
AMA submission to Department of Health's Public Consultation – Review of the Food Standards Australia New Zealand Act 1991 – draft Regulatory Impact Statement

Via [consultation hub](#)

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 AMA considers that the policy problems identified in this RIS are too heavily focussed on reducing regulatory burden for industry. This RIS seems to treat the presence of regulations as foremost, a hurdle for businesses, rather than as a necessary protection for consumers and health.

The crucial policy problem, which is not addressed adequately by the three proposed reform options, is that the current Food Standards Australia New Zealand Act 1991 (FSANZ Act) is not allowing the food regulatory system to meet its objective of protecting public health. This problem should be given equal consideration to broader reforms targeting enhanced efficiency and effectiveness.

A food regulatory system that successfully protects public health would see reductions in the rate of dietary-related chronic disease, along with controlling more acute threats like infectious and food-borne disease outbreaks. The current FSANZ Act, as well as the reform options proposed, do not place long-term health adequately at the core of the Act's remit, rather placing it in the Act's overall objectives and failing to extrapolate on the kinds of regulatory changes that would ensue.

Option 1

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

The impact of Option 1 'status quo' would be negative for public health.

The current food regulatory system is not successfully protecting the long-term health of Australians. In 2015, dietary risks [contributed](#) 37,000 disability-adjusted life years to Australia's burden of disease – the highest contributor after tobacco and overweight/obesity. Since 2003, dietary risks have consistently been a lead risk factor for chronic disease in Australia. The prevalence of chronic diseases that are [linked](#) with poor diet (heart disease; stroke, high blood pressure, diabetes, and some cancers) remain at [concerningly high levels](#).

As the Australian health system struggles to keep up with the demand associated with chronic disease complications:

- Australians are ill-informed about added sugar in the food products they buy;
- Children are inundated with marketing for unhealthy food and beverages;
- 70% of eligible products have refused to take on the health star rating system; and
- Processed food products with high levels of sodium, sugars and unhealthy fats are widely available, and often the cheapest and most convenient foods for many Australians.

Renewed regulation that places the health of consumers as its primary objective is clearly needed to protect Australia's health.

Option 2

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

The AMA is strongly supportive of expanding the definition of “protecting public health and safety” to include long-term health rather than focussing narrowly on acute health risks such as infectious and food-borne disease. The definition included on page 51, which includes protecting consumers from “preventable diet-related disease, illness and disability” is appropriate in this regard. The AMA would support updating the objective as a whole to “protecting and promoting public health and safety”, to give it an action-oriented preventive health focus rather than a reactive framing.

Importantly, the public health definition should be incorporated meaningfully into FSANZ's remit when making decisions on food standards and other regulations, and should take clear precedence over industry profits, trade facilitation and competition. The inclusion of this definition will have a positive impact on public health if it allows FSANZ to more strictly regulate unhealthy food products; incentivises companies to produce healthier products; and provides consumers with better quality information about the products they are buying.

The AMA is also supportive of the inclusion of an explicit objective regarding food sustainability. So far this is an area that has sat outside the food regulatory system, and as mentioned in the RIS, this means it is difficult for consumers to compare products based on their environmental credentials. Improving the regulation of food products in terms of environmental sustainability would also have indirect positive impacts on public health. As acknowledged in the AMA's Position Statement *Climate Change and Human Health – 2015*, “human health is ultimately dependent on the health of the planet and its ecosystem”. Environmental determinants, including air and water quality; biodiversity; temperatures; and extreme weather events, have significant health impacts and all sectors have a role to play in environmental protection.

The AMA is supportive of a greater recognition of Indigenous food expertise in the FSANZ Act and defers to the expertise of Indigenous-led organisations including NACCHO and IAHA in this regard. The AMA recognises the importance of cultural determinants of health for Aboriginal and Torres Strait Islander peoples, including the prioritisation of Aboriginal and Torres Strait Islander-led approaches to health and wellbeing.

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

Implementing Component 2 would certainly have negative public health impacts as it would result in substantially less oversight over food products. While the AMA supports an efficient and risk-based food regulatory system, streamlining processes for food businesses should never come at the cost of public health. The RIS itself notes that this option's benefits relate primarily to business profits and operational savings for FSANZ, and that a "risk-proportionate processes could increase the risk of food-borne illness or adverse health outcomes for community".

The AMA does not support the proposal to rely more heavily on industry self-regulation approaches, as [past experience demonstrates](#) that self-regulation is generally ineffective in public health terms. Noting that food and beverage businesses operate as profit-driven enterprises; any industry-designed regulatory pathway will only protect public health if there is an economic or reputational incentive to do so. Current industry-led regulatory schemes, including that for alcohol marketing, demonstrate that effective controls require an adequate level of Government or independent oversight to successfully protect public health.

The AMA is not supportive of this Component, but notes that if it is implemented, a robust monitoring and evaluation framework will be required to assess changes in adverse health outcomes and incidences of food-borne disease following regulatory shifts.

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

As it is without precedent in Australia or globally, it is difficult to estimate the extent of the public health impact of a regulatory sandbox for food products, but it is likely to be negative. The AMA is highly concerned that Component 3 would result in a proliferation of unhealthy products that are not subject to any level of regulation, and as mentioned in the RIS a "greater risk of adverse outcomes for consumers" based on the lack of pre-market approval. Again, while the AMA appreciates the need for an efficient regulatory system, this should not come at the cost of public health. Real consumer markets, comprised of children and adults who expect that the food regulatory system will protect their health, is not the appropriate place to 'test' potentially harmful and dangerous products.

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

Enhancing FSANZ's role in data collection and analysis would have largely positive impacts for public health. The ability to conduct a greater level of post-market surveillance of products and to track health outcomes against these could help to inform the public about the acute and long-term health risks associated with different products. Importantly, this Component should be accompanied by an increase in FSANZ's capacity for public-facing science and data communication, to ensure that insights gained are shared with consumers for their benefit. It could also inform research from the academic sector on nutrition and health, and the relative impact of regulations on population nutrition outcomes. The AMA is supportive of this Component.

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

The AMA is conditionally supportive of Component 5, which would enhance interfaces across the food regulatory system and improve FSANZ's approaches to working with external stakeholders. Partnerships that allow the public health and academic sectors a greater level of access to information on food safety will have largely positive impacts for public health and consumers.

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

It is difficult to comment on how reducing the size of the FSANZ Board would impact on public health without information about how the makeup of the Board would change as a result. The AMA is concerned that a smaller FSANZ Board would see public health expertise and perspectives reduced. Protecting public health and safety should be the Board's top priority, and the Board should retain adequate and balanced public health representation.

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

The AMA considers that the draft RIS is too narrow in focus and has not considered the kind of broad-scale, foundational reform that would see the food regulatory system shift to one that promotes and protects short- and long-term health as its highest priority. The current options are heavily focussed on how regulatory reform can reduce burden for industry, rather than considering how reform could better protect health. The aim of improving public health is only truly included in Option 2, Component 1, rather than being a guiding principle of the entire reform process. Including a more wholistic definition of public health in the FSANZ Act's objectives is a positive step, but is not sufficient to reorient the food regulatory system towards the proactive health focus which is needed to improve long-term health outcomes in Australia.

Which components of each reform option do you consider to be your sector's highest priorities?

The AMA's highest priority, along with other public health stakeholders, is that protecting long-term health outcomes is successfully incorporated into the FSANZ Act. The current food regulatory system is reactive and focussed too heavily on acute disease threats. As mentioned, chronic conditions linked to dietary patterns place a much greater burden on Australia's health system than infectious and food-borne disease. In the current RIS, this priority is best reflected in Option 2, Component 1.

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?

The AMA does not think that the draft RIS accurately reflects the intent of the draft Aspirations for the Food Regulatory System. The aspirations have a stronger focus on public health, and strive for a collaborative stakeholder engagement system rather than one heavily weighted

toward industry concerns. Aspirations such as “better engaging public health and consumer advocacy bodies to deliver key messages”; “promote and embed a safe and healthy food culture across the supply chain”; and “introduce formal structures to better enable expert advice to guide the system” are not consistent with any of the suggested reform options in this RIS and are unlikely to be achieved under any of the three options. The AMA would support a fourth reform option that focusses in the first instance on how the FSANZ Act can better support public health; including by setting clear and accountable criteria for long-term health protection; instituting straightforward channels for public health stakeholders to raise concerns with food products or standards; and increasing FSANZ’s capacity to evaluate the impact of decisions on public health outcomes.

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