



Australian Government

Department of Health, Disability and Ageing

Final Report on the Review of the FSANZ Act



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Summary

The Australia and New Zealand Food Ministers' Meeting (FMM) have been working on an ambitious plan to reform the bi-national food regulation system (System) to ensure it remains strong, robust and agile into the future.

As part of the broader System reforms, the Australian Government Department of Health, Disability and Ageing (the department) was charged with reviewing the *Food Standards Australia New Zealand Act 1991* (the Act) and the associated operations of Food Standards Australia New Zealand (FSANZ).

FSANZ is a highly regarded, independent statutory body responsible for the protection of public health and safety through ensuring a safe food supply across Australia and New Zealand. Since the Act was established, the national and international food system has evolved and the legislation underpinning FSANZ requires updating to keep pace.

The independent review considered the effectiveness of the Act and the associated operations and responsibilities of FSANZ (the Review), including opportunities to:

- improve best practice regulation and standard setting, with greater consideration of short- and long-term public health
- ensure processes are fit for purpose and support an efficient, competitive food industry
- better support risk proportionality and international harmonisation
- improve consistent implementation and enforcement of food standards
- ensure greater stakeholder collaboration and engagement

This report provides an overview of identified concepts, stakeholder perspectives, and recommendations of the Review.

The Review was undertaken by the department in partnership with the Australian Government Department of Agriculture, Fisheries and Forestry and New Zealand Ministry for Primary Industries. Nous Group was contracted to support the Review through the provision of support for the public consultation process and the development of an Impact Analysis (IA).

Across 2020 to 2024, a series of public consultations, targeted consultations, workshops and other engagement activities were undertaken to inform the review. Over 240 submissions were received across the 3 public consultations from a wide range of stakeholder groups and individuals. The consultation activities provided valuable stakeholder perspectives on risks, benefits, and impacts of the proposed concepts to inform the recommendations within this report.

The recommendations made throughout this Review are broken down across 4 components:

- Component 1: Purpose and objectives of FSANZ
- Component 2: Reform standard-setting
- Component 3: Efficient and effective operations
- Component 4: Improving system agility

The Review emphasises the importance of maintaining a robust, adaptive, and transparent System and represent a strategic opportunity to modernise the System. By implementing the

Review recommendations, FSANZ would be better positioned to ensure a safe food supply across Australia and New Zealand into the future. This would be achieved through ensuring a high standard of short- and long-term public health protection, efficient compliance and regulation and supporting industry innovation.

Recommendations summary

This Report identifies 31 recommendations aligned with the 21 concepts made across the 4 components:

- 11 recommendations require an amendment to the Act (noted with an asterisk*)
- 13 recommendations are operational in nature and can be actioned without amendment to the Act
- 7 recommendations recognise existing arrangements which can be effectively utilised to address issues.

Table 1 provides a summary of the concepts and recommendations of the Review.

Table 1: Recommendations of the Review

Component 1: Purpose and Objectives of FSANZ	
Concept 1: Clarify the definition of ‘protection of public health and safety’ within the Act in line with the current policy guidance	
1.1*	Include the definition of public health and safety in relation to food from the <i>Ministerial Policy Statement on The Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures</i> with the addition of ‘and the diet-related risk factors for them’ within the Act.
1.2*	Amend the Act to clearly articulate ‘short- and long-term public health’ in the functions of FSANZ and matters that may be included in standards.
Concept 2: Clarify how ministerial policy guidelines are reflected in the development of food standards	
2.1	FSANZ to undertake stakeholder education on the utilisation of ministerial policy guidelines, including how they are considered and how guidance influences decisions.
2.2	Communicate the web location of ministerial policy guidelines to make them more accessible to the public.
Concept 3: Update the Act to reflect modern legislation and be more culturally inclusive	
3.1*	Update the language and structure of the Act to be modern, consistent and appropriate with current legislative drafting practices.

Component 2: Reform Standard-setting

Concept 4: Expand a risk-based approach to support efficient development of food regulatory measures

- 4.1 FSANZ to expand its risk-based approach to develop a risk-based framework in collaboration with the Food Ministers' Meeting (FMM), Food Regulation Standing Committee (FRSC), and external stakeholders.
- 4.2 Explore the potential for the risk-based framework to be included in the *Food Standards Australia New Zealand Regulations 1994*.

Concept 5: Introduce new pathways to create and amend food standards

Embed high-level requirements within the Act to support FSANZ to create new pathways, in alignment with risk-based approaches, to:

- 5.1*
 - accept risk assessments from reputable international regulators
 - create and amend food standards based on standards from reputable international regulators.
- 5.2 FSANZ to engage stakeholders to refine pathways for the acceptance of international risk assessments and food standards.
- 5.3 FSANZ to create transparent processes for how international standards and risk assessments are considered prior to adoption, and criteria they must meet, including public health and population assessments.

Concept 6: Expand delegation opportunities to streamline decision making

- 6.1* Embed the ability for members of FMM to be able to delegate decisions to senior government officials within the Act.

Concept 7: Legislative change and greater guidance material to support bringing more traditional foods to market

- 7.1 Utilise existing arrangements - Utilise current processes for First Nations and Māori food enterprises to bring traditional foods to market. Support broader System engagement with First Nations and Māori stakeholders to determine future System opportunities.

Concept 8: FSANZ to undertake more timely, holistic and regular reviews of standards

- 8.1 Develop criteria that should be considered to enable a review to be undertaken, with a key focus to support public health and safety.
- 8.2 FSANZ to consider stakeholder engagement requirements for reviews of food standards.
- 8.3 FSANZ to consider evidence requirements to justify and/or inform reviews of food regulation.
-

Concept 9: Increase use of codes of practice and guidelines to complement food standards

- 9.1 Within the risk-based framework, consider including when guidelines and codes of practice should be developed.

Component 3: Efficient and Effective Operations

Concept 10: Strengthen Board skill composition and appointment processes of the FSANZ Board

Amend the Act to require the Minister to:

- 10.1*
 - ensure the appointed Board members are an appropriate mix of persons suitable for Board membership, with a distribution of the qualifications, skills or experiences referred to in subsections of the Act
 - consider advice from the Board Chair about the current skill mix of the Board.

- 10.2* Amend the Act to allow Board nominations to be sought via a structured, transparent and merit-based process using an open market approach.

- 10.3 Clearly communicate Board appointment processes with stakeholders and how they will be supported to participate.

Concept 11: Expand cost recovery for work that benefits applicants

- 11.1* Allow FSANZ to charge for additional hours above the originally quoted hours, for cost-recovered work.

Concept 12: Remove expedited approvals pathway to address workload prioritisation

- 12.1 Utilise existing arrangements - Retain current expedited approvals processes.

Concept 13: Cost recover some services from government agencies

- 13.1 Utilise existing arrangements - Retain existing functions which enable FSANZ to charge fees for work it undertakes.

Component 4: Improving System Agility

Concept 14: Implement mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting

- 14.1 The Australian Government Minister responsible for FSANZ considers the development of an Australian Government Statement of Expectation for FSANZ.

Concept 15: FSANZ to engage earlier and more systematically with FRSC in the development of food standards

- 15.1 Utilise existing arrangements - FSANZ and FRSC consider opportunities to strengthen their engagement.

Concept 16: FSANZ to take guardianship over key food safety databases (Australia only)

- 16.1* Clarify FSANZ's ability to collect, produce and coordinate information and statistics related to the System.

Concept 17: Expand information sharing arrangements with international partners

- 17.1 Utilise existing arrangements - Enable continuation and expansion of information sharing arrangements with international partners.

Concept 18: Introduce statements of intent into the Food Standards Code to assist with interpretation and enforcement

- 18.1 Utilise existing arrangements - Utilise mechanisms such as purpose statements and interpretive guidelines to improve the interpretation of standards.

Concept 19: Increase development of guidelines for industry to support interpretation of food regulatory measures

- 19.1 Develop transparent processes for guideline development in parallel with food regulatory measures (where relevant) to overcome potential implementation issues.

Concept 20: FSANZ to strengthen collaboration with the Implementation Subcommittee for Food Regulation (ISFR) on enforcement and risk identification (Australia only)

- 20.1 Utilise existing arrangements - FSANZ and ISFR consider opportunities to strengthen their engagement.

Concept 21: FSANZ to undertake limited enforcement and compliance activities (Australia only)

- 21.1* Update the Act to include limited enforcement and compliance functions for FSANZ relating to labelling, advertising and marketing of food.
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- 21.2* Update the Act to enable the Minister responsible for FSANZ to create a legislative instrument for FSANZ to undertake national enforcement activities relating to the marketing, advertising and labelling of food, outside of the System or Code, in consultation with FMM.
-

Introduction

The Australia and New Zealand Food Ministers' Meeting (FMM) has been working on an ambitious plan to reform the bi-national food regulatory system (the System) to ensure it remains strong, robust and agile into the future.

As part of the broader System reforms, the Australian Government Department of Health, Disability and Ageing (the department) was charged with reviewing the *Food Standards Australia New Zealand Act 1991* (the Act) and the associated operations of Food Standards Australia New Zealand (FSANZ) (the Review). The Review was undertaken in partnership with the Australian Government Department of Agriculture, Fisheries and Forestry (DAFF) and the New Zealand Ministry of Primary Industries (NZ MPI).

An independent consultant, Nous Group, was engaged to support the Review, providing an impartial and objective position in the review process. Nous Group led consultation with stakeholders, analysed feedback on key issues within the System as they related to FSANZ, and developed an Impact Analysis (IA) for government consideration.

About this report

This report was finalised in October 2025. It provides an overview of identified issues, concepts, stakeholder perspectives, and recommendations of the Review. Tables within the report provide summaries of the concepts considered through the Review, stakeholder views, and legislative and/or operational recommendations.

The Review considered evidence across 21 concepts, under 4 key components:

- Component 1: Purpose and objectives of FSANZ.
- Component 2: Reform standard-setting
- Component 3: Efficient and effective operations
- Component 4: Improving system agility.

For each concept a problem is described, stakeholder views are summarised, and recommendations are listed. Given the bi-national nature of the System, some recommendations are relevant to either or both Australia and New Zealand – this is noted throughout the report.

The Review makes 31 recommendations for final consideration (see **Table 1**). These recommendations are categorised as:

- legislative changes (requiring amendment to the Act)
- operational changes (can be actioned without amendment to the Act)
- recommendations that recognise existing arrangements that can be more effectively utilised to address issues.

The findings and recommendations of this Review are intended for delivery to Australian and New Zealand Governments for consideration. Once agreed by both governments they will inform updates to the Act and FSANZ operations.

FSANZ Act 1991 and the role of FSANZ

The Act establishes FSANZ as an independent Australian Government statutory body responsible for the protection of “*public health and safety by ensuring a safe food supply in partnership with food and health authorities in Australia and New Zealand*”.

The Act sets out the functions of FSANZ, as well as the processes required to create and administer the *Australia New Zealand Food Standards Code* (the Code). The Code regulates a variety of elements of the food supply, including compositional and labelling requirements, the use of food ingredients and processing aids. The Code safeguards the safety, quality, and reputation of Australian and New Zealand foods, generating significant benefits for consumers and industry.

FSANZ also undertakes surveillance activities to monitor the food supply and ensure it is safe. It provides a critical coordination function to respond to food incidents in Australia, such as a foodborne illness outbreak or product recall. FSANZ works in close partnership with government agencies, food regulators and food businesses to carry out this work.

Context for the Review

The Review aims to ensure that the Act remains fit for purpose in the contemporary environment. Since coming into effect in 1991, the Act has only undergone minor amendments and could benefit from modernisation. The Australian Government Attorney-General’s Department states that legislation should be regularly reviewed for readability, usability, ease of administration and policy desirability.¹

The local and international food environment has evolved significantly in 30 years. Innovation in food production has led to the development of new food technologies, such as genetically modified and cell-cultured foods.

Several food categories have grown rapidly – many of which were uncommon when the legislation was first drafted. These include formulated supplementary sports foods, infant formula products, formulated meal replacements and formulated supplementary foods, and formulated caffeinated beverages.

Continued innovation in the food industry places increasing demand on FSANZ’s capacity. This challenges FSANZ’s ability to assess the safety and health impacts of emerging products in a way that is proportionate to risk and efficient.

In a highly connected global economy, international trade has increased, and supply chains have become more complex. The growth of global food companies makes international harmonisation increasingly important. Increased responsiveness and agility is required to adapt to changing global circumstances, such as supply chain disruptions from COVID-19, and product shortages resulting from major geopolitical events. Effective information sharing across borders and international harmonisation of standards supports an effective food system. Supporting these advancements requires modern regulation, compliance and enforcement solutions.

¹ Australian Government, [Reducing the complexity of legislation](#)

Changing consumption patterns, including consumption of more processed and convenience foods, have accompanied significant changes in the health status of the Australian and New Zealand populations. There are higher rates of overweight and obesity, diabetes, and other diet-related chronic conditions, creating challenges in balancing consumer choice and preventive health measures. Consideration of public health in the System is becoming increasingly important.

These factors support the need for a review of the Act and align with the Australian Government's regulatory reform agenda. The regulatory reform agenda aims to boost Australia's productivity and lower the cost of living by ensuring a fit for purpose regulatory environment.

While there is a clear need to update the Act, stakeholders have consistently communicated that the System is not broken, it can be improved.

Principles of the Review

This Review makes recommendations to achieve effective and fit-for-purpose regulation while minimising the administrative burden on businesses, community organisations and individuals. Across all concepts there was a focus on following best practice principles for regulations and operations that maintain FSANZ's independence and are:

- outcomes focused
- proportional and efficient
- responsive and flexible
- transparent and accountable
- focused on improving communication and engagement
- consistent and cooperative across jurisdictions.

Scope and Governance of the Review

Terms of Reference (ToR) for the Review were agreed by the Australian Government. These ToR ([Appendix A](#)) outlined the scope, process and governance of the Review.

Scope

The ToR outlined the scope of the Review, requiring consideration of:

1. The Act and FSANZ operational functions, focusing on areas identified as being inconsistent with best practice regulation and standard setting.
2. Operational functions of FSANZ, including the timeliness and relative priority of work, risk proportionality and international harmonisation of risk assessments and standards, FSANZ's independence and appropriate resourcing.
3. Role of FSANZ in either/both Australia and New Zealand including enforcement of food standards, food safety, communication of food standards to industry and consumers, undertaking education campaigns in alignment with System outcomes.²
4. The economic efficiency of regulation, recognising the importance of the food industry to regional communities and the broader economies of both Australia and New Zealand.

The specific findings and recommendations which address the above are discussed in more detail throughout this report.

Out of Scope

The ToR specify that other food legislation and agreements were not in scope of this Review. Legislation, legislative instruments and Agreements that are out of scope include the:

- Food Regulation Agreement (FRA) including Annex A and B (the Model Food Act)
- *Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System* (Food Treaty)
- the Code.

Matters that are not in scope of this Review include:

- a comprehensive review of FSANZ's substantive funding arrangements
- recommendations for baseline/remediation funding for FSANZ's ongoing sustainability.

Some out-of-scope items were identified for consideration separate to this Review. These are noted in the relevant concept discussions.

Governance

As the Act is Australian Government legislation, the Review was led by the Australian Government.

² Australia New Zealand Food Regulation System Statement, [Food Regulation System Statement](#)

A Steering Committee, Working Group and Enforcement Advisory Group provided strategic advice, guidance and supported drafting throughout the Review. These groups comprised of government officials from both New Zealand and Australian Governments.

Interdependencies with System work

The Review has several interdependencies with the broader System modernisation work. The System modernisation work focused on *maintaining a strong, robust, and agile food regulation system* using best practice regulatory approaches. The objectives include:

- improving system timeliness
- ensuring the System is responsive
- providing a unified voice regarding food safety
- applying processes proportional to risk.

In considering wider system reforms, the Food Regulation Standing Committee (FRSC) reviewed the FRA, the organisation of the System and its committees and updated the aspirations and strategic objectives of the System.

Recommendations from the broader System modernisation work identified potential areas where FSANZ could support System improvements to achieve better integration, collaboration and intelligence sharing. This supported the inclusion of some operational recommendations in this Review report.

There may be further interactions between the final outcomes of the Review and broader System reforms as both projects progress. Broader System updates in Australia and outcomes of the Review may also impact the Food Treaty.

Economic efficiency of regulation

The ToR included consideration of the economic efficiency of regulation. This recognises the importance of the food industry to regional communities and the broader economies of both Australia and New Zealand.

An IA has been developed in alignment with the Australian Government Office of Impact Analysis (OIA) requirements to address this aspect of the ToR. The early versions of the IA were considered by the OIA, New Zealand Treasury and the FMM throughout the Review. The Early Assessment IA was publicly consulted on between February-April in 2024. Feedback from this consultation informed recommendations made throughout this report.

A final IA has been developed based on recommendations from this report. This will consider feedback received from public consultation to assess the economic efficiency of the recommended reform options. The IA sets out 3 potential options to address the identified policy problems. It identifies a preferred reform option based on the effectiveness of addressing the policy issue, the delivery of risk and the associated costs and benefits. The IA also includes implementation and evaluation considerations to support any recommendations adopted from this report.

Stakeholder Engagement

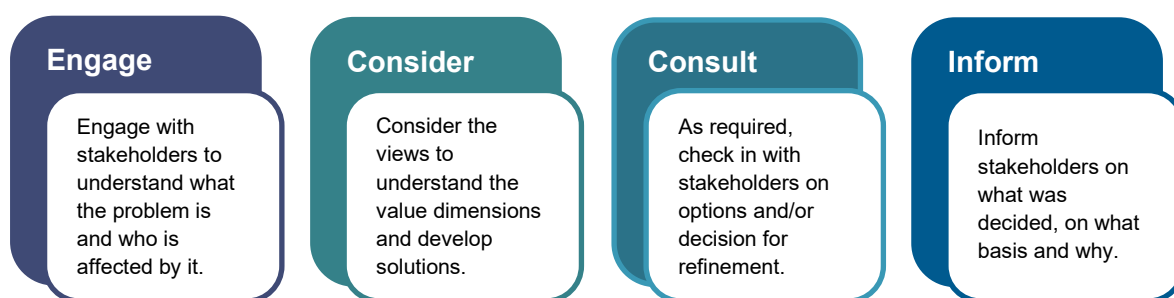
Changes to the Act and FSANZ operations have the potential to impact Australian and New Zealand stakeholders. A key aspect of the Review ToR was to undertake broad consultation, including with government, consumer, public health, and industry stakeholders along the supply chain.

Extensive engagement with a variety of stakeholder groups informed the analysis, findings and recommendations of this Review. A summary of key stakeholder activities and feedback is included at [Appendix B](#). Key stakeholder feedback from public health groups, consumer groups, industry and government are included at each concept within this report.

Engagement planning

The Review followed a four-stage engagement approach: engage, consider, consult and inform. This approach aimed to ensure the concepts were explored in depth, and that there was appropriate consideration of the different views of stakeholders, and of the overarching goals of the Review.

Figure 1: Engagement Activities



Summary of engagement

Throughout the Review, the department and Nous Group undertook a variety of engagement activities with stakeholders across the System.

Three rounds of public consultation were undertaken between 2020 and 2024. Across these consultations, over 240 submissions were received from 90 unique industry, public health groups, consumer groups, government agencies, research bodies, academics, and individuals. These public consultations were:

1. **Scoping Paper Consultation** – this outlined broad issues with the Act and 25 possible ideas for reform.
2. **Draft Regulatory Impact Statement Consultation** – the draft Regulatory Impact Statement articulated 3 proposed reform options, and associated components based on the scoping paper consultation.
3. **Draft IA Consultation** – the draft IA outlined 20 updated concepts across 4 overarching components, to support the refinement of the IA.

Additional targeted engagements with industry, public health groups, consumer groups, and First Nations and Māori representatives were also undertaken. These engagements sought to explore key issues and opportunities for the Review and provide updates to stakeholders.

Additional workshops were also conducted to further explore impacts of the proposed recommendations, next steps, the IA and public consultations.

Consultation across government

Engagement across the Australian Government was undertaken through formal and informal mechanisms with the Australian Department of the Prime Minister and Cabinet, DAFF, Department of Industry, Science and Resources, Department of Foreign Affairs and Trade, FSANZ, and the NZ MPI.

The Food Treaty outlines the requirements for consultation between Australia and New Zealand for any review or amendments of the Act.³ Due to FSANZ's integral role in the System, engagement with New Zealand was vital and occurred consistently throughout the Review.

The Review involved engagement across the System through the three main groups:⁴

- **FMM** oversees and is responsible for the System. FMM membership includes Food Ministers from the Australian Government, states and territories, and the New Zealand Government. FMM is the core decision maker for the System.
- **FRSC** supports the FMM. It coordinates and provides policy advice and ensures a consistent approach to implementing food standards.
- **Implementation Subcommittee for Food Regulation (ISFR)** is a subcommittee of the FRSC. It helps to ensure the implementation and enforcement of food standards is consistent across Australia and New Zealand.

As a key influencer in the System, FMM were consulted with and engaged at key stages of the Review. Consultation included the discussion of outcomes from stakeholder consultation activities, and refinement of proposed recommendations.

FRSC and ISFR provided feedback and support related to early engagement with proposed reforms, troubleshooting key concepts, and contextualising broader System impacts.

Details of engagement with governance groups, and FMM and stakeholders are included in [Appendix B](#).

³ Australian Government, [Agreement between the Australian Government and Government of New Zealand concerning a Joint Food Standards System](#)

⁴ Food Regulation, [Activities and committees](#)

Concepts within the Review

The Review identified a variety of options to improve the effectiveness and efficiency of FSANZ operations through both legislative and operational changes. This section articulates the identified issues, stakeholder perspectives and the consideration of options in relation to the issues and stakeholder views.

Table 2: Review Components and Concepts

Component	Concept	
Component 1: Purpose and Objectives of FSANZ	1	Clarify the definition of ‘protection of public health and safety’ within the Act in line with the current policy guidance
	2	Clarify how ministerial policy guidelines are reflected in the development of food standards
	3	Update the Act to reflect modern legislation and be more culturally inclusive
Component 2: Reform Standard-setting	4	Expand a risk-based approach to support efficient development of food regulatory measures
	5	Introduce new pathways to create and amend food standards
	6	Expand delegation opportunities to streamline decision making
	7	Legislative change and greater guidance material to support bringing more traditional foods to market
	8	FSANZ to undertake more timely, holistic and regular reviews of standards
Component 3: Efficient and Effective Operations	9	Increase use of codes of practice and guidelines to complement food standards
	10	Strengthen Board skill composition and appointment processes of the FSANZ Board
	11	Expand cost recovery for work that benefits applicants
	12	Remove expedited approvals pathway to address workload prioritisation
	13	Cost recover some services from government agencies
Component 4: Improving System Agility	14	Implement mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting
	15	FSANZ to engage earlier and more systematically with FRSC in the development of food standards
	16	FSANZ to take guardianship over key food safety databases (Australia only)
	17	Expand information sharing arrangements with international partners
	18	Introduce statements of intent into the Food Standards Code to assist with interpretation and enforcement
	19	Increase development of guidelines for industry to support interpretation of food regulatory measures
	20	FSANZ to strengthen collaboration with the ISFR on enforcement and risk identification (Australia only)
	21	FSANZ to undertake limited enforcement and compliance activities (Australia only)

Component One: Purpose and objectives of FSANZ

This section outlines three concepts which focus on the purpose and objectives, and role of FSANZ.

Concept 1: Clarify the definition of ‘protection of public health and safety’ within the Act in line with the current policy guidance

Current issue

Some areas of the Act have been identified as ambiguous and inconsistent. In particular, the terms ‘public health protection’ and ‘public health and safety’ are not clearly defined in the legislation. This has led to different interpretations across stakeholders and policies regarding FSANZ’s role in public health and safety, short- and long-term health, and diet-related diseases.

The Act’s objective is to ensure a high standard of public health protection throughout Australia and New Zealand through the establishment and operation of FSANZ.

- Part 1, section (s) 3 states the object of the Act is to “*ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals...*”.⁵
- Part 2, s 18 (1a) states, ‘*The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are: (a) the protection of public health and safety ...*’.⁶

For the purposes of the broader System, a definition of public health and safety does exist. The ‘*Overarching strategic statement for the food regulatory system*’ defines public health as:

*“the organised response by society to protect and promote health, and to prevent injury, illness and disability”.*⁷

In 2013, Food Ministers endorsed a policy statement titled ‘*Policy Statement - the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures*’ (Ministerial Policy Statement on Public Health). This outlines that public health and safety in relation to food:

*“refers to all those aspects of food consumption that could adversely affect the general population or a particular community’s health either in the short term or long term, including preventable diet-related disease, illness and disability as well as acute food safety concerns”.*⁸

The intent of this policy statement was to clarify how public health and safety should be interpreted by FSANZ given the broad definition of public health, which covers matters outside the remit of FSANZ. The endorsed policy statement was included in the updated ‘*Overarching strategic statement for the food regulatory system*’, published in 2017.

⁵ [FSANZ Act 1991](#) (Cth) pt I s 3.

⁶ [FSANZ Act 1991](#) (Cth) pt II s 18.

⁷ Australian Government, [Overarching strategic statement for the food regulatory system](#)

⁸ FMM, [Policy statement on the public health role of Food Standards Australia New Zealand](#)

In December 2021, Food Ministers confirmed the principle of the protection of public health and safety and noted it as a key objective within the Act.⁹ This reaffirmed the continued relevance of the Ministerial Policy Statement on Public Health.

Including a food specific definition of 'public health and safety' within the Act could align with the Ministerial Policy Statement on Public Health. This could help strengthen FSANZ's consideration of public health in its operations and regulatory measures.

Consultation Feedback

Public health and consumer groups

Public health and consumer groups outlined a clear need to clarify the definition of 'protection of public health and safety' within the Act.

Stakeholders agreed that the inclusion of a precise definition would reduce confusion and provide a better understanding of the scope and parameters within which FSANZ operates. However, it was noted a definition alone will not increase transparency or provide assurance as to how FSANZ considers long-term risks to health when developing food standards. Support was given to the use of the definition in the Ministerial Policy Statement on Public Health.

Public health and consumer groups advocated for the definition to have a stronger focus on public health and safety, including long-term risks to health. Some groups proposed introduction of a 'public health test' in the Act or the definition. The components proposed for inclusion in the public health test were:

- consideration of burden of disease and benefit of change to the food supply
- discouraging development of foods with low or no nutritional value and encouraging healthy and sustainable eating.

The full list of considerations for a proposed 'public health test' submitted for consideration is at [Appendix C](#).

Public health and consumer groups recommended the words "*and the diet-related risk factors for them*" be included in the definition.

Industry

Most industry stakeholders supported the current wording of the Act, and FSANZ's existing role and responsibilities. They were concerned definition changes could cause confusion, overlap, or diversion of resources and a shift in focus from FSANZ's core functions and science-based operations to societal issues. It was suggested this could potentially dilute FSANZ's effectiveness and lead to unintended consequences. Some stakeholders expressed support for the concept, provided it was done in a well-considered manner that maintains the integrity and efficiency of the System. Stakeholders suggested the definition should better align with the Australian Dietary Guidelines and recognise the short- and long-term effects of food on health.

⁹ FMM, [Food Ministers' Meeting communiqué – 16 December 2021](#)

Government

Most government stakeholders supported the inclusion of the definition in s 3 and s 18 of the Act, proposing it would increase clarity and create a positive impact. Some stakeholders also suggested the definition should be supported by further implementation guidance, or that it should be captured within s 4 of the Act instead. Some stakeholders felt additional measures were needed to ensure public health and safety was appropriately addressed and captured in the Act.

Consideration

There are opportunities to clearly articulate what ‘public health and safety’ means within the Act, and how this applies to the work undertaken by FSANZ.

- Both s 3 and s 18(1) of the Act would require amendment to clarify the objectives of developing food regulatory measures are to safeguard short- and long-term health.
- There is opportunity to include the definition of ‘public health and safety’ in relation to food from the Ministerial Policy Statement on Public Health within s 4 of the Act. Subsequent updates may be required to the FRA and the Food Treaty to ensure definitions and objective align across the System.
- Following public health and consumer groups feedback, updating the definition of short- and long-term health to include ‘*and diet-related risk factors*’ is recommended.
- The proposed amended definition of public health and safety is:
“refers to all those aspects of food consumption that could adversely affect the general population or a particular community’s health either in the short term or long term, including preventable diet-related disease, illness and disability, and the diet-related risk factors for them, as well as acute food safety concerns”.
- Including the definition in the Act may clarify FSANZ’s purpose and the requirement that both short- and long-term matters should be considered in food regulation. This may improve stakeholders’ understanding and confidence in FSANZ and the System.
- While out of scope for the Review, it was identified that the Ministerial Policy Statement on Public Health could be updated to reflect this definition for consistency.

Any alterations to the Act should be reflected in relevant and associated policy documents or formal agreements (e.g. ministerial policy statements, FRA, Food Treaty), to ensure language is consistent across documents of the System.

Recommendations

Legislative changes

- Include the definition of public health and safety in relation to food from the *Ministerial Policy Statement on The Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures* with the addition of ‘and the diet-related risk factors for them’ within the Act.
- Amend the Act to clearly articulate ‘short- and long-term public health’ in the functions of FSANZ and matters that may be included in standards.

Concept 2: Clarify how ministerial policy guidelines are reflected in the development of food standards

Current issue

Currently, under s 18(2)(e) of the Act, FSANZ must consider ministerial policy guidelines in the development of food regulatory measures. The 15 existing policy guidelines have been endorsed by Food Ministers with the objective of providing policy guidance to FSANZ on key issues of concern when developing or reviewing food standards.

FSANZ reports on how the relevant guidelines have been considered in its approval reports. Stakeholders have articulated this information can be hard to locate and difficult to understand due to the technical nature of these reports. This can lead to confusion about the factors FSANZ considers in its decision-making and how this aligns with the objectives of the Act. Greater transparency and communication would assist stakeholders to understand how the policy guidance is considered by FSANZ in decision making.

Consultation Feedback

There was consensus among stakeholders that FSANZ should revise the way it communicates how ministerial policy guidelines are considered in its decisions.

Public health and consumer groups

Public health and consumer groups proposed FSANZ should document its compliance with ministerial policy guidelines in a report, and the Act should be amended to give priority to ministerial policy guidelines over other matters in s 18(2). Stakeholders requested:

- more transparency and communication from FSANZ on how ministerial policy guidelines are taken into consideration
- a greater understanding of the ministerial policy guidelines and where to find them.

Industry

Stakeholders agreed there is a need for FSANZ to revise its communication methods regarding the development of food regulatory measures. It was suggested there is a need for greater transparency in communication, particularly on how guidelines are applied, the considerations made, and how guidelines are weighed against each other. Stakeholders also noted FSANZ needs to raise awareness that ministerial policy guidelines are in place.

It was suggested when FSANZ publishes 'call for submissions' documents, the relevant ministerial policy guidelines should be clearly referenced and the reasoning for the decisions outlined.

Stakeholders proposed a newsletter and a specific section on the FSANZ home page for publishing of historical and upcoming ministerial policy guideline topics. There was strong support for further education to ensure stakeholders are aware of the available information, including a dedicated page on the FSANZ website and webinars at the time of publication. The additional work this would create was recognised and concerns were raised regarding the pressure this would put on current resources.

Government

Government stakeholders thought FSANZ should have more regard to the ministerial policy guidelines, but there were different opinions on whether it should be mandatory or voluntary. Stakeholders also indicated the communication and integration of ministerial policy guidelines within the FSANZ decision making processes could be enhanced.

Consideration

Noting the desire from stakeholders for increased understanding regarding how FSANZ considers the ministerial policy guidelines, options to improve clarity were explored. Better stakeholder communication could improve understanding of how FSANZ considers all aspects of the relevant policy guidelines when developing food regulatory measures. The ministerial policy guidelines are currently published on the Food Regulation website, not the FSANZ website. To support stakeholders in locating the ministerial policy guidelines, stronger links between the FSANZ and the Food Regulation websites could be developed.

Through their approval reports, FSANZ already outlines their regard of ministerial policy guidelines as required in s 18(2) of the Act. Introducing additional legislative changes to facilitate clearer reporting from FSANZ regarding the consideration of ministerial policy guidelines would not be appropriate. As the subject matter experts, FSANZ should retain autonomy regarding the level of detail and complexity required to address these legislated requirements in the development of regulatory measures.

FSANZ could consider undertaking a stakeholder education piece to outline its utilisation of ministerial policy guidelines, including how they are considered and how guidance influences decisions. Clear communication of the web location of ministerial policy guidelines may also be beneficial to make them more accessible to the public.

FSANZ should consider the broad audience that are interested in the assessment of ministerial policy guidelines and public health and safety, and tailor the relevant sections of the approval reports to comprehensively discuss the rationale and consideration of both.

Recommendations

Operational changes

- FSANZ to undertake a stakeholder education piece on the utilisation of ministerial policy guidelines, including how they are considered and how guidance influences decisions.
- Communicate the web location of ministerial policy guidelines to make them more accessible to the public.

Concept 3: Update the Act to reflect modern legislation and be more culturally inclusive

Current issue

The current Act lacks recognition and respect for First Nations and Māori peoples, their culture, traditional foods, food production techniques and expertise. It also fails to reflect the commitments of governments to these communities.

- The Act does not recognise traditional foods and food production, preservation, and processing techniques of these communities.

- In New Zealand the *Pae Ora (Healthy Futures) Act 2022* specifically sets out how the legislation is designed to give effect to the Treaty of Waitangi.
- Similar provisions could be included within the Act to pay respect to First Nations and Māori people.

Since the Act was first drafted, general language provisions within legislation have also evolved. The language in the Act could be updated to be modern, consistent, appropriate, and inclusive.

The Act could be modernised through inclusion of updates to reflect First Nations and Māori stakeholders, in addition to general modernisation updates to its language and structure.

Consultation Feedback

Noting a low stakeholder response rate to this question, the positions of stakeholders were very consistent across all stakeholder groups. There was also a low response rate from First Nations and Māori stakeholders.

Public health and consumer groups

Public health stakeholders and consumer groups felt that greater recognition of First Nations and Māori food expertise in the Act is required in addition to recognising the importance of cultural determinants of health for First Nations and Māori people. Stakeholders suggested specific consultation to be conducted with First Nations and Māori people and experts on possible provisions and language changes that are culturally appropriate. It was also proposed that broader consideration is needed on the promotion of First Nations and Māori culture and knowledge within the System.

Industry

Industry stakeholders agreed a greater recognition of First Nations and Māori food expertise in the Act is required, with recognition given to the importance of cultural determinants of health for First Nations and Māori people. It was consistently noted that First Nations and Māori people must be appropriately consulted and involved in the changes to provisions and language changes in the Act as it relates to their culture and health.

It was suggested the Australian Government consult specifically with First Nations and Māori people and experts and be guided on possible provisions and language changes that are culturally appropriate. Stakeholders also noted the importance of promoting First Nations and Māori culture and knowledge within the System.

Government

Government stakeholders agreed to the importance of recognising First Nations and Māori food expertise but highlighted that First Nations and Māori people should be specifically consulted on this work. They noted that any changes which impact First Nations and Māori people should go beyond wording and be implemented in a holistic manner.

Consideration

Broader changes are required to better support and reflect First Nations and Māori stakeholders within the System. In April 2023, FMM considered a desktop review of First Nations and Māori culture and expertise, undertaken by the department. This review identified 13 concepts focused on discrete and broader System changes to better support

First Nations and Māori people within the System, as referred at [Appendix D](#). FMM supported the inclusion of several concepts within the Review and the broader System workplan.

A comprehensive consultation should be conducted to understand the needs of First Nations and Māori communities and businesses related to the System. This systems-focused review should consider and address the broad range of barriers facing these communities and identify any subsequent changes required to the wider System, including those that may need to be updated within the Act. Some concepts from this review have been referred to the System for consideration as a broader piece of work for FRSC.

Appropriate engagement with First Nations and Māori stakeholders would be required to ensure any work relating to First Nations and Māori peoples is undertaken in partnership and co-designed with these communities to meet their self-identified needs.

General updates to the Act are also required to ensure the language is modern, consistent and appropriate. Incidental changes that would support modernisation of the Act have been identified at [Appendix E](#). It is anticipated that these changes would assist in increasing efficiency, productivity and clarity of functions of FSANZ, and reduce delay costs associated with FMM application delays.

Advice on aligning the Act with current legislative drafting practices can be sought from the Office of Parliamentary Council (OPC) during the drafting process.

Any alterations to the Act should be reflected in relevant and associated policy documents or formal agreements (e.g. FRA, Food Treaty) to ensure language is consistent across documents of the System.

Recommendations

Legislative changes

- Update the language and structure of the Act to be modern, consistent and appropriate with current legislative drafting practices.

Component Two: Reform Standard-setting

This section outlines the six concepts in Component 2 which focus on modernising and reforming the development of food regulatory measures.

Concept 4: Expand a risk-based approach to support efficient development of food regulatory measures

Current issue

The Act prescribes detailed processes for developing and amending food regulatory measures. It outlines a 'general procedure' for handling applications and proposals, with slightly modified processes for major, minor, and urgent variations. The procedures apply to:

- applications – requests by external party to vary the Code
- proposals – initiated by FSANZ to review and update the Code.

While these processes ensure consistency and transparency, they offer limited flexibility in how FSANZ conducts assessments, consultations, and decision-making.

Approximately half of the applications received by FSANZ each year relate to minor amendments involving processing aids. Many of these substances have already been assessed and approved in international food regulation bodies. Despite this, the current framework does not support risk-proportionate processes.

This results in inefficient use of FSANZ's resources, and lengthy timeframes for low-risk applications. The lack of flexibility also places a burden on industry, due to the time and costs involved in preparing detailed applications. This can discourage businesses from engaging with the application process, potentially limiting innovation and reducing consumer access to newer or more cost-effective products.

To address these issues, the Act and/or Regulations could be amended to give FSANZ greater discretion to tailor processes using a risk-based framework. This could support a level of consultation and assessment appropriate to the risk involved. It could also provide sufficient flexibility to adjust the approach or procedure based on new information.

This could improve efficiency and enable clearer communication of how decisions are made.

Consultation Feedback

Stakeholders indicated the limited information provided regarding a risk framework meant full support could not be given to this concept at this time.

Public health and consumer groups

Public health and consumer groups outlined the risk-based framework does not appear to produce an equivalent approach for decisions that would impact public health compared to industry. Stakeholders raised concerns that all public health decisions would be assessed as 'high-risk' whereas some industry/commercially driven decisions would be assessed as 'low-risk'. This raised concerns about a potential disparity between the approach to public health and industry under the Act.

Both public health and consumer groups agreed the introduction of a risk-based framework would be better supported if consultation was undertaken during its development. Factors to consult on included:

- risk criteria and assessment matrix
- whether assessments from select organisations can inform the assessment of a low-risk, minimal assessment approach
- who is responsible for determining risk
- how to consider short- vs long-term risk, and public health vs industry risk.

Industry

Industry stakeholders generally agreed a risk-based framework and approach would be positive, flexible, and proportionate, and would support public health impact assessment and alignment of regulatory actions. Stakeholders suggested that a risk-based framework should be based on sound, science-based risk assessment processes, such as by leveraging risk assessments from reputable international regulators. Some concerns were raised about the subjectivity of risk evaluation, the reliance on existing evidence, and the sufficiency of information provided by applicants.

Stakeholders agreed that a risk-based framework should be informed by stakeholder consultation and ministerial oversight. It was noted that work would be required to determine the overall risk profile, risk approach, and to ensure it reflects the views of a diverse range of participants.

Government

Many government stakeholders supported this concept, noting it could increase flexibility and proportionality in the System. Stakeholders highlighted that the risk-based approach needs to be carefully applied to ensure long-term public health is not compromised. Some stakeholders felt the consultation did not provide enough detail on this proposal and requested more information and consultation.

Consideration

FSANZ already has a clear risk appetite which places the protection of public health and safety first as outlined in *Risk Analysis in Food Regulation*.¹⁰ However, an expanded risk-based approach to guide processes for development of food regulatory measures could allow FSANZ more flexibility to adjust processes based on the identified risks. FSANZ could review and build upon existing risk-based approaches to most effectively recognise and respond to risk.

An expanded risk-based regulatory approach could support FSANZ to be flexible, responsive and proportionate within its functions.

A framework could articulate FSANZ's risk appetite and how this interacts with the broader System. It may include a description of how FSANZ identifies and manages risks, and what pathways are undertaken based on how risk is identified. The framework could require FSANZ to more publicly share its decision-making processes or describe the process for assessment when determining the risk of applications. Factors addressed may include timeframes, complexity of the proposal, stakeholder concerns and public health impacts.

¹⁰ FSANZ, [Risk Analysis in Food Regulation](#)

Clarity regarding what resourcing and stakeholder engagement requirements are implicated depending on level of identified risk would be beneficial.

The framework could include communication of how regulatory efforts are prioritised based on the impact and likelihood of risk, and promote open, transparent and documented processes. Consideration may be required to ensure the focus on public health and safety is maintained.

To assist in the operationalisation of this framework, FSANZ could consider existing guidance and risk-based frameworks to inform its potential principles including:

- *AS/NZS ISO 31000:2018 Risk Management – Principles and Guidelines*¹¹
- *Working Principles for Risk Analysis for Application in the Framework of the Codex Alimentarius*¹²
- *Office of Gene Technology Regulator Risk Analysis Framework 2013*¹³
- *Organisation for Economic Cooperation and Development Regulatory Policy Outlook 2021*.¹⁴

The development of a framework would require careful consideration and consultation. Careful framing of elements within the framework, including risk, the levels of risk and appropriate mitigation measures would be required. A clear approach to capturing public health risk in assessments should be identified.

Noting the views from consultation, collaboration with stakeholders during the development of the framework would be beneficial. As outlined by stakeholders, areas for consideration could include:

- how public health and safety risk is considered
- what level of risk is appropriate for various pathways to create and amend food standards ([concept 5](#))
- interaction of risk with the development of guidelines and codes of practice ([concept 9](#))
- alignment to strategic priorities of the System
- articulation of a clear risk appetite and mitigation strategies
- clearly defined risk management accountabilities and responsibilities
- promotion of open, transparent and documented processes
- consideration of the Australian Government regulatory reform agenda
- utilising evidence to determine appropriate risk categories and processes
- prioritisation of regulatory efforts based on the impact and likelihood of risk, the characteristics of each risk, timeframes for delegation and decision making.

¹¹ Comcover, [An Overview of the Risk Management Process](#)

¹² Food and Agriculture Organization (FAO), [Working Principles for Risk Analysis for Application in the Framework of the Codex Alimentarius](#)

¹³ Office of the Gene Technology Regulator (OGTR), [Risk Analysis Framework 2013](#),

¹⁴ Organisation for Economic Co-operation and Development (OECD), [Chapter 6: Risk-based regulation – OECD Regulatory Policy Outlook 2021](#)

A risk-based framework may help streamline timeframes and strategically allocate resources to be used in a way that ensures attention is prioritised to where the highest risk is.

Recommendations

Operational changes

- FSANZ to expand its risk-based approach to develop a risk-based framework in collaboration with the Food Ministers' Meeting (FMM), Food Regulation Standing Committee (FRSC) and external stakeholders.
- Explore the potential for the risk-based framework to be included in the *Food Standards Australia New Zealand Regulations 1994*.

Concept 5: Introduce new pathways to create and amend food standards

Current issue

As noted in [concept 4](#), the Act imposes strict processes and timelines for handling applications and proposals. This has led FSANZ to allocate additional resources to low-risk tasks and repeat work that has already been done. As a result, FSANZ's agility and cost-effectiveness is reduced, resulting in longer processing times and increased expenses for both FSANZ and applicants. This burden is particularly prominent for smaller businesses and First Nations and Māori food enterprises.

The Australian Government is advancing its Regulatory Reform Agenda, aimed at boosting productivity, lowering cost of living and working with international partners to identify opportunities to improve the quality of regulation across Australia. Opportunities have been identified for FSANZ to recognise and/or harmonise with international risk assessments and food regulatory measures. This would be consistent with other Australian standards development bodies such as the Therapeutic Goods Administration (TGA) and Australian Pesticides and Veterinary Medicines Authority (APVMA).

Feedback was sought on the appropriateness of FSANZ being able to develop new pathways to do one or more of the following:

- recognise and accept risk assessments from comparable, reputable overseas regulators
- create and amend food standards based on international standards set by reputable overseas regulators
- automatically adopt approved trusted international standards, and subsequent changes, without the need for FSANZ to create or update a standard
- bring low-risk products to market more efficiently, through a minimal check pathway.

These pathways would need to be subject to risk-proportionate requirements ([concept 4](#)) and decision-making arrangements and guided by agreed key principles.

Consultation Feedback

Public health and consumer groups

Most public health stakeholders and consumer groups indicated that they felt the introduction of new pathways would compromise public health and favour commercial interests. They

also noted the IA did not provide sufficient evidence that any new pathways would apply to public health measures.

Stakeholders agreed there were benefits to FSANZ accepting risk assessments from international jurisdictions to support a risk-based and proportionate handling of applications and proposals. It was suggested there are potential benefits of leveraging the expertise and resources of other regulatory agencies, reducing duplication of efforts, and utilising international best practices and scientific knowledge. The feedback also raised several concerns such as the:

- lack of assurance the international standards would meet a 'public health test'
- possible bias towards industry decisions over public health decisions
- need for transparency and credibility of the overseas bodies
- importance of considering the local context and consumer preferences.

Stakeholders were largely unsupportive of FSANZ having the ability to automatically recognise appropriate international standards, based on the lack of detail and the potential impact on public health. Some stakeholders did support the concept, stating it would align FSANZ's regulatory framework with global best practices and apply a proportionate regulatory response.

Concerns were raised about the lack of a clear strategy or framework for defining low-risk products. It was noted the minimal check pathway appeared to apply only to applications and not proposals, which could result in prioritising commercial decisions over public health. Stakeholders also noted the limited information on how the minimal check pathway would apply in practice and the risk of compromising public health protection.

Several concerns were raised regarding the introduction of principles in legislation to allow FSANZ to create other pathways to amend food standards. Concerns included the possible removal of public consultation, the lack of transparency and assurance of FSANZ's internal processes, and the impact on public health outcomes.

Stakeholders requested additional consultation be undertaken regarding clarification on the new pathways and examples of how they would work in practice.

Industry

Most industry stakeholders supported enabling FSANZ to accept risk assessments from international jurisdictions, but raised some concerns about the quality, context, and impact of such assessments. Stakeholders also agreed new pathways, such as a minimal check pathway for very low-risk products, and a recognition of appropriate international standards would be positive. Stakeholders noted any decision to adopt new pathways should involve a risk-based review and consultation, and FSANZ should maintain an oversight process and discretion.

Stakeholders suggested the introduction of principles into legislation to allow FSANZ to create other pathways that would help them to better respond to the changing food environment and innovation. They outlined that the principles should be science-based and flexible. Stakeholders raised other opportunities and challenges relating to the concept, such as the:

- need for more engagement and consultation with stakeholders

- potential for greater harmonisation and alignment with international standards and best practices
- possibility of using codes of practice and notification systems for low-risk issues
- recognition and protection of First Nations and Māori knowledge and materials.

Stakeholders agreed that additional consultation would be required should this concept progress.

Government

Government stakeholders expressed mixed views on the potential benefits and risks of this change, and suggested more details are needed on the pathway proposals. Some stakeholders supported the idea of reducing the workload and consultation processes for low-risk approvals. Others raised concerns about the assurance mechanisms, the protection of public health and safety, and the prioritisation of commercial decisions over public health ones.

Consideration

As part of the revitalised National Competition Policy (NCP), Australian Government, state and territory treasurers have agreed to support work to “lower barriers to the adoption of overseas standards in regulation”.¹⁵ This includes consideration of if, when and how existing standards and risk assessments should be adopted in Australia.¹⁶

Utilisation of risk assessments and standards from reputable international regulators should therefore be further considered as a mechanism to improve FSANZ’s agility and cost-effectiveness. Concerns raised through stakeholder feedback have been acknowledged, and the development of a minimal-check pathway for low-risk applications will not be further considered. Consideration of each option is further explained below.

Acceptance of risk assessments from reputable overseas regulators (recommended)

Currently, FSANZ can consider but not accept international risk assessments. Introduction of this process could reduce FSANZ assessment timelines, reduce industry burden and enhance FSANZ processes.

Both the TGA and APVMA have adopted processes to accept risk assessment from international counterparts.

- The TGA expedited pathways are based on a transparent list of criteria for comparable overseas regulators as well as a list of countries and jurisdictions determined to be comparable overseas regulators.
- The APVMA uses overseas or international risk assessments from a trusted overseas regulator or international scientific body to facilitate the approval of new active constituents and registration of products.

The Act could be amended to allow FSANZ to formally recognise and accept risk assessment determinations from international authorities. This pathway would rely on the

¹⁵ Australian Government, [Revitalising National Competition Policy](#)

¹⁶ Australian Government, The Treasury, [Reforms to improve use and recognition of standards in regulation](#)

establishment of a list of comparable sources, including both international risk assessment bodies such as Joint FAO/WHO Expert Committee on Food Additives, as well as overseas regulatory agencies. Examples of risk assessments that could be captured by this process include:

- chemical risks assessments undertaken by the Joint FAO/WHO Joint Expert Working Group for Additives
- enzyme permissions, like current 'flavouring substances' permissions, recognising Canada and Europe's list of approved enzymes.

For applications, this would require the applicant to provide a recent, unredacted overseas assessment, as well as the original data and any necessary context-specific information (including data to inform a dietary exposure assessment or assessment of consumer understanding and behaviour). However, FSANZ should retain the option to not accept international risk assessments, even if they meet requirements.

It is expected this approach would reduce the risk assessment timeframe, potentially making the overall timeframe for consideration of some applications shorter. This could reduce the workload for FSANZ and reduce cost for applicants in preparing an application.

Create and amend food standards based on standards from reputable international regulators (recommended for low-risk standards with FSANZ scrutiny)

This pathway could reduce the time FSANZ spends duplicating low-risk work from reputable international organisations, such as for:

- food additive permissions
- permissions for vitamins and minerals
- maximum levels of contaminants and natural toxicants
- irradiation.

International standards would be assessed by FSANZ to ensure they were developed with rigour and at a high standard, and to ensure public health and safety and consumer confidence is maintained. Relevance to the Australia and New Zealand context also need to be considered. This process would not force FSANZ to adopt any standards, rather provide an opportunity to recognise and adopt international standards if they meet specific criteria.

TGA and APVMA have demonstrated successful use of similar pathways:

- APVMA annual maximum residue limit (MRL) - harmonisation assesses how MRL's can align with international limits set by Codex Alimentarius or equivalent international agencies.
- APVMA uses international risk assessments from a trusted overseas regulator or international scientific body to facilitate the approval of new active constituents and registration of products. APVMA does not publish a list of trusted overseas regulators.
- TGA expedited pathways are based on a transparent list of criteria for comparable overseas regulators as well as a list of countries and jurisdictions determined to be comparable overseas regulators.

This pathway should be considered with [concept 8](#), relating to holistic reviews of standards.

Automatic adoption of select international standards (not recommended)

This pathway is similar to above, however the international standard, and subsequent amendments would be adopted without FSANZ needing to create or update a standard in the Code. This would result in any changes to the international standard being automatically applied to Australia and New Zealand. This could undermine FSANZ's original intent of adopting the standard.

While this could foster industry innovation and efficiency by reducing data requirements and duplication, it would be crucial to apply an appropriate Australia and New Zealand-specific risk assessment, especially when scientific opinions diverge.

Based on stakeholder feedback and the need to assess suitability of any standards for the Australia and New Zealand context, this option is not suggested. However, a more purposeful and scrutinised approach as outlined above could be considered.

A minimal check pathway to bring very low-risk products to market (not recommended)

Based on concerns raised through stakeholder feedback, providing FSANZ with the ability to develop a minimal check pathway to bring very low-risk products is not suggested. This is due to the lack of rigour this pathway provides, leading to reduced confidence in FSANZ's processes, and foods that are subsequently approved.

A minimal check pathway would have limited consultation and evidence requirements for proposals identified as very low risk. This would reduce the burden on FSANZ and business in progressing very low-risk products to market. The level of risk would have been determined through an expanded risk-based framework outlined in [concept 4](#).

Additional considerations

In the development of these new pathways, FSANZ should create compatibility criteria to ensure the regulatory outcomes of risk assessments or standards are appropriate and comparable to FSANZ's expected outcomes. This would include having regard to ministerial policy guidelines during the assessment process.

The Act would provide FSANZ discretion to not accept risk assessments or standards, even if they meet these requirements.

To support successful operation, these pathways would not be utilised until the risk-based framework is developed and published, even if the legislation is enacted earlier.

Recommendations

Legislative changes
• Embed high-level requirements within the Act to support FSANZ to create new pathways, in alignment with risk-based approaches, to: ○ accept risk assessments from reputable international regulators ○ create and amend food standards based on standards from reputable international regulators.
Operational changes
• FSANZ to engage stakeholders to refine pathways for the acceptance of international risk assessments and food standards. • FSANZ to create transparent processes for how international standards and risk assessments are considered prior to adoption, and criteria they must meet, including public health and population assessments.

Concept 6: Expand delegation opportunities to streamline decision making

Current issue

Currently, there are limited delegation powers for both the FSANZ Board (Board) and FMM.

- The current delegation process is complex and can delay the decision-making process.
- Section 150 of the Act enables the Board to delegate its powers to other parties within FSANZ. Section 150 also includes a list of powers the Board cannot delegate, including the approval or rejection of food regulation measures.
- The Act does not provide the option to delegate FMM powers. The FRA includes process information on how the FMM can proxy an in-session decision but does not cover out-of-session decisions or any FMM delegation arrangements.
- When FSANZ approves a draft food regulatory measure, it must notify the FMM. Under s 84 and s 86, FMM may request FSANZ to review the draft measure. Section 88, s 90 and s 91 set out the requirements to accept, amend, or reject the reviewed measure based on FSANZ's review decision.
- The inability for the Board and FMM to delegate key responsibilities, and the statutory timeframes for processes, can slow down the decision-making process.

It was considered to allow FMM the option to delegate decisions to government officials and for the Board to delegate some decisions to the FSANZ Chief Executive Officer (CEO). This could streamline processes and support a shift from rules-based processes to those focused on outcomes and flexibility.

Transparency in delegated decisions would be important to maintain trust within the System. Delegation parameters and reporting would be considered as part of the development of the risk-based framework. Including delegation within the risk-based framework would help ensure that delegation parameters are appropriate and proportionate to the level of risk usually carried by Ministers.

Consultation Feedback

Public health and consumer groups

Public health and consumer groups indicated they had not been provided with enough information regarding delegation and how this related to the proposed risk framework to enable agreement to this concept. A small number of stakeholders did agree a streamlined decision-making process would support FSANZ's operations to be more flexible, efficient, and effective.

Most stakeholders agreed that once consultation on the risk framework has been completed and the risk framework is finalised, they would be open to considering delegation arrangements. In addition, they noted the expertise of the delegated person would need to be considered against the set criteria.

Industry

Most industry stakeholders agreed this concept could enhance flexibility and efficiency. They also stressed the importance of clear, accountable and transparent processes, robust policies, and legislative responsibilities. Stakeholders highlighted the importance of considering the level of risk for decision-making, the government officials' responsibilities, and the required expertise.

Stakeholders also highlighted the importance of elected representatives as the ultimate decision-makers, as they can balance broader economic and societal consequences. Several stakeholders expressed concerns about the potential risks and long-term consequences of streamlining decision-making, and the need to maintain FSANZ's independence and quality of decisions.

Government

Most government stakeholders did not agree with the idea of delegating the approval of food standards to the FSANZ CEO or a government official. They were concerned about the transparency, rigour, and accountability of the process. Stakeholders raised various considerations and risks associated with the delegation arrangements, such as the need for appropriate skills, training, guidelines, review mechanisms, and flexibility to accommodate different stakeholder preferences. New Zealand expressed concerns related to the delegation proposal, as it could bypass the New Zealand representation on the Board and undermine the sovereignty and interests of New Zealand.

Consideration

Delegation of low-risk decisions could streamline processes and timeframes for applications and proposals. Providing flexibility in the System through delegation would support efficiency in FSANZ operations.

The delegation of Board decisions to the FSANZ CEO could have impacts on the representation of New Zealand in decision-making by FSANZ. Due to bi-national stakeholder concerns, this was not further considered.

It is proposed to outline FMM delegation ability within Division 3 of the Act, for both in- and out-of-session decisions. Delegation would be optional to support different risk appetites of each food minister.

- FMM delegation would allow individual ministers to delegate decisions at their discretion. However, ultimately FMM would remain the decision maker for food regulatory measures.
- FMM would still be notified of any food regulatory measures requiring its review, but an individual minister could choose to delegate decisions to senior government officials at their discretion.
- Each minister would have ultimate authority over the delegation and could change, or revoke delegation as required.
- Currently, government officers normally review the food regulatory measures and provide a position to the minister for their decision.
- These officers are often subject content specialists and able to provide appropriate advice on the approval reports provided to FMM for review.

Further development, transparency and communication regarding the proposed delegation arrangements should be undertaken to help alleviate stakeholder concerns.

While out of scope of this Review, updates would be required to the FRA to reflect new delegation opportunities for FMM.

Recommendations

Legislative changes

- Embed the ability for members of FMM to be able to delegate decisions to senior government officials within the Act.

Concept 7: Legislative change and greater guidance material to support bringing more traditional foods to market

Current issue

There is a need for FSANZ to provide more guidance and simplify processes for First Nations and Māori food enterprises to bring traditional foods to market.

- The current legislated application process is seen as a barrier due to a lack of information and resources.
- There is a need to simplify the processes and enable streamlined pathways to bring traditional foods to market.
- Legislation does not currently acknowledge cultural connections and traditional knowledge in assessment of the safety of traditional foods.
- There is a lack of targeted education on system navigation and safety assessments of traditional foods.
- Collaborative research by the Royal Melbourne Institute of Technology and FSANZ on the dietary safety of Australian native plants has identified opportunities for assessing the safety of traditional foods, acknowledging cultural connections and traditional knowledge.

Development of a list of traditional foods which have been assessed for safety could support First Nations and Māori businesses to bring food to market. There is an opportunity to amend the Act to streamline pathways for bringing traditional foods to market and acknowledge

traditional knowledge in food safety. The application process may also be simplified through additional guidance materials.

Consultation Feedback

Public health and consumer groups

Public health stakeholders and consumer groups agreed legislative change and greater guidance material could support bringing more traditional foods to market. It was suggested a one-off investment would be insufficient, and this would need to be ongoing and maintained.

Stakeholders consistently highlighted that First Nations and Māori people must be appropriately consulted and involved in the changes in the Act as it relates to their culture and health. Stakeholders suggested that FSANZ consult specifically with First Nations and Māori people and experts on what is required. They raised that broader consideration is needed on the promotion of First Nations and Māori culture and knowledge within the System.

Industry

Industry stakeholders agreed that a greater recognition of First Nations and Māori food expertise in the Act is required, with recognition given to the importance of cultural determinants of health for First Nations and Māori people. It was consistently noted First Nations and Māori people must be appropriately consulted and involved in the changes in the Act as it relates to their culture and health.

It was suggested that FSANZ consult with First Nations and Māori people and experts on legislative changes and guidance material that could support bringing more traditional foods to market.

Government

A strong theme for this concept was that decision making on the application of these concepts should be informed by the voices of First Nations and Māori people. Additionally, many government stakeholders felt changes needed to go beyond wording changes and be implemented in a holistic manner.

Consideration

Stakeholders across all sectors strongly advocated for appropriate engagement with First Nations and Māori stakeholders on this issue, and related issues. Due to a low response rate from First Nations and Māori stakeholders in this consultation, further targeted engagement should be undertaken before recommendations are made to support bringing more traditional foods to market.

A comprehensive consultation should be conducted to understand the needs of First Nations and Māori communities and businesses related to the System. This systems-focused review should consider and address the broad range of barriers facing these communities and identify any subsequent changes required to the wider System, including those that may need to be updated within the Act. This could be considered as a broader piece of work through the System.

Appropriate engagement with First Nations and Māori stakeholders is required to ensure any work relating to First Nations and Māori peoples is undertaken in partnership and co-designed with these communities to meet their self-identified needs.

Recommendations

Utilise existing arrangements - Utilise current processes for First Nations and Māori food enterprises to bring traditional foods to market. Support broader System engagement with First Nations and Māori stakeholders to determine future System opportunities.

Concept 8: FSANZ to undertake more timely, holistic and regular reviews of standards

Current issue

FSANZ has a crucial role in maintaining and updating the Code. FSANZ conducting regular reviews can allow it to ensure standards remain fit-for-purpose. Regular reviews initiated by FSANZ provide opportunities to consider changes to industry and regulatory practices, emerging issues, and resolve 'interpretive uncertainty'. Section 113(1) of the Act enables FSANZ to undertake reviews of the Code on its own initiative.

- FSANZ has the expertise and remit to undertake regular holistic reviews of food standards. Limited resources have restricted FSANZ's ability to undertake reviews of the Code.
- While some reviews are being undertaken, such as those requested by FMM, FSANZ initiated holistic reviews are often not prioritised. Holistic reviews of whole standards can be lengthy. Other higher priority work, including those with legislative timeframes or requested by Ministers, are given priority over holistic reviews, resulting in a piecemeal approach to reviews and holistic updates.
- Undertaking more FSANZ-initiated reviews could be an important opportunity for FSANZ to reflect contemporary research around population health risks.

Embedding principles for undertaking reviews within the legislation and supporting the operationalisation of this work through additional resourcing could support FSANZ to undertake more standard reviews.

Consultation Feedback

Public health and consumer groups

Public health stakeholders and consumer groups agreed this concept would allow FSANZ to be more strategic and consistent in changes to food standards. Stakeholders recommended a public health test (key components suggested are outlined in [Appendix C](#)) is used to determine which reviews are undertaken and how they are prioritised. Stakeholders also pointed out this issue could be rectified immediately with additional funding, without the need to await legislative change.

Some stakeholders recommended that FSANZ should establish clear criteria and timelines for holistic standard reviews. A 3-year timeframe was proposed, with a possible one-year extension in exceptional cases. Stakeholders also advocated for statutory timeframes for holistic standard reviews to be included in the Act, to ensure accountability and transparency.

Industry

Most industry stakeholders agreed on the need for regular reviews, as they would enable FSANZ to keep up with the latest developments in science, technology, industry and international standards. Stakeholders' concerns included the potential diversion from FSANZ's core purpose, and the need for clear governance and criteria for reviews. Suggestions included the involvement of external reviewers, the simplification and consolidation of existing guidelines, and the consideration of socio-cultural factors. Some proposed that FSANZ should expand its objectives to recognise trade as a core goal it is designed to support.

Government

Government stakeholders suggested this concept could improve the inter-linking of standards across the Code, alignment with best practice, and identification and resolution of inconsistencies within food standards. Stakeholders' suggestions included modifying the definition of processing aids, bundling complementary policies and food categories, and having a mechanism to respond quickly to unanticipated problems. Stakeholders felt the review process should not detract from other higher priority projects and should reflect FSANZ's capacity and resources.

Consideration

Development of criteria to outline when FSANZ should initiate reviews should be considered to facilitate a more systematic and strategic approach to reviewing standards. Criteria could include:

- consideration of public health aspects, including the cumulative impact on health and population health risks
- consideration of emerging public health and System issues
- addressing inconsistencies between food standards that impose regulatory burden
- work to resolve 'interpretive uncertainty' around food standards
- appropriate stakeholder consultation mechanisms.

Undertaking more regular, FSANZ-initiated holistic reviews would leverage FSANZ's existing coordination roles and expertise. This would be supported by other concepts in this report, such as improved national and international engagement. Reviews would include opportunity for stakeholder engagement where required.

A legislative timeframe should not be included for completion of a FSANZ-initiated review, as legislated timeframes can contradict needs-based prioritisation. However, there should be an expectation that a timeframe is developed and communicated as part of the review. Any delays or extensions to this timeframe should be communicated to stakeholders.

Recommendations

Operational changes

- Develop criteria that should be considered to enable a review to be undertaken, with a key focus to support public health and safety.
- FSANZ to consider stakeholder engagement requirements for reviews of food standards.
- FSANZ to consider evidence requirements to justify and/or inform reviews of food regulation.

Concept 9: Increase use of codes of practice and guidelines to complement food standards

Current issue

FSANZ can develop different regulatory measures to achieve its objectives, including food standards, codes of practice, and guidelines. These instruments differ in their legal status and application. Food standards are legislative instruments, while codes of practice and guidelines are not.

- Currently, FSANZ mostly develops or varies food standards which serve as legislative instruments.
- FSANZ currently develops non-legally binding guidelines such as 'User guides to the Food Standards Code' which are available on its website. However, as FSANZ is not an enforcement agency, it is currently limited in its ability to develop codes of practice.
- While not a legislative instrument, compliance with codes of practice can be used as evidence in court to demonstrate how a business meets its obligations.
- Some state and territory legislation even provides a defence for due diligence to industry for demonstrating compliance through codes of practice.

There is an opportunity to increase the utility of both codes of practice and guidelines in the suite of food regulatory measures FSANZ uses to protect public health and safety.

Consultation Feedback

Public health and consumer groups

Public health and consumer groups did not support the use of codes of practice and guidelines being used to complement food standards. Stakeholders agreed that if codes of practice and guidelines were developed for industry, by industry, this would negatively impact public health.

Stakeholders had concerns in relation to changes to the process and approval pathway for developing guidelines and codes of practice. Stakeholders noted that guidelines and codes of practice are non-binding and should only deal with matters of interpretation and application. However, it was recognised that codes of practice and guidelines offer flexibility in addressing specific issues or concerns without the need for formal amendments to the Code. Additionally, it was noted they can be updated more quickly than formal amendments to the Code and require fewer resources overall.

In relation to the development of codes of practice for industry by industry, stakeholders noted it was unclear how industry-led codes of practice would be effective in addressing

public health risks. Specifically, it was noted that industry-led frameworks do not work, they do not support public health and are not transparent. Stakeholders raised that voluntary, self-regulated, co-regulated and industry-led guidelines and codes of practice have consistently been shown to be ineffective, unenforced and a risk to public safety, health and confidence in the System.

Industry

Most industry stakeholders believed that codes of practice and guidelines would help to address low to moderate risk issues, reduce regulatory costs and burdens, and increase industry awareness, consumer choice, and jurisdictional consistency. Industry also emphasised that codes and guidelines should not be mandatory or enforceable, however should reflect an agreed approach that does not replace the standards. They also suggested there should be clear processes and mechanisms for developing, updating, and adopting the codes and guidelines, as well as meaningful consultation with FSANZ and jurisdictions. Stakeholders cited issues that could be addressed by a code of practice or guidelines.

Government

Government stakeholders had mixed views on this concept, with some noting it could provide practical advice and promote consistency. Others cautioned it could weaken the existing requirements and create compliance and enforcement issues. Stakeholders suggested the concept should align with the risk-based framework, consider the context of the modernisation work, and avoid bypassing or undermining the policy guidance and ratification process. There were concerns that if industry developed its own regulatory instruments, this would increase the chance of industry capture, create governance and approval issues, and create access barriers for small and medium businesses. Stakeholders recommended a co-developed approach with regulators and industry, and the need for ancillary legislation to give codes of practice enforceable effect.

Consideration

While codes of practice and guidelines are not legally binding, they are alternative regulatory instruments that could be utilised more by FSANZ for lower-risk issues or to clarify how standards are to be interpreted and enforced. This review does not make recommendations for FSANZ to increase development and use of codes of practice and guidelines. Instead, it is recommended that a risk-based framework (as recommended in [concept 4](#)) should consider when it is appropriate to develop codes of practice and guidelines, with emphasis towards the protection of public health and safety.

FSANZ should consider embedding stakeholder engagement criteria for the development of guidelines and codes of practice. The opportunity for FSANZ to work with stakeholders in the development of guidelines is captured in [concept 19](#).

Recommendations

Operational changes

- Within the risk-based framework, consider including when guidelines and codes of practice should be developed.

Component Three: Efficient and Effective Operations

This component focuses on better use of FSANZ's resources, through more effective governance and cost recovery options, to improve financial sustainability of the organisation. This component addresses:

- current legislated processes for Board appointments prohibit best practice approaches to nominations and appointments to the Board
- long-term decreases in funding have created significant resourcing pressure and is forcing FSANZ to focus on only a subset of its statutory functions.

Concept 10: Strengthen Board skill composition and appointment processes of the FSANZ Board

Current issue

The current legislated processes for Board appointments prohibit best practice approaches to nominations and appointments to the Board. A departmental review conducted in 2014 made recommendations to align FSANZ with contemporary governance and merit-based selection of Board members.

- Two of the agreed recommendations from the 2014 review requiring legislative amendment have not been adopted into the Act:
 - Amend the compositional requirements of the Board to address the need for flexibility to accommodate future work requirements (Board Rec. #1).
 - Amend the nomination process to be an open market process by advertising for upcoming vacancies externally (Board Rec. #5).

Some of the other recommendations from the 2014 review have been implemented operationally which has contributed to improved processes. This could be strengthened by more formally updating the processes in the Act or Regulations. This includes formalising the Board Chair involvement in the nomination process to assist with identifying the skill gaps and future needs of the Board (Board Rec. #6).

Consultation Feedback

Public health and consumer groups

Responses in relation to this concept were mixed. Public health stakeholders and consumer groups supported amending the compositional requirements of the Board to increase flexibility and reflect contemporary and good governance processes and oversight of the Act. However, these stakeholders did not support amending the nomination process for the Board to be an open market. They felt an open market process might reduce the quality of public health nominees with a preference for former industry representatives with health backgrounds.

In addition, stakeholders wanted to see greater cultural inclusion and food systems sustainability experts represented on the Board.

Industry

Industry stakeholders agreed the Board should have a diverse and skills-based composition, reflect community views, First Nations and Māori food and culture, and follow contemporary

governance processes. Stakeholders also expressed some preferences and concerns regarding the nomination process for the Board, such as the role of ministers, the source of nominations, and the potential impact of commerciality. Some stakeholders suggested a smaller Board could improve the efficiency of FSANZ decisions.

Government

Government stakeholders outlined key themes of:

- the need for public health and nutrition expertise
- First Nations and Māori people and diverse perspectives
- alignment with Australian Government's Public Sector Board Appointment Processes
- transparency and clarity of the roles and responsibilities of the Board and the officials.

Most stakeholders supported the current nomination process, which is based on skills and experience, and noted that an open market process may pose some risks and additional costs.

Consideration

Best practice suggests that Board composition should be based on merit, skills, diversity and independence. Board appointment processes should:

- be consistent, merit-based and aligned to the needs and strategy of the entity
- identify the current skills, knowledge, experience and capabilities of the Board
- consider Board diversity
- allow for a formal application process that is publicly advertised to promote transparency and encourage quality applicants
- identify any gaps in skills or competencies, including behavioural competencies, that can be addressed in future appointments
- consider the unique environment or context in which the entity operates
- consider Board succession needs, with an emphasis on the timing for replacing Board members to maintain a balance between new and existing members

To ensure the Board retains an appropriate mix of skills, knowledge, experience and capabilities, an addition could be made to the legislation requiring the Minister to ensure the appointed Board members are an appropriate mix of persons suitable for Board membership, with a distribution of the qualifications, skills or experience referred to in the subsection of the Act.

This would ensure the Board members represent an appropriate distribution of experience within science and public health, or food industry, depending on the position they are filling. This addition could be included within s 116 of the Act.

To further support this, the Board Chair should seek to ensure government is appropriately advised about the required and desirable skills, competencies, attributes and composition profiles that align to the organisation's strategy. This helps ensure a fully informed decision can be made by the Minister regarding new appointments.

The lists of prescribed organisations within the Regulations are outdated and may not be reflective of current organisations. Regular reviews and updates to the lists within Part 6A of

the Regulations could be considered. However, best practice process for the identification of Board nominations involves a structured, transparent and merit-based process using an open market approach.

Board size was considered, noting that current practice tends to favour a smaller Board. The breadth of topics and range of stakeholders to represent supports that a larger Board size could be maintained.

Introducing an open market process for Board member nominations was a recommendation in the 2014 review. Recent stakeholder consultation feedback did not support this approach. Current sentiment demonstrates strong support and trust in the current process.

The efficiency of the Board appointment process conducted by the department should be considered separately to this review to explore options for improvement.

Recommendations

<i>Legislative changes</i>
• Amend the Act to require the Minister to: ○ ensure the appointed Board members are an appropriate mix of persons suitable for Board membership, with a distribution of the qualifications, skills or experiences referred to in subsections of the Act ○ consider advice from the Board Chair about the current skill mix of the Board. • Amend the Act to allow Board nominations to be sought via a structured, transparent and merit-based process using an open market approach.
<i>Operational changes</i>
• Clearly communicate Board appointment processes with stakeholders and how they will be supported to participate.

Concept 11: Expand cost recovery for work that benefits applicants

Current issue

The Act (s 146) enables FSANZ to conduct limited cost recovery from industry for some application work. Currently cost recovery applies when the:

- applicant has elected to have the consideration of the application expedited
- application is to develop or vary a standard and the development or variation of the standard would confer an exclusive capturable commercial benefit on the applicant.

Only a small portion of FSANZ's funding is gained through existing cost recovery. This cost recovery currently contributes approximately 4% of funding to the total FSANZ revenue. If cost-recovered work goes beyond the cost of the originally quoted price, FSANZ currently absorbs the outstanding amount, which can be a significant expense.

Reviews of other systems have identified different ways that support ongoing funding, highlighting cost recovery options. Examples of cost recovery models include:

- compulsory fees for all applications, with additional charges for expedited applications and those with an exclusive capturable commercial benefit
- industry levy for select food businesses to support FSANZ's ongoing work
- charging for entrepreneurial activities.

There is opportunity to consider cost recovery for all, or a broader subset of applications, or introduce cost recovery for additional activities such as pre-application assistance to industry. Compulsory fees, industry levies and cost sharing arrangements could be investigated.

Consultation Feedback

Public health and consumer groups

Public health stakeholders and consumer groups agreed that introducing an appropriate industry-wide cost recovery structure could provide a reliable source of funding. It was noted that an industry-wide levy could create financial incentives for businesses to comply with food safety regulations as well as a reliable funding source for FSANZ.

No firm position was given for what an acceptable levy rate would be, however it was suggested the levy should only be applied to the largest food businesses. Industry initiated entrepreneurial activities were not supported by these stakeholders.

Public health and consumer groups were concerned that compulsory fees for all applications would have a negative impact on non-profit advocacy organisations and for small food start-ups. These stakeholders raised concerns regarding compulsory fees noting this would create an uneven playing field for consumer and public health groups. In addition, they noted compulsory fees do not provide a secure funding model compared to an industry-wide levy.

With either option, stakeholders raised that consideration needs to be given to the administrative burden of implementation, and management of resources and infrastructure.

Industry

Most industry stakeholders rejected the idea of an industry-wide levy, arguing it would harm businesses, especially First Nations and Māori food enterprises and small businesses. Stakeholders believed it would undermine the role of the federal government in ensuring the health and safety of food. Some stakeholders suggested a levy could be acceptable if it was used for activities that have direct industry-wide benefits, such as guidance materials, international harmonisation, monitoring, and streamlining.

Most stakeholders opposed mandatory fees for all applications, citing similar concerns about the negative impact on innovation, consumer choice, and research and development. They also noted the current System allows for efficient marketing of products that may need regulatory approval. Stakeholders expressed a strong preference for FSANZ to be funded by publicly available government funds, and to maintain its current mandate and core business as a science-based regulator.

Some stakeholders mentioned the possibility of entrepreneurial activities for FSANZ but cautioned such activities should not compromise its independence or credibility or create conflicts of interest. Stakeholders also suggested any criteria for cost recovery should be assessed against the cost recovery principles and the issues of fairness and equity.

Government

Government stakeholders agreed that an industry-wide levy would be a reliable source of known funding for FSANZ and would create a level playing field for industry. However, there were mixed responses to the possible solutions, with some agreeing an industry-wide levy would be effective, while another proposed a tax on Ultra-Processed Food-like substances. Concerns were raised about transparency, differentiation between suppliers and businesses, additional cost on the industry, compromise of regulatory processes due to cost recovery and the impact on innovation.

There were concerns that compulsory fees for all applications may not provide a secure funding model for FSANZ, with a risk of industry capture. In terms of eligibility criteria, stakeholders suggested the fee structure should be proportionate to the ability of the applicant to pay, and consider the food priorities for the nation.

Stakeholders suggested the cost of a food recall coordination levy should be borne by the food manufacturer, producer, or food service provider responsible for necessitating the recall.

Stakeholders identified there is no guarantee this fee would result in an increase in FSANZ funding, particularly due to the high administration cost of cost recovery. Jurisdictional stakeholders noted that additional funding should be sourced from the Federal Government.

Consideration

FSANZ can currently cost recover in accordance with the FSANZ Cost Recovery Implementation Statement,¹⁷ and fees charged are already aligned with the Australian Government Cost Recovery Policy¹⁸ and Charging Policy¹⁹ and the *Public Governance, Performance and Accountability Act 1993* (PGPA Act). However, FSANZ is currently limited in its ability to cost recover for additional hours as part of its current processes.

Changes to the Act could enable FSANZ to charge for additional hours beyond the originally quoted time for application-related work. Any such changes would require:

- clear criteria for calculating additional hours
- a defined upper limit on additional charges
- strong justification for any extra costs.

These measures would ensure transparency and provide industry with confidence that additional charges are directly related to the relevant application, rather than other FSANZ activities. The FSANZ Application Handbook would also need to be updated to reflect any new cost structures and associated processes.

Other cost recovery mechanisms such as levies are available to FSANZ through legislative amendments, however these may have unintended consequences, including:

- high administrative overhead with limited financial return
- disproportionate impact on smaller organisations
- increased risk of industry influence over FSANZ's work.

¹⁷ FSANZ, [Cost Recovery Implementation Statement](#)

¹⁸ Australian Government, [Cost Recovery Policy](#)

¹⁹ Australian Government, [Charging Policy](#)

While a levy could offer FSANZ a stable and predictable funding source, implementing one would require appropriate taxation legislation in both Australia and New Zealand to ensure consistency across jurisdictions.

In December 2023, the Australian Government Productivity Commission released the *Towards Levyathan? Industry Levies in Australia* research paper.²⁰ This report highlighted the growing use of levies in Australia and suggested they are increasingly viewed as ad-hoc micro-taxation. Levies are often perceived as revenue-generating tools and may be classified as regulatory compliance charges, which can be contentious and difficult to justify.

Based on research and stakeholder feedback, FSANZ does not recommend pursuing industry levies, compulsory fees, or cost-sharing arrangements at this time.

Recommendations

Legislative changes
Allow FSANZ to charge for additional hours above the originally quoted hours, for cost-recovered work.

Concept 12: Remove expedited approvals pathway to address workload prioritisation

Current issue

Under s 146(6)(b) of the Act, applicants may pay a fee for FSANZ to prioritise assessment of their application. These expedited applications are prioritised over other applications.

- Currently the fee charged covers resourcing for the completion of expedited applications within the required statutory timeframes as outlined in the Act.
- Industry stakeholders have expressed concerns about the potential removal of this pathway as this provides greater certainty regarding product launch and supports future planning.
- Despite the potential loss of a revenue source, removal of this pathway would free FSANZ from the obligation to quickly assess paid applications.
- The removal of the expedited approval pathway would allow FSANZ to better manage its workload, allocate resources, and focus on other initiatives such as proposals and project work.

Consultation Feedback

Public health and consumer groups

Public health and consumer groups agreed the impact of removing the option for applications to be expedited would be positive. Stakeholders noted that expedited applications pose a real risk of regulatory capture and a pathway for larger business to have their applications

²⁰ Australian Government, [Towards Levyathan? Industry levies in Australia - Productivity Commission](#)

processed ahead of smaller businesses. They suggested the removal of such pathways will provide a level playing field for all those making applications.

Industry

Industry stakeholders raised concern about the potential impact on the food industry and consumers if expedited pathways were removed. Stakeholders argued the removal of this pathway could reduce business certainty, food innovation, and investment in the Australian and New Zealand food sector. Stakeholders also questioned the rationale for imposing a fee on applicants, whether they seek an expedited approval or not, and suggested the removal of this pathway should be part of a broader discussion about alternate pathways.

Government

Some government stakeholders supported this concept, arguing it would help FSANZ prioritise its workload and apply a more robust risk matrix framework. They suggested it would also reduce the perception of preferential treatment for paying businesses and create a level playing field for industry players. However, some of the feedback also recognised the value of expedited applications for applicants who want to enter the market faster or have a competitive advantage.

The feedback also discussed the need for adequate cost recovery for FSANZ and other government agencies, and the possibility of exploring other cost-recovery options, such as charging a fee to assess self-substantiated health claims. The feedback concluded that the impact of removing expedited applications would depend on various factors and would need to be balanced to support regulatory processes alongside market entry and industry innovation.

Consideration

The removal of the expedited approvals pathways would have positive outcomes related to FSANZ's ability to manage its workload. It would support the comprehensive and risk-based assessment of applications and reduce perception of preferential treatment from paying businesses. It would also reduce risk of regulatory capture within industry applications, where larger businesses have greater capacity to pay for applications to progress through this pathway.

Despite these benefits, removal of the pathway would have significant impacts to industry across the Australian and New Zealand food sector. Significant risks are apparent to industry innovation, business certainty and investment in the sector. In addition, impacts of the significant loss of income for FSANZ through this cost recovery mechanism must be considered.

Without an appropriate plan to address these impacts, or an identified risk-based approach to replace the expedited pathway, there is significant risk to its removal.

Based on the above, the expedited pathway should remain to support industry innovation, certainty and investment, in addition to supporting FSANZ's sustainability. Consideration of this concept could be revisited in the future if appropriate processes are developed through introduction of a risk-based framework and associated new pathways.

The current statutory timeframes for consideration of expedited applications and those with exclusive capturable commercial benefit should also remain. In this case, the statutory timeframe would continue to commence once payment has been received.

Recommendations

Utilise existing arrangements - Retain current expedited approvals processes.

Concept 13: Cost recover some services from government agencies

Current issue

New cost recovery options were considered as part of the Review, as per the request of FMM in 2022. This included consideration of jurisdictional cost recovery for proposals and food recalls.

- In 2022, 75% of FSANZ's active proposal work was initiated at the request of FRSC or FMM.
- This represented a significant portion of FSANZ's resources for standard setting, and cost approximately \$6.3 million per year.
- Under current arrangements, FSANZ can only respond to food incidents and assist with food recalls if requested by states and territories (s 13(k)).
- As a result, FSANZ must wait for a request from the jurisdictions before acting, leading to reactive and inconsistently activated recalls and other food incident responses.
- FSANZ cannot initiate a response and cannot perform this function on behalf of New Zealand.
- Delayed responses can increase risk and confusion for consumers and pose reputation risks for industry.
- The annual cost to FSANZ for approximately 90 recalls is \$1.2 million.

Two cost recovery options were considered:

- FSANZ charges for some proposal work, to be cost-shared across the Australian Government, states and territories, and New Zealand using a cost-share formula based on population estimates.
- FSANZ charges for food recalls, to be cost-shared across Australian states and territories, using a cost-share formula based on population estimates.

Consultation Feedback

Public health and consumer groups

Public health stakeholders and consumer groups provided no additional feedback compared to feedback from [concept 11](#).

Industry

Feedback received was minimal and mixed. Some industry stakeholders expressed concerns or opposition to the idea of imposing a recall levy or expanding FSANZ's remit into enforcement.

Some stakeholders supported stronger collaboration between FSANZ and jurisdictions in risk identification and response, agreeing that jurisdictions should pay for additional proposal or project work requested from FSANZ.

Some stakeholders raised the impact of the levy on industry and FSANZ, the uneven distribution of recalls, and the potential for unintended consequences. Stakeholders felt

further consultation and transparency on the cost recovery process is needed if this concept is to be implemented.

Government

Jurisdictions did not support this concept, primarily because they already contribute resources and funding to the System, and because they cautioned that charging fees could undermine the national System and public health objectives.

Stakeholders suggested that charging jurisdictions to add items to FSANZ's workplan could result in jurisdictions abandoning some work.

Some stakeholders proposed an alternative suggestion that food businesses responsible for food safety incidents pay a levy based on the extent of the recall, to share the financial burden and promote preventive measures. Stakeholders acknowledge this option may be fairer and more effective, but also more costly to administer, and suggest an annual levy for jurisdictions may be more equitable and simpler.

Consideration

Under s 13(1)(o) of the Act, the functions of the Authority (FSANZ) are *"to make the Authority's knowledge, expertise, equipment, facilities and intellectual property available to other persons on a commercial basis"*.²¹

As such, FSANZ can already charge fees for work it undertakes, including recalls and proposals if it sees fit. Therefore, there is no need to make changes to the Act in relation to this.

- If FMM suggest FSANZ should commence work on a proposal and changes to FSANZ's workplan are required, consideration should be given to the removal of an item from the workplan to support appropriate resourcing. Alternatively, FSANZ could charge for additional work.

Australian jurisdictions are responsible for enforcing food legislation and already make substantial contributions to the System through their existing investments in enforcement and compliance activities. Given the scale of their contributions, jurisdictions are not considered the most appropriate participants in cost-sharing arrangements.

This concept was not further progressed due to the existing mechanisms and considerations noted above. The Act currently allows for FSANZ to charge fees for work it undertakes, and for prioritisation of resources to be managed through existing structures or those proposed in other concepts of this Review.

Recommendations

Utilise existing arrangements - Retain existing functions which enable FSANZ to charge fees for work it undertakes.

²¹ [FSANZ Act 1991](#) (Cth) p II s 13.

Component Four: Improving System Agility

This component explores how to make the System better integrated, streamlined, and evidence informed. Concepts within Component Four largely focus on gaps and duplication of efforts, and current challenges impacting System agility, specifically:

- the lack of a shared vision of System priorities between FSANZ and the FMM limits the effectiveness of the broader System
- limited intelligence-sharing between stakeholders across the System results in duplication of effort and missed opportunities to manage risk
- inconsistent interpretation and enforcement of food standards heightens costs for industry and enforcement agencies, while potentially undermining management of foodborne risks (Australia only).

Concept 14: Implement mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting

Current issue

There is a lack of shared vision and System priorities between FSANZ and FMM. This is partly due to differing roles, priorities, and operations.

- This can lead to inefficiencies, delays in food standard changes, and confusion around regulatory changes.
- This can aggravate existing inefficiencies within the System, contributing to delays in progressing changes to food standards, misalignment of priorities, and confusion around the intent of regulatory changes.

There is opportunity for FMM and FSANZ to undertake joint agenda-setting to support policy and proposal priorities for the System. This aligns with the October 2020 Review of COAG Councils and Ministerial Forums, which recommended that FMM maintains a workplan of actions that sunset.²²

Consultation Feedback

Public health and consumer groups

Minimal responses were received in relation to this concept.

Public health stakeholders and consumer groups supported the concept of joint agenda-setting, however advised existing mechanisms should be leveraged to optimise collaboration between FSANZ and FMM. They proposed that a clear governance structure and processes should be developed to outline objectives, criteria for prioritisation, evidence-based decision-making, clear communication, and regular evaluation and reviews. Stakeholders also recommended the governance structure be developed through consultation.

²² Australian Government, [Review of COAG Councils and Ministerial Forums - Report to National Cabinet](#)

Industry

Mixed feedback was received. Some industry stakeholders highlighted the benefits of a more strategic approach, shared vision, and work alignment. Others expressed concerns about the potential risks of undermining FSANZ's independence, impartiality and authority.

Stakeholders suggested ways to improve collaboration. These included engaging with key stakeholders regularly, having annual strategic forums, creating a National Food Plan and a Minister for Food, and appointing an independent Chief Food Scientist.

Stakeholders also emphasised the importance of the roles of food industry and retail, resources and timing, and the clear distinction between government policy development and FSANZ's evidence-based standard setting.

Government

Feedback was mostly positive, though some government stakeholders raised the need for clear objectives, leadership and support, and First Nations and Māori involvement. Feedback identified the following should be considered in joint agenda-setting:

- addressing the burden of disease due to poor diet and associated chronic conditions, including overweight/obesity
- enabling consumers to make healthy food choices
- protecting children
- identifying and mitigating inequitable impacts
- avoiding industry capture.

Stakeholders also proposed some ways FSANZ could accommodate the FMM's directions, requests and policy guidance. Suggestions included issuing an annual letter of expectations, explaining how it gives effect to the FMM's inputs, and developing a joint strategic agenda and joint programs.

Consideration

FSANZ already undertakes periodic joint agenda-setting with Food Ministers. This includes consultation with FMM on FSANZ's work plan, forecasting, and providing FMM regular updates throughout the year, with opportunity for feedback. While continuation of this practice does not require Act amendments, this collaboration should continue.

Effective and sustained collaboration across the System is crucial to enhance efficiencies, reduce duplication and ensure resourcing is directed towards the most appropriate areas. Maintaining and prioritising these communications will benefit the agility and rigour of the broader system.

The Australian Government does not currently issue a Statement of Expectation (SoE) for which FSANZ is required to report against. It is acknowledged that as part of its standard practice FSANZ reports on its functions and objectives, including public health. FSANZ currently meets its reporting requirements as described in the PGPA Act through its annual reports.

An Australian Government SoE may be developed, to express the expectation that joint agenda-setting will continue. Australian Government Ministers may issue a SoE to a statutory authority, to provide greater clarity about government policies and objectives

relevant to a statutory authority. The views of other Food Ministers could be considered in this decision.

Any SoE should ensure that FSANZ's independence and ability to exercise executive oversight functions effectively is maintained. For example, if FMM request additions to FSANZ's workplan, FSANZ will retain independence as to whether they proceed. This decision may be informed by negotiations with FMM with regards to FSANZ's capacity, resourcing ability to add to its work plan, and whether financial support is required.

Recommendations

Operational changes

- The Australian Government Minister responsible for FSANZ considers the development of an Australian Government Statement of Expectation for FSANZ.

Concept 15: FSANZ to engage earlier and more systematically with FRSC in the development of food standards

Current issue

Stakeholder consultations have perceived a lack of systematic prioritisation between FSANZ and FRSC to ensure efforts within food regulation and implementation of food standards are harmonised. This is perceived to have resulted in duplicated efforts and missed opportunities to manage risk.

- Part of FRSC's role is to provide advice to FMM, coordinate policy advice, ensure consistent implementation of the Code, and advise on strategic issues impacting the System. It also operates as a forum for collaboration, planning, evaluation, and information sharing. The FSANZ CEO attends FRSC meetings as an observer.
- Additionally, FRSC sets priorities and undertakes annual planning for the System, providing advice to FMM to inform strategic planning.
- Consultations have posed that FSANZ could increase engagement with FRSC to establish a shared understanding of safety and regulatory impact measures for assessing proposals.
- This early engagement could minimise duplication of work at different stages of the standard development process.
- Increased collaboration could support intelligence-led decisions relating to policy agenda-setting for the System, making it more responsive and forward-focused.
- Broader engagement with ISFR through FRSC could also capture implementation and compliance issues related to food standards development.

Consultation Feedback

Public health and consumer groups

Public health and consumer groups agreed routine engagement between FSANZ and FRSC would reduce duplication of effort as well as missed opportunities to manage risk. It was raised that engagement mechanisms already exist between FSANZ and FRSC, and these should be leveraged to optimise continued collaboration. It was noted these mechanisms could be improved through FSANZ being better resourced to undertake its core functions,

including regular standard reviews and efficient processing of proposals. Stakeholders suggested this would relieve the need for FRSC and FMM to direct FSANZ work to ensure the Code is up to date and reflects changes in the market.

Industry

Industry stakeholders suggested FSANZ could engage earlier and more systematically with FRSC and jurisdictions in the development of food standards.

They noted that improved communication with FRSC could reduce duplication and enhance the efficiency of standards development and implementation. Several approaches to improve collaboration were proposed, including:

- involving FRSC representatives in FSANZ and FMM's annual planning meeting
- setting up periodic strategic discussions
- the use of a National Food Plan and dedicated Minister for Food.

Stakeholders raised concerns with the current operations of FRSC, including a lack of transparency and accountability. Suggestions were made to address these concerns, such as by opening FRSC processes to stakeholder participation, establishing clear accountability mechanisms, and developing structured pathways for two-way engagement.

Government

Feedback from government stakeholders was mostly positive, but also cautioned against adding additional meetings or engagement groups that may hinder the ability for agencies to provide adequate time and resources. Some of the common themes were more funding for FSANZ and a Memorandum of Understanding between jurisdictions and FSANZ.

Another recurring idea was to include FRSC involvement in the scope of important and major proposals, and to refer out-of-scope issues that may need further policy work or coordination with other forums or agencies.

Consideration

No legislative change is required to implement this concept. Engagement mechanisms, such as FSANZ's involvement in regular FRSC meetings to discuss policy options and advice, coordinate responses to food issues and ensure consistent implementation of food standards, already exist between FSANZ and FRSC.

It is recommended that FSANZ and FRSC consider opportunities to strengthen their engagement. This would complement collaborative improvements gained through the system modernisation work. It may also be useful to smaller jurisdictions, which could utilise FSANZ expertise and knowledge to bolster skills gaps experienced by those jurisdictions.

If FSANZ and FRSC decide to strengthen engagement, further consideration could be given to:

- roles of each party
- engagement opportunities across all stages of FSANZ's development of food regulatory measures, including implementation
- opportunities to minimise duplication of work between parties
- timeframes to review engagement mechanisms, to ensure they remain fit for purpose.

Recommendations

Utilise existing arrangements - FSANZ and FRSC consider opportunities to strengthen their engagement.

Concept 16: FSANZ to take guardianship over key food safety databases (Australia only)

Current issue

The Australian System is currently facing challenges in coordinating and consolidating food safety research and data.

- There have been several missed opportunities to deliver collaborative, high-impact policy and regulatory work across the System.
- This is largely due to limited intelligence-sharing between stakeholders across the System, resulting in duplication of effort, missed opportunities to manage risk, and limited System agility.
- Resourcing constraints in FSANZ mean limited effort is expended in establishing or administering such information-sharing alliances.

FSANZ could take guardianship over key food safety databases to create a central data repository, leveraging its technical expertise and scientific capabilities to deliver more value to the System. Positioning FSANZ's databank to inform project work could increase collaboration and contribute to greater intelligence-led decision-making. This would support FSANZ to carry out project work which benefits the jurisdictions and their enforcement agencies.

The Act currently allows FSANZ to assume a limited data guardianship role. Enabling functions in the Act include the ability to coordinate the monitoring and surveillance of food, conduct research, publish information to increase public awareness, and conduct any functions incidental to these functions. This enables FSANZ's existing data role, such as for management of the Australian Food Composition Database. However, as the Act is not explicit in FSANZ's data functionality, it does not currently have the legislative mandate to significantly expand this function and adopt key additional food safety databases.

Consultation Feedback

Public health and consumer groups

Public health stakeholders and consumer groups agreed FSANZ assuming a role as a database custodian for Australia would meaningfully improve intelligence sharing across the System. They suggested this would lead to more informed decision-making, better risk management, and enhanced protection of public health and safety.

It was noted a comprehensive governance structure, agreed processes and System appropriate curated data sets would need to be in place for such capture to be successful. Stakeholders strongly encouraged this database be publicly available and thought consideration should also be given to undertaking this approach in conjunction with New Zealand.

Industry

Feedback from industry was mixed. Some of the benefits raised include access to a comprehensive map of related datasets, while some of the concerns include resource constraints, lack of consideration of total food supply data, and definitions of database custodian. New Zealand stakeholders opposed expanding FSANZ's role in data management, research coordination, and consumer education.

Government

The concept was strongly supported by the jurisdictions, who saw the potential benefits of improved intelligence sharing, public health outcomes, and informed decision-making. Stakeholders acknowledged the possibility of reciprocal data sharing agreements with other organisations, and the need to consider the cost and the broader application of shared databases, such as security, privacy and confidentiality.

Consideration

Changes to FSANZ's operations, infrastructure, and governance arrangements would be required to improve its intelligence-gathering and coordination functions. These would be necessary to mitigate against any possible conflicts of interest arising from FSANZ's role in coordinating food safety research.

While there is significant merit to FSANZ taking guardianship over key food safety databases in Australia, it is a major shift from FSANZ's current operations and would require substantial funding and infrastructure to operationalise.

Additional scoping is required to determine potential operationalisation and costings, for future consideration outside of this Review. This work should consider:

- governance structure
- data sharing agreements
- information technology requirements
- security and privacy requirements
- FSANZ remit and data for collection
- funding requirements.

FSANZ already has the broad legislative remit to manage data across the System, however this could be strengthened to support any future expanded data functions of the organisation. FSANZ's ability to collect, produce and coordinate information and statistics related to the System could be clarified within the Act. This could facilitate the System's responsiveness to an expanding and agile data environment, and support any expansion of FSANZ's data role if agreed in the future.

Recommendations

Legislative changes

- Clarify FSANZ's ability to collect, produce and coordinate information and statistics related to the System.

Concept 17: Expand information sharing arrangements with international partners

Current issue

There is currently limited information and intelligence-sharing across the bi-national and international food systems, resulting in duplicated efforts and missed opportunities to manage risk.

- Increasingly, the System lags in both coordination and application of intelligence relating to food safety and composition.
- FSANZ and Health Canada have been working together since 2013 on safety assessments of genetically modified foods. Evidence shows this relationship has been beneficial to both FSANZ and applicants.
- Additional formal partnerships could be established to support greater sharing of information to support the System.
- Both the TGA and APVMA engage in international work-sharing arrangements.

FSANZ is already enabled to participate in international, regional, and bilateral negotiations on matters that may be included in standards. No legislative change would be required for this concept.

Consultation Feedback

Public health and consumer groups

Public health and consumer groups agreed establishing information sharing arrangements with international partners would streamline efforts and prevent missed opportunities in risk management. They noted that such arrangements are crucial for enhancing global cooperation, improving risk management practices, harmonising regulatory approaches, and protecting public health. Stakeholders raised that leveraging collective expertise and resources of international partners could result in effectively addressing shared challenges, achieving common goals such as consumer protection and safety, and maintaining integrity of the food supply.

Stakeholders noted an information sharing arrangement should focus on forming part of the initial background research required during standard development and should be considered against the Australian and New Zealand context.

Industry

Industry stakeholders agreed on the importance of establishing information sharing arrangements with international partners to reduce duplication of effort and manage risk more effectively. They suggested this approach would enhance regulatory agencies' ability to manage risks, conduct comprehensive risk assessments, develop effective risk management strategies, and potentially increase the speed to market for new products. It was noted these arrangements may also limit barriers, create streamlined pathways, and foster stronger relationships.

Stakeholders recommended that focus should be on building strategic relationships with comparable regulators, sharing assessments or standards, and working together to develop

relevant standards. The need for appropriate checks and balances within a robust governance framework was also highlighted.

Government

Jurisdictions raised the potential benefits of establishing information sharing arrangements with international partners to reduce duplication of effort and missed opportunities in managing risk. Stakeholders supported building strategic relationships with international agencies to share assessments and standards for mutual benefit. They also highlighted the importance of confidentiality and interpreting data within the context of Australia and New Zealand. It was suggested changes may be needed to facilitate the sharing of information on investigations and recalls with other countries.

Consideration

No legislative change is required to implement this concept. FSANZ has the existing ability to expand information sharing arrangements with international partners. For example, s 13(n) of the Act allows FSANZ to “*participate in international, regional and bilateral negotiations on matters that may be included in standards*”.

FSANZ has a strong presence and reputation internationally. These relationships provide a strong basis for information sharing and partnerships. FSANZ could leverage existing relationships to create stronger collaborative partnerships with international jurisdictions. This would support further opportunities to share assessments and standards for mutual benefit and aligns with the proposed pathways in [concept 5](#). This aligns with FSANZ’s existing work, relationships and presence in regional and global forums.

Recommendation

Utilise existing arrangements – Enable continuation and expansion of information sharing arrangements with international partners.

Concept 18: Introduce statements of intent into the Food Standards Code to assist with interpretation and enforcement

Current issue

Stakeholders across Australian jurisdictions have expressed frustration about the interpretive uncertainty in relation to the Code.

- The interpretation and enforcement of food standards can vary across jurisdictions, leading to inconsistencies in food safety programs. The nature of the System allows for different approaches to compliance and enforcement across jurisdictions.
- Many food businesses report they struggle to understand their regulatory requirements.
- Differences between jurisdictions can place unnecessary burdens on businesses. This can include costs to understand the appropriate interpretation of standards, compliance burden to adjust practices for different interpretations of the Code across jurisdictions. This may lead to risk-adverse practices that limit innovation.

Inclusion of a ‘statement of intent’ in the Code was posed as an way to address these issues.

Consultation Feedback

Public health and consumer groups

Minimal feedback was received in relation to this concept.

Stakeholders agreed that statements of intent alongside the Code would improve understanding and consistency of the interpretation and enforcement of food standards. It was recommended that statements of intent be prepared at the same time as a new standard or variation. It was also recommended they be written in plain English and demonstrate alignment with FSANZ priority objectives as set out in s3 of the Act.

Industry

Minimal feedback was received in relation to this concept.

Industry stakeholders thought statements of intent could improve consistency in interpretation and enforcement of food standards. They noted this would need to be undertaken with the same level of consultation as standard development, as they have the potential to be legally binding. Stakeholders sought to ensure jurisdictions retain the authority to interpret standards. Concerns included statements of intent being used to expand the preventive health perspective, rather than the original intention of the standard.

Stakeholders suggested greater consultation be undertaken on this concept to better determine what statements of intent should include. Stakeholders proposed that statements of intent should primarily be a concise statement that outlines the purposes, overarching aims and objectives of the standard. They suggested they may also appropriately include reflections on the references and insights the standard draws from, and the intentions and directed outcomes for relevant stakeholders.

Government

Jurisdictions agreed on the potential benefits of statements of intent, such as improving clarity, consistency, and understanding of standards. However, they noted that challenges and limitations include the need for clear drafting, difficulty applying them to outcome-based standards, and the subjective nature of interpretation. Suggestions included articulating the purpose and evidence behind the provisions, an explanation of any changes, and linking to the relevant requirements relating to the sale of food.

Stakeholders indicated that statements of intent would complement the guidance materials proposed in [concept 19](#) and existing sources of information, such as Explanatory Statements and Basic Requirements provisions. Statements of intent were suggested to be most useful for interpreting labelling and compositional requirements of the Code, but less so for requirements spread across multiple standards.

Consideration

No legislative change is required to implement this concept. Based on legal advice, and further consideration, the Review found that introduction of statements of intent into the Act may cause legal uncertainty and/or duplication of existing mechanisms.

- If statements of intent are given legal standing, and sit outside of their associated food standard, jurisdictional interpretation acts may interpret these statements differently. This may reduce the clarity they aim to provide.

- In 2010, the Australian Government Office of Legislative Drafting and Publishing (OLPD, now OPC) provided a report to FSANZ with recommendations to improve drafting of the Code to improve its interpretation²³. The OLPD report outlined the necessity of ‘purpose statements’ within (not outside of) the Code. Purpose statements (akin to statements of intent) are now included in food standards, to summarise its intent and aid readability.
- No changes are required to the Act to communicate intent within Food Standards. Where required, intent can be communicated through strengthened purpose statements, which already exist in food standards.

Introducing statements of intent may increase uncertainty rather than provide clarity. Instead, FSANZ can utilise existing mechanisms, such as purpose statements and interpretive guidelines ([concept 19](#)) to improve the interpretation of standards

Recommendations

Utilise existing arrangements - Utilise mechanisms such as purpose statements and interpretive guidelines to improve the interpretation of standards.

Concept 19: Increase development of guidelines for industry to support interpretation of food regulatory measures

Current issue

This concept discusses the role of guidelines for industry in supporting compliance with food regulations. These guidelines do not replace regulations but serve as interpretive tools, streamlining the compliance process and reducing the time and resources spent on navigating regulatory nuances.

- Section 13(c) of the Act currently enables FSANZ to develop guidelines to assist interpretation of the Code. These may be developed on FSANZ’s own initiative or in consultation with others as appropriate.
- There is a gap in the availability and use of non-binding guidelines for both industry and businesses in general.
- There is also a potential gap in guidelines addressing the needs of First Nations and Māori peoples and businesses.
- Most large food businesses engage consultants or have ready access to independent legal advice or support, to navigate and comply with the Code. Access to such resources can be cost prohibitive for smaller food businesses and sole traders.
- In Australia, inconsistent interpretation and enforcement of food standards heightens costs for industry and enforcement agencies, while potentially undermining management of foodborne risks.
- Provision of additional mechanisms for interpretive advice would help reduce interpretive uncertainty and improve consistency.

²³ FSANZ, [Legislative audit report provided by the Office of Legislative Drafting and Publishing – Proposal P1025](#)

- This could be achieved through increased use of non-binding guidelines for industry, that could also be utilised by regulators.
- Guidelines could assist in mitigating issues and risks by referencing specific relevant sections of the Act to provide a single source of truth.

Consultation Feedback

Public health and consumer groups

Minimal feedback was received in relation to this concept.

Public health stakeholders and consumer groups raised concern about FSANZ being resourced to undertake this work as it could place a considerable burden on FSANZ. It was noted stakeholders did not want this function to impact FSANZ's ability to progress proposals and other activities likely to deliver public health benefit and other essential activities.

Industry

Industry stakeholders agreed FSANZ should be resourced to develop, update, and maintain guidelines for industry to guide the interpretation of food standards. This would assist in the consistent implementation of regulations by food companies, benefit all stakeholders in the System, and drive innovation by providing information that allows company founders to understand the regulatory requirements.

Stakeholders agreed that cultural considerations should be considered in the food standards process. It was suggested that FSANZ consult specifically with First Nations and Māori people and experts on how best to support First Nations and Māori businesses.

Government

Government stakeholders supported FSANZ developing guidelines for industry. Cited benefits included improved consistency, compliance, and enforcement of food standards, as well as a reduction of industry inquiries and jurisdictional differences. Jurisdictions raised concerns on the practicality of the guidelines in resolving inconsistencies in the Code and articulated the need for consultation in their development.

Stakeholders also recommend an amendment of the Act to allow for consultation with First Nations and Māori people on cultural matters related to food standards.

Consideration

FSANZ can currently make guidelines under s 13(1)(c) of the Act. However, this power has not been utilised recently due to resourcing pressures and previous interpretive issues with guidelines.

There may be an opportunity to re-visit this power in collaboration with jurisdictions (linked to [concept 20](#)). This could support consistent implementation of standards through the provision of increased information. Development of guidelines could be:

- undertaken in parallel to standard development
- triggered by jurisdiction or industry need, targeting specific interpretive issues and requests for clarification.

It is expected that creating guidelines in parallel to standard development, and in collaboration with stakeholders, would decrease implementation uncertainty. The

implementation intention of the standard would be clearly communicated prior to the standard being approved, supporting a more consistent approach to implementation from its commencement.

For guidelines triggered by an industry need, these should be developed in collaboration with industry and consultation with broader stakeholders. This would support industry to share known issues and work with FSANZ to develop a solution that reflects enforcement agencies' approaches as well as industry concerns.

While s 13(1)(c) of the Act allows FSANZ to create guidelines in consultation with "*the States, the Territories and any other body or person that it considers appropriate*"²⁴, specific consideration should be given to consulting First Nations and Māori stakeholders to ensure their views and needs are considered.

It is suggested FSANZ, jurisdictions, and industry develop a transparent process for guideline development in parallel with food regulatory measures (where relevant) to overcome potential implementation issues.

In developing this process, FSANZ should consider when a guideline should accompany a regulatory measure as part of the risk-based framework. Engagement opportunities in guideline development should also be enabled, including with First Nations and Māori stakeholders.

Based on feedback previously raised by stakeholders on jurisdictional roles and enforceability, the register of binding interpretations is not being considered.

Recommendations

Operational changes

- Develop transparent processes for guideline development in parallel with food regulatory measures (where relevant) to overcome potential implementation issues.

Concept 20: FSANZ to strengthen collaboration with the ISFR on enforcement and risk identification (Australia only)

Current issue

ISFR plays a key role in ensuring the implementation and enforcement of food standards is consistent across Australia and New Zealand. Direct engagement with enforcement agencies is managed by ISFR through respective jurisdictions.

Enforcement agencies across Australia include state and territory health departments, agriculture or primary production departments, local councils and independent agencies. The number of enforcement agencies within each jurisdiction can vary, with some jurisdictions having more than 150 agencies.

It is impractical for FSANZ to engage directly with enforcement agencies to identify future risks, or support compliance and enforcement activities. Strengthened engagement with ISFR could help bridge this gap.

²⁴ [FSANZ Act 1991](#) (Cth) p II s 13.

FSANZ has the statutory remit to coordinate food recalls in Australia, but only at the request of states and territories. Stronger collaborations between FSANZ and jurisdictions could facilitate more timely identification of risks and enable swift responses to better protect the public and minimise reputational damage to the industry.

Despite existing governance structures, there is inconsistent interpretation and enforcement of food standards. This leads to increased cost to industry and enforcement agencies, potentially undermining the management of foodborne risks. FSANZ could collaborate more regularly with ISFR to identify emerging risks and activate the appropriate regulatory response.

The System could be strengthened through enhanced engagement, collaboration, data sharing, and risk identification between FSANZ, states, territories and the Australian Government. FSANZ plays a key role by fostering collaboration and data sharing through stakeholder engagement, joint research and international partnerships. It is also well placed to coordinate risk identification and management using science-based frameworks and to support consistent enforcement across jurisdictions. This would support the FRA objectives to include cost-effective compliance and enforcement arrangements and ensure a consistent regulatory approach.

Consultation Feedback

Public health and consumer groups

Public health and consumer groups agreed that bridging the collaboration gap between FSANZ and jurisdictional enforcement agencies would improve the interpretation and enforcement of food standards. This was considered practical if it improves the enforcement of standards that promote better public health outcomes. Stakeholders noted that effective data sharing would act as an enabler to bridge the gap between FSANZ and jurisdictional enforcement agencies.

Industry

Minimal responses were received in relation to this concept.

Industry stakeholders agreed that bridging the communication gap between FSANZ and jurisdictional enforcement agencies would improve consistency in interpretation. They suggested this would benefit industry, consumers and public health. Stakeholders noted that FSANZ already has opportunities to engage, and existing mechanisms should be leveraged to optimise collaboration between FSANZ and with jurisdictional enforcement agencies.

Stakeholders raised concerns regarding jurisdictional buy-in and the potential to dilute FSANZ's focus.

Government

Some jurisdictions believe that bridging the communication gap between FSANZ and jurisdictional enforcement agencies could improve public health outcomes and implementation of standards. Others argued that FSANZ should not provide advice on enforcement, as it is not an enforcement agency.

Some stakeholders highlighted that existing forums for collaboration between FSANZ and jurisdictions (such as ISFR) should be maximised to support implementation and compliance. Stakeholders indicated that it would be challenging for FSANZ to collaborate with hundreds

of enforcement agencies, and that it could be more appropriately managed at the state/territory level.

Considerations

No legislative change is required to implement this concept. Mechanisms, such as joint meetings, collaborative development of compliance and enforcement strategies, and coordinated monitoring and surveillance activities, are already in place to support collaboration between ISFR and FRSC. In addition, FSANZ participates as a member of ISFR.

It is recommended that FSANZ and ISFR consider opportunities to strengthen their engagement opportunities. This could improve enforcement and risk identification in both the development of, and compliance with food standards. It may also be useful to smaller jurisdictions, which could utilise FSANZ expertise and knowledge to bolster skills gaps experienced by those jurisdictions.

If FSANZ and ISFR decide to strengthen engagement, further consideration could be given to:

- roles of each party
- engagement opportunities across all stages of FSANZ's development of food regulatory measures, including implementation
- opportunities to minimise duplication of work between parties
- timeframes to review engagement mechanisms, to ensure they remain fit for purpose.

Recommendations

Utilise existing arrangements - FSANZ and ISFR consider opportunities to strengthen their engagement.

Concept 21: FSANZ to undertake limited enforcement and compliance activities (Australia only)

Current issue

There is a significant gap in enforcement powers in the System. Currently, it does not have the ability to effectively and efficiently enforce future national public health regulations relating to food marketing, advertising and labelling (e.g. Health Star Rating and Infant Formula Marketing Controls (IFMC)).

Australian jurisdictions are responsible for enforcing food regulations in Australia. However, marketing and advertising are not within their scope of enforcement.

Currently, jurisdictions have the scope to enforce labelling standards. However, in a resource constrained environment, jurisdictions necessarily prioritise compliance and enforcement for acute food safety over non-immediate threats, such as those stemming from labelling. If additional food regulations relating to labelling, advertising and marketing are introduced in the future (e.g. HSR or IFMC), they will likely be de-prioritised and ineffectively enforced.

Existing national enforcement bodies are not well placed for this role. The Australian Government Department of Agriculture, Fisheries and Forestry enforce food regulations for imported food at Australia's border. The Australian Competition and Consumer Commission (ACCC) may enforce some advertising and marketing breaches. However, breaches would

have to be of significant magnitude and in-scope, such as relating to misleading and deceptive conduct, anti-competitive behaviour and fair-trade.

Consultation Feedback

In the 2020 and 2021 public consultations, consideration was given to FSANZ taking on limited enforcement activities, having a national recall power or becoming the single bi-national regulator. A potential enforcement role for FSANZ was not included in the 2024 public consultation.

Limited compliance and enforcement powers are being re-considered for Australia-only, to support emerging issues relating to labelling, advertising and marketing.

Public health and consumer groups

Public health stakeholders and consumer groups were generally unsupportive of this concept during initial public consultations. However, they raised concerns that any enforcement role would be a conflict of interest given the current powers and functions of FSANZ. It was suggested that enforcement discrepancies across Australia could be addressed within the food standards and with guidance, rather than expansion of FSANZ remit.

Industry

There were disparate views across industry, but most stakeholders were against this concept. Stakeholders raised current issues with inconsistency in enforcement activities and the pressure this has on businesses. Some stakeholders raised concerns about FSANZ deviating away from its core functions, changing the nature of FSANZ. Concerns were also raised about disrupting the constitutional arrangements between Australian Government, states and territories, and New Zealand. Some stakeholders felt this expansion would dilute FSANZ's impact on food safety, and compromise credibility and trust within the System and internationally.

Other stakeholders were supportive of FSANZ expanding into this role to support consistency in enforcement across Australia. This was caveated within a limited capacity of Chapters 1 and 2 of the Code and only in Australia.²⁵

Government

Australian State and territory governments expressed mixed views on this concept. Some raised concern this role would present a serious risk of inefficiency, duplication, and delay. Concerns were raised regarding splitting labelling and food safety enforcement across multiple agencies. Concerns were also raised regarding conflicts of interest if FSANZ were responsible for both creating and enforcing food standards.

Some stakeholders supported limited enforcement powers for select food standards including health claims, or initiatives including Health Star Rating (if mandated), as these areas require technical expertise. Stakeholders expressed that food safety management should remain within the remit of current enforcement agencies.

²⁵ FSANZ, [Food Standards Code legislation](#)

Subsequent consultations have highlighted targeted opportunities for an Australian Government enforcement role in areas where jurisdictions have limited scope. Stakeholders expressed that any Australian Government enforcement role within the System that would otherwise be enforced by jurisdictions should first be approved by Food Ministers.

Consideration

There is opportunity for an Australian Government enforcement and compliance role in targeted areas where Australian jurisdictions have limited scope and/or significant barriers to success. The biggest opportunities lie in food marketing, advertising and labelling, particularly for issues outside of the System or the Code. Utilisation of powers should be targeted to areas which require a level of technical expertise and would benefit from a national approach. This could be supported by enabling the Minister responsible for FSANZ to create a legislative instrument to allow FSANZ to undertake national enforcement activities, in collaboration with FMM. This would facilitate the consistent and efficient enforcement of the marketing, advertising and labelling of food, outside of the System or the Code. Additional scoping may be required to determine if a declaration is also required by the Minister responsible for FSANZ to declare when enforcement of marketing, advertising and labelling should be undertaken nationally.

Australian Government enforcement and compliance should only occur when it is outside of the remit of Australian jurisdictions and should be undertaken in collaboration with Food Ministers. Any agreed Australian Government enforcement scope should be included in the FRA.

As a national body with the necessary expertise to manage these issues, FSANZ could be well-placed to undertake an enforcement role. If FSANZ are provided with enforcement and compliance powers, these should align with Model Food Act provisions within Annex A to the FRA, where relevant. This will ensure a level of consistency with jurisdictional powers.

Conflict of interest concerns may be addressed through separation of reporting lines between those who create and enforce standards, to maintain independence.

Further work is required to determine the specific regulations that FSANZ may enforce. However, provisions to enable a FSANZ enforcement role may be inserted into the Act, for activation in the future if required.

If this concept is progressed, updates will be required to the FRA to articulate this new function of FSANZ, and how it fits within broader enforcement activities in Australia. Operational policies and procedures will also need to be developed to support any enforcement approach.

Recommendations

Legislative changes

- Update the Act to include limited enforcement and compliance functions for FSANZ relating to labelling, advertising and marketing of food.
- Update the Act to enable the Minister responsible for FSANZ to create a legislative instrument for FSANZ to undertake national enforcement activities relating to the marketing, advertising and labelling of food, outside of the System or Code, in consultation with FMM.

Appendix A – Terms of Reference

These Terms of Reference were agreed in July 2020.

Review into the *Food Standards Australia New Zealand Act 1991*

TERMS OF REFERENCE

1. The review will include a comprehensive examination of the effectiveness of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act) and the associated operations and responsibilities of Food Standards Australia New Zealand (FSANZ). It will include consideration of the economic efficiency of regulation, recognizing the importance of the food industry to regional communities and the broader economies of both Australia and New Zealand. The review will include findings and recommendations for any reforms. The final report from the review will be provided to the Australian minister responsible for FSANZ, who will consider the report/review in partnership with the New Zealand Minister for Food Safety and consult with state and territory food ministers through the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum).

Scope

2. The review will include the FSANZ Act and FSANZ operations, with a focus on areas identified as being inconsistent with best practice regulation and standard setting. The review should consider and make recommendations on the appropriateness of FSANZ Act legislation, in particular:
 - a. The FSANZ assessment process to ensure it is fit for purpose and outcomes based and promotes an efficient and internationally competitive food industry. This work should include:
 - o ensuring any proposed changes to the regulatory system imposes the least burden on business to achieve the stated objectives of the regulation and specific consideration is given to the impact on small businesses; and
 - o revision of the interface between the regulator and business, i.e. the digital or paper systems used to support the assessment.
 - b. An optimal operating model for FSANZ, the roles and functions of FSANZ including consideration of FSANZ undertaking a greater role as a regulator.
 - c. Cost recovery models for industry initiated work.
 - d. Decision making processes, including the role of the CEO, FSANZ Board and Ministers.
 - e. Best practice board appointment processes.
3. The review should consider and make recommendations on the operational functions of FSANZ, in particular:
 - a. The timeliness of work undertaken and relative priority of the FSANZ work plan including consideration of the risk proportionality and international harmonisation of risk assessments and standards.
 - b. The operation and effectiveness of the Food-Medicine Interface, including the effectiveness of regulation around nutrition supplements.
 - c. FSANZ as an independent agency and appropriate resourcing.
4. The review should also consider what wider role FSANZ as a joint body could take across Australia and New Zealand and in Australia only, by considering issues and making recommendations in relation to FSANZ's potential role including (but not limited to):

- a. Enforcement of food standards – noting concerns around a lack of consistent implementation of standards across jurisdictions.
- b. Emerging issues – such as food fraud and food crime.
- c. Food safety – noting consumers’ and industry’s desire for one ‘Face of Food Safety’ that produces a unified national approach to raising awareness and responding to food safety issues (Australian context only).
- d. Food safety research – including facilitating collaboration on research relating to food safety.
- e. Communication of food standards to industry and consumers – including a greater role in providing advice on interpretation of food standards.
- f. Undertaking education campaigns – in alignment with Priority 1 and Priority 2 of the Food Regulation system.

The review will provide an indication of the potential role of FSANZ in both Australia and New Zealand and relative impact of the recommendations for Australia and New Zealand.

Out of scope

5. The review will not include other food legislation and agreements, such as the Food Regulation Agreement, the Food Treaty, or the Model Food Act. However, should issues with these instruments be identified, they may be considered separately.

Process

Stakeholder engagement

6. Wide consultation will be undertaken as part of the review, including with government, consumer, public health, and industry stakeholders along the supply chain.

Legislative amendments

7. In accordance with Article 4(4) of the Treaty, no amendments to the FSANZ Act will be introduced without effective consultation with New Zealand.

Principles

Alignment with Priority 3 of the food regulation system

8. The review will complement the objectives of Priority 3 of the food regulation system, as agreed by the Forum in April 2017: to maintain a strong, robust, and agile food regulation system. The central focus of this work is applying best practice regulatory approaches, with the objectives of improving timeliness, ensuring the food regulation system is responsive, and provides a unified voice regarding food safety and applying processes proportional to risk. Under the Priority 3 program of work, the Food Regulation Standing Committee is concurrently considering wider reforms to the food regulatory system (including the Food Regulation Agreement and the Model Food Act). This review will aim to align with and complement the broader Priority 3 work.

Management

9. The Australian Government Department of Health in consultation with the Australian Government Department of Agriculture, Water and the Environment will manage the review through an independent consultant, in partnership with the New Zealand Government and in consultation with FSANZ, and Australian states and territories.

Appendix B – Stakeholder Engagement

Overview of stakeholder activities

In 2020, public consultation was undertaken on a scoping paper which outlined broad System issues and 25 possible ideas for reform. Ninety-two submissions were received during this consultation. Submissions were analysed to develop 3 proposed options:

- **Option 1** – Retaining the status quo
- **Option 2** – Modernise the Act to make it agile, resilient and fit-for-purpose
- **Option 3** – Build on FSANZ's role to reinforce the bi-national nature of the System.

In 2021, public consultation was undertaken on a draft Regulatory Impact Statement (RIS) articulating the above 3 options and associated components. Seventy-six submissions were received during this consultation. Responses demonstrated that a hybrid option, comprising components from both Option 2 and Option 3, was the preferred way forward for FSANZ.

The hybrid option was proposed to Food Ministers in December 2021, but FMM postponed decision-making to allow jurisdictions more opportunity to consider the options. Engagement with jurisdictions and New Zealand was then undertaken in early 2022 to support the development of 22 draft concepts.

Following the Federal election in 2022, new authority for the Review was sought from the Prime Minister. As part of this authority, the Review was required to undertake all stages of the IA process again. In late 2023, Food Ministers were provided with an updated set of draft concepts to inform the development of the RIS.

In early 2023, scoping work to recognise First Nations and Māori culture and expertise within the Act and FSANZ operations was undertaken. This was also discussed with Food Ministers in April 2023.

From mid-2023, the then Australian Government Department of Health and Aged Care provided an update on the Review to key stakeholder groups and those who have previously engaged with consultation on the Review. At this time, feedback on the concepts under consideration was sought to support the refinement of the IA (previously known as the RIS). To assist stakeholders the 27 concepts were refined down to 20 concepts and then grouped into 4 overarching components for easy analysis and consideration.

From February to April 2024, public consultation was undertaken on the IA. Seventy-eight submissions were received, stakeholders provided feedback on the 20 concepts, advised of any implementation issues, and provided additional cost benefits and risk information.

Targeted Stakeholder Engagement

- **August 2020** – workshops with FRSC members on key issues within FSANZ and opportunities for reform.
- **September 2020** – separate workshops with industry, and public health and consumer groups to explore key issues and opportunities for consideration by the Review.
- **November 2020** – workshops with FRSC and ISFR members on the desirability and feasibility of proposed options.

- **April 2022** – workshop with Australian jurisdictions and New Zealand to refine the proposed concepts prior to consideration by FMM.
- **August 2023** – separate reconnection sessions with industry, public health and consumer groups to provide an update on the Review, current concepts being considered and next steps.
- **September 2023** – separate workshops with industry, public health and consumer groups on the draft IA for early assessment to understand the impacts of proposed regulatory recommendations.
- **February 2024** – separate workshops with Australian and New Zealand industry, public health, consumer groups and Māori representatives on the IA public consultation.

Key Engagement

- **25 November 2022** – FMM agreed to the continued scoping of 22 identified concepts. This included scoping work into the concept of recognising First Nations and Māori culture and expertise within the Act and FSANZ operations. FMM also agreed to exclude several concepts from further consideration, including those relating to the:
 - food medicine interface
 - inclusion of trade as a specific FSANZ objective
 - processes for the Australian Government to instigate a national food recall
 - removal of criteria for ministers to request a review of a draft standard from the FRA to the Act
 - consideration of FSANZ business solutions.
- **April 2023** – FMM agreed to the inclusion of 6 First Nations and Māori concepts into the Review, 3 additional concepts were agreed to be explored at a later stage of the Review, subject to agreement and available resources and timeframes.
- **July 2023** – FMM noted plans for stakeholder engagement and consultation on 27 concepts, to inform the IA.
- **December 2023** – FMM noted the draft IA for the planned public consultation in February 2024-March 2024.
- **July 2024** – FMM discussed the proposed recommendations within the draft Review Report. Ministers raised concerns regarding the potential FSANZ enforcement function, noting that enforcement had previously been excluded from further consideration by Ministers at FMM04 in December 2022.
- **September 2024** – FRSC agreed for the Australian Government to establish a working group to further consider enforcement provisions.

Table 1: Overview of feedback from the Scoping Paper consultation

Key:

Supported	Mixed Support	Not Supported
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Option	Public Health and Consumer groups	Food Industry	Government
Legislative changes may clarify the Act's objectives (R1-3)	Supported defining 'public health' and 'safety' with consideration to short- and long-term health. Concern about including trade as core goal of FSANZ. Mixed support criteria for FMM to request review of draft regulatory measure.	Supported defining 'public health' and 'safety' without expanding current health remit. Supported including trade as core goal of FSANZ. Supported criteria for FMM to request review of draft regulatory measure.	Mixed support. Support defining 'public health' and 'safety' with consideration to short- and long-term health. Not supportive of trade as core goal of FSANZ. Not supportive of criterial for FMM to request a review of draft regulatory measure.
Statutory functions could be amended to reflect FSANZ's agreed scope of practice (R4-5)	Supported clear description of FSANZ functions to support long-term health. Supported expansion of some functions.	Mixed support. Support limited expansion to support FSANZ to protect food safety, not move into long-term public health.	Supported clear description of FSANZ functions to support long-term health. Support expansion of some functions.
A strategic approach to reviewing standards could better future-proof the regulatory framework. (R6-7)	Mixed support for sunseting of standards. Support holistic reviews of standards, with public health focus.	Mixed support. Does not support sunseting of standards. Support holistic reviews of standards, with adequate resourcing.	Mixed support. Does not support sunseting of standards. Support holistic reviews of standards, with criteria to determine process/evidence to trigger review.
Legislative changes could support more risk-based processes and decision-making. (R8-9)	Mixed support. Some concern with risk-based approach reducing public health oversight. Some support for greater flexibility, including delegation.	Supported risk-based approach and delegation for FSANZ to be more efficient.	Supported risk-based approach and delegation in principle, pending more information.
New pathways to amend food standards may support a more timely and responsive regulatory system. (R10-12)	Not supported. Concern over adopting international risk assessments or standards due to reduced public health oversight. Do not support industry led pathways.	Supported adoption of international risk assessments and standards, with assessment to ensure alignment with Aus/NZ context. Support industry led pathways.	Supported exploring international harmonisation, but more information needed to understand how Aus/NZ context is considered.

Option	Public Health and Consumer groups	Food Industry	Government
Legislative and operational reforms could improve alignment of policy development and standard-setting. (R13-14)	Supported joint agenda setting, but concern about political interference. Mixed support for amending statutory timeframes as may not focus on public health items.	Mixed support. Support joint agenda setting, whilst maintaining independence. Concern about statutory timeframes.	Mixed support for joint agenda setting. Considers benefits for statutory timeframes to ensure proposal work is prioritised.
Legislative and operational changes may improve the implementation and enforcement of food standards (R15-17)	Supported guidance to increase consistency in interpretation. Support binding advice as long as set by FSANZ, not industry. Some support for limited enforcement powers.	Mixed support for increased guidance. Instead of interpretative advice, prefer standards be clearly written. Unsupportive of limited enforcement powers.	Mixed support. Supportive of providing more guidance to industry for interpretation. Not supportive of binding interpretations. Mixed support for limited enforcement powers, within novel foods and health claims.
Three improvement opportunities have been identified to address issues at the food-medicine interface. (R18-20)	Supported work to reform food-medicine interface and FSANZ assessing general level health claims.	Mixed support of work to reform food-medicine interface and FSANZ assessing general level health claims.	Mixed support to reform food-medicine interface and FSANZ assessing general level health claims.
Legislative change could support more efficient and effective governance for FSANZ. (R21-23)	Mixed support. Concerned about reduction in public health members. Support minimum term for members.	Mixed support for smaller Board, minimum term and streamlining appointments. Desire for increased industry representation.	Mixed support for smaller Board, minimum term and streamlining appointments.
There are opportunities for legislative and operational reform to ensure adequate resourcing for FSANZ. (R24-25)	Mixed support. FSANZ should be adequately funded by government and not rely on cost recovery to function.	Not supported. Opposed to increased cost recovery. FSANZ should receive appropriate government funding to operate.	Mixed support for cost recovery.

Table 2: Overview of feedback from the draft Regulatory Impact Statement consultation

Key:	Supported	Mixed Support	Not Supported
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Option 1: Retain the status quo

Option	Public Health and Consumer groups	Food Industry	Government
Retain the status quo	Better option than Option 2 and 3 as doesn't deprioritise public health and safety.	Not supported. Need to reflect changes to food system and support innovation.	Not supported.

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

Option	Public Health and Consumer groups	Food Industry	Government
Clarify objectives and functions and reflect these into the Act.	Mixed support. Support clarifying short- and long-term public health and safety.	Mixed support. Support for recognising trade, but not for expansion into sustainability or clarifying public health definition.	Supported. Objectives should be aligned but not extend beyond the roles of modernised bi-national food regulatory systems.
Facilitate risk-based approaches to developing or amending food regulatory measures.	Mixed support. Concern about degradation of public health and safety. Would want more detail and robust monitoring and evaluation framework.	Supported. Some concern with use of alternative regulatory measures.	Mixed support. Generally supportive, with some concern about automatic adoption of standards. More information needed regarding the criteria and thresholds of risk.
Build in flexibility to create bespoke regulatory sandboxes.	Not supported. Present high public health risk.	Mixed support. More information needed to inform decision making, but support innovation.	Mixed support. Some support in-principle. Concern with magnitude of risk and the scope to be considered within the Review.
Position FSANZ as the engine of food safety intelligence, equipped to drive forward-looking regulation.	Not supported. Concern of expanding FSANZ functions within current resourcing challenges.	Mixed support. Understand importance of reviewing standards to ensure up to date but not change for change's sake.	Mixed support. Support for more regular reviews. Concerns regarding resource demand and risk of expanding FSANZ functions.
Foster new approaches to working with other agencies, with a focus on intelligence-sharing.	Mixed support. Concern with who they would work with, potential conflicts and other mechanisms to improve FSANZ.	Mixed support. Supportive of greater collaboration across the system but concern if FSANZ expands into databank that info not publicly accessible.	Mixed support. Supportive of greater collaboration across broader system. Current legislation allows for this. Need clear separation between enforcement and standard setting.
Streamline FSANZ's governance and operations.	Not supported. Public health must be prioritised, and current nomination process should be retained.	Not supported. Concern with decreased industry representation on the Board or smaller Board size.	Supported. Supports streamlining the Board if appropriate skillsets of members are ensured.

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

Option	Public Health and Consumer groups	Food Industry	Government
Provide for FSANZ to coordinate food incident and food recall responses, on its own initiative.	Not supported. Current process works effectively and FSANZ resources already stretched.	Not supported. Current process works effectively. Work would be duplicative and an unnecessary of resources.	Not supported. Current process works effectively and current regulators have better expertise and knowledge in this space.
Provide for FSANZ to give greater guidance on food standards.	Mixed support. Concerns about resourcing but understand benefit of increasing consistency. Development of guidelines shouldn't be industry led.	Supported. Greater guidance should support implementation, but interpretive guidance shouldn't be legally binding.	Supported. FSANZ should provide additional guidance but not prepare evidence.
Position FSANZ to take on an enforcement role.	Not supported. Enforcement should be separate from standing setting.	Mixed support. Expansion supported by some but others concerned about duplication of effort and increased cost burden.	Not supported. Enforcement should be separate from standing setting and differences in regulators could blur jurisdictional roles.
Clarify legislation so FSANZ can extend Australia and New Zealand's influence on the international stage.	Not supported. FSANZ should be focused on health and safety, not on trade considerations.	Mixed support. Harmonisation may strengthen trade but Australia and New Zealand should have separate voices in this space.	Not supported. This is the role of government agencies, not FSANZ.

Key:	Supported	Mixed Support	Not Supported
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Table 3: Overview of feedback from the Impact Analysis consultation

Option 1: Retain the status quo

Option	Public Health and Consumer groups	Food Industry	Government
Retain the status quo	Mixed support. Better option than Option 2 and 3 as doesn't deprioritise public health and safety.	Not supported. Need to reflect changes to food system and support innovation.	

Option 2: Modernise regulatory settings

Option	Public Health and Consumer groups	Food Industry	Government
The definition of 'protection of public health and safety' within the Act could be clarified to be in line with the current policy guidance.	Supported. A clear definition would reduce confusion, if 'long-term' public health is also considered and factored into the definition. Suggested public health test to consider burdens of disease and discouragement of foods with low/no nutritional value.	Not supported. The current wording within the Act and FSANZ's current role is suitable. Concern definition change will shift FSANZ focus from science-based considerations to societal issues.	Supported. Including a definition in the Act to increase clarity. Supportive of implementation guidance and other measures in the Act to ensure public health and safety are appropriately addressed.
There could be greater clarity around how Ministerial Policy Guidelines (MPG) are reflected in the development of food standards.	Supported. FSANZ better document how it complies with MPG, with greater transparency in communication on how the guidelines are considered through a report.	Mixed support. Desire increased transparency in communication on how the MPG are applied and considered. Increased education on awareness of the MPG and where to find them.	Supported. Greater understanding of how they are considered and communicated is beneficial. Need to consider interactions with FRA.
Language within the Act could be updated to be more culturally inclusive.	Supported. Greater consultation required before work progresses.	Supported. Greater consultation required before work progresses.	Supported. Greater consultation required before work progresses.
A risk-based framework and approach could be introduced to guide the development of food regulatory measures.	Not supported. Insufficient information to support decision making and comfort. Concern about public health not being appropriately considered and prioritised. Want to be involved in development.	Supported. Want to be involved in development. Needs to be fit for purpose for FSANZ and not within legislation.	Supported. Want to be involved in development. Insufficient information to be fully comfortable but understand importance of this shift.

Option	Public Health and Consumer groups	Food Industry	Government
New pathways to amend food standards could be introduced.	Not supported. Insufficient information to support decision making and comfort. Concern public health items will be high risk and no efficiency gains. Low-risk may not appropriately consider public health. Concern about minimal check pathways. Don't support adoption of international standards without consultation.	Supported. Reduce timeframes for applications, reducing repetition and free up resources for more complex work. Local considerations need to be factored into new pathways.	Mixed support. Need to consider Australian and New Zealand dietary patterns to ensure streamlined assessments are appropriate. Don't want to undermine sovereignty. Concern about minimal check pathways.
Decision-making arrangements could be streamlined.	Not supported. Would not increase efficiency. Insufficient information to support decision making and comfort.	Supported. Need to consider risk appetite of FSANZ and food system. Transparency important. Concern about impact on New Zealand.	Mixed support. Delegation would need to be to person with appropriate knowledge and expertise. Don't support delegation to FSANZ Board as New Zealand voice bypassed.
Legislative change and greater guidance material could support bringing more traditional foods to market.	Not supported. Greater consultation required before work progresses.	Mixed support. Greater consultation required before work progresses.	Supported. Greater consultation required before work progresses.
FSANZ to undertake more timely, holistic and regular reviews of standards.	Supported. Could be achieved now with more resources. Engagement with multidisciplinary experts beneficial in this process.	Supported. Link to key scientific advances and international standards to support innovation. Concern about expansion outside of food safety, and impact on application statutory timeframes.	Supported. Holistic review of Code, not single standard approach. Need to ensure focus is public health and safety. Establishing criteria is important.
Codes of Practice and guidelines could be increasingly used to complement food standards.	Not supported. Benefit industry and not public health. FSANZ can already do this.	Supported. Benefit interpretation and having an agreed approach on low-risk topics that don't warrant a standard. FSANZ can already do this.	Mixed support. Need to consider where appropriate to utilise non-regulatory measures and how these are supported by FMM if not notified to them for consideration.
Outstanding recommendations from the 2014 review of the FSANZ Board could be implemented.	Mixed support. Support amending compositional requirements but not open-market approach.	Supported. Should be consistent with contemporary governance principles but not supportive of open-market approach.	Mixed support. Increased representation beneficial, but increased risk with open market process. Clearer nomination parameters.

Option	Public Health and Consumer groups	Food Industry	Government
The expedited approvals pathway could be removed to address workload prioritisation.	Supported. Removal would enable level playing field for applications. Reduces risk of regulatory capture.	Not supported. Result in increased delay costs and reduce innovation.	Mixed support. Would support FSANZ prioritisation but impact applicants wanting to bring products to market quicker. Overall positive for industry and consumers.
To generate more sustainable revenue, cost recovery could be expanded for work that benefits industry.	Mixed support. Support industry-wide levy but don't support compulsory fees or entrepreneurial activities.	Not supported. Additional fees will be passed onto consumers, levy hard to administer across Australia and New Zealand. Impact products brought to market.	Mixed support. Levy will benefit FSANZ and industry but impact on consumers. Code benefits industry so they should pay. Fee would need to be proportionate to size and revenue of businesses to make equitable.
Some services could also be cost recovered from government agencies.	Mixed support. Didn't feel they could answer this question, but did not feel charging for additional proposal work was beneficial.	Mixed support. Jurisdictions should pay for work to ensure discipline in what requested, but don't think it would support financial stability.	Not supported. Jurisdictions who already contribute resources to recalls and enforcement. FSANZ funding shouldn't be dependent from ad hoc jurisdictional funding.
Mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting could be implemented.	Supported. Feel this already occurs but Public Health test should be used to prioritise work.	Mixed support. FSANZ needs to maintain independence, evidence informed framework required. Separate science and politics.	Supported. Could facilitate more effective planning and understanding resource pressures. Need to ensure FSANZ remains independent.
FSANZ could engage earlier and more systematically with FRSC and jurisdictions in the development of food standards.	Supported. Already occurring in practice, additional opportunities beneficial.	Supported. Would need clear objectives but would support greater collaboration across the system. Should include stakeholders.	Supported. Fostering further collaboration is important, clear guidance and goals is critical to achieve this.
FSANZ could take guardianship over key food safety databases (Australia only).	Supported. Any data should be publicly available. Need connect in with other data agencies and if this could be expanded into New Zealand.	Mixed support. Already underway with Branded Food Database. Resources should be focused on other work before this.	Supported. Data sharing should benefit everyone involved. Long term funding and resourcing needed to deliver this. Need to consider connection with New Zealand.
Further work could be done to establish information sharing arrangements with international partners.	Supported. Harmonisation of regulatory approaches will ensure safeguarding of public health. Information sharing should be on background research only.	Supported. Could limit technical barriers and reduce duplication of work by industry.	Supported. Should benefit harmonisation processes and reduce costs for applicants. Data sharing could reduce work duplication and support horizon scanning.

Option	Public Health and Consumer groups	Food Industry	Government
Statements of intent could be introduced into the Food Standards Code to assist with interpretation and enforcement.	Mixed support. Don't feel they could answer this question, but recognised importance of avoiding misinterpretation.	Not supported. Benefit is unclear and unsure of how this would work in practice or legislative processes.	Supported. May assist in improving consistent interpretation and provide clarity on what standard is trying to achieve. Clearer drafting would also solve this.
FSANZ could be resourced to develop, update and maintain industry guidelines to guide interpretation of food standards	Supported. Don't feel they could answer this question but may be some benefit to provide additional guidance.	Supported. Utilise insights from developing standards to inform this work. Will help with consistent interpretation but should not be mandatory.	Supported. Will help consistent interpretation and could result in reduced enforcement. FSANZ best placed to develop these documents.
FSANZ could collaborate more regularly with jurisdictional enforcement agencies. (Australia only)	Supported. Only if the changes results in improved enforcement of standards that promote better health outcomes.	Mixed support. FSANZ already does this, but jurisdictions must compromise to achieve consistent outcomes. May benefit smaller jurisdictions.	Supported. Collaborating to share enforcement experiences beneficial, and would support better health outcomes.

Table 4: Overview of Option 2 feedback from Impact Analysis targeted engagement sessions

Key:	Supported	Mixed Support	Not Supported
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Recommendation	Public Health	Food Industry
The definition of ‘protection of public health and safety’ within the Act could be clarified	Agreed the definition should exactly reflect the ministerial guidance. Suggested greater detail should be provided regarding what ‘protection of public health and safety’ means in practice.	Broadly agreed with intent of the reform. Concern that expanding the definition with the suggested language could expand FSANZ’s remit. Noted this could exacerbate FSANZ’s resourcing constraints.
There could be greater clarity around how Ministerial Policy Guidelines (MPG) are reflected in the development of food standards.	No major concerns raised.	MPG need to be kept up to date and reflect current issues to be of benefit to the system. Consider expansion/additional MPG.
Language within the Act could be updated to be more culturally inclusive	Noted input required from representatives of indigenous communities on culturally safe health-focused language and approaches to regarding First Nations and Māori food-health links.	No major concerns raised.
A risk-based framework and approach could be introduced	Insufficient detail provided to assess framework. Assessment of the framework would require factors including the proposed framework’s assessment criteria and requirements for consultation be disclosed.	Broad in-principal agreement for introduction of a risk-based framework. Emphasised risk framework should manage concerns regarding food safety, and not public health.
New pathways to amend food standards could be introduced	Drawing evidence and best practice from international partners was supported. Noted it was critical this does not diminish the high-standard of Australia and New Zealand’s regulatory systems.	Supported leveraging existing standards from overseas jurisdictions. Should be clarified that not all standards are adopted automatically. Parameters for informational requirements for international risk assessments should be established.
Decision-making arrangements could be streamlined	Concern with delegation from FSANZ Board to FSANZ CEO would undermine the Board and not provide appropriate accountability.	Supported in-principle. Decision-making processes must be clear and transparent, with an established decision tree and evidentiary requirements. Where delegation does occur, it should be done to individuals with minimum relevant qualifications.

Recommendation	Public Health	Food Industry
Legislative changes and greater guidance material could support bringing more traditional foods to market.	Reiterated importance for engagement with First Nations and Māori.	Criticism raised regarding proposition that traditional foods should be considered safe as they have been consumed for thousands of years. Introduction of a specific traditional foods assessment pathway also resisted as the Code assesses food composition and ingredients, not whole foods. Creation of a 'two channel' system, where different types of foods were assessed in different ways, was resisted.
FSANZ can be resourced to undertake more timely, holistic and regular standard reviews	Stakeholders noted that it is critical to consider the cumulative impact of standards.	Supported in-principle. Noted that stakeholders should be regularly engaged to prioritise and inform the review process.
Codes and Practice could be increasingly used	No major concerns raised.	Risk of Codes of Practice having weak legal standing and enforceability as they are not adopted into law in the jurisdictions. Noted Codes of Practice could be developed by industry in collaboration with regulators.
Outstanding recommendations from the 2014 review of the FSANZ Board	Reflected that the Board exists just to approve or reject draft standards and there is limited opportunity to draw on expertise to inform good policy decision making. Some suggestions that the Board doesn't operate in a way that supports good governance.	Endorsed appropriateness of a Board review. Removal of the requirement that Board members are nominated from prescribed organisations was questioned. Noted this could contribute to the Board nomination process being less efficient.
The expedited approvals pathway could be removed to address workload prioritisation	Strongly supported by some stakeholders. An alternative expedited process whereby healthier foods are prioritised was proposed.	Not supported. Benefits of the expedited approvals pathway were emphasised, including the timing certainty it provides to industry to be able to launch products, and that it attracts international entities to enter the Australian and New Zealand market.
Cost recovery could be expanded for work that benefits industry	Generally supported. Proposed some exceptions for businesses bringing healthy foods into the market.	Introduction of an industry-wide levy was strongly opposed. Industry stakeholders suggested that the FSANZ's current funding gap should be filled by government.
Some services could be cost recovered from government agencies	Considered potential risk of government agencies passing these costs on, increasing costs to taxpayers. Introduction of a charge for FSANZ to coordinate food recalls could disproportionately impact fresh food providers (as opposed to providers of processed foods).	FSANZ base funding has not been increased in recent times and should be considered.

Recommendation	Public Health	Food Industry
Mechanisms to enable FSANZ and FMM to undertake periodic joint agenda-setting	No major concerns raised.	Broadly supported. Concern that this component may contribute to political decisions influencing FSANZ's agenda-setting, when it should be a purely science-based organisation. Requirement for multiple touch points between FSANZ and FMM to check the intent of a standard raised.
FSANZ could engage earlier and more systematically with FRSC and jurisdictions in the development of standards	Supported. Recognised the value of the viewpoints and expertise that it will systematically bring together.	Critical that this component does not reduce the transparency of decision-making processes.
FSANZ could take guardianship over key food safety databases	Noted challenges with the current data ecosystem which may limit the success of this component (e.g. voluntary nature of data contribution by industry).	Questioned if a legislated mandate is required, and if it justified being a priority for FSANZ, given ongoing resourcing constraints.
Further work could be done to establish information sharing arrangements with international partners	No major concerns raised.	No major concerns raised.
Statements of intent could be introduced into the Food Standards Code	No major concerns raised.	Noted the Act previously included editorial comments, which were removed as they had no legal standing. Stakeholders would need to understand the legal role of statements of intent.
FSANZ could be resourced to develop, update and maintain industry guidelines	No major concerns raised.	May increase burden of documentation that stakeholders need to be familiar with. Could make the system more complex and difficult to navigate. Noted any resource should also include the language from the standard itself to serve as a single source of truth.
FSANZ could collaborate more regularly with jurisdiction enforcement agencies	No major concerns raised.	Noted FSANZ already performs this role. Suggested the language could be adjusted to reflect the role that FSANZ could play in sharing intelligence with jurisdictional agencies

Appendix C – Elements for consideration in a public health test

Many of the public health and consumer stakeholders who submitted to the 2024 public consultation proposed several criteria that could be utilised in FSANZ's decision making. The criteria are below.

Long term public health consideration criteria

Priority setting should consider:

- the burden of disease attributable to the food supply¹, and
- estimated benefit of change to the food supply from the work under consideration.

Decisions should:

- discourage the development of foods with low or no nutritional quality, as defined by an appropriate nutrient classification scheme
- encourage patterns of healthy and sustainable eating, and discourage patterns of unhealthy and unsustainable eating, as defined in the Australian and New Zealand Dietary Guidelines²
- reduce the quantity of ingredients and substances within foods that are known risk factors for chronic disease³
- address the impact on the burden of disease attributable to the System, include the benefits of improved public health outcomes and the costs of inaction on public health in any cost benefit analysis
- assess the cumulative impacts of the introduction of new foods on public health outcomes
- reduce availability of unhealthy foods targeted at children.

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

² Noting that updates are considering sustainability of the food supply.

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

Appendix D – Indigenous Culture Desktop Review Concepts

In scope of FSANZ Act Review

Tier 1 Concepts - In scope enablers to facilitate consultation and future changes

- Update language within the Act to be modern, consistent, appropriate and inclusive, including consideration of the following documents as examples:
 - Pae Ora (Healthy Futures) Act 2022
 - The United Nations Declaration on the Rights of Indigenous People
 - Australia and Aotearoa-New Zealand Indigenous Collaboration Arrangement
- Consider extending the consultation clause in Section 13(1)(c) of the Act to also include Aboriginal, Torres Strait Islander and Māori stakeholders
- Consider expanding the areas of expertise for FSANZ Board members outlined within Section 116 of the Act to increase knowledge of Indigenous and First Nations food and culture within the FSANZ Board.
- Explore how greater guidance material on how traditional foods can be assessed for safety, including clarification on when a traditional food would need to go through an alternative food process, for example a traditional food used in a non-traditional way.
- Embed legislative principles within the Act to support FSANZ to develop new application pathways.
- Develop and publish a list of Aboriginal, Torres Strait Islander and Māori traditional foods used in Australia and New Zealand that have undergone safety assessments by FSANZ.

Tier 2 Concepts - In scope but require substantive consultation

- FSANZ Act Review to explore the explicit consideration of Indigenous populations and cultural implications within the assessment of proposals and applications in section 18(2).
- In collaboration with Indigenous and First Nations stakeholders, FSANZ to develop a traditional food pathway to support Aboriginal and Torres Strait Islander, and Māori businesses to bring traditional foods to market.
- FSANZ to explore how to ensure Aboriginal and Torres Strait Islander, and Māori Peoples and industry are sufficiently consulted and engaged in FSANZ processes and operations, including application and proposal processes.

Out of scope of FSANZ Act Review

Tier 3 Concepts – Out of scope

- Undertake a separate project to undertake substantive and meaningful engagement and co-design with Aboriginal and Torres Strait Islander, and Māori stakeholders to understand broad issues and challenges with the food regulation system. This work would support the validation and implementation of Tier 2 and Tier 3 concepts.
- Define traditional foods Food Standards Code, with reference to traditional use in Australia and New Zealand.
- FSANZ to liaise with IP Australia on their work on acknowledging Indigenous Knowledge within the Australian IP system (including trademarks), to support successful implementation within in the food system and ensure Indigenous Cultural Intellectual Property (ICIP) ownership remains with Traditional Owners and use of ICIP benefits Aboriginal and Torres Strait Islander communities.
- FSANZ to work with the Intellectual Property Office of New Zealand to explore the development of an, or utilisation of existing, Indigenous knowledge labelling or certification system for food products to ensure ICIP ownership remains with Traditional Owners and use of ICIP benefits Māori communities.

Appendix E – Incidental changes to support modernisation of the Act

Proposed Incidental Modernisation Changes for consideration in the Act

Problem	Proposed Change
The Act does not reflect current legislative drafting practices, causing inefficiencies, legal challenges and a lack of clarity.	Clarify areas of the Act to align more closely with contemporary legislation from comparable agencies (e.g. APVMA, TGA, NICNAS, OGTR). Areas for consideration may include delegation authority, exclusive capturable benefit, Board regard to submissions, confidential commercial information and conflict of interest declarations.
All changes (including Australia-only changes) to the Code need to be published in the New Zealand Gazette. Publishing Australia-only changes in New Zealand is costly, unnecessary.	Review publication requirements to better utilise resources and align with modern Acts. This would include removing the need for FSANZ to gazette changes to the Code that don't apply to New Zealand.
There is a lack of flexibility to adjust statutory timeframes for major and complex applications.	Include flexibility within the Act to allow for timeframes to be adjusted for complex applications, aligning with a risk-proportionate approach.
The definition and application of a 'standard' is not clear and has legal ambiguity, and there is not clear advice regarding what can be included in a 'standard'.	Clarify the definition and criteria for a 'standard' within the Act.
Lack of clarity regarding that the onus and cost of information provision is on the applicant, not the taxpayer/FSANZ.	Clarify that the onus and cost of information provision is on the applicant, in line with Australian Government policy.
Lack of clarity regarding applicants automatically withdrawing their application if they 'fail to comply' with a s 108 without a 'reasonable excuse'. These phrases are contestable and not defined.	Clarify how 'failure to comply' and 'reasonable excuse' are defined in relation to the automatic withdrawal of applications.
Annual reporting requirements are highly prescriptive.	Align annual reporting requirements with other comparable contemporary Acts.

Some timeframes are dependant on decisions from the FMM. However, in times where there is no FMM Chair, FMM are often unable to make decisions.	Allow timeframes that are dependant on FMM to be paused while the FMM chair is not in their position.
The Act is not explicit regarding if it is FSANZ's responsibility to undertake a risk-based approach to all activities in its development, review or variations to food regulatory measures.	Clarify FSANZ's responsibility to operate under a risk-based approach with regard to all activities in development, review or variations to food regulatory measures.
The Act is not explicit in FSANZ's data functionality. If its data role is expanded, the legislative mandate to undertake this function and adopt key additional food safety databases is unclear.	Clarify FSANZ's ability to collect, produce and coordinate information and statistics related to the System.