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Australia New Zealand Ministerial Forum on Food Regulation

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Submission on the scoping paper on the Review of the Food Standards Australia New Zealand Act 1991

Thank you for the opportunity to submit on the scoping paper out for consultation entitled “Review of the Food Standards Australia New Zealand Act 1991.”

The following submission represents the views of Auckland Regional Public Health Service (ARPHS) and does not necessarily reflect the views of the three district health boards it serves. Please refer to Appendix 1 for more information on ARPHS.

Yours sincerely



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Introduction

Thank you for the opportunity for the Auckland Regional Public Health Service (ARPHS) to submit on the scoping paper on the Review of the Food Standards Australia New Zealand Act 1991.

The submission draws from ARPHS 'experience and knowledge of public health nutrition, involvement in the Food Act review and submitting food marketing complaints to the Advertising Standards Authority (ASA) about unhealthy food marketing to children.

ARPHS responses to the consultation questions

In the following section ARPHS will respond to selected consultation questions.

1. Background and context to the Review

1. Is there still a compelling case for regulating food? What market failure(s) should governments seek to address through the regulation of food?

1. Dietary risks are the leading cause of major health loss in New Zealand. This is largely attributable to the role of dietary risks in the development of non-communicable diseases like cancers, cardiovascular disease and diabetes.¹ ARPHS therefore is of the view that there is still a compelling case for regulating food.
2. As set out in the scoping paper, governments are well placed to regulate food as they can take a longer-term perspective on health and wellbeing and consider how regulation of food can promote the wellbeing of the population and promote broader social objectives. As such the food regulation system should support population access to a diverse range of affordable, safe, nutritious, and sustainably produced food and beverages.
3. Regulation should address the failure of the current system to protect the population from unhealthy food marketing which has led to the overconsumption of food and beverages classified as discretionary. Independent evaluations of effectiveness of industry-led self-regulation indicate that the impact of this approach on reducing the exposure and power of marketing to children is limited.² Numerous complaints made to the Advertising Standards Authority have shown that the Advertising Standards Codes do not take into account the full range of marketing techniques that children are commonly exposed to.³
4. This highlights the need for strongly regulating food. The regulation should not solely focus on ensuring a safe food supply, but should also ensure that the food supply promotes population health and a healthy diet.

¹ Ministry of Health. (2015). Eating and Activity Guidelines for New Zealand Adults. Wellington: Ministry of Health.

² León-Flández, K.; Rico-Gómez, A.; Moya-Geromin, M.; Romero-Fernández, M.; Bosqued-Estefania, M.J.; Damián, J.; López-Jurado, L.; Royo-Bordonada, M. Evaluation of Compliance with the Spanish Code of Self-Regulation of Food and Drinks Advertising Directed at Children under the Age of 12 Years in Spain, 2012. *Public Health* 2017, 150, 121–129.

³ Sing F, Mackay S, Culpin, A, Hughes S and Swinburn B (2020) Food Advertising to Children in New Zealand: A Critical Review of the Performance of a Self-Regulatory Complaints System Using a Public Health Law Framework *Nutrients* 2020, 12(5), 1278; <https://doi.org/10.3390/nu12051278><https://doi.org/10.3390/nu12051278>

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

5. The burden of disease in New Zealand disproportionately affects Māori and Pacific Peoples and ARPHS therefore believes that equity should be considered as a focus area as part of the Review.⁴
6. Since the Act came into force in 1991, climate change has become of growing concern, with food production and distribution being significant contributors to greenhouse gas emissions.⁵ At present this is not mentioned as a focus area in the Review. ARPHS proposes for this topic to be included as a specific focus area.
7. ARPHS is also concerned about the current dominance of the food industry in FSANZ work plan. ARPHS would like to point out the importance of the opportunity for an equally strong voice for consumers and public health experts. Currently the work plan seems to be mostly dominated by the industry voice. The structure of the organisation needs to be equally accessible by all.

2. Objectives

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?

8. From ARPHS's perspective, the current objectives do not sufficiently prioritise long term public health concerns nor do they include a clear goal to promote a healthy food supply. This is particularly an issue for ARPHS in our work trying to ensure the children are protected from unhealthy food marketing - the Advertising Standards Authority (ASA) has referenced the Act in their responses to ARPHS's complaints.
9. The purpose of the Advertising Standards Authority Codes is to ensure only responsible advertisements are displayed. The Codes state that advertisements must not undermine health and wellbeing and must protect children from harm. However, there are insufficient provisions in the Codes for this purpose to be upheld. There are particular concerns around advertisements encouraging excessive consumption. For example, it has been deemed reasonable for advertisements to show 40% of a person's recommended daily intake to be consumed in one meal.
10. To mitigate this, ARPHS suggests that Objective 1(c) includes exploitative conduct to enable the restriction of unhealthy food and beverage marketing to children. ARPHS would like to see an additional objective under 2(c) to require the Authority to have regard to equity.

4 Ministry of Health. (2019). Obesity statistics. Retrieved from <https://www.health.govt.nz/nz-health-statistics/health-statistics-and-data-sets/obesity-statistics>

5 Ministry for the Environment. (2020). New Zealand's Greenhouse Gas Inventory. Retrieved from <https://www.mfe.govt.nz/climate-change/state-of-our-atmosphere-and-climate/new-zealands-greenhouse-gas-inventory>

4. What would be the impact (positive, negative or otherwise) of implementing each of the reform ideas below? How could the outcome specified for each idea best be achieved?

Reform idea 1 – Define ‘public health’ and ‘safety’ in legislation to affirm the inclusion of long-term health and nutrition as a core objective

11. ARPHS generally supports Reform idea 1. It is anticipated that clear definitions and the inclusion of the additional core objectives will strengthen the legislation. A broad definition of public health is required to ensure a focus on the long term implications of the food supply on health. This definition should extend to restrictions on the marketing of unhealthy and beverages to children, not just short-term food safety issues. As well as the broader environmental factors that affect our long-term health.

Reform idea 2 – Recognise trade as a core goal and reframe consumer choice as a factor to which FSANZ ‘must have regard’

12. ARPHS strongly opposes Reform idea 2. This reform idea puts trade interests above consumer choice and safety. Consumer choice has been a key objective in several recent changes to the food regulation for instance the Pregnancy Warning Labels on Alcoholic beverages. It should therefore remain in the Act and not be reduced in importance to a matter that legislators only ‘must have regard to’.
13. Trade interests could be in conflict with what would be desirable from a population health perspective. The main purpose of the Act should be the protection of population health rather than advancing commercial interests. Consumer choice, public health and equity should therefore form the basis of the Act. This is the case in the current Act where Section 3 (d) for instance supports the protection of public health and safety as the overarching principles.

Reform idea 3 – Establish criteria in the Act that the Forum must meet to request a review of a draft regulatory measure

14. ARPHS generally supports reform idea 3. At present the Forum must give a reason as set out in the Food Regulation Agreement, the request a review of a draft regulatory measure. These reasons however extend beyond the objectives FSANZ has when setting food standards. ARPHS recommends that the Forum can request review of a draft regulatory measure if it considers that FSANZ did not adequately consider one of its objectives, or the factors to which it must have regard.
15. The Act should also include clear procedural steps that must be met, including that the Forum should explain how it considers FSANZ has failed to properly consider its objectives, and the Forum itself should be required to consider all of those same objectives and factors in making the decision to request a review.

5. Are there other potential solutions to problems relating to legislated objectives?

16. This review provides an opportunity to include the latest evidence and research on the environmental impact and sustainability of the food supply and the potential for that to be an additional factor which FSANZ ‘must have regard to’.

3. 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?

17. At present, the statutory functions of FSANZ do not allow for taking a proactive role with regards to investigating and monitoring the food supply and the impact of its standards in the market on consumers. This over time has led to issues specifically around:

- Marketing and front of package labelling
- Excessive amounts of nutrients of concern permitted in products
- The absence of a standardised single-serving for beverages.

Marketing and front of package labelling

18. There is currently a disconnect between the marketing strategies used, the claims permitted on Front of Packaging Labelling (FOPL) and the Nutrition Information Panel (NIP). The NIP is almost always located on the side or back of packaging, yet it contains the actual information about what ingredients a product contains. Consumers can therefore be misled by marketing strategies and (health and nutrition) claims more prominently placed on the front of packaging. For example:

- The statement “no artificial sweeteners” implies that the product has not been sweetened however it can still contain sugar as an ingredient
- With regards to the use of the term “natural”, there is no actual food standard supporting this claim. However the use of this term implies that the product is natural and therefore healthy. The product however may not actually be a better choice
- “Free from” claims of gluten or dairy free are great for those who have intolerances to wheat or dairy. There are consumer trends which claim that these products are being “healthier” but it does not always mean the products are low in sugar and fat or high in fibre, nutrients which have stronger links to long-term health
- The term “low” implies “healthier” but products low in fat, could still be high in sugar or sodium.⁶

Excessive amounts of nutrients of concern permitted in products

19. ARPHS has made complaints to the Advertising Standards Authority (ASA) of New Zealand about products and meals that are undermining the health and wellbeing of individuals by normalising excessive consumption. However, these complaints have to date not been upheld as there is currently no standard for how much energy, fat, salt or sodium a single serving can contain.

20. Setting standards for acceptable amounts for nutrients of concern such as energy, fat, salt and sodium in servings and meals would greatly help to protect public health, which under Reform idea 1 would be one of FSANZ main objectives.

⁶ Consumer NZ. (2018). 10 food claims to question. Retrieved from <https://www.consumer.org.nz/articles/10-food-claims-to-question#:~:text=Tempted%20by%20a%20%E2%80%9C%20low%20fat,high%20in%20sugar%20or%20sodium.>

The absence of a standardised single-serving for beverages

21. The beverage category is particularly problematic as there is no a standard single serving size. The serving size can vary in terms of volume (200 to 750mL) and sugar content (21.2g to 636.6g) across manufacturers and within brands. It appears to be industry practise that when volumes reach one Litre or greater, a standard serving of 250mL is described on the NIP as 'designed to share'.
22. ARPHS strongly believes that a standardised single-serving size of 250mL should be introduced for beverages manufactured and sold in New Zealand to align with the recommended serving for healthy beverages such as plain milk and water in dietary guidelines.
23. In conclusion, ARPHS would support FSANZ taking a more proactive role in monitoring the food supply, assessing how standards are applied in practice, assessing how the standards are applied in practice and how they influence consumer choice and population diets and developing appropriate proposals for amendment to support public health.

7. What would be the impact (positive, negative or otherwise) of implementing each of the reform ideas below? How could the outcome specified for each reform idea best be achieved?

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

24. As highlighted previously, there are a number of existing issues including packaging and food labelling, no standardised single-serve beverage size and no standards for the amounts of nutrients of concern permitted in products. ARPHS therefore supports Reform idea 4 to amend the Act to include provisions to support long-term health and nutrition. FSANZ could achieve the envisaged outcomes under this reform idea by:
 - Conducting research in collaboration with stakeholders (for instance the Ministry of Health) to address evidence gaps. There is little recent New Zealand nutrition data as the last national surveys were carried out in 2008/09 for adults and 2002 for children. FSANZ could play a role in addressing these data gaps
 - Setting standards for nutrients of concern to encourage reformulation
 - Strengthening packaging and labelling regulations to be more supportive of long-term health and nutrition.
25. It should be noted though that FSANZ should be appropriately resourced to be able to take up any additional functions identified in this review.

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.

26. ARPHS is generally supportive of reform idea 5. As highlighted in the scoping paper, similar regulatory bodies like FSANZ in other jurisdictions have a broader range of functions. ARPHS does see however a potential conflict of interest with FSANZ leading public education campaigns given its work with the food industry. ARPHS therefore is of the view that those broader education campaigns are best led by health agencies and public health organisations.

3. Legislative processes and decision-making arrangements

10. What would be the impact (positive, negative or otherwise) of implementing each of the reform ideas below? How could the outcome specified for each reform idea best be achieved?

Reform idea 7 – Resource FSANZ to undertake regular, more holistic reviews of food standards

27. ARPHS is generally supportive of FSANZ undertaking regular, more holistic reviews of food standards. The Food Standards Code in particular requires regular review to ensure it is up to date with the most recent scientific evidence, dietary guidelines and international best practice.

28. In order to be able to take a proactive approach, FSANZ should be given sufficient resourcing to undertake regular reviews to ensure the standards are fit for purpose and promote a food supply that supports healthy diets at a population level. It is important to ensure that these reviews are independent and that public health is prioritised above the profits of the (processed) food industry.

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?

29. The current processes for applications and proposals are industry focused and designed to enable the food industry to seek modifications to standards that are of interest. This has resulted in a process that is not sufficiently accessible to public health organisations to seek review of a standard. At present, FSANZ does consider a proposal or application that is likely to have a public health benefit, because the process prioritises paid industry applications above policy development work. This results in significant delays for proposals and applications that have public health benefits. The current Review provides for an opportunity to change that process.

13. What would be the impact (positive, negative or otherwise) of implementing each of the reform ideas below? How could the outcome specified for each reform idea best be achieved?

Reform idea 8 – Reframe legislation to support more agile, risk-based processes

30. ARPHS generally supports the idea of reframing legislation to support more agile, risk based processes which is in line with how similar agencies like FSANZ operate in other jurisdictions. ARPHS however is sceptical with regards to the use of voluntary codes of practice. ARPHS's experience in marketing has shown that voluntary codes of practice are unlikely to meet the objective of promoting and protecting public health.

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?

31. From ARPHS's perspective the main issue with the current system is that it is difficult for public health stakeholders to get public health issues into the FSANZ work plan. The process currently requires the need to provide evidence on the long-term health impact which requires modelling.

16. What would be the impact (positive, negative or otherwise) of implementing each of the reform ideas below? How could the outcome specified for each reform idea best be achieved?

Reform idea 10 – Provide for FSANZ to adopt or accept risk assessments from overseas jurisdictions

32. ARPHS agrees that there should be a mechanism to consider risk assessments from overseas jurisdictions to prevent duplication; however it is important that these risk assessments are applicable to the New Zealand and Australian contexts. There needs to be an avenue for stakeholder consultation if adoption of risk assessments from other jurisdictions is proposed. Any impact on priority groups in New Zealand and Australia should also be considered when assessing the relevance of risk assessments from overseas jurisdictions.

Reform idea 11 – Enable FSANZ to adopt international standards

33. In line with the previous reform idea, ARPHS would support a mechanism to adopt international standards as long as they can be applied to the New Zealand and Australian contexts.

Reform idea 12 – Create industry-led pathways to expedite applications and bring new products to market

34. ARPHS strongly opposes the creation of any industry led pathways to enable industry to bring new products to market without FSANZ oversight. In particular, ARPHS does not support industry self-certification or the ability to list particular products without FSANZ oversight. It is of fundamental importance that public health is the primary consideration in any decision-making around bringing new products to the market, not the ability of the processed food industry to increase profits by bringing new products to market.

4. 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?

35. Currently, there is no strong alignment between nutrition policy and food standards, which both involve government agencies. This makes it difficult to influence industry to manufacture products that support long-term health as there are limited standards to hold them accountable to.

36. In 2018, the Food Industry Taskforce released report outlining 51 recommended actions across five main areas that could be taken to address obesity, including⁷:

- Food and Beverage Formulation and Innovation
- Employee Health and Wellness Programmes
- Community and Education Initiatives
- Food and Beverage Marketing
- Labelling and the rollout of Health Star Ratings.

⁷ Food Industry Taskforce. (2018). Food Industry Taskforce on Addressing Factors Contributing to Obesity – Final Report To Ministers of Health and Food Safety.

37. There has been little action to date. FSANZ could play a role in supporting long-term health and nutrition by setting standards in these areas and leveraging industry partnerships to take action. Current pledges from industry are voluntary and have not been shown to create meaningful improvements in the food supply at the pace needed to ensure health and sustainability.

19. What would be the impact (positive, negative or otherwise) of implementing each of the reform ideas below? How could the outcome specified for each reform idea best be achieved?

Reform idea 14 – Amend statutory timeframes to support more strategic prioritisation of work

38. ARPHS supports reform idea 14. ARPHS recognises the reality that some applications will take longer to assess than others. FSANZ should therefore have the ability to reprioritise work. ARPHS would however welcome a move to prioritising work related to improving long-term health outcomes.

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?

39. The food standards need to be easily understood by consumers as well as industry. Consumers should be able to understand if a product they are buying meets the food standard, and what to do if it does not meet the standards. Moreover, consumers should be able to work out if the product meets the standard for Healthy products (standard 1.2.7) using the nutrition panel only.

22. What would be the impact (positive, negative or otherwise) of implementing each of the reform ideas below? How could the outcome specified for each reform idea best be achieved?

Reform idea 15 – Enhance FSANZ’s role in providing guidance about food standards within its current statutory remit

40. ARPHS supports enhancing FSANZ’s role in providing guidance about food standards. ARPHS does however strongly oppose the suggestion in the scoping paper that this process could be led by the industry. FSANZ should take on this role as an independent body and base its guidance on the best available evidence.

Reform idea 16 – Provide for FSANZ to give binding interpretive advice on food standards

41. ARPHS supports this reform idea as long as the advice is developed by FSANZ without industry involvement. Binding interpretive advice would provide clarity and remove differing interpretations of the food standards. This would also enable stakeholders to access compliance independently and efficiently.

6. 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?

42. From a public health perspective, the most pressing issues for FSANZ to address are:

1. Impose discrete targets through:
 - Mandating maximums of nutrients that can be in place for a food to be considered healthy or unhealthy.
 - Mandating serving size standardisation
 - Make the NIR based on the the actual product, not an ‘as served’ version

2. Ensure the food system includes long term health, equity and environmental sustainability.

Conclusion

43. Thank you for considering ARPHS' submission on the scoping paper on the Review of the Food Standards Australia New Zealand Act 1991.

Appendix 1: Auckland Regional Public Health Service

Auckland Regional Public Health Service (ARPHS) provides public health services for the three district health boards (DHBs) in the Auckland region (Counties Manukau Health, Auckland and Waitematā District Health Boards).

Auckland Regional Public Health Service has a statutory obligation under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities in the Auckland region. The Medical Officer of Health has an enforcement and regulatory role under the Health Act 1956 and other legislative designations to protect the health of the community.

ARPHS 'primary role is to improve population health. It actively seeks to influence any initiatives or proposals that may affect population health in the Auckland region to maximise their positive impact and minimise possible negative effects.

The Auckland region faces a number of public health challenges through changing demographics, increasingly diverse communities, increasing incidence of lifestyle-related health conditions such as obesity and type 2 diabetes, infrastructure requirements, the balancing of transport needs, and the reconciliation of urban design and urban intensification issues.