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THE NEW ZEALAND BEVERAGE COUNCIL SUBMISSION ON THE REVIEW OF THE FOOD STANDARDS ACT 1991: SCOPING PAPER FOR PUBLIC CONSULTATION

INTRODUCTION

1. The New Zealand Beverage Council (NZBC) is the industry association for New Zealand's non-alcoholic beverage sector. Our members are the brand owners, manufacturers, bottlers and suppliers of New Zealand's juice, carbonated drinks, flavoured-dairy and bottled water brands. Our membership is made up of a wide range of companies operating in New Zealand, from some of the largest multinational brands in the world through to some of the country's smallest boutique producers, as well as those companies that provide a wide range of goods and services to beverage manufacturers. In total, our membership represents over 75 per cent of the non-alcoholic ready-to-drink beverages sold at retail level in New Zealand.
2. The NZBC welcomes the opportunity to make comments on the *Review of the Food Standards Act 1991: Scoping paper for public consultation* (the Scoping Paper).
3. The NZBC strongly believes that FSANZ and the broader food regulatory system is a crucial component of the Australia-New Zealand relationship. The NZBC acknowledges that there has not been significant change in the food regulatory system for many years. The food environment has changed substantially over the last twenty years, both domestically and internationally. Therefore, the current review of the food standards will be critical to the future and continued success of food and beverage industries.
4. The New Zealand Beverage Council wishes to make comments on several of the questions relevant to our industry that are presented in the Scoping Paper, which you will find attached below.

BACKGROUND AND CONTEXT TO THE REVIEW

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

5. The NZBC firmly holds the view that there is still a case and a need for regulating food. It is necessary to ensure the consistent safety of food in order to provide confidence to consumers that food and beverages meet appropriate standards. The regulation of food and beverages provides a level playing field for all manufacturers and supports international import and export of food.

OBJECTIVES

Question 3. To what degree are the current legislated objectives an issue for the system?

6. It is the view of the NZBC that the legislative objectives continue to be relevant but would benefit from a change in language. This can be achieved by a simple but significant change relating to the term “public health”. The term “public health” addresses a range of issues for populations around the world and can have different implications in various contexts.
7. The NZBC recommends the objectives instead refer to “consumer health protections”. This will allow a more specific focus to be placed on consumer dietary health and narrow the scope as opposed to a much broader public health objective, which includes issues beyond the safety and consistency of food and beverages. However, we do not believe it is the responsibility of FSANZ to fund consumer education and nutritional health promotions. This is a responsibility left us to individual governments, industries or other relevant agencies.
8. The types of problems that are experienced by the beverage industry in the New Zealand context includes additional time and cost to launch new products and often long wait times for application approval. Additional challenges include reviews of ingredients, such as caffeine, that are rushed through and then reviewed a short time later once again.
9. The NZBC holds the view that engaging with FSANZ for some members of the beverage industry can be a slow and lengthy process, resulting in missed opportunities for consumers to have access to new products in the marketplace. Additionally, we support reviews based on health and science data that includes taking the appropriate time required to make reforms for the benefit of consumer health. This methodology will help ensure that FSANZ and food and beverage manufacturers can get reforms right the first time, saving time and substantial costs.
10. Finally, the NZBC would support evidence from other reputable international standards and agencies from Europe, Canada or the United States, as a guidance for the Australia-New Zealand food standards where appropriate. The global food industry is rapidly evolving, and it is reasonable to accept international scientific evidence and guidance, where appropriate, and adjust as required to fit into the Australia-New Zealand context.

Question 4. What would be the impact of implementing each of the reform ideas below?

11. The NZBC is supportive in part of *Reform Idea 1*, to define “public health” in legislation to affirm the inclusion of long-term health and nutrition as a core objective. The NZBC holds the view that an alternative term for “public health” which focuses instead on the consumer and their choices would be better suited for the desired objective. We note that the term “public health” is incredibly broad and extends to other matters that are not related to food or beverage.
12. The NZBC strongly supports *Reform Idea 2*, recognising trade as a core goal and to reframe consumer choice as a factor to which FSANZ must have regard. The consumer is the centre of the food and beverage industry and are responsible for making informed and engaged choices for their health. Furthermore, there are economic benefits and product development opportunities that come with the import and export of food and beverage.
13. The NZBC supports *Reform Idea 3*, to establish criteria in the Act that the Forum must meet to request a review of a draft regulatory measure. It is our view that this will improve the review process for all stakeholders and increase efficacy of the Forum.

FUNCTIONS

Question 6. To what degree are FSANZ’s function an issue for the system?

14. The NZBC holds the view that the functions of FSANZ are generally appropriate for a trans-Tasman agency. The NZBC is not likely to favour an extensive expansion of FSANZ’s functions.

Question 7. What would be the impact of implementing each of the reform ideas below?

15. The NZBC is supportive of *Reform Idea 4*, which suggests making amendments to the Act to better reflect the functions FSANZ currently delivers, particularly how they relate to supporting long-term health and nutrition.
16. The NZBC has concerns about overly prescriptive amendments with long-term health and nutrition targets and would recommend short-medium term targets be considered. Health and nutrition are incredibly dynamic issues and a focus on short-medium term health goals will be more achievable. Additionally, the NZBC holds the view that FSANZ already requires an increase in funding to continue to undertake its present activities. This need for additional funding will increase even further if there is a desire for FSANZ to broaden its functions going forward.
17. The NZBC does not support *Reform Idea 5* to amend Section 13 of the Act to broaden FSANZ’s functions now and in the future.

LEGISLATIVE PROCESS AND DECISION-MAKING ARRANGEMENTS

Question 10. What would be the impact of implementing each of the reform ideas below?

18. The NZBC is opposed to *Reform Idea 6*, to remove exemption of food standards from sunseting arrangements. We hold the view that this would create significant gaps and fail to benefit any stakeholder.
19. The NZBC supports *Reform Idea 7* to resource FSANZ to undertake regular and more holistic reviews of food standards. While we are supportive of this recommendation in principle, it should be noted that FSANZ should be funded to do this work, without distracting from other high priorities, or undertaking additional work programmes.

Question 12. To what degree are the current statutory application and proposal processes an issue for the system?

20. Applications made under the FSANZ Act are subject to a “one size fits all” process, and in some cases, can take a substantial amount of time to process.

Question 13. What would be the impact of implementing each of the reform ideas below?

21. The NZBC supports *Reform Idea 8*, to reframe legislation that supports a more agile and risk-based process. We hold the view that while this will achieve the same desired outcome as the current process to date, it will do so in a much more efficient manner. This would create significant time and cost savings for FSANZ and industry.
22. The NZBC is also supportive of *Reform Idea 9*, in which redefining the decision-making arrangements will support timelier and more efficient sign-off of regulatory measures. We support the Ministerial Forum, FSANZ Board and FSANZ Chief Executive to have decision-making powers about various food standards, strictly on the basis of risk to consumers. However, the NZBC would not be supportive of the delegation of such powers to the Food Regulation Standing Committee.

Question 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?

23. We hold the view that only using applications or proposals is not an issue. However, it is the “one size fits all” approach that create a lack of agility in the system, particularly where there are opportunities to reprioritise applications based on risk.

Question 16. What would be the impact of implementing each of the reform ideas below?

24. The NZBC strongly supports *Reform Idea 10*, to adopt or accept risk assessments from overseas jurisdictions. Risk assessments from internationally recognised agencies will free up resources for FSANZ whilst creating a timelier process for a significant number of applications. We note that it is critical for FSANZ to incorporate current dietary modelling for the Australia-New Zealand dietary patterns in order to pursue such a change. Currently, the New Zealand data is wildly out of date and differs significantly to the current Australian dietary guidelines.
25. The NZBC supports *Reform Idea 11*, to enable FSANZ to adopt international standards. Whilst this proposal is promising, it may only be limited to particular areas and should require recognised and qualified international standards for risk purposes.

26. The NZBC supports *Reform Idea 12*, in part. We are supportive of the creation of legal pathways for industry to expedite applications. The NZBC specifically supports a streamlined application pathway that incorporates proposals for low risk ingredients with FSANZ Board decision making and sign-off.

PARTNERSHIPS

Question 18. To what degree is the current alignment between policy development and standards setting an issue for the system?

27. The NZBC holds the view that it is crucial for FSANZ to understand the context of issues and to play an active role in the policy development process.

Question 19. What would be the impact of implementing each of the reform ideas below?

28. NZBC does not support the proposed joint agenda setting between FSANZ and the Forum and recommended in *Reform Idea 13*. Whilst there is a reasonable amount of collaboration that should be expected between the two agencies, it is necessary for FSANZ to have independence as it relates to setting or delivering the agenda.

29. The NZBC supports *Reform Idea 14* to amend statutory timeframes to support strategic prioritisation of work. We hold the view that any changes to create a more strategic prioritisation of work should be categorised based on the risk of an application.

Question 22. What would be the impact of implementing each of the reform ideas below?

30. The NZBC supports *Reform Ideas 15* and *16*, which aims to enhance FSANZ's role in providing guidance about food standards within its current statutory remit and give binding interpretive advice on food standards. We hold the view that any interpretive binding advice on food standards must be applied through careful thought, consultation and legislation.

31. The NZBC is opposed to *Reform Idea 17* which would enhance FSANZ's regulatory role by providing limited enforcement powers. We hold the view that in the New Zealand context, industry benefits and is well served by the enforcement approach lead by the Ministry for Primary Industries.

OPERATIONS

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

32. The NZBC holds the view that the top priority issues that need to be resolved include redefining the objectives, decision-making powers and increased efficiency based on risk assessments.

CONCLUSION

33. Thank you for taking the time to consider our comments. Should you require further information or seek to discuss our submission in more detail, please do not hesitate to contact me.

Yours sincerely,

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