VicHealth response to the FSANZ Act draft Regulatory Impact Statement (RIS) consultation

Submitted: Tuesday 1 June

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- Link for submission
- Response ID: ANON-HVUN-TJYF-X

Survey intro:

The FSANZ Act Review commenced in July 2020, and is a comprehensive examination of the effectiveness of the FSANZ Act and the associated operations and responsibilities of Food Standards Australia New Zealand (FSANZ). Extensive stakeholder consultation has been undertaken to date, including public consultation on a Scoping Paper across October and November 2020 and targeted workshops with key government, industry, public health and consumer bodies.

This consultation has informed the development of a draft Regulatory Impact Statement which presents three reform options for the FSANZ Act. Option 1 is the status quo (proposes no legislative changes to the FSANZ Act), while Option 2 and 3 present increasingly ambitious suites of measures that could be taken to amend the FSANZ Act. Stakeholders are being asked for their views on the draft Regulatory Impact Statement and to provide feedback to characterise the impact of the proposed options. 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.

About you

Name Dr Sandro Demaio
Email sdemaio@vichealth.vic.gov.au
Sector (select one) General public Public health Food industry Government Consumer organisation
Organisation Victorian Health Promotion Foundation (VicHealth)
Country (select one) Australia New Zealand Trans-Tasman organisation
An opportunity to submit any other information about your organisation you would like to provide
VicHealth was established as a statutory body of the Victorian Government in 1987 and we have over 30 years' experience in promoting health. We know there are barriers to good health and wellbeing for people in our community, and we work with partners to discover, implement and share solutions to these challenges. We understand how changes in the environment can promote health and draw on practices that ensure we achieve the best outcomes for those who need it most.

A core part of our work is ensuring all Victorians can eat a healthy, balanced diet, which includes a focus on supporting policy reform. For more information, see www.vichealth.vic.gov.au.

Please note that VicHealth endorses and closely aligns with the Obesity Policy Coalition's submission and recommendations to this consultation. VicHealth is a partner of the Obesity Policy Coalition,

along with Cancer Council Victoria, Diabetes Victoria and The Global Obesity Centre (GLOBE) at Deakin University.

Policy Problems

Please read section 3 'The problems to solve' (pages 19 - 46) of the draft Regulatory Impact Statement before answering the questions below.

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 aims to fulfil the Terms of Reference of the FSANZ Act review, which call for review of the effectiveness of the Act and FSANZ's operations and responsibilities. Effectiveness of the Act and of FSANZ can only be determined by reference to its objectives – and its ultimate objectives are the protection of public health and the provision of adequate information to enable consumers to make informed choices.

The RIS has not considered the following policy problems that apply to both Australia and New Zealand:
(a) The Act in its current form does not enable the food regulatory system to meet its primary objectives of protecting public health, specifically long-term health and preventable diet-related disease.
(b) The Act in its current form does not enable the food regulatory system to meet another of its primary objectives: the provision of adequate information to enable consumers to make informed choices.

To fulfil the review's Terms of Reference, it is critical that the RIS recognises and analyses those problems, and VicHealth recommends that the final RIS is amended so that it does so. We also recommend that this incorporates a health equity lens and analyses differential impact of proposed reforms. As a regulatory tool, the Act has the potential to have the most benefit for Australians experiencing greater barriers to healthy diets and achieving good health.

Currently, the RIS does not adequately consider the health and economic impacts of poor diets. These can lead to overweight and obesity, type 2 diabetes, cardiovascular disease and cancer, with poor diet contributing 7.3% to the Australian burden of disease. The vast majority of Australian adults and children have poor diets, with more than a third of daily energy intake coming from unhealthy food. Around two-thirds of Australian adults and a quarter of Australian children are above a healthy weight, with overweight and obesity contributing a further 8.4% to the burden of disease in Australia. There are significant inequities in poor diet and overweight and obesity, with Australians from lower socioeconomic areas, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas more likely to be above a healthy weight. Together these risk factors account for the greatest burden of disease in Australia. In addition, 47.8% of Australian adults exceed the World Health Organization's recommendation for free sugar intake, and 90% of Australians over 15 years old have experienced dental decay in their permanent teeth.

VicHealth recommends that the final RIS and resultant review of the Act aligns with other government strategies, such as the National Preventive Health Strategy and the National Obesity Strategy. It must also align with the current priorities of the food regulatory system itself (i.e. supporting the public health objectives to reduce chronic disease related to overweight and obesity)

and government policy statements on the role of FSANZ, which identify the role of food regulation in preventing and reducing disease, illness and disability.

Importantly, the final RIS must recognise that food regulatory arrangements should prioritise public health over industry interests, particularly industries that manufacture harmful products including unhealthy foods and beverages. This should be reflected in the way FSANZ considers applications, so that proposals to benefit public health are prioritised over industry applications. A fit-for-purpose system must be provided for public health bodies to seek amendment and introduction of food standards, and ensure the food industry is not permitted to self-substantiate evidence of health claims.

The current food regulatory system has been successful in ensuring Australians are protected from short-term food-borne illness. This protection must be maintained, but long-term health outcomes must be addressed alongside short-term public health issues.

Under the final RIS, any proposed changes and amendments considered under the FSANZ Act review must be assessed against public health needs. Despite the draft RIS noting that its analysis includes consideration of regulatory impacts for four key stakeholder groups (including public health), VicHealth believes that it currently does not meet this objective for public health, as compared to the impacts on the food industry.

We are not in a position to provide a response from a New Zealand perspective specifically but expect that these issues are equally relevant for both jurisdictions.

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

Currently, the food regulatory system does not include standards to confirm the accuracy of claims manufacturers make about sustainability. This means that consumers are limited in their ability to make informed choices about the sustainability of the foods they purchase.

Any measure to incorporate sustainability into the food regulatory system must establish a strong evidence-based system to ensure claims about sustainability:
(a) can be independently verified by reference to clear and consistent standards
(b) are not used to promote foods that are unhealthy overall.

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

VicHealth recommends that in addition to including recognition of indigenous culture and expertise in the objectives of the Act, this is extended to include assessment of how food regulatory measures affect Aboriginal and Torres Strait Islander people more generally. The Act and the food regulatory system have a role to play in improving health outcomes for Aboriginal and Torres Strait people and should be designed to promote measures that improve equity and protect the short- and long-term health of Aboriginal and Torres Strait Islander people, including those living in remote communities.

We recommend that the Department consults directly with Aboriginal and Torres Strait Islander organisations in Australia and with Māori tangata whenua of New Zealand on this issue.

Option 1: Retain the status quo

Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.1 'Impacts of Option 1: Retain the status quo' (pages 69 to 74) of the draft Regulatory Impact Statement before answering the questions below.

4. Would the impact of pursuing Option 1 represent a positive, negative or neutral outcome for your sector? Positive Negative Neutral
Please provide any comments in the box below
VicHealth fully supports a strong, effective food regulatory system that protects the health of all Australians. We agree with the statement in the RIS that the Act is dated and that its effectiveness is diminishing. For this reason, we believe retaining the status quo represents a negative outcome for public health. However, VicHealth recognises that it is a better option than Options 2 and 3 as they relate to public health outcomes.

Importantly, the current system prioritises the profits of the food industry above the health and wellbeing of Australians. It fails to protect consumers from long-term health effects linked to poor diet.

Key failings of the current system are as follows:
(a) Paid industry applications to modify standards are prioritised ahead of proposals that are likely to have public health benefit, resulting in significant delays in progressing public health measures.
(b) The Act does not provide a clear and practical pathway that is designed for public health organisations to seek timely amendments to standards that address long-term public health issues. This means that key public health issues are not considered at all or that Australia falls significantly behind best practice.
(c) The approach to regulating and enforcing health claims is inadequate, as it relies on industry self-substantiation and is not effectively and consistently enforced.

As noted above, the current system prioritises industry interests ahead of public health. However, Options 2 and 3 outlined in the RIS shift this balance even further, so that industry profits are prioritised above the health of Australians to an even greater extent, which will have significant implications on poor diet and overweight and obesity. Options 2 and 3 enable the processed food industry to sell and promote more ultra-processed foods that are harmful to health with less oversight, as well as increase barriers to public health reform and centralise decision-making. This significantly undermines the integrity of a joint food regulatory system.

VicHealth recommends the retention and improvement of a preventive approach that assesses impacts to short- and long-term health and safety before food is allowed to be sold. We do not support a system that is responsive and only intervenes to prevent harm after it has occurred. As the draft RIS notes, a system that requires industry to demonstrate that substances are safe before they can be used is the most effective system of harm prevention.

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 CONSUMERS AND PUBLIC HEALTH
Key risks to consumers and to public health in retaining the status quo are:
(a) the health risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including poor diet, preventable diet-related disease and dental health. These risks include overweight and obesity, dental decay and diet- and weight-related preventable

disease. These risks are often linked to weakened or non-existent regulatory measures that protect public health and improve labelling. The final RIS must be amended to include detailed assessment of these risks
(b) the economic risks caused by this failure, as poor diet, overweight and obesity, associated chronic diseases and poor dental health lead to economic costs both for individuals and for governments. The final RIS must also be amended to include detailed assessment of these risks
(c) the health and economic risks caused by the impact of the food regulatory system on the food supply, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This should be compared to an analysis of the economic impacts of an improved food supply and a reduction in preventable diet-related disease
(d) the health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by referring to existing costed examples of regulatory measures, or research that models economic impacts of reform. More detail is provided in our response to question 8
(e) the health and economic risks of limited or confusing information on product packaging that reduces consumers' ability to make informed choices.

RISKS TO GOVERNMENT
A key risk borne by government is the significant economic cost of the high levels of poor diet, overweight and obesity and the burden of disease caused by these risk factors. 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). Poor diet also contributes to economic costs related to dental health. A food regulatory system that prioritises industry profits over public health will increase the cost for governments in the short- and long-term. These economic and health risks must be addressed and quantified in the RIS analysis.

RISKS TO INDUSTRY
VicHealth acknowledges that processed food companies may incur some costs under the current system due to application process requirements and approval delays. However, we do not agree with the quantification of those costs in the draft RIS. We are concerned that, in multiple instances (e.g. p.71), the RIS incorporates costings self-reported by one industry stakeholder without further analysis, and then extrapolates that cost across the whole industry to arrive at a figure that we believe represents a significantly exaggerated cost. We request that the final RIS uses independent economic data that is applied to real world figures rather than costings provided by the processed food industry, as this is not independent or verifiable and presents significant conflicts.

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.
VicHealth recommends that the final RIS uses an assessment of the cost to industry of delays in bringing products to market that is independently verifiable and not based solely on industry-reported data. As noted in our response to question 5, the current analysis in the draft RIS appears to use industry data provided by one or a small number of companies in relation to a particular case study, then extrapolates these high figures across the board. This approach is likely to lead to inflated figures.

As well as assessing the cost of delays in bringing products to market, the final RIS must also assess the cost of delays in processing proposals for public health measures. For further detail see our response to question 7.

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

The RIS must assess in detail the qualitative and quantitative impact of Option 1 on public health, in particular the health and economic costs and benefits to long-term public health and preventable diet-related disease.

The draft RIS states that 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 draft 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–benefit analysis throughout the draft RIS is incomplete and inaccurate. The final RIS must be revised to include this analysis.

Costs and benefits that must be considered for Option 1 include the following:

COSTS

(a) The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to improve public health. This can be assessed by referring to the costs saved and health risks reduced by existing public health measures that were delayed under the current system. A case study on this topic is provided in our response to question 8.

(b) The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health outcomes. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests above public health.

(c) The administrative costs to public health and consumer organisations due to participating in lengthy and/or delayed processes to review and amend food standards.

(d) The economic costs borne by industry for productivity loss, sick leave and staff turnover as a result of preventable diet-related diseases.

BENEFITS

(a) The health and economic benefits borne by consumers and governments of the current system of regulatory approvals that largely assesses product safety 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.

The cost of delays and barriers to implementing public health measures can be assessed by considering assessments of the economic and health impacts of policy interventions that were delayed under the current system.

This same analysis can be used to quantify the benefits of these policies once implemented. Analysis for Options 2 and 3 must consider the likely effect of proposed reforms both on the speed of the process to implement public health measures, and on the likelihood that the reforms make it more difficult to implement public health measures or result in measures that are weaker and do not reflect best practice.

CASE STUDY: PREGNANCY WARNING LABELS ON ALCOHOL PRODUCTS

The recent proposal for pregnancy warning labels on alcohol products 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 for pregnancy warning labels on alcohol products should be developed and asked FSANZ to develop it as a priority. It took almost two years for this work to be completed, with Ministers accepting a proposed draft standard in July 2020.

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. The DRIS quantified the economic cost of Foetal Alcohol Spectrum Disorder (FASD) in Australia and New Zealand, estimating it at A$1.18 billion per year in Australia and NZ$171.12 million per year in New Zealand, with the cost of each individual case of FASD estimated at A$75,662. The DRIS could not 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, the economic cost per year incurred for each year of delay is estimated at A$13.8 million, while the health impact is 183 additional individuals living with FASD.

The RIS must include analysis of this type to provide a complete picture of the costs of the current system, even if those costs cannot be precisely determined. Similar analysis must also be done for Options 2 and 3, with analysis for those options assessing the likely impact of proposed reforms on both the process and outcome of public health measures. For example, pregnancy warning labels are significantly less likely to be implemented in their current form under the reforms proposed in Options 2 and 3, due to the increased importance given to trade and regulatory impact 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 interests of the public health sector and the consumer sector are largely aligned, in that public health experts and consumers both want to ensure that consumers' short- and long-term health is protected, and that consumers have adequate information about food to enable informed choices.

The risks borne by consumers and public health are often linked to the prioritisation of industry interests ahead of the health of consumers. Key risks to consumers and to public health in retaining the status quo are as follows:

(a) There are significant health risks caused by a continued failure of the food regulatory system to prioritise long-term public health issues, including poor diet, overweight and obesity, preventable diet-related disease and dental health. These health risks and impacts are inequitably distributed across the population and are more likely to be experienced by lower socioeconomic groups, Aboriginal and Torres Strait Islander people and Australians living in regional and remote areas. These risks are linked to weakened or non-existent regulatory measures to protect public health and to ensure mandatory food labelling is implemented so consumers can make informed choices that benefit their diet and health.

(b) These health issues are also linked to economic risk, as overweight and obesity and preventable diet-related disease, including dental health, lead to economic costs both for individuals and for governments. These risks are not identified in the draft RIS.
(c) There are risks to the food supply related to the food regulatory system, and the number and proportion of unhealthy products that are available and heavily promoted to consumers. This creates a higher risk of poor diet and preventable diet-related disease.
(d) There are health and economic risks caused by delays in progressing public health proposals under the current system. These risks can be quantified by existing costed examples of regulatory measures, or research that models economic impacts of reform. See more detail in our response to question 5.

VicHealth strongly recommends that the RIS is amended to include detailed assessment of these risks.

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?
[n/a]

Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose
Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.2 'Impacts of Option 2: Modernise the Act to make it agile, resilient and fit-for-purpose' (pages 74 to 103) of the draft Regulatory Impact Statement before answering the questions below.

11. Would the impact of pursuing Option 2, Component 1 represent a positive, negative or neutral outcome for your sector? Positive Negative Neutral
Please provide any comments in the box below
Option 2, Component 1 further increases the prioritisation of industry interests over public health. Strengthening trade and regulatory impact considerations is likely to act as an increased barrier to the implementation of public health measures and does not align with the objectives of the Act. Some minor elements, however, do make a positive contribution. Positive and negative elements are discussed below.

OBJECTS AND FACTORS TO WHICH FSANZ MUST HAVE REGARD
1.Clarification of definition of public health:
VicHealth agrees that the definition of public health should be clarified to include both short- and long-term health, including the prevention of diet-related disease. This is important to ensure that the food regulatory system prioritises the protection and promotion of healthy diets and preventable diet-related disease. We support the way long-term health is framed in the proposed definition; however, we recommend that it be amended to delineate between short- and long-term health and include these two elements as distinct and equally-prioritised objects and objectives in both s.3 and s.18 of the Act. VicHealth recommends that these elements are subject to dedicated funding, resourcing and strategic planning. The Act is an important part of establishing this dual focus.

2. Inclusion of trade as a core goal:
VicHealth strongly opposes this element of reform, as it will undermine Australians' health and detract from the primary public health objective of the Act.

The elevation of trade is unnecessary, and it will increase barriers to food regulatory measures that will promote and protect public health. The draft RIS notes that the status quo (which does not include trade as a core objective) has delivered good trade outcomes over many years. This has been achieved due to FSANZ's mandate to have regard to an efficient and internationally competitive food industry, and promote consistency between domestic and international food standards when making decisions. The proposed change will further enable the processed food industry to challenge public health measures and will increase barriers to Australia adopting innovative public health interventions. This will create a system where Australia lags behind in public health protection, when the draft Aspirations of the Food Regulation System identifies the goal of becoming 'a world-class system'.

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

3. Food sustainability:
VicHealth supports the inclusion of food sustainability as a core goal of the Act. However, in doing so it is critical that sustainability cannot be used opportunistically by the food industry in a way that prioritises profit over public health. For example, the Act must ensure that the processed food industry cannot use sustainability as a way to promote unhealthy foods that have a negative impact on health, such as through marketing unhealthy foods as being produced sustainably or having low environmental impact. There must also be a clear framework to independently assess sustainability claims. FSANZ must play a role in assessing these claims, and industry self-substantiation of evidence of sustainability claims must not be permitted.

4. Indigenous culture and expertise:
VicHealth supports the inclusion of indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food regulatory system and of individual food regulatory measures on Aboriginal and Torres Strait Islander people, not only limited to the introduction of new food products. We recommend that the Department consults directly with expert Aboriginal and Torres Strait Islander and Māori organisations.

5. Including the regulatory impact on industry, particularly small businesses as a factor to which FSANZ must have regard:
VicHealth strongly opposes the inclusion of the regulatory impact on industry, particularly small businesses, as a factor to which FSANZ must have regard when setting food standards. This factor will create a barrier to implementing changes to food standards that protect public health. In addition, the impact of regulation on businesses is already considered by FSANZ as part of its process in developing and amending food standards, meaning this factor does not need to be strengthened further given its negative impacts on public health.

5. Further changes to s.18 and the role of FSANZ:
We note that Option 3, Component 4 also appears to be an amendment to the objectives or items to which FSANZ must have regard under s.18. We do not support any amendment that enables FSANZ to extend Australia and New Zealand's influence internationally.

FSANZ FUNCTIONS

VicHealth supports changes to FSANZ's functions to align with the objectives of the Act, subject to our comments above. We also support the inclusion of FSANZ's 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's 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', and this role should remain Food Ministers' responsibility.

We do not support a broad extension to FSANZ's functions in food fraud or undertaking education campaigns. In our view, FSANZ may play a supportive role in these issues, but they should not be a key focus of its work.

ESTABLISHING CRITERIA IN THE ACT THAT THE FOOD MINISTERS' MEETING MUST MEET TO REQUEST A REVIEW OF A DRAFT REGULATORY MEASURE

We support establishing criteria that Food Ministers must meet to request review of a draft regulatory measure. We recommend that the Food Ministers' Meeting has the ability to request a review of a draft regulatory measure if it decides that FSANZ did not adequately consider one of its objectives or factors to which it must have regard, including Ministerial policy guidelines. The Act should also include clear procedural steps that must be met, including that the Food Ministers' Meeting should explain how it decided FSANZ failed to properly consider its objectives and factors to which they must have regard.

COSTS AND BENEFITS OF COMPONENT 1

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

The cost–benefit assessment for Component 1 is not comprehensive. It does not consider any health or related economic costs associated with the elevation of trade and regulatory impact. The RIS must assess this cost, both to consumers' health and the economic cost for governments. VicHealth recommends that the RIS is amended to include detailed assessment of these factors. This analysis must include costs linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on business under Option 2, Component 1, as compared to Option 1.

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).

VicHealth recommends that FSANZ adopts a definition of sustainability that considers health, social, environmental and ecological impacts both now and into the future. This must be designed so that protection of current and future public health remains the primary goal, and sustainability is relevant where it supports public health objectives. Economic sustainability must be considered within a public health framework, meaning that industry profits are not prioritised as an economic benefit over the likely costs to individuals and governments due to overweight and obesity and preventable diet-related disease.

Sustainability must not be able to be used by the processed food industry to promote unhealthy food that has a negative impact on health, such as using sustainability claims as a marketing tactic for those products. There must also be a clear framework to independently assess sustainability claims to limit 'greenwashing'. FSANZ must play a role in assessing these claims, and industry self-substantiation of evidence of sustainability must not be permitted.

Sustainable diets protect the climate, ecosystems and biodiversity while also ensuring food security and culturally acceptable, accessible and affordable nutrition for human health. Economic and population growth are expected to increase greenhouse gas intensive diets. Diets that are consistent with recommendations for good health are also likely to have lower environmental impacts compared to the current Australian diet, since they encourage plant foods; limit animal foods and energy-dense, nutrient-poor foods; and recommend energy balance.

Current diets and food systems contribute to global warming and environmental degradation leading to climate change; oil, water and nutrient scarcity; land degradation; food insecurity; food waste; and biodiversity loss. The global food system is failing to meet nutritional needs and is increasing pressure on planetary health. At the current rate of consumption, studies suggest there will need to be 70–100% more food by 2050.

There is a growing recognition of the need for policies and practices that foster ecologically sustainable production and consumption of food. Two complementary approaches are required. The first is to shift consumer demand to a more environmentally sustainable food supply. The second is to work with primary producers, the food industry and governments to lead changes in the food system to make its processes and outputs ecologically sustainable. FSANZ and the Act have a key role to play in creating a food system that is ecologically and environmentally sustainable.

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?

VicHealth supports the inclusion of indigenous culture and expertise in the objectives of the Act. We support a broader consideration of the impact of the food regulatory system and individual food regulatory measures on Aboriginal and Torres Strait Islander and Māori people, not only limited to the introduction of new food products.

We recommend that the Department consults directly with expert Aboriginal and Torres Strait Islander and Māori organisations on this topic.

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? Positive Negative Neutral

Please provide any comments below

VicHealth does not support this component. The reforms in this component represent a further prioritisation of industry profits ahead of public health and are likely to lead to negative health outcomes for consumers, as well as an increased economic burden on governments through increased health expenditure.

We support an efficient and effective food regulatory system and agree that it may be more efficient to have different approval processes based on the level of risk. To that end, we support some elements of this component only if particular safeguards are met. However, the combination of reforms proposed represents a significant shift to a system that even further prioritises private profits and transfers the burden of risk onto Australian consumers. Our concerns are discussed below.

USING OTHER REGULATORY INSTRUMENTS: CODES OF PRACTICE AND GUIDELINES

We agree that it may be beneficial to use other regulatory instruments in some instances. This should not be done to avoid using food standards, but to complement or add to existing standards. These instruments must be government-led and mandatory, as voluntary or industry-led food regulatory measures often lead to measures that result in detrimental impacts on public health. A system must also be developed to ensure that these other regulatory instruments are subject to oversight from all jurisdictions that are part of the food regulatory system.

We support the proposal to create a resource to guide decisions about the instrument that can most appropriately deal with particular problems. We also agree that only low-risk issues are suitable for inclusion in codes of practice.

RISK FRAMEWORK FOR APPLICATIONS AND PROPOSALS

In theory, we support the idea of a risk-based model where low-risk applications and proposals are subject to a different decision-making pathway to high-risk applications and proposals. However, greater detail is required for us to provide a clear assessment of the proposed measure. This includes the types of applications and proposals that are considered low- or high-risk, and the pathway that will apply. We recommend that the risk framework provided in the draft RIS (Table 5) is amended to reflect the following feedback:

(a) Any assessment of risk must include a distinct criterion to assess the impact on long-term health outcomes, including on preventable diet-related disease

(b) While evidence of immediate impacts on health (and other factors) should be considered, long-term impacts must also be considered, as many applications or proposals only show impact over time. To be considered low-risk, the type of amendment must be limited to those that do not have any impact either on short-term public health and safety, or on long-term public health.

(c) We do not support any measures that are industry-led or that allow the industry to self-substantiate evidence to support an application.

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

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

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

DELEGATION BY FSANZ BOARD AND FOOD MINISTERS' MEETING

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

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

There should be further consideration and stakeholder consultation on which types of decisions will be subject to each process and the details of that process. Any new decision-making process should also be subject to review after a period of operation.

It is critical that jurisdictions have oversight of amendments to the Food Standards Code.

NEW PRODUCT APPROVAL PATHWAYS

The three new potential pathways contained in Component 2 essentially enable industry to progress what would otherwise be done via application in a fast-tracked manner and with fewer checks and balances. As noted in the draft RIS, applications have a small number of beneficiaries outside the initial applicant. There is nothing in Component 2 to address the inequality between applications and proposals, nor to prioritise proposals that the RIS specifically states 'often have system-wide impacts' and 'arguably [have] a wider reaching benefit for the broader Australian and New Zealand public'. There is also no pathway for new or amended food standards to protect public health.

Our feedback on each pathway is discussed below.

1. Accepting risk assessments from overseas jurisdictions – automatic adoption and minimal checks:
VicHealth strongly opposes a proposal for automatic adoption of overseas risk assessments. This will benefit the food industry at the expense of public health, because international standards often represent the minimum of necessary regulation, rather than the international best practice that Australia should be aiming for, in line with the review's Aspirations document.

FSANZ already has the ability to consider risk assessments from international jurisdictions, and we believe this is sufficient. We do not support providing FSANZ with any additional ability to adopt or accept international risk assessments without review and application to the Australian context.

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

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

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

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

We strongly oppose the proposal to implement this system by exempting products from being listed in the Food Standards Code if they are 'generally recognised as safe' by qualified experts.

We know from Australian experience that self-substantiation of health claims is ineffective, and its expansion must not be allowed.

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?

VicHealth disagrees with this proposal. Adding a third limb for Ministers to delegate to the FSANZ Board further centralises decision-making and means that the Board could then further delegate to the CEO. This provides too much power to the FSANZ CEO and 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 that the Ministers will lead action to meet the aspiration aims.

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

VicHealth does not support using codes of practice or guidelines to replace food standards. We believe that guidelines are only appropriate for information that explains how to implement food standards. Mandatory government-led codes of practice could be used for measures that require detail and flexibility; for example, a code for sustainable packaging. There must be a mechanism incorporated into the Act that ensures all jurisdictions in the joint food regulatory system have oversight of these forms of food regulatory measures and to ensure there is universal adoption by industry so there is equity across businesses and industries.

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?

While we cannot provide this data, we note that assessment of the cost of this administrative burden must be analysed to isolate the cost of the risk assessment process that applies above the cost of a manufacturer's expected internal due diligence processes. For example, if a manufacturer wants to use a new ingredient or additive in a food that requires a FSANZ risk assessment, it is reasonable to expect that, regardless of any FSANZ process, the manufacturer must satisfy itself that the ingredient or additive is safe before deciding to use it. Only the additional costs over and above this process should be considered as part of this RIS analysis of administrative burden.

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?

This must be assessed in a narrow way as described in response to question 18. This must also be assessed against the public health costs to consumers and governments of adopting international risk assessments. This assessment must consider short- and long-term health and consider the overall long-term effect on the standard of public health protection applied in Australia, to ensure we meet and/or exceed international best practice.

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

Please provide any comments in the box below

VicHealth strongly opposes the introduction of regulatory sandboxes, as it represents an unacceptable risk to public health and contradicts the purpose of food regulation to protect health and act to prevent harm before it occurs. Allowing the food industry to seek exemptions from food regulation undermines the integrity of the system at the most fundamental level.

The draft RIS provides no examples of a food regulatory sandbox system in other jurisdictions (instead providing a financial regulation example which should not be applicable in this context) and no detailed analysis of the risks and benefits that are likely to arise. We are unable to fully assess this policy proposal without a clear understanding of when it could be used and its impacts.

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

We very strongly disagree with the statement within the draft RIS that the standard on health claims is a barrier to innovation, which appears to suggest that this could be an area where an exemption could be sought under a sandbox scheme. We strongly oppose any suggestion that the food industry could be exempt from food standards related to labelling of any kind, including health claims. Those standards regulate how a company can market and label their food; they do not stop or delay the introduction of a new product. It is also paramount that any unhealthy foods, as tested by a nutrient profiling tool, are not exempt from any regulatory processes.

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

We do not support the use of regulatory sandboxes, and strongly oppose the introduction of new foods, ingredients and production and testing methods outside the food standards framework.

These standards are all in place to protect public health, and allowing exemptions undermines the system and risks consumer health and safety.

23. Would the impact of pursuing Option 2, Component 4 represent a positive, negative or neutral outcome for your sector? Positive Negative Neutral
Please provide any comments in the box below
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 concentrate additional resources on reorienting its work to protect long-term public health.

RESOURCING FSANZ TO UNDERTAKE MORE TIMELY, HOLISTIC AND REGULAR REVIEWS OF FOOD STANDARDS
VicHealth supports FSANZ having a greater strategic focus on reviewing and amending the Food Standards Code to protect long-term public health and prevent diet-related disease. We support FSANZ being required to monitor, assess and review the operation of the Code in practice, and its alignment with public health objectives.

We recommend that the final RIS incorporates a specific public health and consumer review pathway, specifically designed to ensure food standards represent best practice in terms of public health protection and providing consumers with adequate information. This must include review of existing standards and the capacity to introduce new standards. This process must require FSANZ to consider long-term health outcomes, and how food regulation can improve diets, reduce overweight and obesity and prevent diet-related disease. The process must also recognise the resource constraints of public health organisations and enable FSANZ to review evidence. This review process should be resourced separately to industry applications and should be subject to reasonable time limits.

The review process outlined in the draft RIS appears to have a significant focus on reducing regulatory burden for the food industry. This system is unlikely to achieve best practice public health outcomes, as there is often an inherent conflict between effective, evidence-based public health measures and the goal of minimising regulation. VicHealth recommends that to effectively protect public health, the Act should include a specific review pathway that is focused only on public health outcomes.

EXPANDING FSANZ'S FOOD SAFETY ROLE: COORDINATING FOOD SAFETY RESEARCH, ACTING AS A GUARDIAN OF FOOD SAFETY DATABASES AND COLLATING AND CREATING CONSUMER-FACING FOOD SAFETY EDUCATION MATERIALS
We do not support this expansion of FSANZ's role and responsibilities. FSANZ must focus on its key priority to develop food standards and must commit additional resources to reorient its focus to protect long-term health. Additional food safety functions are unlikely to create a significant additional public health benefit for consumers, do not address long-term health at all and are likely to divert resources away from priority areas.

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

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

25. Would the impact of pursuing Option 2, Component 5 represent a positive, negative or neutral outcome for your sector? Positive Negative Neutral
Please provide any comments in the box below
While we agree with some of the aspects of this component, we do not support all, as discussed below.

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

FSANZ PARTNERING WITH GOVERNMENT TO MAKE INTELLIGENCE-LED DECISIONS AND REDUCE DUPLICATION OF EFFORTS
We support earlier involvement with the Food Regulation Standing Committee and collaboration with enforcement agencies. We also support information-sharing with overseas jurisdictions, as long as this is not used to introduce automatic adoption of international risk assessments or create a minimal checks pathway without adequate assessment and safeguards.

FSANZ'S DATABANK COULD BE AVAILABLE TO DRIVE HIGH-QUALITY RESEARCH AND POLICY WORK BOTH ACROSS AND OUTSIDE GOVERNMENT
We conditionally support making FSANZ's databank available to drive high-quality research and policy work across and outside government. FSANZ needs to maintain an up-to-date databank to meaningfully contribute to regulatory decisions, monitoring and research. Having a centralised database would ensure independence, consistency and sustainability of ongoing monitoring efforts (e.g. Healthy Food Partnership targets). If a fee-for-service model is established for this it should take an equitable approach such as a tiered fee structure.

26. Would stakeholders (including universities, expert food safety bodies or industry) be willing to pay for data or data-linkages services from FSANZ?
VicHealth recommends that should FSANZ be given a function to create a data bank, access to this data is provided without charge to public health researchers and public health and consumer organisations.

27. Would the impact of pursuing Option 2, Component 6 represent a positive, negative or neutral outcome for your sector? Positive Negative Neutral
Please provide any comments in the box below
VicHealth does not support this component. The reasons for this are discussed below.

CHANGING FSANZ BOARD ARRANGEMENTS
We do not agree with the proposed changes to Board size, appointments and nomination. It is imperative to retain the same proportion of public health and consumer representation on the Board to ensure that FSANZ is focused on achieving its primary objectives of protecting public health

and ensuring consumers have access to adequate information. We do not support any increase in industry representation on the Board, and we recommend industry representation be reduced to one member.

We recommend retaining the current arrangements to enable listed organisations to nominate a member to the Board. We do not support a shift to a skills-based approach, although we expect that members nominated by external organisations have relevant skills. We also do not support reducing the Food Ministers' role in approving Board appointments. It is important to ensure that all jurisdictions participating in the joint food regulatory system can have oversight of Board appointments.

INVESTMENT INTO BUSINESS SOLUTIONS
While we support an online portal, we recommend that this is resourced separately and in addition to FSANZ's usual operations.

While the draft RIS notes it is outside the scope of the review, we are concerned by the suggestion that FSANZ considers using technology such as QR codes to present information online instead of on a food label. This should only be done for information that is voluntary and not subject to food standards; for example, additional information on how a product is manufactured or where the ingredients are sourced. Mandatory food labelling must always be available to a consumer on the physical label, as it ensures there is immediate access to this information at the point of purchase and provides equitable access to key information for all consumers.

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 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. The combination of reforms in Option 2 prioritises the profits of the processed food industry by enabling industry to sell more ultra-processed food that is harmful to health with less oversight. It will increase barriers to public health reform, while placing the burden of health and economic risk on individual Australian consumers and Australia's health system.

This means that all risks to consumers and public health outlined in relation to Option 1 (see our response to question 9) also apply in relation to Option 2, to an even greater extent.

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?

The costs and benefits that should be measured are largely similar to those identified in relation to Option 1 (see our response to question 7). The RIS must assess in detail both the qualitative and quantitative costs and benefits in relation to long-term public health, including preventable diet-related disease. These costs are borne by individual consumers and by governments, but also by industry.

This analysis must include the following:
(a) The health and economic costs borne by consumers and governments due to delays in progressing food regulatory measures to improve public health. This can be assessed by referring to the costs saved and health risks reduced by existing public health measures that were delayed under the current system (for example, see our response to question 8), together with an assessment of how those delays may be changed under this option. As there is no mechanism to address the prioritisation of industry applications over proposals with public health benefit, this is unlikely to improve.
(b) The health and economic costs borne by consumers and governments due to food regulatory measures that do not effectively address long-term public health outcomes. This can be seen in measures that are either not progressed at all or that do not represent best practice public health measures due to the prioritisation of industry interests ahead of public health. This analysis should assess whether Option 2 makes public health measures more or less likely to be implemented in accordance with evidence on best practice. Due to the elevation of trade and the regulatory impact on industry, we believe that public health reforms will be more difficult to progress and approve under Option 2.
(c) The administrative cost to public health and consumer organisations due to participating in lengthy and/or delayed processes to review and amend food standards.
(d) The health and economic costs borne by consumers and governments due to new approval processes with less oversight and pre-market assessment. This must include short- and long-term health impacts and consider the impact of Option 2 on the number of unhealthy foods that are sold and promoted to consumers.
(e) The economic costs borne by industry for productivity loss, sick leave and staff turnover as a result of preventable diet-related diseases.

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 consumers' health and the economic cost for government. As we discussed in question 7, the draft RIS states that it analyses the impact of policy options on public health, but then fails to do this. The RIS must be amended to include a detailed assessment of the costs to public health and consumers from elevating trade and industry interests. This analysis must include costs linked to delays in approving public health measures, and measures that are weakened or rejected because of the greater importance of trade and regulatory impact on industry under Option 2, Component 1, as compared to Option 1 (status quo).

30. Are you aware of any data that may assist in quantifying the magnitude of these costs and benefits? If so, please provide these data.
As these policy options represent a broad suite of reform measures with varying public health impacts, it is difficult to precisely quantify the magnitude of the costs that will result from them, both qualitative and quantitative.

We do, however, have data and analysis to understand the impact of poor diet, overweight and obesity and preventable diet-related disease, from both a qualitative and quantitative perspective.

This data should be used as the foundation of a detailed assessment in the RIS of the impact of the proposed reforms on public health outcomes.

Many Australians are not consuming an optimal diet for good health, are above a healthy weight and have preventable diet-related diseases such as type 2 diabetes, heart disease and cancer. Poor diet and overweight and obesity make a major contribution to the burden of disease in Australia. Data is also available on the economic costs of obesity, including costs borne by individual Australians and by governments.

Using this existing data as a foundation, the RIS must assess the health and economic costs of estimated changes resulting from proposed reforms to the number of Australians and New Zealanders who have a poor diet, are overweight or obese and suffer from preventable diet-related disease. It will not be possible to quantify exactly how these impacts will manifest if these proposed reforms are implemented; however, the RIS can quantify the economic and health costs of a slight change in these levels. For example, a 2015 PWC report estimated the annual cost of obesity in Australia as $8.6 billion in direct and indirect costs (see https://www.pwc.com.au/publications/healthcare-obesity.html). If these costs were to increase proportionately due to even a 0.25% increase in the number of people with obesity, this would represent a cost of A$21 million per year in Australia.

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 food manufacturers above proposals that have widespread public health impact. This results in delayed action on public health measures, instead benefiting industry profit and leading to higher health and economic costs to consumers and governments. Overall, this results in a system that is not fit-for-purpose in achieving its primary objective: protecting public health.

VicHealth is concerned that if additional cost-recovery mechanisms are introduced, this could worsen this unequal treatment of public health proposals and industry applications. Creating new ‘services’ that the food industry can pay for, such as interpretive advice, risks compromising FSANZ’s independence and central role. While we acknowledge that a lack of resources limits FSANZ’s ability to deliver its core functions and understand that a holistic review of the way FSANZ is funded is required, it is essential that this review does not result in negative public health impacts.

We strongly recommend that industry applications and public health proposals are separately resourced, so changes in industry paid applications do not delay proposals. We also recommend the introduction of a specific public health pathway to request changes to the Food Standards Code that must be addressed and responded to in a timely manner and that acknowledges resource constraints of public health organisations.

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

Consideration of this issue must also assessment of the impact on public health. In particular, it must assess how current cost-recovery models affect public health and the likely impact of expanding those measures. This must include assessment of the current prioritisation of paid industry

applications above proposals to benefit public health, and the delays that are attributable to this system.

It must also consider how FSANZ would be able to undertake the additional responsibilities 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?

VicHealth does not engage with the system by applying for review and amendment of food standards. This is because the current system prioritises industry interests and there is no specific pathway designed for public health organisations.

We regularly engage with proposals to change food standards, a process that is subject to extensive delay and lengthy, detailed consultation processes. These processes disproportionately benefit large food companies with significant resources.

VicHealth strongly recommends that the RIS is revised to address the prioritisation of paid industry applications over proposals that create change 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 that 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 length and complexity of the process mean that generating change is very resource-intensive for public health organisations. It also creates an advantage for large food corporations who have significant resources to use to influence the process to their benefit. The result is that outcomes for Australians often lag behind evidence and best practice for long-term health outcomes.

The RIS must consider how this imbalance can be addressed to ensure public health is prioritised above industry profits. One element of reform must be a specific public health review pathway and a pathway for consumers to seek amendments to the Food Standards Code. The process must recognise the resource constraints of public health and consumer organisations, enable evidence review by FSANZ and be subject to reasonable time limits.

VicHealth also notes the considerable resourcing required of public health bodies to respond to consultations such as this. This is exacerbated by short deadlines compared to the size of consultation papers, and the use of questions that are more targeted to industry and can be difficult to respond to from a public health perspective (e.g. quantifying costs and benefits to industry).

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?

The pathways proposed in the RIS are industry-focused and do not allow for public health organisations' engagement. The options for reform would make it more difficult for public health organisations to engage with the system, as they represent a further prioritisation of industry interests and strengthen existing barriers to achieving public health benefits.

The RIS should be revised to include a public health pathway to enable public health organisations and consumers 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

Please read section 5 'Options to address the Policy Problems' (pages 49 to 68) and section 6.3 'Impacts of Option 3: Build on FSANZ's role to reinforce the bi-national nature of the join food standards system' (pages 104 to 120) of the draft Regulatory Impact Statement before answering the questions below.

36. Would the impact of pursuing Option 3, Component 1 represent a positive, negative or neutral outcome for your sector? Positive Negative Neutral
Please provide any comments in the box below
Extending FSANZ's functions to enable it 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. Given FSANZ's resource constraints, it should focus on the current objectives of the Act.

VicHealth disagrees with the statement in the draft RIS that there is a 'net positive benefit' to Component 1. The cost–benefit assessment for Component 1 is not comprehensive. It does not assess the impact of reassigning FSANZ's limited resourcing to an area where there is no current need for FSANZ to take a role. Giving FSANZ an additional role will further exacerbate this.

37. Are you aware of any quantified costs that food businesses have borne as a result of a food incident or recall?
VicHealth is not aware of any quantified costs.

38. Is FSANZ coordinating food recalls/incident response a function that would be equally valuable for Australia and New Zealand?
VicHealth does not believe it would be valuable to either Australia or New Zealand for FSANZ to coordinate food recalls or incident response, for the reasons discussed in our response to question 36.

39. Would the impact of pursuing Option 3, Component 2 represent a positive, negative or neutral outcome for your sector? Positive Negative Neutral
Please provide any comments in the box below
Guidance on the intention of food standards and how to interpret them (particularly for enforcement purposes) would provide consistency in interpretation across sectors and jurisdictions and provide clarity and remove interpretive doubt. This would also give stakeholders better access to information to allow them to comply with the Food Standards Code. However, some elements of this component go much further than this and we do not support these, as discussed below.

Resourcing 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.

We make the following points in relation to the specific guidance mechanisms identified in the draft RIS:

STATEMENT OF INTENT ALONGSIDE FOOD STANDARDS
We support FSANZ providing statements of intent alongside food standards. This would ensure there was more clarity around standards, particularly for enforcement purposes.

FSANZ TO UPDATE AND MAINTAIN INDUSTRY GUIDELINES
While we support independent industry guidelines developed by FSANZ, it is critical that this process is not industry-led.

There must be equal access for all stakeholders (consumers, public health stakeholders and industry) to getting a binding standard, requests for clarification of food standards or specific guidance on interpretative issues.

FSANZ TO ASSIST BUSINESSES TO PREPARE DOSSIER TO SUBSTANTIATE GENERAL HEALTH CLAIMS
We do not support the current system of self-substantiation, but agree that guidance is necessary to ensure organisations comply with regulations for general health claims. We do not believe that changes to the Act are necessary to enable this, or that FSANZ is best placed to undertake this work. FSANZ is under-resourced to deliver its current remit and changes should instead be made to better resource and equip states and territories to undertake a support role in ensuring businesses are complying with standards. It is important that this role is done before products are on the market, so that unsubstantiated claims of relationships between food and health are not made prior to FSANZ assessing them. If companies could sell the product while claims are being assessed, they could sell them without the claims for that period.

MINISTERS TO DETERMINE WHETHER A PRODUCT IS A FOOD OR A MEDICINE
We do not support 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. While 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. Instead, this power should sit with a broader group that can consider categories of food and medicine in a more comprehensive manner.

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? Positive Negative Neutral
Please provide any comments in the box below
VicHealth does 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 proposed for FSANZ under this draft RIS.

The additional powers and functions proposed by the draft RIS that enable FSANZ to set guidelines for interpretation and make binding interpretative statements will enable the states and territories to better enforce the provisions in a more cohesive and consistent manner. This could address differences in interpretation and action by different jurisdictions, streamline the process, reduce inequities for food companies and increase consumer confidence in the system. Additionally, key areas of concern can be addressed in the model law provisions of the Food Regulatory Agreement.

We disagree with the statement in the draft RIS that there is a 'net positive benefit' to Component 3. The cost–benefit assessment for Component 3 is not comprehensive, as it does not assess the costs or benefits of alternative avenues for ensuring consistency in enforcement across the states and territories, nor the cost to public health of FSANZ's resourcing being deferred into the enforcement space. FSANZ is under-resourced to deliver its current remit and given the prioritisation of industry applications, this has a negative outcome for proposals. Giving FSANZ an additional role will further exacerbate this.

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

VicHealth does not have access to this data. However, we note that in considering costs and resources, consumer safety and public health should be prioritised over cost-saving efforts.

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

Please provide any comments in the box below

The draft RIS is unclear as to what legislative changes are proposed to implement Component 4. We do not support any changes to the objectives in s.3 or s.18 of the Act, or to the items to which FSANZ must have regard in s.18, to enable FSANZ to extend Australia and New Zealand's influence on the international stage.

We also do not support the extension of FSANZ's 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', and therefore this role should remain as the Food Ministers' responsibility.

The draft RIS states that Component 4 could create new economic opportunities for businesses. Creating new economic opportunities is not and should not be the focus of amendments to a food regulatory system that has an overarching objective of protecting public health.

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 deprioritisation of proposals related to public health outcomes, as industry applications will still be prioritised and FSANZ will have even less time and resources to allocate to public health proposals. The RIS must assess this cost, with analysis including:

(a) the costs (both in terms of consumer health and economic costs) of further delays in progressing food regulatory measures designed to promote public health

(b) the economic costs to consumers and governments, as well as industry, of poor health outcomes that are not addressed by public health food regulatory measures.

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 above 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 achieving the overall objectives of the food regulatory system. Cost recovery mechanisms also risk compromising FSANZ's independence and central role. However, we do 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.

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?

The policy options do not represent the full spectrum of policy approaches and fail to consider any approach that will enable FSANZ to deliver on its objectives in relation to the protection of long-term public health and providing consumers 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 consumer organisations in earlier consultations.

The policy approaches in Options 2 and 3 enable industry profits to be further prioritised above public health, meaning that the status quo, while being inadequate, would be better for the health of Australians.

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, the following:

1. Developing a clear, practical and timely pathway for public health stakeholders to request FSANZ to review and amend the Food Standards Code to meet a public health objective.
2. Giving FSANZ the resources to set strategic priorities that address the biggest dietary challenges for our population and aim to improve dietary patterns. This must include the requirement to regularly review the operation of the Food Standards Code in practice and its alignment with public health objectives, specifically long-term health.
3. Creating a delineation within FSANZ for its two main work streams (applications and proposals). These should be funded, resourced and prioritised without competing against one another. Funding and resourcing should be allocated separately for each workstream and then prioritised within that workstream alone.
4. Setting statutory maximum timeframes for proposals that are consistent with the timeframes for applications.
5. Addressing concerns in respect to jurisdictional inconsistencies by amending the Food Regulatory Agreement and the model law provisions.
6. Undertaking a review of the health claims system as a whole with the view to refining this system to ensure it has the best outcomes for long-term public health and adequate consumer information, above industry's ability to promote their (often unhealthy) products. This review should include oversight and enforcement mechanisms for the system as well as an assessment of which foods can

carry health claims, which claims can be made and the impact of these claims on the food supply and consumer choice. Overall, the review should consider whether health claims enhance 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.

We do not think any components of either Option 2 or Option 3 should be pursued, and certainly not prioritised above real changes that could enable FSANZ to meet its primary objective of protecting public health, particularly long-term health.

We strongly support reform to improve the food regulatory system, but this must be done in a way that better protects long-term public health. The FSANZ Act review must be refocused to put public health first. This must include an independent review to fully assess the impact on long-term public health of all proposed options, including the health and economic costs and benefits to consumers and governments. The RIS must be amended to incorporate the policy problems listed above, the findings of this independent review and to identify additional reforms to address long-term public health (see our responses to questions 1, 46 and 47).

The priority should be aligning the FSANZ Act and review with the Aspirations for the Food Regulatory System. Priorities should include:

(a) clearly defining public health to include short- and long-term health, including the prevention of diet related disease, ensuring these two elements are separated and are equally resourced and prioritised

(b) developing a clear, practical and timely pathway for public health stakeholders to request FSANZ review and amend the Food Standards Code to meet a public health objective

(c) resourcing FSANZ to set strategic priorities that aim to promote healthy food choices, improve diets and prevent diet-related disease. This must include the requirement to regularly review the operation of the Food Standards Code in practice, and its alignment with public health objectives, specifically long-term health

(d) setting statutory maximum timeframes for proposals that are aligned with timeframes for industry applications. This must ensure that proposals receive appropriate resourcing and are not delayed due to prioritisation of industry-focused work

(e) removing inconsistencies in interpretation and enforcement between jurisdictions. This could be achieved without amending the FSANZ Act, including by amending the Food Regulatory Agreement and the model law

(f) reviewing the health claims system as a whole, 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.

Alignment with draft Aspirations for the Food Regulatory System

Please read the draft Regulatory Impact Statement and the draft Aspirations for the Food Regulatory System before answering the questions below.

The FSANZ Act Review is an element of the ambitious plan to reform the Bi-national Food Regulation System, which also consists of three other projects (see the Food Regulation website for further

information). These projects are being progressed in parallel to develop a new, best practice regulatory, legislative and operational basis for the system.

As part of the Review of the Food Regulation Agreement project, draft Aspirations for the Food Regulation System have been developed. For this FSANZ Act Review consultation, stakeholders are also being asked to consider how the reform options for the FSANZ Act align with the 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?

It is VicHealth's view that none of the options in the draft RIS align with the draft Aspirations for the Food Regulatory System, as they are not in line with the overall vision of the Aspirations and nor do they enable the high-level aims to be met. We have expanded on this further below.

The Aspirations for the Food Regulatory System state that the Food Ministers are the leaders in meeting the aims of the Aspirations and yet many of the components outlined in Options 2 and 3 seek to limit the involvement of the Food Ministers, which will reduce their capacity to meet the aims of the aspirations.

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

The Communique further notes that Ministers will reconsider the draft Aspirations following stakeholder feedback and consideration of the RIS. In reconsidering the draft Aspirations, we recommend that the Ministers amend the Aspirations to:
(a) include an additional aim to ensure the food supply is equitable and enables equal access to healthy foods throughout Australia and New Zealand
(b) clarify Aim 1 to make it clear that the health and safety of consumers will be protected by reducing both short-term and long-term risks related to food
(c) clarify Aim 4 to make it clear that the food supply that is being aspired to is not only diverse and affordable but also healthy and sustainable.

ANALYSIS OF DRAFT RIS OPTIONS AGAINST THE VISION AND AIMS OF THE DRAFT ASPIRATIONS FOR THE FOOD REGULATORY SYSTEM

1. ANALYSIS OF THE VISION – A world-class collaborative food regulatory system focused on improving and protecting public health and safety.

Option 1 – status quo – the current food regulatory system is primarily focused on protecting Australians from short-term food safety issues and prioritises industry interests and profits. This focus only aligns with the safety element of the vision and does not align with a food regulatory system focused on 'improving and protecting public health'.

Option 2 – modernise the Act – the combined effect of the 6 components of this option will result in an Act that:
(a) further prioritises industry interests and profits over public health, and seeks to marginalise other stakeholders including public health organisations by taking a less collaborative approach
(b) removes safeguards and proposes instruments such as regulatory sandboxes, resulting in less focus on improving and protecting safety and greater risk to public health
(c) elevates the importance of trade and impact on business, resulting in greater barriers to implementing public health measures that seek to improve health
(d) fails to take any action that enables efficient processing of proposals, which could be done by adequately and separately resourcing this stream of FSANZ's work from applications work
(e) fails to improve outcomes for public health, which together with the above results in even less public health promotion and protection than Option 1.

Option 3 – reinforce bi-national role – the combined effect of the 4 components of this option will result in an Act that:
(a) centralises power and control with FSANZ, marginalising state and territory input and impact, resulting in less collaboration between governments and less collaboration between stakeholders and state and territory governments
(b) focuses FSANZ's attention and resources on new functions (i.e. recalls and enforcement) when it is already limited in its capacity to deliver its current remit. By widening the remit of FSANZ there will likely be a further deprioritisation of proposals and strategic project work, and therefore even less public health improvement and protection than Option 1.

2. ANALYSIS OF AIM 1: To protect the health and safety of consumers by reducing risks related to food:

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

Option 1 adequately aligns with this aim in respect of short-term risks related to food safety, but does not align with this aim in respect to the long-term health risks related to food including overweight and obesity and preventable diet-related disease. Option 1 prioritises applications for new and novel foods and products, often ultra-processed foods that are not good for health, above proposals for public health measures. This further exacerbates long-term food-related health risks and creates a food regulatory system where these issues cannot be addressed.

Option 2 does not align with this aim as it results in less oversight in relation to short-term risks than Option 1 and does not improve the status quo in relation to long-term risks. It is imperative that our food regulatory system addresses long-term food-related health risks.

Option 3 could result in no change in relation to short-term food-related risks as the status quo does not improve current arrangements in relation to long-term risks. Again, it is imperative that our food regulatory system addresses long-term food-related health risks.

3. ANALYSIS OF AIM 2: Enable consumers to make informed choices about food by ensuring that they have sufficient information and by preventing them from being misled:

Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work, which often result in increased consumer information and protection for consumers from being misled.

Option 2 does not align with this aim as it further deprioritises proposals and strategic work, resulting in worse outcomes for consumer information and less protection from being misled than the status quo.

Option 3 does not align with this aim as it centralises power and control with one body, which undermines the integrity of the joint food regulatory system as it removes oversight and decision-making from participating governments. This is likely to result in better outcomes for industry but not for consumers.

4. ANALYSIS OF AIM 3: Support public health objectives by promoting healthy food choices, maintaining and enhancing the nutritional qualities of food and responding to specific health issues:

Option 1 does not align with this aim as it does not adequately resource and prioritise proposals and strategic project work. The draft RIS notes that proposals 'often have system-wide impacts', and these system-wide impacts are what promote healthy food choices and enable responses to health issues.

Option 2 does not align with this aim as it enables novel and new food products, typically ultra-processed products that are not considered healthy food choices and do not have enhancing nutritional qualities, to enter the market with more ease and less oversight.

Option 3 does not align with this aim as it centralises power and control with one body, which undermines the integrity of the joint food regulatory system as it removes oversight and decision-making from participating governments. This is likely to result in better outcomes for industry but not for health and consumers.

5. ANALYSIS OF AIM 4: Enable the existence of a strong, sustainable food industry to assist in achieving a diverse, affordable food supply and also for the general economic benefit of Australia and New Zealand:

Option 1 aligns with this aim in some respects as it prioritises applications above proposals, resulting in economic benefits for industry as they are able to get new, cheap products into the market. However, the resulting market is not diverse, as it is becoming increasingly dominated by ultra-processed foods that are not considered healthy food choices and are not sustainable from a health or environmental perspective. This contributes significantly to the immense economic burden of preventable diet-related disease on consumers and all governments.

Option 2 further encourages the development, production and sale of unhealthy food products, which will result in increasing economic benefits for industry. However, it will result in a greater economic burden from preventable diet-related disease on both consumers themselves and all governments and will have increasingly damaging impacts on health and environmental sustainability.

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