

Response ID ANON-GG99-CCN8-C

Submitted to **Public Consultation- Scoping Paper on the Review of the Food Standards Australia New Zealand Act 1991**

Submitted on 2020-11-16 11:06:36

About you

What is your name?

Name:

Jody Aiken

What is your email address?

Email:

jaiken@allergyfacts.org.au

Please tick this box if you would like your response to be confidential

Tick the box if you would like your response to this consultation to be confidential:

No

What sector do you represent?

Drop down list about which sector the respondent represents:

Public health

If 'other' sector selected, please specify in the text box:

What is your organisation?

Organisation:

Allergy & Anaphylaxis Australia

Which country are you responding from?

Drop down list about which country the respondent is based:

Australia

If you selected 'other' please specify country:

NSW

An opportunity to submit any other information about your organisation you would like to provide.

An opportunity to provide any other information about your organisation.:

Allergy & Anaphylaxis Australia (A&AA) is a registered charity, established in 1993 to support and assist those affected by allergy and anaphylaxis. A&AA is dedicated to assisting individuals, their caregivers and all in the community in the management of allergic conditions including food allergy. A&AA's aim is to enable individuals and their families to enjoy an optimal quality of life whilst minimising risk to their health and wellbeing.

A&AA strives to raise awareness of allergy in the community and provides evidence-based information, resources and services to support children and adults living with allergic disease including food allergy. A&AA has members across all states and territories of Australia. We have a Medical Advisory Board that consists of several clinical immunology/allergy specialists who are also members of Australia's peak medical body, ASCIA (the Australasian Society of Clinical Immunology and Allergy).

In 2014, a collaboration between A&AA and ASCIA, alongside many key stakeholder organisations, formed the foundations of the National Allergy Strategy (NAS) which was launched in 2015. The NAS continues to progress several initiatives including food allergy prevention, a youth project, free education for staff working in food service, a clinical care standard for anaphylaxis, a shared care model for allergic disease, an anaphylaxis register, minimum standards for school and childcare, a drug allergy project and more. See www.nationalallergystrategy.org.au

A&AA has responded to the discussion questions and the reform ideas predominately as they relate to FSANZ's approach to food allergens and persons with one or more food allergy. Some comments are of a more diverse nature and are relevant to all foods, food standards and FSANZ's existing and proposed roles generally, but nonetheless impact on food allergy issues.

As a general observation on the reform ideas, A&AA strongly advocates for an outcome which results in FSANZ being able to conduct its core work in the development and amendment of food standards in a more expeditious manner, rather than compromising this core work by adding additional functions and/or responsibilities without appropriate additional and substantial funding.

Upload file here. :

No file was uploaded

Discussion questions - Objectives

1a Is there still a case for regulating food?

Is there still a case for regulating food? :

Yes, especially in the case of clear and consistent full ingredient labelling and specifically food allergen declaration.

There is also a compelling case for uniform food regulations/standards across the States and Territories. For example, the NSW regulation "requirements for the display of nutritional information" for the declaration of energy content of foods in outlets such as supermarkets seems to undermine the agreed process of elaboration of food standards through FSANZ and ultimately the Forum, and seemingly contrary to the principles of the Food Regulation Agreement.

1b What market failure(s) should governments seek to address through regulation of food?

What market failure(s) should governments seek to address through regulation of food?:

In the case of food allergens, there is an on-going failure to address the declaration of allergens present through unintentional contamination. Precautionary Allergen Labelling (PAL) is discussed in more detail at section 6.

The government also needs to address the increasing number of imported food recalls due to undeclared allergens and ensure businesses registering to import food understand their responsibilities around importing safe food that meets the requirements. Similarly, food service businesses should only be registered in the first instance when they have shown they understand regulation around safe food service for people with food allergy. The increase in prevalence of food allergy also warrants mandatory training for all staff working in food service. The National Allergy Strategy has developed a series of free All About Allergens e-training courses for people working in the food service sector. Like the Responsible Service of Alcohol (RSA) certificate and first aid certificates, the All About Allergens basic course should be a pre-requisite for all applying to work in any food service role.

For people with food allergy the lack of requirement to list ingredients that constitute less than 5 percent of the makeup of a product is problematic. Although 90 percent of food allergic reactions are caused by the 10 allergens that need to be declared in Australia, there is a significant minority of the population who are allergic to more unusual ingredients such as spices and fruits which do not need to be declared on an ingredient list when they are present at less than 5% of the total proportion of ingredients. Eating any packaged food poses a significant danger to these individuals unless they have enquired with the manufacturer about ingredient content prior to consuming. Even if the consumer has enquired, the manufacturer is under no obligation to reveal the ingredients of their product unless it is one of the mandatory allergens that need to be declared.

This same issue occurs in food service, but more often as the food service business is not required to tell the customer what ingredients are in their foods, unless it is one of the ten declarable allergens. For example, a customer can ask "does this dish have any paprika in it, as I am allergic to paprika" and under the current regulations the food service business can tell the customer "I am not obliged to give you that information". The onus is on the consumer to know that they need to declare their allergy and ask "I have an allergy to paprika, can I please have this meal made without any paprika". Although this distinction seems small, it is a significant one for an allergic consumer who is not allowed to know if a dish contains their allergen (remembering that a consumer can be allergic to any food, not just the 10 declarable allergens) and must be very specific with their request for it to fall within the Food Act legislation.

2 Are there other significant focus areas that should be considered as part of the Review?

Are there other significant focus areas that should be considered as part of the Review?:

There needs to be a more effective mechanism for the uniform interpretation and enforcement of the food standards. It seems unlikely that this can be achieved through amendments to the FSANZ Act.

Training on food allergy for all food service staff needs to become mandatory. Each food service establishment that sells food should have a food safety supervisor that has undertaken food allergy training. The food safety officer understands the legislative requirements, oversees training of all staff and ensures the food service establishment has policies/protocols/process in place around staff training, ordering of food, storage of food, food preparations and serving of food. The food safety officer also understand process when something goes wrong and knows how to respond in an emergency, reporting of a reaction, undertake a root cause analysis and review of procedures and support of staff involved in the incident.

3 To what degree are the current legislated objectives an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree are the current legislated objectives an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

A&AA strongly supports the position at 3.1.3, viz "Other stakeholders have argued that FSANZ should focus on delivering its core business effectively before broadening its remit and note the risk of diluting the organisation's impact. Some stakeholders have voiced concerns that FSANZ's credibility and trusted status as a risk-and science-based standard-setting body could be compromised if it took on additional functions, such as regulatory roles.

An area where FSANZ could be taking a significantly stronger role in promoting consistency between jurisdictions is the mandatory reporting of anaphylaxis. People with food allergy live with the risk of anaphylaxis (severe allergic reaction). There has been a documented increase in death as a result of food allergy and most fatalities are the result of food eaten when away from home.

The Victoria reporting system shows a significant number of people have anaphylaxis after disclosing their food allergy when eating out. While we want to reduce death from anaphylaxis we also need to decrease the number of near misses, where people have anaphylaxis and recover. The trauma of anaphylaxis greatly impacts quality of life and puts further stress on the health system and the economy.

4a What would be the impact of implementing "Reform idea 1 – Define 'public health' and 'safety' in legislation to affirm the inclusion of long-term health and nutrition as a core objective", and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Positive

and provide details about the impacts (positive and negative) that this would have:

The review needs to take into account the Model Food Act and the variable State and Territory Food Acts versions of the Model Act, and the New Zealand Food Act. The Model Act defines what is meant by a safe food, and excludes the presence of food allergens. Nonetheless FSANZ and the Food Standards have a clear role in protecting the health of those consumers with food allergies. In the absence of such definitions in the FSANZ Act, 'Public Health' and 'Safety' need to unequivocally encompass food allergies by amendments to the Act.

While the majority of children with an allergy to milk, egg, soy and wheat outgrow their food allergy, those with an allergy to other common allergy causing foods such as peanut, tree nuts, sesame, fish, shellfish usually have their allergy for life. People that develop a food allergy in their adult life very rarely outgrow their allergy. Long-term health and nutrition objectives must therefore be included as a core objective. Those with less common food allergies face a more difficult path, with legislation not requiring packaged food to be labelled with that ingredient if it constitutes less than 5% of the total proportion of the food. With food service, more unusual allergens, consumers are not entitled to know if they are in the food they wish to consume.

Long term health and nutrition is influenced by more than the food Australians consume. Social interaction is a vital part of health, and eating is an essential part of most social interactions. For Australians living with food allergy, clear and consistent packaged food labelling is essential to be able to take part in social interactions involving food. Well trained and informed food service staff who are able to clearly communicate with the consumer what is in their food and adequately reduce the risk of cross contamination is essential. Without these criteria in place, Australians living with food allergy suffer compromised health outcomes due to the need to limit social interactions involving eating out (including when travelling) or risk having an allergic reaction that could potentially lead to death because of sub optimal food safety requirements.

4b What would be the impact of implementing "Reform idea 2 - Recognise trade as a core goal and reframe consumer choice as a factor to which FSANZ 'must have regard' ", and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

and provide details about the impacts (positive and negative) that this would have:

Given that 'trade' presumably encompasses both imports and exports, A&AA is mostly concerned with imports that fail to comply with Australian standards. This applies mainly to food imported from Asia and most particularly to 'parallel imports'. The Commonwealth has an enforcement responsibility at the point of import, and the States and Territories thereafter.

4c What would be the impact of implementing of implementing "Reform idea 3 – Establish criteria in the Act that the Forum must meet to request a review of a draft regulatory measure", and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

and provide details about the impacts (positive and negative) that this would have:

Whilst A&AA is ambivalent on this issue, the likely scenario may be that Forum should be entitled to request a review on whatever grounds in deems appropriate and for it to be progressed in a set time period, not over more than 3 years.

5 Are there other potential issues or solutions relating to legislated objectives?

Are there other potential issues or solutions relating to legislated objectives?:

The area of 'food education initiatives' is problematic in that such education is undertaken at Commonwealth, State/Territory and Local Government levels, as well as by non-government organisations such as A&AA. Whilst there are some mechanisms in place to coordinate education initiatives, there is a potential opportunity to address gaps and overlaps more comprehensively.

Discussion questions - Functions

6 To what degree are FSANZ's functions (as currently stated in the Act) an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree are FSANZ's functions (as currently stated in the Act) an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

A&AA has been voicing concerns around precautionary allergen labelling (PAL) of foods for over fifteen years. FSANZ silence on the issue has contributed to the ad hoc uptake of Voluntary Incidental Trace Allergen Labelling (VITAL) by manufacturers within Australia. The Allergen Bureau and the Australian Food and Grocery Council have tried to do what they can at a voluntary level but after 15 plus years of trying to get manufacturers to adopt the VITAL standard it is clear, from A&AA perspective, that VITAL will not be implemented unless it is legislated.

See <http://allergenbureau.net/vital/>

7a What would be the impact of implementing "Reform idea 4 - Amend the Act to better reflect the functions FSANZ currently delivers, particularly as they relate to supporting long-term health and nutrition" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Positive

and provide details about the impacts (positive and negative) that this would have:

Agreed, especially with respect to food allergens and the declaration of food allergens in all settings, including both packaged and unpackaged food, and particularly with respect to food service such as cafes and restaurants

7b What would be the impact of implementing "Reform idea 5 – Amend s 13 of the Act to reflect a broader range of functions that FSANZ could deliver now and in the future" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Otherwise

and provide details about the impacts (positive and negative) that this would have:

A&AA reiterates that FSANZ's current funding does not appear to allow FSANZ to attend to its core functions expeditiously. A broader range of functions should not be contemplated unless there is an unambiguous commitment to more funding to bring its core business up to speed, plus additional funding to cater for additional functions.

A&AA notes that the ToR refers to the enforcement of food standards – noting concerns around a lack of consistent implementation of standards across jurisdictions. That would seem to be the role of the ISFR (Implementation Subcommittee for Food Regulation). "Food regulation authorities in Australia and New Zealand work closely together to ensure food standards are implemented and enforced consistently" according to the website. If there is concern about the efficiency of the ISFR, which is a subcommittee of the Food Regulation Standing Committee (FRSC), the matter should be taken up with FRSC.

8 Are there other potential solutions relating to FSANZ's statutory functions?

Are there other potential solutions relating to FSANZ's statutory functions?:

In the absence of additional funding, a solution may be to reduce some of FSANZ's statutory functions to enable FSANZ to be able to achieve its core functions more expeditiously.

Discussion questions - Legislative processes and decision-making arrangements

9 To what degree are the current processes for strategically reviewing standards an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree are the current processes for strategically reviewing standards an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

There are two significant issues for A&AA. First the glacially slow progress made by FSANZ over the last 20 years in reviewing and amending standards relating to food allergens despite requests from the Forum and its predecessors.

Second, the two-tiered system whereby paid applications take precedence over other applications for amendments to Food Standards. Organisations such as A&AA do not have the resources to prepare or fund applications to FSANZ, yet the issues they wish be addressed may have more significant health implications than paid-for applications by the food industry.

10a What would be the impact of implementing "Reform idea 6 – Remove exemption of food standards from sunseting arrangements" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Otherwise

and provide details about the impacts (positive and negative) that this would have:

A&AA is not opposed to the removal of such an exemption, but would be opposed if it required a review of the entire food standards code simultaneously. Participating in such a review would be beyond the capacity of organisations such as A&AA, where its input would be considered vital on matters relating, even on the periphery, to food allergens.

10b What would be the impact of implementing "Reform idea 7 – Resource FSANZ to undertake regular, more holistic reviews of food standards" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Positive

and provide details about the impacts (positive and negative) that this would have:

A&AA considers this option preferable to reform idea 6, again subject to a process of a rolling review encompassing a limited and manageable range of food standards.

11 Are there other potential solutions relating to the timing of reviews of food standards?

Are there other potential solutions relating to the timing of reviews of food standards?:

The exemption given to the Food Standards Code from sunseting was presumably based on sound reasoning, some or all aspects of which may still apply. A&AA is aware that a review of the entire Code would require substantial resources not only for FSANZ, but also for other Commonwealth bodies (eg drafting issues), relevant State and Territory departments, the food industry and non-government organisations such as A&AA.

A potential solution is for individual standards, or groups of standards, be identified as a priority for review with input from of ISFR (Implementation Subcommittee for Food Regulation) and AFGC (Australian Food and Grocery Council) and other relevant bodies as appropriate.

12 To what degree are the current statutory application and proposal processes an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree are the current statutory application and proposal processes an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

The principle issue for A&AA and probably for similar organisations is the two-tiered system of paid applications taking precedence over other applications for amendments to Food Standards. Organisations such as A&AA do not have the resources to prepare or fund applications to FSANZ, yet the issues they wish be addressed may have more significant health implications than paid-for applications by the food industry.

The consequence is that A&AA does not make applications for amendments to the food standards code, but relies instead of making submissions to FSANZ on applications or proposals to amend the food standards code. Such submissions may not be taken into consideration if considered by FSANZ to be beyond the scope of the application or proposal. [see unintentional contamination]

13a What would be the impact of implementing "Reform idea 8 – Reframe legislation to support more agile, risk-based processes" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Positive

and provide details about the impacts (positive and negative) that this would have:

A&AA would support more agile, risk based processes. As noted above, progress on allergen labelling has not been consistent with the risks to the expanding allergy community

13b What would be the impact of implementing "Reform idea 9 – Redefine the decision-making arrangements to support timelier and more efficient sign-off of regulatory measures" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Positive

and provide details about the impacts (positive and negative) that this would have:

A&AA has not had an issue with the sign-off process

14 Are there other potential solutions relating to streamlining current legislative process to develop or vary regulatory measures?

Are there other potential solutions relating to streamlining current legislative process to develop or vary regulatory measures?:

A&AA would be concerned where 'streamlining' involved any of the current checks and balances built into the current system. The need to streamline should not be a substitute for providing FSANZ with adequate resources to perform their core functions in a timely manner.

15 To what degree is the current approach to using only applications and proposals to develop or vary food standards an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree is the current approach to using only applications and proposals to develop or vary food standards an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

A&AA has already discussed the issue of applications to vary the code. See above at sections 9 to 12.

For organisations such as A&AA, making an application to FSANZ is not practical, and the mechanism for instigating a FSANZ proposal is unclear.

With respect to proposals, A&AA has found the process to be somewhat opaque and would welcome a review of how FSANZ determines the need for a proposal to vary an existing food standard, or establish a new food standard.

16a What would be the impact of implementing "Reform idea 10 – Provide for FSANZ to adopt or accept risk assessments from overseas jurisdictions" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

A&AA understands that this mirrors existing practice e.g. FSANZ Application A1175 – Rapeseed protein isolate as a novel food

However, A&AA considers this to be problematic. Overseas jurisdictions do not always reflect the allergen situation in Australia. Australia has different top allergens and overall diet to other countries, so overseas risk assessments will not take into account this different characteristic of the Australian population.

16b What would be the impact of implementing "Reform idea 11 – Enable FSANZ to adopt international standards" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

The only truly international standards are those recommended by the Codex Alimentarius Commission (CAC) through WHO/FAO, which are already considered by FSANZ through the proposal and application processes. A&AA sees no need or advantage to vary that procedure. With respect to food allergen standards, Australia has consistently been ahead of CAC, and the adoption of CAC standards would have been, in that case, counterproductive.

Australia must not wait indefinitely for international standards before setting its own. In particular Australia needs to move ahead with the implementation of standards on uniform precautionary allergen labelling (PAL), see also section 6.

It is however important that Australia align with international standards where possible so that there is consistency and clarity with regards to food allergen labelling of imported and locally manufactured foods. International standards should only be considered if they strengthen Australia's regulations around allergen labelling, making it easier for Australians living with allergy to safely eat packaged foods.

FSANZ must also consider and take into account World Trade Organisation issues.

16c What would be the impact of implementing "Reform idea 12 – Create industry-led pathways to expedite applications and bring new products to market" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

The fundamental issue here relates to the capacity of FSANZ to deal with applications and proposals in a prompt and efficient manner. A pathway to expedite industry applications appears to have the potential for such matters to divert FSANZ resources away from issues relating to public health or provision of information [such as food allergens] to consumers.

Industry already has a pathway to expedite applications, by make the requisite payment to FSANZ. If that is considered insufficient, then perhaps the payment should be increased to facilitate additional resources so that applications or proposals which may impact public health are not compromised.

17 Are there other potential solutions relating to additional pathways to develop or vary food regulatory measures?

Are there other potential solutions relating to additional pathways to develop or vary food regulatory measures?:

A&AA notes reference to industry codes of practice. These have included in the past a voluntary code for nutrition claims which was largely ignored by the same industry bodies which prepared the code. As noted, industry codes which are oversighted by the ACCC are anything but voluntary and might as well be legislated.

Discussion questions - Partnerships

18 To what degree is the current alignment between policy development and standards setting an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree is the current alignment between policy development and standards setting an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

For matters relevant to A&AA, the fundamental issue has been that although the Forum, or its predecessors, requested FSANZ to expedite action with respect to food allergens, the FSANZ progress has, for a range of reasons no doubt, been variable.

19a What would be the impact of implementing "Reform idea 13 – Facilitate joint agenda setting between FSANZ and the Forum" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Otherwise

and provide details about the impacts (positive and negative) that this would have:

A&AA understands that the CEO of FSANZ attends Forum meetings. It is not clear why that should not be sufficient liaison.

Also, as the Forum agenda is largely dictated by the Food Regulation Standing Committee (FRSC), the initial agenda setting discussion would need to involve FRSC, thus adding another layer of complication.

19b What would be the impact of implementing "Reform idea 14 – Amend statutory timeframes to support more strategic prioritisation of work" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

A&AA believes this should be approached with some reservation. There are issues here with FSANZ resources, and with the boundaries of 'strategic prioritisation'.

20 Are there other potential solutions relating to agreeing system priorities between FSANZ and the Forum?

Are there other potential solutions relating to agreeing system priorities between FSANZ and the Forum?:

'System priorities' was considered under Reform idea 5, above, section 3.2.2 of the Review and discussion questions 6, 7 and 8.

21 To what degree does inconsistent interpretation of food standards present an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree does inconsistent interpretation of food standards present an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

For A&AA the issue has been less about interpretation of food standards and more about inconsistent prioritisation and enforcement. Inconsistent interpretation, prioritisation and enforcement of food standard means inconsistent food allergy management in both packaged and non-packaged food industries putting consumers at risk of anaphylaxis and therefore, death.

22a What would be the impact of implementing "Reform idea 15 – Enhance FSANZ's role in providing guidance about food standards within its current statutory remit" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Positive

and provide details about the impacts (positive and negative) that this would have:

A&AA agrees that FSANZ's role in providing guidance could be enhanced. This should however be limited to providing advice on the structure and layout of the standards only. FSANZ should not engage in interpretive advice or enforcement. See again Separation of Powers.

Without major changes to a raft of legislation above and beyond the FSANZ Act, FSANZ should not and cannot usurp the administration and enforcement role of the Australian States, Territories, or New Zealand, or the role of the judiciary in interpreting the standards.

22b What would be the impact of implementing "Reform idea 16 – Provide for FSANZ to give binding interpretive advice on food standards" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

See response to Reform idea 15

22c What would be the impact of implementing "Reform idea 17 – Enhance FSANZ's regulatory role by providing limited enforcement powers" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

See response to Reform idea 15. See also 'Separation of Powers', viz the doctrine of the separation of powers divides the institutions of government into three branches: legislative, executive and judicial: the legislature makes the laws; the executive puts the laws into operation; and the judiciary interprets the laws.

Nonetheless the referral of powers with respect to food regulation from the States and Territories back to a Commonwealth agency other than FSANZ has substantial merit with respect to uniform interpretation, administration and enforcement.

23 Are there other potential issues or solutions relating to interpretation of food standards?

Are there other potential issues or solutions relating to interpretation of food standards?:

It seems unlikely that an amendment to the FSANZ Act purporting to give 'binding interpretive advice on food standards' would be considered binding in State and Territories where the judiciary have to consider the food standards in relation to their own Food Acts, policies and precedents.

24a To what degree is the food-medicine interface an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree is the food-medicine interface an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

Whilst there has been inconsistency between allergen declarations on foods and those on TGA products, some of these have been or are being addressed by amendments to current TGA requirements. A&AA expects this process to continue. For example, the TGA has yet to incorporate wheat and lupin as declarable allergens, and gluten is to be declared only when present above 20 mg/kg

A&AA expects medications that contain food allergens that must be declared will be recalled accordingly if a food or a food allergen in a medication (including as an excipient) is not labelled clearly. Our hope is that the TGA will include any changes made as a result of Plain English Allergen Labelling (PEAL) see FSANZ proposal P1044 and adopt them for medicines as well.

24b To what degree is the oversight of health claims an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree is the oversight of health claims an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

See 24a

25a What would be the impact of implementing "Reform idea 18 – Focus efforts on improving the food-medicine interface through regulatory practice" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

and provide details about the impacts (positive and negative) that this would have:

It is not clear what FSANZ means by the food-medicine interface. A&AA believes that with respect to allergen declaration the current process appears to be effective. There are certain foods such as some specialised infant formulas for babies with food allergies which are not viewed as a medicine, however are seen as essential for supporting life for some infants. A&AA would like to see processes in place for foods such as these when they are in shortage, such as the TGA has for medicine shortages.

A&AA is aware of a product which is aiming to bridge the food-medicine interface with the aim of allergy prevention in infants. These kinds of products are a concern with little evidence for efficacy and serious concerns for longer term impact on infants. This product is not a whole food, but very small extracts of food proteins (measure in milligrams) which don't fit under the definition of medicine, but also in A&AA's opinion are not foods, but supplements.

25b What would be the impact of implementing "Reform idea 19 – Broaden the role of FSANZ to assess general level health claims" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

Any health claims related to food already on sale that impact people with food allergy need to be carefully assessed by the regulator, not by the legislator. A&AA does not support any broadening of the role of FSANZ to assess general level health claims in the market place, and reiterates that it is inappropriate for FSANZ to have an enforcement role.

A&AA is concerned about potential health claims around allergy prevention in infants. There are new products on the market which in the USA have health claims regarding allergy prevention without substantive evidence of efficacy and some potential for harm. However, A&AA accepts that it is the role of the food regulators in the States and Territories to enforce the health claims standards with respect to such products once in the market.

25c What would be the impact of implementing "Reform idea 20 – Align definitions and powers in legislation between therapeutic goods and foods" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Positive

and provide details about the impacts (positive and negative) that this would have:

A&AA strongly supports the alignment of definitions and powers with respect to food allergens. The consequences of a person consuming a product containing a food or food component to which they are allergic is no less dangerous when the product is a medication.

26 Are there other potential solutions relating to improving the food-medicine interface?

Are there other potential solutions relating to improving the food-medicine interface?:

A&AA feels that all common food allergens that must be declared in foods must also be declared on medicines. Where there are exemptions to allergens being labelled (e.g. refined soy oil) these should also be exempted in medicines because evidence indicates very little/no allergenic protein.

Discussion questions - Operations

27 To what degree are FSANZ's governance arrangements an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree are FSANZ's governance arrangements an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

A&AA is sometimes frustrated by the need to agitate for stakeholder meetings and/or working group formation when major issues arise. For example, the contaminated cashew pesto issue in late 2019/early 2020 required substantial urging from A&AA before the relevant parties, including FSANZ in its recall capacity, got together to properly address what could have become a major public health issue without the contaminated products being withdrawn promptly from the market.

Stakeholder groups such as A&AA have for many years provided FSANZ with expert input on issues relevant to standards development and review, other than through the call for comment process. The adverse consequence for A&AA is that scarce resources are utilised without compensation.

28a What would be the impact of implementing "Reform idea 21 – Streamline Board appointments and nominations" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

and provide details about the impacts (positive and negative) that this would have:

No comment

28b What would be the impact of implementing "Reform idea 22 – Establish minimum term length for Board members" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

and provide details about the impacts (positive and negative) that this would have:

No comment

28c What would be the impact of implementing "Reform idea 23 – Reduce Board size" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

and provide details about the impacts (positive and negative) that this would have:

No comment

29 Are there other potential solutions relating to FSANZ's governance arrangements?

Are there other potential solutions relating to FSANZ's governance arrangements?:

No comment

30 To what degree does FSANZ's approach to setting its own workplan and resourcing its work present an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?

To what degree does FSANZ's approach to setting its own workplan and resourcing its work present an issue for the system? What are the types of problems that different stakeholder groups face as a consequence?:

A&AA believes that the current approach to setting and publishing its workplan provides a useful tool for interested parties to identify the status of relevant applications and proposals. Where dissatisfied, interested parties can make representations through whichever channel they prefer.

31a What would be the impact of implementing "Reform idea 24 – Expand scope of applications for which FSANZ can recover costs" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

A&AA reiterates its concern that many charitable organisations would be unable to meet the costs of an application to amend the Code. A&AA would oppose any move to impede the ability of such organisations to urge change to the food standards to protect public health.

31b What would be the impact of implementing "Reform idea 25 – Provide for limited expansion of scope of activities for which FSANZ can recover costs" and how could the outcome best be achieved?

Please advise the net impact of implementing the reform idea above:

Negative

and provide details about the impacts (positive and negative) that this would have:

See response to Reform idea 24.

32 Are there other potential solutions relating to FSANZ's operations?

Are there other potential solutions relating to FSANZ's operations?:

No comment

Discussion questions - Key reflections

33 What are the top 2-3 most pressing issues to resolve through change to the Act and associated operations and responsibilities of FSANZ?

What are the top 2-3 most pressing issues to resolve through change to the Act and associated operations and responsibilities of FSANZ?:

- i. more expeditious processing of applications and proposals
- ii. stronger focus on issues of public health
- iii. more accountability to the Forum

34 Are there key issues or challenges related to FSANZ and the Act that are not represented in this scoping paper?

Are there key issues or challenges related to FSANZ and the Act that are not represented in this scoping paper?:

No comment

35 What other reform ideas should be considered to address the issues identified in the paper, assuming no resource constraints?

What other reform ideas should be considered to address the issues identified in the paper, assuming no resource constraints?:

Commonwealth (separate to FSANZ) takeover of food legislation and enforcement from the States and Territories