Foundation for Alcohol Research & Education

FARE submission to the Review of the Food Standards Australia New Zealand Act 1991 – *draft Regulatory Impact Statement*

Online Submission; 1 June 2021

The Foundation for Alcohol Research and Education (FARE) is a not-for-profit organisation working towards an Australia free from alcohol harms. Together with values-aligned organisations, health professionals, researchers and communities across the country, we develop evidence-informed policy, enable people-powered advocacy and deliver health promotion programs.

Far too many Australians are impacted by alcohol harm in Australia. Nearly 6,000 lives are lost every year and more than 144,000 people hospitalised, making alcohol use one of our nation's greatest preventive health challenges.[1] Alcohol use is causally linked to over 200 disease and injury conditions.[2] The estimated cost of alcohol harm to Australia is $36 billion every year.[3]

Alcohol is captured within the food regulatory system. The effective regulation of alcohol is essential to ensuring that alcohol harm is prevented and Australians remain healthy, safe and well. FARE's submission focuses on the need for alcohol to be comprehensively regulated within the food regulatory system and to ensure that public health outcomes are prioritised ahead of industry commercial interests.

FARE support the submission of the Obesity Policy Coalition, The George Institute for Global Health and Cancer Councils and many of our responses reiterate their positions.

Policy Problems

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

The RIS must consider that, in its current form, the Act does not enable the food regulatory system to meet its primary goal of protecting public health, specifically long-term health and preventable diet-related disease, and the provision of easily accessible and interpretive information about risks to health to enable people to make informed choices. This policy problem applies to both Australia and New Zealand. The RIS must be revised to include this policy problem, to assess each proposed component of reform against it, and to consider new components that are required to address it. If this is not done, the Act will not effectively protect public health, and will not achieve its primary purpose.

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

No response.

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

No response.

Option 1: Retain the status quo

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

Negative.

Option 1 represents a negative outcome for public health. The current system prioritises profits of the alcohol and food industry and does not effectively protect public health as it fails to address long-term health and preventable diet-related disease. The RIS states that the status quo proposed involve "less regulatory intervention and associated regulatory burden" and it is clear that this will come at a cost to individuals, communities and governments. However, neither Options 2 nor 3 presented in the RIS will produce better public health outcomes and Option 1 does not enshrine the new and harmful mechanisms proposed through Options 2 and 3 which may threaten the health of the community.

The current system mostly takes a proactive and preventative approach in its requirement for products to be assessed as safe before approval, and for standards to be fully assessed in the Australian context before adoption. While predominantly oriented toward immediate food safety risks, the proactive and preventative approach must be retained in the food regulatory system and should be extended to consider safety in terms of long-term health outcomes.

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

Risks to community and public health: The key risks to the community and to public health in retaining the status quo are the increased experience of preventable illness and diseases and the subsequent economic consequences of this. When the food regulatory system fails to prioritise long-term public health issues, these risks are extremely likely and will result in significant consequences for both individual Australians and the Government. The RIS must be amended to include detailed assessment of these risks. This includes the health and economic risks caused by delays in progressing public health proposals under the current system which can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform (examples and more detail provided in subsequent sections).

Risks to Government: A key risk to Government is the significant cost of the high level of chronic illness, non-communicable disease and other related harms in the Australian community. For example, alcohol related harm costs Australia an estimated $36 billion every year.[3] The cost of obesity in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity).[4] These risks must be addressed and quantified in the RIS analysis.

Risks to industry: The primary focus of risk assessment in the RIS should be on the short- and long-term costs borne by Government and the Australian community, which are substantial. We acknowledge that alcohol and processed food companies may incur some costs under the current system, however, these should not be prioritised over health outcomes. Additionally, we do not accept

the quantification of the costs to industry presented in the RIS. We are concerned that, in multiple instances (see p71), the RIS incorporates costings self-reported by one industry stakeholder, without further analysis, and then extrapolates that cost across the board to arrive at a figure then attributed to the failing of the current system. This is likely to lead to a significantly exaggerated cost. The RIS must use independent economic data that is applied to real world figures and not costings provided by the food or alcohol industry as this is not independent nor verifiable.

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

No. We note, as above, that the primary focus of risk assessment should be the substantial short- and long-term costs borne by the Government and the Australian community and prioritise health outcomes over industry costs.

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

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

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

Option 1 must consider the health and economic costs borne by the Australian community and governments due to delays or failure to implement food regulatory measures that address long-term public health matters, including preventable illness and disease, and the administrative cost to public health and community organisations of participating in lengthy and delayed processes to review and amend food standards. Option 1 must also consider the health and economic benefits borne by the Australian community and governments of the current system that largely assesses that products are safe before they are put on the market.

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

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

Case Study: Pregnancy warning labels on alcohol

The recent proposal for pregnancy warning labels on alcohol provides a good case study on the economic costs and health impacts of delays in progressing public health proposals in the current food regulatory system. In October 2018, the Ministerial Forum on Food Regulation agreed that a mandatory standard should be developed and asked FSANZ to develop it as a priority. This work was completed in July 2020 when Ministers accepted a proposed draft standard – meaning that the time to complete the proposal was a few months under two years.

The cost of this delay can be assessed by referring to the analysis in the Decision Regulatory Impact Statement for Pregnancy Warning Labels on Packaged Alcoholic Beverages (DRIS), published in October 2018. This DRIS quantified the economic cost of Fetal Alcohol Spectrum Disorder (FASD) in Australia and New Zealand, estimating it at $1.18 billion per year in Australia and $171.12 million per year in New Zealand, with the cost of each individual case of FASD estimated at $75 662 (AUD). The DRIS is unable to predict the exact number of cases of FASD that will be prevented as a result of the labelling change, however the analysis concluded that only 183 cases of FASD in Australia per year, representing 1.18% of the total FASD cases per year in Australia, would need to be prevented to offset the costs of the mandatory labelling scheme. Even using this very conservative figure of 1.18% of cases, the economic cost per year incurred for each year of delay is estimated at $13.8 million, while the health impact is 183 additional individuals living with FASD.

When considering these costs, the almost two year delay of the work on mandatory pregnancy labelling came at a high cost to the government and to the Australian community. The costs are tremendous when also considering the inaction on effective mandated labelling. It was ten years between the COAG Review of Food Labelling Law and Policy recommending mandatory pregnancy warning labels and these labels being mandated, despite longstanding evidence on the risk to the developing fetus when alcohol is used during pregnancy. This occurred because industry-led self-regulatory models failed.

The RIS must include analysis of this type to provide a complete picture of the costs of the current system. Similar analysis must also be done for Options 2 and 3 – with analysis for those options assessing the impact of proposed reforms on both the process and outcome of public health measures. For example, pregnancy warning labels would have been significantly less likely to be implemented in their current form under the reforms proposed in Options 2 and 3, because of the increased importance given to trade and business concerns. This brings with it a significant health and economic cost, as outlined above.

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

The protection of short- and long-term health and the provision of easily accessible, honest, and interpretative information about alcoholic products is in the interest of the wider community and is an interest strongly represented by public health experts. The risks to the community and public health outcomes are adversely linked to the prioritisation of industry interests ahead of people's health,

which is shown throughout the system in many ways as has been discussed in earlier responses in this consultation.

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

No response.

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

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

Negative.

Option 2, Component 1 represents a further elevation of industry interests, with strengthening of trade and regulatory impact considerations likely to act as a higher barrier to the implementation of public health measures. Some small elements of this component, however, do make a positive contribution.

Objects and factors to which FSANZ must have regard:

- Clarification of definition of public health: We agree that the definition of public health should be clarified to include both short- and long-term health, including the prevention of diet-related disease.
- Inclusion of trade as a core goal: We strongly oppose this element of reform, as it will undermine Australians' health and detract from the primary public health objective of the Act.
- Including the regulatory impact on industry, particularly small business as a factor to which FSANZ must have regard: We strongly oppose the inclusion of the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard when setting food standards. The only purpose of this factor will be to create a barrier for changes to food standards that would protect public health. The impact of regulation on business is already considered by FSANZ as part of its process in developing and amending food standards.

FSANZ functions:

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

Costs and benefits of Component 1:

- We do not agree with the statement in the RIS that there is a clear net benefit to Component 1, and that the proposed changes would not impose any costs on stakeholders. The cost/benefit assessment for Component 1 does not consider any costs associated with the elevation of trade and industry interests and the impact this will have on public health. The RIS must assess this cost, both to health and the economic cost for government.

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

No response.

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

No response.

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

No response.

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

No response.

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

Negative.

We do not support this component. The combination of reforms in this component represent a significant shift to a system that even further prioritises industry profits ahead of public health and shifts the burden of risk onto the Australian community.

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

No. This component already allows for FSANZ Board to delegate to CEO and for Ministers to delegate to departmental officials. Adding a third limb that Ministers can delegate to the FSANZ Board further

centralises decision making and the Board could then further delegate to the CEO. This gives too much power to the FSANZ CEO and the Board, removing power from the jurisdictions and undermining the joint nature of the food regulatory system. This is not aligned with the Aspirations for the food regulatory system which state the Ministers will lead the meeting of Aspiration aims.

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

We do not think codes of practice and guidelines should replace food standards. We consider that guidelines are really only appropriate for information that explains how to implement food standards. Any regulatory instrument implemented must be government led and mandatory; we do not support voluntary or industry-led food regulatory measures as these have long shown to be ineffective at achieving public health outcomes.[5]

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

No. However, we reassert that that the primary focus of risk assessment should be the substantial short- and long-term costs borne by the Government and the Australian community and prioritise health outcomes over industry costs.

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

No. However, we reassert that that the primary focus of risk assessment should be the substantial short- and long-term costs borne by the Government and the Australian community and prioritise health outcomes over industry costs.

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

Negative.

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

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

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

No response.

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

Negative.

Overall we do not support this component. We do not support reform options that significantly expand FSANZ's areas of responsibility, as FSANZ is unlikely to be sufficiently resourced to fulfil these additional functions. FSANZ must focus on its central role of setting food standards, and must focus additional resources on reorienting to protect long-term public health. Any additional functions that may undermine this primary focus are not supported.

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

No response.

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

Neutral.

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

FSANZ partnering with government to make intelligence-led decisions and reduce duplication of efforts: We support earlier involvement with FRSC and collaborating with enforcement agencies. We support information sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessment, or a minimal checks pathway without adequate assessment and safeguards. Further, FSANZ's databank could be available to drive high-quality research and policy work both across and outside government.

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

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

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

Negative.

Changing FSANZ Board arrangements: We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board, to ensure that FSANZ is focused on achieving its primary objectives of protecting public health, and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board.

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

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

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

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

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

Yes. The RIS must assess in detail, the qualitative and quantitative impact of this option on public health, in particular the health and economic costs and benefits to long-term public health and preventable illness and disease. These costs are borne by individual Australians and by governments.

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

The primary focus of risk assessment in the RIS should be on the short- and long-term costs borne by Government and the Australian community, which are substantial. For example, alcohol related harm costs Australia an estimated $36 billion every year.[3] The cost of obesity in Australia has been estimated at more than $8.6 billion annually, including $3.8 billion in direct costs (such as healthcare) and $4.8 billion in indirect costs (such as lost productivity).[4]

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

The current system prioritises paid industry applications that benefit one or a small number of manufacturers, ahead of proposals that have widespread public health impact. This results in the prioritisation of industry interests and delayed action on public health measures, resulting in increased industry profit and higher health and economic costs to the Australian community and governments. Overall, this results in a system that is not fit for purpose in achieving its primary objective, protecting public health.

If additional cost-recovery mechanisms are introduced, we are concerned that this could worsen this unequal treatment of public health proposals and industry applications. Creating new 'services' that the alcohol and food industry can pay for, such as interpretive advice, risks compromising FSANZ's independence and central role, further positioning FSANZ as a provider of services to the alcohol and food industry. We do, however, acknowledge that a lack of resources will limit FSANZ's ability to deliver its core functions, and understand that a holistic review of the way FSANZ is funded may be required.

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

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

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

We do not engage with the system by requesting applications to change food standards. This is because the current system is designed to promote industry interests and there is no specific pathway designed for public health organisations to request review and amendment of food standards, taking into account resource constraints of public health organisations.

We engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes that benefit large food companies with significant resources to engage and advocate for changes in their interests. The RIS must be revised to address the prioritisation of paid industry applications over proposals that create change across the system, often with public health benefits.

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

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

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

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

No. The pathways are all industry focused and don't allow for public health engagement. The options for reform in this RIS would make it more difficult for public health to engage as the reforms represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health reforms. The RIS should be revised to include a public health pathway, to enable public health organisations to request changes to the food standards code.

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

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

Negative.

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

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

No. We assert that consumer safety and public health should be prioritised over commercial interests.

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

No response.

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

Negative.

Guidance on the intention of food standards and how to interpret them (particularly for enforcement purposes) would provide consistency in interpretation across sectors and jurisdictions and provide clarity and remove interpretive doubt. This would also enable stakeholders to better access information to allow them to comply with the Food Standards Code. However, some elements of this component go much further than this. Resourcing of FSANZ to enable it to perform any elements of this guidance role must be additional and not at the expense of FSANZ's existing functions.

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

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

- FSANZ to update and maintain industry guidelines: Whilst we support independent industry guidelines developed by FSANZ we do not support that this process could be industry led. Industry should not have a role in developing the guidance provided by FSANZ.

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

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

No response.

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

No response.

42. Would the impact of pursuing Option 3, Component 3 represent a positive, negative or neutral outcome for your sector? [Drop down options, plus comment box]

Negative.

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

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

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

No response.

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

Negative.

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

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

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

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

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

Overarching views on the RIS

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

No. The policy approaches do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing the Australian community with adequate information to enable them to make informed choices. The policy approaches also fail to reflect concerns and recommendations put forward by public health and community organisations in earlier consultations.

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

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

- Developing a clear, practical and timely pathway for public health stakeholders to ask FSANZ to review and amend the Food Standards Code to meet a public health objective.

- Giving FSANZ the power and resources to set strategic priorities that address the biggest dietary challenges for our population and aim to shift dietary patterns. This must include the power and obligation to regularly monitor, assess and review the operation of the Food Standards Code in practice, and its alignment with public health objectives.

- Create a delineation within FSANZ for its two main work streams (applications and project/strategic work). These should be funded, resourced and prioritised without competing against one another. Funding/ resourcing should be allocated separately for each work stream and then prioritised within that work stream alone.

- Set statutory timeframes for proposals.

- Addressing concerns in respect of jurisdictional consistencies by amending the Food Regulatory Agreement, and the model law provisions, to ensure there is consistency between the States and Territories.

- Undertaking a review of the health and nutrition claims system as a whole with the view to redefining this system to ensure it has the best outcomes for long-term public health and for providing consumers with adequate information to make informed choices, instead of being a tool for industry to promote their, often unhealthy, products. This review should include

oversight and enforcement mechanisms for the system as well as an assessment of the foods that can carry health claims, the claims that can be made and the impact these claims are having on the food supply and consumer choice. Overall, the review should consider whether health and nutrition claims promote or detract from public health and the promotion of healthy diets.

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

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

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

Alignment with draft Aspirations for the Food Regulatory System

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

No. The Aspirations are very public health focused and the options presented in the RIS will not enable the Aspirations to be met. None of the options provide an avenue for public health concerns to be raised and addressed or any kind of separation between food safety and long term public health issues in the objectives.

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