

4 April 2022

Senator the Hon Richard Colbeck
Minister for Senior Australians and Aged Care Services, Minister for Sport
Chair, Food Ministers Meeting

By email to: FoodRegulationSecretariat@health.gov.au and Senator.Colbeck@aph.gov.au

Dear Minister Colbeck

Thank you for meeting with us on 18 March 2022 in your capacity as Chair of the Food Ministers Meeting, to discuss the concerns of 24 public health and consumer organisations about the *Food Standards Australia New Zealand Act 1991* (FSANZ Act) review. We have provided a summary of that meeting to those organisations, who have read and support this letter. A summary of the key points raised in our meeting and our response to them is provided in Attachment A.

Our coalition supports the Food Ministers' desire to modernise the food regulatory system and the FSANZ Act. Our responsibility, as public health experts and consumer advocates representing the interests of over 26 million Australians and 5 million New Zealanders, is to make sure that any reforms introduced are in the public interest and continue to prioritise the protection of public health and safety. We were heartened to hear of your commitment to a number of our key concerns, including:

- Public health primacy in the FSANZ Act
- That trade will not be included as an objective of FSANZ or the FSANZ Act
- That neither FSANZ nor the Chair of the Food Ministers meeting will be moved outside of the health portfolio

We do, however, have remaining concerns we would like to address. As discussed, the majority of our submissions on the May 2021 Regulatory Impact Statement (May RIS) clearly noted that despite supporting and wanting reforms, Option 1 (no change to the current FSANZ Act) was the preferable outcome from a public health and consumer perspective and we could not support the proposed Options 2 and 3.

In supporting the call for modernisation of the food regulatory system, we have recommended key reforms and identified requirements to ensure that public health and safety have primacy in the FSANZ Act. These have been provided previously and we attach these again for your convenience (Attachment B). We have also advised that a critical part of the reform process is to conduct a public health impact assessment to assess whether the individual or combined impact of any proposed reforms is likely to weaken the existing protection of public health and safety.

We share your vision for a world class food regulatory system focused on improving and protecting public health and safety and other consumer requirements. Food Ministers have an important opportunity to ensure this, and we are keen to work with Food Ministers to achieve this common goal. It is in this context that we raise our concerns that the current process will not produce this outcome and seek involvement in this important reform process prior to the final RIS being released. We look forward to your response to these remaining concerns.

Sincerely



Jane Martin
Executive Manager
Obesity Policy Coalition



Adam Knobel
Acting Chief Executive Officer
FARE

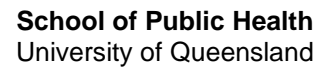


Natalie Stapleton
Advocacy and Policy Manager
Dietitians Australia

cc: Members of the Food Ministers Meeting / Members of the Food Regulation Standing Committee / all parties invited to, and all parties present at, the 18 March meeting



AUSTRALIAN CHRONIC DISEASE PREVENTION ALLIANCE



Rosemary Stanton

Dr Rosemary Stanton OAM
Independent Public Health
Nutritionist



Attachment A: Summary of key points from 18 March 2022 meeting

- **Public Health will have primacy in the FSANZ Act**

We welcome your confirmation that the primacy of public health in the FSANZ Act will be retained. We remain concerned, however, that any reform proposal based on options 2 and 3 of the May RIS cannot achieve this aim and will have a negative impact on public health compared to the current system. The minimum requirements to ensure primacy of public health are set out in Attachment B along with key reforms.

- **A definition of 'public health' is being considered as part of the reforms to the FSANZ Act**

We were pleased to hear that a definition of public health is being considered. As previously raised, the definition of public health within the Act should expressly include long-term public health and be as previously agreed in the Ministerial Policy Statement on the *Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures*.

- **No public health impact assessment has been done to date and there is no definite plan for this to be undertaken**

We are concerned this important step has not been undertaken so far, particularly since the main objective of the FSANZ Act is to protect public health.

Assessing whether any proposed changes to the FSANZ Act have an impact on public health would seem to be a logical and critical step in ensuring that the changes do not undermine this objective. This is still required where FSANZ's role in relation to public health and safety is not being directly amended, as each proposed amendment to the FSANZ Act, individually or combined, will impact on FSANZ's role, and could have implications for public health and safety outcomes.

A public health impact assessment would allow parties to understand the basis on which decisions are being made and, when done well, would provide public confidence in the process and outcome.

- **Trade will not be an objective of FSANZ or the FSANZ Act**

We were also pleased to hear your confirmation that trade will not be an objective of FSANZ or the FSANZ Act. We are keen to ensure that trade will not otherwise be elevated within the FSANZ Act and therefore seek confirmation that public health measures and other consumer matters will be prioritised above industry matters, so that:

- sub-sections 18(1)(a), (b) and (c) and 18(2)(e) of the FSANZ Act will be clearly prioritised above industry matters set out in s18(2)(b),(c) and (d); and
- FSANZ will only need to have regard to items in s18(2)(b), (c) and (d) when developing or reviewing or varying food regulatory measures.

- **Neither FSANZ nor the Chair of the Food Ministers meeting will be moved outside of the health portfolio**

We welcome the news that there will be no changes to the current arrangements and extend our thanks for your support of this position.

- **Current status and next steps**

- **A 'proposal of reforms' was put to Food Ministers prior to their meeting in December 2021 (the Proposal).** We understand that this Proposal:

- is based on options 2 and 3 of the May RIS;
- is not planned for public release; and
- will form the base of discussions between the Commonwealth, New Zealand and the States and Territories as they work towards a final RIS.

- **The summary of submissions following the consultation on the May RIS will be released soon**

We welcome the release of this summary and would be grateful if you could please advise when this will occur.

- **A Food Ministers Meeting will be held in July 2022 to agree on the Proposal**

Could you please confirm that the date of this meeting will be made public well ahead of the meeting date.

- **The anticipated timing for a final RIS is between August-November 2022. No consultation is planned prior to the release of the final RIS**

Pushing forward with the Proposal without further consultation to get a better understanding of public health and consumer concerns and addressing these concerns, risks a solution that compromises public health and exposes the food regulatory system to criticism. It also risks damaging the reputation of Australia and New Zealand's food regulatory system, particularly since no public impact assessment on the Proposal has been done to date.

We strongly urge you to reconsider consultation prior to the next Food Ministers Meeting.

- **The anticipated timing for an exposure draft of legislation is for the second half of 2023**

- **Clarification of how the FSANZ Act Review will align with other actions associated with the modernisation of the food regulatory system**

We did not discuss the status of the broader reform process to modernise the food regulatory system at our meeting but would appreciate an update on this. Could you please clarify what progress has been made with these other elements of the reform program, and how they are being incorporated into the review of the FSANZ Act.

Attachment B: Key reforms to the FSANZ Act that support public health and safety and ensure the food regulatory system remains strong, robust and agile into the future

- **Reforms to the FSANZ Act must level the imbalance between the application and proposal pathways** This can be achieved by setting statutory minimum timeframes for proposals that are at least aligned with timeframes for industry applications.
- **Public health and consumer review pathway** A clear, practical and timely pathway is needed for public health and consumer stakeholders to ask FSANZ to review and amend the Food Standards Code.
- **FSANZ must be appropriately resourced to enable it to meet its core objective of ensuring a high standard of public health protection** This requires resourcing FSANZ to set strategic priorities that aim to promote healthy food options, improve diets and prevent diet-related disease.

Minimum requirements to ensure the primacy of public health and safety in the FSANZ Act is retained

- **The FSANZ Act must align with the Food Regulatory Agreement and Aspirations for the Food Regulatory System**
The Aspirations for the Food Regulatory System have been agreed by Food Ministers and it is fundamental that amendments to the FSANZ Act enable FSANZ to fulfil its role in meeting these aspirations.
- **The individual and combined impact of proposed changes to the FSANZ Act must not weaken existing public health protections, including for long-term health**
This must be demonstrated through a comprehensive public health impact assessment.
- **The FSANZ Act must clearly define public health to include long-term health**
Ministers have previously agreed a definition for public health and safety in the Ministerial Policy Statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures - *'All those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short term or long term, including preventable diet-related disease, illness and disability as well as acute food safety concerns'* - this should be incorporated into the FSANZ Act.
- **Responsibility for FSANZ and the position of Chair of the FMM should remain within the health portfolio**
To ensure the primacy of public health and safety within the FSANZ Act, responsibility for FSANZ and the position of Chair of the FMM remain with the health portfolio.
- **Public health and safety, as defined above, must have primacy in the FSANZ Act's objectives**
To ensure this, trade should not be incorporated as a specific objective of the FSANZ Act (in section 3) nor of FSANZ itself (in section 18). In addition, amendments to section 18 of the FSANZ Act must clearly prioritise the following objectives and matters to which FSANZ must have regard above industry and trade matters:
 - the protection of public health and safety (s18(1)(a) FSANZ Act);
 - the provision of adequate information relating to food to enable consumer to make informed choices (s18(1)(b) FSANZ Act);
 - the prevention of misleading or deceptive conduct (s18(1)(c) FSANZ Act); and
 - any written policy guidelines formulated by the Forum on Food regulation (s18(2)(e) FSANZ Act).