



## Member Alert

### Consultation: Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement

As part of the review of the Food Regulation System, the Department of Health have opened a [consultation](#), closing **18 May 2021**, to seek stakeholder feedback on the Review of the *Food Standards Australia New Zealand Act 1991* (the Act) - draft Regulatory Impact Statement (RIS) and to provide feedback to characterise the impact of the three proposed options within the RIS (outlined below).

This consultation represents the potential for significant change within the food regulatory system, as the Act has been in place for almost 30 years, with few amendments over that time. The data, commentary and information received through this consultation will be analysed to inform a final Regulatory Impact Statement, which will be used to inform any amendments to the FSANZ Act.

The draft RIS identifies three policy problems at the core of the outdated legislative scheme in which the effectiveness of regulation is diminishing:

- **Policy Problem 1** The Act does not support efficient and effective regulation and is burdensome to administer in its current form.
- **Policy Problem 2** Legislation does not enable a strong, resilient, and agile joint food standards system.
- **Policy Problem 3** Current arrangements undermine the power of a single, joint food standards system.

The draft RIS also provides three options to address the above Policy Problems:

#### **Option 1: Retain the status quo**

Under this option nothing would change. Option 1 would maintain the Act in its current form, including the objectives, functions, processes for creating and amending food regulatory measures, and the current governance arrangements of FSANZ. The legislative framework may continue to develop over time (for example through incremental changes to the Act and Regulations and policy guidelines), but there would not be more wholesale and substantial change as a result of the Review.

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

Option 2 would involve significant changes to FSANZ's operations, in particular through establishing new processes and procedures for new and refined pathways for changing food standards and enhancing collaborations at interfaces with industry, jurisdictional regulators and policy

development stakeholders. It would also involve enhancing FSANZ's intelligence-gathering and coordination functions and establishing processes and procedures to establish and operate the self-certified pathway to bring food products to market.

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

Option 3 seeks to change the Act to give FSANZ broader statutory functions aimed at reinforcing the bi-national nature of the joint food standards system. It builds on Option 2 and would involve an expansion in FSANZ's operations, in particular through a greater role in relation to enforcement guidance and/or activities.

Additional questions/areas that may be of interest to members are outlined below. General sections and page numbers are referenced for member convenience however, there may be other/additional relevant sections/questions to any topic. Please ensure you access and read all relevant material relating to any questions of interest.

- **Inconsistent interpretation and enforcement of food standards is an enduring issue for the joint food standards system**

Questions 40-43 and Component 3 of Option 3 (pages 41-45; 66-68 of the draft RIS) relate to positioning FSANZ to take on an enforcement role, including potentially across the food-medicine interface

- **Potential to support industry innovation by creating new regulatory 'sandboxes'\* such as greater ability for food businesses to undertake research & development on innovative products or provide different avenues for market access**

Questions 21;22 and Component 3 of Option 2 (pages 58-59 of the draft RIS) relate to creating bespoke regulatory 'sand boxes'.

\*A **regulatory sandbox** generally refers to a regulatory "safe space" that creates an environment for businesses to test products with less risk of being "punished" by the regulator for non-compliance. In return, regulators require applicants to incorporate appropriate safeguards to insulate the market from risks of their innovative business. It typically involves a framework set up by a regulator to allow pilot testing of innovations by private firms in a controlled environment (e.g., exemptions, allowances, time-bound exceptions etc.) overseen by regulators.

- **Current processes to develop, change or review food regulatory measures are inflexible and do not enable a risk-based response for changing food standards**

Questions 16-20 and Component 2 of Option 2 (pages 29-32 of the draft RIS) relate to enabling cost effective and timely risk-based response for changing food standards.

- **FSANZ's objectives do not currently encompass modern priorities around food sustainability**

Questions 2;12;13 and Component 1 of Option 2 (pages 26-27; 75-76 of the draft RIS) relate to sustainability.

- **FSANZ's objectives do not include a recognition of indigenous culture and food expertise**

Questions 3; 14;15; and Component 1 of Option 2 (pages 27; 76 of the draft RIS) relate to recognition of indigenous culture and food expertise.

### How to respond to the consultation

While the RIS presents three broad options for consideration, stakeholders are not being asked to consider the value of each option as an absolute package. Rather, feedback on this draft RIS will inform the combination of components that make up the 'preferred option' when developing the final RIS.

For example, to reflect stakeholder feedback, the final RIS might identify Option 3 as the preferred option, where Option 3 encapsulates only two components of reform, rather than the three currently described. Also, many ideas in Option 2 and 3 have been expressed as bi-national changes, for example, where FSANZ might take on a function on behalf of both Australia and New Zealand. All of these ideas can be decoupled, that is, they can be reframed as Australia-only or New Zealand-only functions, should this prove more desirable.

The consultation format is a range of questions and answers, where respondents will have an opportunity to address specific areas of the draft RIS. **It is not necessary to answer all questions.**

Responses to the consultation can be submitted via the [online consultation platform](#). All relevant documentation, including a preview of the survey questions, can be accessed [here](#) or in the resources section of this member alert below. The consultation closes on **18 May 2021**.

### Background

In November 2019 the [Australia and New Zealand Ministerial Forum on Food Regulation \(Forum\)](#) endorsed an ambitious plan to reform the Bi-national Food Regulation System to ensure it remains strong, robust and agile into the future. A key element underpinning the reform agenda is the review of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act).

The draft RIS was developed following consultation on [Review of the Food Standards Australia New Zealand Act 1991](#), which occurred in October and November 2020 as part of broader consultations conducted as part of this reform agenda including [Aspirations for the Food Regulatory System](#) and [Consistency of food regulatory approaches](#).

As part of the consultation, Stakeholders were asked for their views on the Scoping Paper, which outlined key issues identified with the FSANZ Act and opportunities for legislative and operational reform. Stakeholders were engaged for their perspectives on the issues and associated opportunities and the impact that these could have.

### Resources

- [Consultation: Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement](#)
- [Review of the Food Standards Australia New Zealand Act 1991 - draft Regulatory Impact Statement - PDF](#)
- [Draft Aspirations of the Food Regulatory System](#)
- [Preview survey - Public consultation on the FSANZ Act Review draft Regulatory Impact Statement](#)
- [Terms of Reference - Review of the Food Standards Australia New Zealand Act 1991](#)