



Review of the Food Standards
Australia New Zealand Act 1991

Summary of the response by Alcohol
Beverages Australia

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Executive Summary

The Commonwealth Department of Health has initiated a review of the *Food Standards Australian New Zealand Act 1991* (the Act), the first since the passage of the Act almost 30 years ago. Alcohol Beverages Australia (ABA) welcomes the opportunity to contribute to the review, and we believe its outcome should ensure an appropriate system of food regulation is maintained which balances public confidence in the security and safety of food and beverages sold in Australia and New Zealand, with a cost-efficient and transparent process for industry that seeks to bring innovation and increased choice to consumers.

Consistency with the COAG Review

ABA notes that the Act review process commenced before the release and government endorsement of the Review of COAG Councils and Ministerial Forums (the COAG Review); however, the principles of the COAG Review need to be consistent with any reforms of the FSANZ Act. A number of proposed recommendations in the scoping paper for review of the FSANZ Act are now contradictory to the COAG Review. We believe these recommendations now need to be reconsidered and amended, particularly in respect to the decision-making process and the involvement of Ministers in agenda setting and oversight. Any reform of the FSANZ Act cannot be inconsistent with COAG Review principles.

The industry view on the FSANZ Act and its operation

ABA and its members are experienced in engaging with FSANZ processes, including in relation to the recent decision to introduce mandatory pregnancy warning labels on alcoholic beverages. We welcome this Review as an opportunity to address procedural and substantive concerns with the food regulatory system that arose in that process including:

- The extension of FSANZ's original mandate beyond ensuring food safety and prevent acute food borne illnesses, to a role in responding to broader health policy such as the pursuit of consumer behavioural change to address multifaceted public health issues such as obesity, non-communicable disease and the consumption of alcohol;
- Poor alignment of priorities between the Ministerial Forum and various bureaucratic arms of the system;
- A lack of appreciation within FSANZ for the compliance costs, timelines and processes associated with regulation which are borne by industry.

FSANZ faces a conflict because some stakeholders seek to use the food regulatory system as a platform to pursue longer term behavioural change by consumers beyond simply assuring the safety and reliability of food products. We believe this is, and should remain, outside the scope of work managed by FSANZ. Broader policies to address longer term chronic illnesses related to diet are already the responsibility of health agencies at state and federal level. Ideally, the scope of work of FSANZ should match the remit of Codex Alimentarius, where the focus is on preventing acute illness from contaminants and poor hygiene practices. We note that as well as protecting consumer health from acute disease, a secondary role for Codex is the promotion of free trade and removal of unnecessary technical barriers to trade.

Proposals to expand the scope of FSANZ risk exacerbating the already existing conflict arising from the agency being actively involved at so many stages of the food regulatory decision making framework. It is unrealistic to expect an organisation to be balanced, impartial and open to alternative approaches when it is so thoroughly invested in each project, being required to identify and develop proposals for change, conduct the expert assessment, and make decisions on its own work to be ratified by ministers. Given the timeframes of some work, expanding the FSANZ remit risks further delays and loss of confidence by industry.

Finally, ABA believes industry is underrepresented on the FSANZ Board, while public health representatives dominate. There is a lack of real world experience within the Board, and the agency more broadly, of the costs, processes and timelines faced by the food and beverage sector, with increasingly complex supply chains, the demands of the retail sector, and the ability to provide innovation and increased choice to consumers.

ABA recommendations

In summary, ABA recommends:

1. Any review of the FSANZ Act be undertaken with the principles of the COAG Review in mind, and that no proposed reforms seek to contradict or undermine the principles of the COAG Review;
2. The objective of FSANZ should primarily remain on ensuring consumer confidence in the food regulatory system by focusing on the prevention of acute disease resulting from food borne illnesses, and that processes and decisions are fair, transparent and cost-effective for industry to implement;
3. That there should be no expansion of the FSANZ mandate into long-term public health issues around chronic, non-communicable disease, given this work would duplicate efforts by other agencies in the bureaucracy;
4. That Ministers represented on the Forum remain involved in all key aspects of the agency's work, including agenda setting and as the final decision makers on substantive decisions which have a significant impact on industry;
5. That the FSANZ Board has a greater representation of members with food and beverage industry experience, and an earlier role in reviewing FSANZ's work to ensure it aligns with the expectations of Ministers and other key stakeholders.

ABOUT ABA

Alcohol Beverages Australia (ABA) is the pan-industry body created to highlight the positive social, cultural and economic contribution of alcohol beverages in Australia. Our goal is to promote, explain and defend the legitimate rights of the industry and the 15 million Australian consumers who responsibly enjoy our drinks.

With members from all parts of the Australian alcohol beverages industry, ABA uses a balanced, evidence-based approach to actively engage in public debate on alcohol policy issues and lead the development of innovative and effective alcohol policies.

BACKGROUND

ABA has been an active participant in FSANZ processes relating to alcoholic beverages, including most recently *P1050 – Pregnancy warning labels on alcoholic beverages*. ABA believes the P1050 process, involving more than 13 years of deliberation, highlights the need to reconsider the role and objectives of FSANZ and the decision-making processes observed when considering amendments to the Food Standards Code (the Code).

ABA was deeply disappointed with the outcome of P1050, which saw the adoption of a mandated three-colour pregnancy warning label for alcoholic beverages at a cost to industry of some \$400 million according to research commissioned by FSANZ. This includes initial setup costs of more than \$100,000 to hundreds of small brewers, distillers and winemakers across Australia and New Zealand. The vast majority of these costs could have been avoided by adopting the imagery and colour-contrast scheme recommended by the industry, and which is already being used voluntarily on the majority of alcoholic beverages sold across both countries. We do not believe best practice regulatory processes were followed in this decision.

We support the objectives as stated in the terms of reference for a food regulation framework that “imposes the least burden on business to achieve the stated objectives of the regulation and specific consideration is given to the impact on small businesses”. We believe part of the legislative review should involve identifying areas within the Act where amendments can be made to reinforce the need for FSANZ to balance health benefits and the industry and societal costs of regulation (including the opportunity cost arising from foregone innovation, market entry etc).

In the interests of assisting in the development of a basis for a robust review we have consulted with our members and identified the key principles we believe should underpin Australia’s food regulation framework and should be reflected in any legislative or operational amendments arising from this Review.

ISSUES

- 1. Any review of the FSANZ Act be undertaken with the principles of the COAG Review in mind, and that no proposed reforms seek to contradict or undermine the principles of the COAG Review**

ABA notes the recommendation of the recent [Review of COAG Councils and Ministerial Forums](#), endorsed by the Commonwealth, to abolish officials' groups attached to the Food Regulation Ministers Forum, such as the Food Regulation Standing Committee (FRSC). There are a number of recommended reform proposals which are also at odds with the principles of the COAG review, including increasing the decision-making power of officials at the expense of ministerial involvement.

We appreciate that the scoping paper was drafted before the COAG Review was released and endorsed by the Commonwealth, but ABA believes all reform proposals must be re-checked to ensure their consistency with the revised COAG principles.

- 2. The objective of FSANZ should primarily remain on ensuring consumer confidence in the food regulatory system by focusing on the prevention of acute disease resulting from food borne illnesses, and that processes and decisions are fair, transparent and cost-effective for industry to implement**

The food regulation system was established to provide consumers with assurance on the safety of food available for purchase, aiming to prevent acute injury or illness as a direct result of consumption. Safety was focused on the immediate post-consumption period and required attention on hygiene in manufacturing and the use of safe ingredients and additives.

We note that the current objects of the FSANZ Act include a goal to provide an efficient, transparent and accountable regulatory framework within which the food industry can work with assuredness. We support retention of this goal, and propose that all FSANZ decision be asked to demonstrate how this goal was achieved in individual decision making processes.

- 3. That there should be no expansion of the FSANZ mandate into long-term public health issues around chronic, non-communicable disease, given this work would duplicate efforts by other agencies in the bureaucracy**

As the scoping paper notes, over time some stakeholders have sought to use the food regulatory system as a platform to pursue non-food safety related behavioural change, seeking new requirements relating to potential longer-term health concerns, dietary preferences, ethical matters and environmental impact. In particular, there appear to be two streams of applications to amend the Code – those related to genuine food 'safety' in the acute, post-consumption period, and those relating to longer term 'public health' concerns.

The scoping paper states that “consumers increasingly expect information to support a wide range of food preferences, including to make healthy choices about food”. While this may be an emerging consumer trend, it does not mean that the food regulatory system is the appropriate channel for this to occur. ABA notes that there are other agencies in the Commonwealth, state and territory and New Zealand system which are focused on addressing chronic non-communicable disease related to diet, and these agencies are better suited to make policy decisions given the multifactorial nature of non-communicable disease in both countries.

4. That Ministers represented on the Forum remain involved in all key aspects of the agency’s work, including agenda setting and as the final decision makers on substantive decisions which have a significant impact on industry

While we support in-principle the proposal that low-risk, highly-technical decisions could be delegated downwards, we strongly oppose the suggestion that appointed delegates such as departmental officials should be entitled to vote on Forum decisions. This would inevitably result in the widespread withdrawal from the process by ministers and significantly reduce the degree of accountability from the decision-making process. It would also be at odds with the recommendation of the recent COAG Review, discussed above. Additionally, involving the Forum in FSANZ’s annual workplan development is a logical step that would help to align the strategic interests of both entities.

Providing certainty to industry regarding the timeframes for assessing applications is critical to maintaining confidence in the system and the competitiveness of the Australian food industry. It appears there is concern that the requirement to adhere to statutory timeframes “can contribute to the prioritisation of applications over proposals”. We submit that this is an issue of resourcing for FSANZ and does not justify watering down a commitment to deal promptly with industry attempts to innovate and bring new products to the market.

Achieving greater consistency in the interpretation of standards by regulators and industry would be welcomed by businesses that operate in multiple jurisdictions. However, FSANZ should not go beyond its current legislated objectives by venturing into new functions such as conducting investigations, enforcement activities or providing ATO-style binding interpretive advice. Improved consistency of interpretation by both industry and regulators is better pursued through statements of intent and industry guidelines as suggested in the Scoping Paper. Industry guidelines would be useful in helping industry reduce the time and cost of complying with standards by reducing confusion and complexity.

5. That the FSANZ Board has a greater representation of members with food and beverage industry experience, and an earlier role in reviewing FSANZ’s work to ensure it aligns with the expectations of Ministers and other key stakeholders.

The core issue of FSANZ’s board composition is the underrepresentation of directors with industry experience, which is crucial because the board makes decisions which materially impact businesses affected. The FSANZ board should draw more than two of its twelve members from industry. The Australian Institute of Company Directors notes that all boards require a balance and diversity of experience and expertise to function effectively. The pursuit

of pregnancy warning labels on alcoholic beverages for more than 13 years despite repeated concerns from the Forum about industry costs indicates that FSANZ does not appreciate the financial and economic consequences of its decisions to the same extent that elected ministers do.

If there is a desire to reduce the number of directors on the FSANZ board to facilitate improved efficiency and decision-making dynamics, the best way to achieve this reduction would be to consolidate the six representatives of health organisations down to three positions on the board. Any decision on the number of directors should be made in conjunction with a commitment to increase the proportion of directors with industry experience.

Finally, the FSANZ Board should be involved in ensuring that the agenda of work reflects the decisions of the Forum, and be involved earlier in particularly contentious pieces of work which have significant cost implications for industry.