Australian Government
Productivity Commission

Performance Benchmarking of Australian and New Zealand Business Regulation:
Food Safety

Productivity Commission
Draft Research Report

October 2009

This is a draft research report prepared for further public consultation and input.

The Commission will finalise its report after these processes have taken place.

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au) or by contacting Media and Publications on (03) 9653 2244 or email: maps@pc.gov.au

Opportunity for further comment

You are invited to examine this draft report and to provide written comments to the Productivity Commission on the draft report and on areas which might be examined in future years of this study.

Written comments should reach the Commission by 25 November 2009. If possible, please provide your comments by email. After comments have been received and discussions with the interested parties have been held, a final report will be prepared.

The Commission will present its final report to Government by the end of December 2009.

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Terms of reference

The Hon Chris Bowen MP
Assistant Treasurer
Minister for Competition Policy and Consumer Affairs

16 DEC 2008

Mr Gary Banks AO
Chairman
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Mr Gary Banks

I am writing to you regarding the 2009 work plan of the Productivity Commission's Performance Benchmarking of Australian Business Regulation study.

In response to your request of 12 September 2008, this matter was raised at the 24 October 2008 Council of Australian Governments' Business Regulation and Competition Working Group meeting.

The BRCWG:

- noted the merit in continuing the benchmarking work program;
- agreed that occupational health and safety and food safety regulation should be considered by the Commission in year 2;
- requested that the Commission complete the OH&S and food safety benchmarking reports by December 2009; and
- agreed to revisit the Commission's future work plan in relation to the benchmarking study in 12 months time.

I would be grateful if you could undertake whatever action is necessary to fulfil the BRCWG's direction. The Commission may structure its work as it sees fit within the timeframe indicated above.

I have copied this letter to the Minister for Finance and Deregulation and the Minister Assisting the Finance Minister on Deregulation.

Yours sincerely

CHRIS BOWEN

RECEIVED
23 DEC 2008
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Abbreviations

ACCC	Australian Competition and Consumer Commission
ACSWA	Aged and Community Services Western Australia
ACT	Australian Capital Territory
ACVM Group	Agricultural Compounds and Veterinary Medicines Group
AFSA	Australian Food Safety Assessment
AHEA	Australian Horticultural Exporters Association
AIPWG	Australian Implementation Working Group
AMRA Survey	Australian Milk Residue Analysis Survey
ANAO	Australian National Audit Office
ANZFRMC	Australian and New Zealand Food Regulation Ministerial Council
ANZFS Code	Australia New Zealand Food Standards Code
APVMA	Australian Pesticides and Veterinary Medicines Authority
AQIS	Australian Quarantine and Inspection Service
ASQAP	Australian Shellfish Quality Assurance Program
BMS	Bivalve Molluscan Shellfish
BSE	Bovine spongiform encephalopathy
CAC	Codex Alimentarius Commission
COAG	Council of Australian Governments
DAFF	Department of Agriculture, Fisheries and Forestry (Commonwealth)
DASA	Dairy Authority of South Australia
DFSV	Dairy Food Safety Victoria
DHHS	Departmentt of Health and Human Services (Tasmania)
DHS	Department of Human Services (Victoria)
DMO	Delivered meals organisation

ECCB	Exclusive capturable commercial benefit
EHO	Environmental Health Officer
ESR	The Institute of Environmental Science and Research Ltd
EU	European Union
FAO	Food and Agriculture Organization (of the United Nations)
FCP	Food Control Plan
FRSC	Food Regulation Standing Committee
FSANZ	Food Standards Australia New Zealand
FSP	Food safety program (or plan)
FTE	Full-time equivalent
HACCP	Hazards Analysis and Critical Control Points
HUS	Haemolytic uraemic syndrome
IFIS	Imported Food Inspection Service
IFN	Imported Food Notice
IFR	Imported Food Requirements
ISC	(Food Standards) Implementation Subcommittee
LPA	Livestock Production Assurance
MoH	Ministry of Health (New Zealand)
MOU	Memorandum of Understanding
MRL	Maximum Residue Limit
NARM	National Antibacterial Residue Minimisation
NCRP	National Chemical Residue Programme
NFA	National Food Authority
NFAS	National Feedlot Accreditation Scheme
NLIS	National Livestock Identification System
NORM	National Organochlorine Residue Management
NRS	National Residue Survey
NSWFA	NSW Food Authority
NSWMOA	New South Wales Meals on Wheels Association
NT DoHF	Department of Health & Families (Northern Territory)

NT DRDPIFR	Department of Regional Development, Primary Industry, Fisheries and Resources (Northern Territory)
NVD	National Vendor Declarations
NZFSA	New Zealand Food Safety Authority
NZFSA VA	New Zealand Food Safety Authority Verification Agency
ODS	Operator documented system
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety
PIRSA	Primary Industries and Resources South Australia
PPPS	Primary Production and Processing
PPPS	Primary Production and Processing Standard
QAP	Quality assurance program
RCS	Regulated control scheme
RIS	Regulatory impact statement
RMP	Risk management programme
SFM	Sydney Fish Market
SFPQ	Safe Food Production Queensland
SMR	Standard Management Rules
SSA	Seafood Services Australia
STEC	Shiga toxin producing E coli.
TART	Targeted Antibacterial Residue Testing
Tas DPIPWE	Department of Primary Industries, Parks, Water & the Environment (Tasmania)
TDIA	Tasmanian Dairy Industry Authority
TTMRA	Trans-Tasman Mutual Recognition Arrangement
VCEC	Victorian Competition and Efficiency Commission
vCJD	variant Creutzfeldt-Jakob disease
VTEC	Verocytotoxin producing E. coli
WA DoH	Department of Health (Western Australia)
WHO	World Health Organization
WTO	World Trade Organisation

OVERVIEW

Key points

- The regulation of food safety involves all levels of government in Australia and New Zealand resulting in a complex set of laws and institutions.
- Australia and New Zealand are well served by their regulators, in terms of achieving food safety and commonly using a cooperative, graduated approach to achieve compliance. They apply risk management and try to minimise adverse side effects on business.
- Consistent with the Food Treaty, New Zealand only adopts a minority of the Australia New Zealand Food Standards. New Zealand has separate food hygiene standards for consumer food safety which are much more prescriptive.
- The Model Food Act and national food standards in Australia help to achieve some level of harmonisation between states and territories in their consumer food safety requirements. The most significant difference occurs over requirements to employ a food safety supervisor and to prepare a food safety plan.
- Generally, it is difficult to use outcomes data to draw conclusions on the performance of food safety regulation.
- Local councils play a key role in the administration and enforcement of food safety regulation, except in the Australian territories. The Commission identified significant differences in councils' fees and charges, inspection rates, enforcement practices and transparency of their activities, which can lead to unnecessary burdens on business. The NSW Food Authority has achieved greater coordination and clarity by establishing an MOU with local councils.
- There are significant differences among the core consumer food safety regulators in the level and nature of charges; taxpayer versus business funding; risk classifications; the rate and duration of audits/inspections; appeal mechanisms and transparency.
- Across the Australian states and territories, there is far less harmonisation in regulation at the primary production and processing (PPP) end of the food chain:
  - there is no model food safety legislation covering PPP
  - progress in developing national PPP standards has been slow
  - significant differences in the interpretation and implementation of PPP standards persist in jurisdictions
  - red meat processing receives far more regulatory attention than other PPP.
- The processes for registering and specifying appropriate maximum residue limits of chemicals are more streamlined and timely in New Zealand than in Australia.
- Comparing how Australia and New Zealand regulate internationally traded food:
  - Australia's charges are generally higher, its fee structure is more complex, and there is jurisdictional diversity and agency duplication
  - in both countries, red meat exporters incur greater costs and more regulatory intervention than other primary product exporters
  - some products are subject to the strictest export requirements irrespective of destination, extending to domestically sold products in New Zealand's case
  - New Zealand reduces costs for exporters with the use of electronic processing.

Overview

The regulatory stream of the National Reform Agenda of the Council of Australian Governments (COAG) focuses on reducing the regulatory burden imposed by the three levels of government. COAG agreed that effective regulation is essential to ensure markets operate efficiently and fairly, to protect consumers and the environment and to enforce corporate governance standards. However, the benefits from regulation must not be offset by costs, especially unnecessary compliance costs.

In February 2006, as part of the Agenda, COAG agreed to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government. COAG particularly wants to identify unnecessary compliance costs, enhance regulatory consistency across jurisdictions and reduce regulatory duplication and overlap. COAG's concern is not only with written regulation but also with the role and operation of regulatory bodies.

The Commission was asked to undertake a two stage study on benchmarking for COAG. The first stage considered the feasibility of benchmarking and methodology. The second stage involves benchmarking selected areas of regulation. This report on the regulatory burdens imposed on business by food safety regulatory regimes is one of two studies in the second year of the second stage. (A companion draft report will benchmark the regulatory burdens imposed by occupational health and safety regulation and regulators, most likely to be released in January 2010.)

Purpose and conduct of the study

The purpose of this study is to benchmark indicators of regulatory burden associated with food safety regulatory regimes across the jurisdictions (including New Zealand). The inclusion of New Zealand in the study broadens the regulatory functions which can be benchmarked by providing a basis of comparison for activities where there would otherwise not be one (such as national regulation of international trade in food).

While this study will not make recommendations regarding food safety regulation, the results of this study should inform governments about those areas of food safety regulation where there are differences in the compliance burdens between the jurisdictions and the areas where there may be benefits from further reform.

The process adopted for the review has been to invite submissions from, and consult widely with, interested parties, including: industry associations; national, state, territory and local governments; consumer groups and businesses, anywhere along the food chain from where food is grown to its delivery to the consumer. The Commission also used public submissions to other reviews, annual reports and studies estimating relevant costs, in order to reduce the cost of participation on interested parties. As well, the Commission surveyed regulators. All these sources of information contributed to both the identification of regulatory differences and burdens and to the analysis, and where feasible the quantification, of the burdens.

For such an extensive and varied regulatory regime as food safety, it is not possible to measure the total compliance burden imposed on a typical business in each jurisdiction. Businesses find it difficult to identify and cost regulatory burdens, many are more concerned with the costs of private regulation and a diverse range of businesses are affected by food safety regulation. Instead, the Commission has:

- identified differences in regulation and regulator behaviour and highlighted those that are likely to impose higher costs on businesses
- estimated the costs of some regulatory requirements which differ across the jurisdictions
- provided information which is likely to reflect indirectly on the regulatory burden in different jurisdictions.

It is not sensible to disregard differences in the effectiveness of regulation in achieving food safety outcomes because it risks leading to the trite conclusion that to achieve the lowest regulatory costs governments just need to remove all regulations.

Food safety outcomes

This study is concerned with regulation directed at *food safety*, that is with reducing food-borne illness, preventing contamination of food and minimising the risk of physical harm from chemicals in food. Regulations serving other objectives, such as: ensuring export market access; providing consumer information; and preventing misleading and deceptive conduct are generally not within the scope of this study.

As COAG has made clear, regulation has an important role to play in internalising the cost of unsafe food to producers and thus to increase the supply of safe food to the Australian public. Unfortunately, it is usually impossible to link changes in outcomes with particular regulatory changes. Even attributing better or worse performance to whole regulatory regimes is dubious (partly because a higher incidence of food safety incidents might reflect better reporting as part of more effective regulatory efforts).

Also, notifications data for food-borne illnesses suffer from severe under-reporting and while outbreak data are more likely to be accurate, the annual variability of these statistics makes it difficult to identify trends over time. Differences in reporting systems also make comparisons of outcomes tenuous. As a way of providing background only, existing data show:

- In Australia, in 2008, there were over 25 000 notifications of diseases that are commonly transmitted by food. The Northern Territory recorded the highest rate of food-borne illness, while Western Australia and Tasmania recorded the lowest rates. However, not all of the cases were caused by food-borne transmission. Campylobacteriosis was the most frequently notified illness (15 500 cases).
- In 2007, there were 149 food-borne outbreaks, 2300 people were affected, over 260 people were hospitalised and five people died as a result of these outbreaks:
  - the Northern Territory recorded the highest rate of outbreaks and relatively low rates were recorded in South Australia and Western Australia
  - the majority of people hospitalised were in New South Wales
  - all five fatalities were recorded in Victoria (although in the three preceding years Victoria recorded no fatalities associated with food-borne outbreaks).
- In New Zealand, 89 food-borne outbreaks, affecting 1206 people were reported in 2008. New Zealand reported 6693 notifications of campylobacteriosis in 2008.

The regulatory regimes

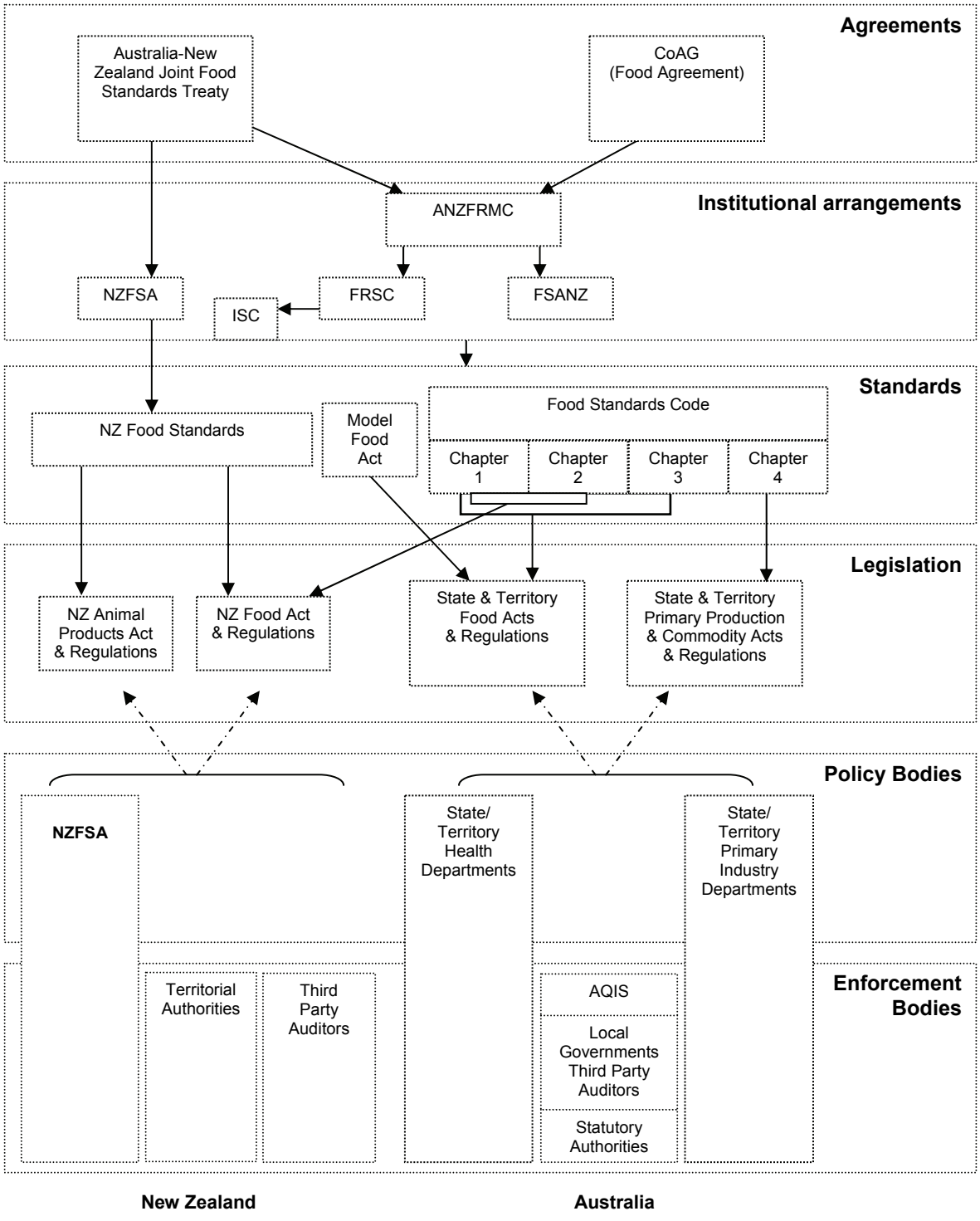
The regulatory and institutional structure

New Zealand and every Australian state and territory[1] has a core Food Act. Except for New South Wales, Western Australia and the ACT, all governments have one or more Acts dealing with aspects of food safety for the primary production and processing (PPP) of products up to the point at which the product is 'substantially transformed' and sold to the public.

All tiers of government — national, state and territory and local government — have responsibilities for regulating food safety. New Zealand and Australian states and territories use different institutional models to regulate different aspects of food safety ranging from primary production to retail. All the major elements of the food safety regulatory regimes under reference are depicted in figure 1.

[1] The *Food Act 2008* (WA) came into force on 23 October 2009.

Figure 1 **Australia-New Zealand food regulatory system**



New Zealand has a single agency which regulates all aspects of food safety except that regulated by local governments, which it monitors and coordinates. In all Australian states, the core food agency responsible for consumer food safety is also responsible

for coordinating and monitoring the regulatory functions of local councils to differing degrees. In contrast, the core food agency in both Australian territories absorbs all the 'local council' functions. Jurisdictions vary as to whether the regulation of PPP food safety is done within its core agency or devolved to one or two separate agencies. Only Victoria, South Australia and Tasmania have two PPP regulators and in each case one of these deals only with dairy.

While it might be expected that devolved models provide greater scope for duplication and inconsistency, this was not reported by businesses.

Given the focus on compliance costs, this study is concerned with the administration and enforcement functions of regulators rather than their regulation making functions. The Australian, New Zealand and state and territory government regulators covered in this study are outlined in table 1.

Table 1 **Australia, New Zealand and state and territory government regulators**

	Regulators
Aus	Australian Quarantine and Inspection Service
NZ	New Zealand Food Safety Authority
NSW	NSW Food Authority
Vic	Department of Health [a]
	PrimeSafe
	Dairy Food Safety Victoria
Qld	Queensland Health
	Safe Food Production Queensland
SA	Department of Health
	Primary Industries and Resources South Australia
	Dairy Authority of South Australia
WA	Department of Health
Tas	Department of Health and Human Services
	Department of Primary Industries, Parks, Water and Environment
	Tasmanian Dairy Industry Authority
NT	Department of Health and Families
	Department of Regional Development, Primary Industry, Fisheries and Resources
ACT	ACT Health

[a] Responsibility for food safety regulation passed to the newly created Department of Health from the more broadly-based Department of Human Services in August 2009.

Notable distinctions between Australia and New Zealand arise from Australia being a federation that has not granted its national government any constitutional powers over food, while New Zealand has no middle tier of government. Hence, while the New Zealand Food Safety Authority (NZFSA) combines regulation of internationally traded food and of domestic food, Australian imported and exported foods are regulated by a separate national agency, the Australian Quarantine and Inspection Service (AQIS). Also, while the NZFSA is the only agency in New Zealand which

sets and applies minimum residue limits for food, in Australia both Food Standards Australia New Zealand (FSANZ) and the Australian Pesticides and Veterinary Medicines Authority (APVMA) are involved.

Enforcement and accountability

In areas where some harmonisation in written regulations has been achieved, administrative and enforcement differences can still be present.

Indicators of good administration and enforcement by regulators include:

- consistent and clear interpretations of the same laws and legal definitions
- flexible regulatory styles
- well-trained and experienced auditors and inspectors able to enforce responsively and to assess alternative ways to achieve compliance
- the provision of education, training and information to facilitate compliance
- the application of adequate regulatory resources based on risk analysis
- having and using a range of regulatory instruments, commensurate with the circumstance and risk to the public
- providing low cost appeal mechanisms
- transparency about policies and reporting on past practices and outcomes.

The more regulators adopt these best practice techniques, the less likely are businesses to be subject to unnecessary regulatory burdens because low-risk businesses are not over-regulated, inspectors can assess alternative ways to meet outcome-based regulation and provide advice on how to comply. Differences in the level and types of fees and charges; the frequency and duration of audits and inspections; and the extent of regulatory duplication are also likely to reflect differences in the regulatory compliance burden placed on food businesses.

Wide awareness of the need to administer and enforce well

While much attention has been given to improving the prior assessment of the potential adverse impacts of regulations on business and other groups with regulatory impact assessment, less emphasis is often given to how well regulations are implemented ex post. Nevertheless, in its wide range of visits, the Commission became aware that, over the last 10 years or so, administrators have steadily and unobtrusively improved their capacities to deliver regulatory outcomes in ways that try to minimise adverse impacts on businesses, provide assistance in complying with the law and focus efforts on those most likely to offend, so that demonstrated compliers

receive the minimum of inspections, et cetera. Three examples reflect this improved focus:

- the establishment of the Implementation Sub-Committee of Food Regulation Standing Committee (FRSC) which brings senior public servants together with the aim of improving both the effectiveness and consistency of the implementation of food standards across Australia and New Zealand (though progress is limited as a result of an extensive forward work program and limited resourcing)
- the emergence of Memoranda of Understanding between regulators within a number of jurisdictions to clarify responsibilities and reduce regulatory overlap
- the introduction by the NSW Food Authority (NSWFA) of a Food Regulation Partnership agreement with local councils in order to clarify responsibilities, improve coordination and transparency and enable councils to recover costs associated with food safety enforcement.

Findings — consumer food safety

Broadly, consumer food safety is addressed through the core food acts of each jurisdiction and the regulatory roles of local councils and a core agency, usually the jurisdiction's health department.

Regulation

As agreed under the Australian Inter-governmental Agreement on Food Regulation (the Food Agreement), Annex A provisions of the Model Food Act[2] have been widely and consistently adopted by each state and territory government. As the adoption of Annex B was not mandatory, there is considerably more variation among the jurisdictions (figure 2).

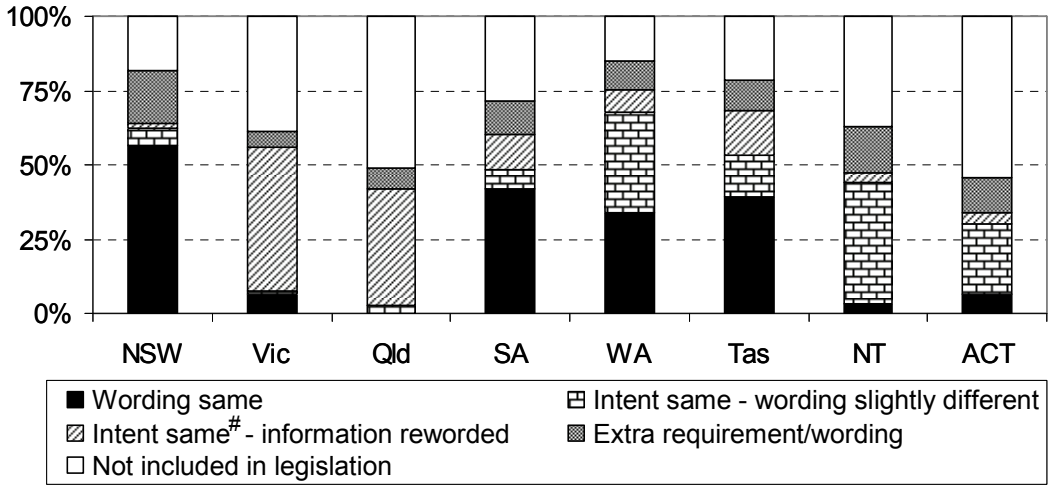
With regard to adoption of the Australia New Zealand Food Standards Code (ANZFS Code), New South Wales, Queensland, South Australia and Western Australia have made some modifications to standards in the ANZFS Code.[3] Some modifications are

[2] The Model Food Provisions contain: Annex A which are the essential 'core provisions' (relating to definitions, offences and emergency powers) that every state and territory agreed to implement 'in the same terms'; and Annex B which are the 'non core provisions' relating to administration and enforcement matters that could be removed or amended at the discretion of each jurisdiction.

[3] The Food Agreement provides that individual provisions may be made for a state or territory where the Australia New Zealand Food Regulation Ministerial Council is satisfied they are needed given exceptional conditions in that state or territory, and where the provision would not present a risk to public health or safety, or contravene Australia's international treaty obligations.

designed to lower the regulatory burden, such as not requiring fundraising activities to notify authorities of a food event. However, Western Australia's use of prescriptive hygiene regulations instead of the standards in the ANZFS Code are likely to have raised the regulatory burden for Western Australian food businesses and for businesses operating interstate, though this burden was removed with the recent commencement of the *Food Act 2008* (WA).

Figure 2 **Consistency of Annex B provisions with jurisdiction Food Acts**
as at 31 July 2007



intent same – information reworded and/or contained in more than one section/subsection.

Data source: Theobald (2007).

As agreed under the Joint Food Standards Setting Treaty, chapters 3 and 4 of the ANZFS Code (box 1) do not apply in New Zealand, and New Zealand has not adopted some standards from chapters 1 and 2, such as those relating to maximum residue limits; country of origin labelling; and fortification of bread with folic acid.

Differences in compliance costs between Australia and New Zealand result. For example, in Australia, the bread standard requires bread to be fortified with folic acid by adding it to the flour. In contrast, the New Zealand standard (yet to be introduced) does not specify the way manufacturers are required to fortify the bread and focuses on the content in the final bread product. New Zealand requires a lower content than Australia. In the event, these differences will not determine the cost differences, as New Zealand recently decided to delay the introduction of its standard. Australian millers will face higher upfront costs estimated to be around $7.9 million and higher ongoing costs of about $1.1 million (FSANZ 2007). On the other hand, Australia may receive the benefit of reduced incidence of neural tube defects.

Box 1 **The Australia New Zealand Food Standards Code**

The ANZFS Code has four chapters:

- chapter 1 — labelling, food additives, contaminants and chemical residues, foods requiring pre-market clearance, microbiological and processing requirements
- chapter 2 — food product requirements applying to particular types of foods (for example, cereals, meat, eggs, fruit, vegetables, edible oils and alcoholic beverages)
- chapter 3 (Australia only) — food hygiene
- chapter 4 (Australia only) — primary production and processing: seafood and dairy.

Source: ANZFS Code.

Australia's food hygiene standards are contained in the ANZFS Code and are outcome based while New Zealand's food hygiene standards, in regulations under its Food Act, are prescriptive (although PPP standards issued under the *Animal Products Act 1999* are outcome-based). For example, in New Zealand food handlers are required to wear light-coloured outer overalls or smocks over clothing and wear hats or hair nets to restrain hair from touching any food and food contact surfaces. In contrast, Australian food handlers must 'take all practicable measures to ensure his or her body, anything from his or her body, and anything he or she is wearing does not contaminate food or surfaces likely to come into contact with food'.

It is not easy to determine whether, on balance, prescriptive or outcome based standards impose larger costs. Outcome-based standards can capture a broad range of circumstances without explicitly stating each one. For example, the Australian standard is broader than the New Zealand standard requiring food handlers to ensure objects like jewellery and bandages do not contaminate the food being prepared.

Prescriptive standards may provide greater certainty and information to businesses, which is often valued by small and medium sized enterprises. However, they can limit flexibility, prevent adoption of new technologies and lead to regulatory overload with managers and workers adopting a minimum compliance mentality. They can also impose costs without the desired improvement in outcomes.

Other enterprises (often larger businesses) particularly value the greater flexibility provided by outcome-based standards in how they will meet regulatory requirements, sometimes making significant cost savings by discovering innovative ways to deliver mandatory outcomes. This greater flexibility comes at the price of greater uncertainty both in terms of what inspectors or auditors will accept as compliant and likely outcomes if prosecuted.

Of course, it is possible to cater for both preferences. For example, the occupational health and safety (OHS) regulatory regime provides both concrete prescriptive guidance and flexibility by having both higher level legal instruments to state broad outcome-based objectives and non-mandatory prescriptive documents (codes of practice in OHS). The latter outline one way to meet the objective while allowing businesses to choose other means. Unfortunately, FSANZ does not develop prescriptive codes to accompany its outcomes-based standards although it does produce guidelines in some cases.

In addition, Safe Food Production Queensland (SFPQ) also stated that the Model Food Act is not suited to tailoring compliance measures to achieve the best outcomes, because it

> … is reactive in nature focusing on punitive measures rather than an outcomes focused preventative approach that is espoused throughout the [Commission's] paper. The Act is not the panacea for reducing regulatory burden – in fact the Act limits the ability to implement alternative, outcomes-focused regulatory arrangements.

Regulators

Resources

The level of financial and human resources available to food safety regulators has a key influence on enforcement. With fewer resources, regulators are less able to provide training and written information to businesses and may force regulatory officers to resort to more combative deterrence strategies rather than work methodically through a structured set of responses to non-compliance, moving from helpful to increasingly punitive. Also, the move from prescriptive regulation to more flexible outcome and performance-based regulation requires more highly skilled inspectors who are able to judge a range of alternative methods used by businesses to satisfy regulatory requirements.

Local government

The Commission survey[4] revealed considerable variability between large and smaller jurisdictions with New Zealand, New South Wales and Victoria facing higher average workload pressures than their less populous counterparts (table 2).

[4] While the survey results provide insights into regulator behaviour, there are limitations to the survey approach, particularly selection bias due to optional participation and low response rates from councils in some jurisdictions. Hence, the results should be treated as impressionistic rather than as providing a definitive statistical snapshot of food safety enforcement.

Local councils appear generally to consider themselves under-resourced, with 74 per cent of all respondents nominating budget (and 65 per cent nominating staffing) issues as either high or medium level constraints on their ability to enforce food laws. An aspect of this is a growing number of non-food tasks that EHOs must address, thus spending less time on food enforcement and potentially reducing their understanding of food safety regulation.

Table 2 **Indicators of food safety unit resourcing: 2008-09**[a]

Average of responses

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*
Premises per EHO	123	135	146	102	113	65	103
Population per EHO	21 424	26 433	17 793	17 232	14 772	14 030	11 141
Food safety budget per premise[b] ($)	623	274	513	637	355	317	366

[a] The results for indicators related to EHOs may have been influenced by the way councils interpreted the resourcing questions. Some caution is therefore required. [b] Four New Zealand, Queensland and South Australian councils, two Victorian and Western Australian councils and one New South Wales council did not provide a response to the food safety budget question.

Source: Productivity Commission survey of local councils (2009, unpublished).

Core regulators

Importantly, differences in the scope of regulatory responsibilities need to be kept in mind in comparing resourcing indicators. In particular, the roles of the NZFSA (includes PPP and internationally traded food) and of the NSWFA (includes PPP) are broader than those of consumer food safety regulators. Also, most state health departments do not directly regulate most businesses, while those in the two Australian territories do.

The NSWFA, Queensland Health, Western Australian Health, Tasmanian Health and Human Services and Northern Territory Health all nominated budgetary issues as high level constraints, while Tasmanian Health and Human Services and ACT Health considered staffing issues imposed high level constraints.

There is considerable variation in salary and experience levels of regulatory staff. Average salary ranges for inspectors ranged from $60 000 to $85 000, even though all are required to have a science degree. South Australian Health pays the lowest average salary and has the highest staff turn-over rate.

Income: fees and charges, taxpayer funding

Sources of income and their levels can impact in a number of ways on the costs borne by business:

- the more that regulators rely on funding from charges rather than from taxpayers the greater is the direct cost burden on business
- differences in the levels of fees and how they are calculated result in different costs being placed on businesses in different jurisdictions.

Local government

Variations in the types, level and basis of fees and charges imposed on food businesses were the source of greatest difference both within and across jurisdictions. For example, formal approval requirements and charges for commencing and continuing a food business differ substantially. Reasons for the variability include:

- discretion exercised by councils in applying inspection fees. One in three surveyed Queensland councils charged for inspections while the figure in New Zealand, South Australia and Tasmania was closer to one in two. A number of councils only charged for initial inspections (common in South Australia with 32 per cent of councils so doing). Others only charged for follow-up inspections after a compliance breach (a more common practice in Queensland and New Zealand involving 25 per cent and 21 per cent of councils respectively)
- considerable variation in the factors taken into account in determining fees. Business type and inherent risk classification were the most common. South Australia and Victoria also take into account the number of food handlers, while New Zealand and Queensland includes premise size.

The survey indicated considerable variability in the application of risk grading to food business fees and charges. While nearly all Victorian councils used risk-based charging (mainly registration fees) in 2008-09, South Australian councils were much less likely to charge according to the inherent and other risks.

South Australian local councils stand out as having both the lowest and most uniform fee structure for food businesses — no annual fees and the lowest inspection fees. Queensland councils levied the highest and exhibited the greatest disparity in inspection and re-inspection fees. Depending on their location and compliance record, some New Zealand food businesses faced the highest annual registration or licence fee and the largest difference between low and high risk businesses, although council fee structures are highly variable within New Zealand.

Jurisdictions also vary over whether a food business must register and be licensed or just notify the relevant body of its existence. Registration/licensing imposes a much higher compliance burden than notification due to information requirements, the leverage given to regulators to gain increased compliance and to provide a basis on which to charge businesses without relating it to inspections.

Core regulators

Reliance on fee and non-fee income and the types of fees charged varied considerably. NZFSA is the only agency where all its funding comes from fees and charges (table 3). In contrast, taxpayer funding accounted for 67 per cent of the NSWFA's budget. Risk-based fees were applied only in Queensland and the ACT.

Table 3 **Resourcing indicators: 2008-2009**

	Agency	*Food safety staff (FTE)*	*Food safety budget*	*Fee income*	*Businesses regulated*	*Food safety budget per FTE staff*	*Businesses to food safety staff ratio*	*Food safety budget per business*	*Average fee income per business*
		Number	A$' 000	A$' 000	Number	A$' 000	Number	A$	A$
NZ	NZFSA[a]	256.8	30 212	30 212	6 669[b]	118[a]	26	4 530	4 530
NSW	NSWFA	61.0	15 002	6 450	13 934	246	228	1 077	463
Vic	Vic Health	6.5	1 010	0	na	155	na	na	na
Qld	Qld Health	nr	nr	0	0	na	na	na	na
SA	SA Health	11.0	1 350	80	na	123	na	na	na
WA	WA Health	11.8	1 075	13	430	91	36	2 500	30
Tas	Tas Health	3.0	nr	1	na	na	na	na	na
NT	NT Health	23.0[c]	2 780	0	2 259	110	98	1 230	0
ACT	ACT Health	17.0[c]	1 450	na	1 877	85	110	773	na

na not applicable. **nr** no response. [a] NZ dollars converted to $A using an exchange rate of 1.23 New Zealand dollars per Australian dollar. [b] NZFSA noted the potential for some double counting in the number of businesses registered. [c] Staff at NT Health and ACT Health also perform those duties performed by local governments in other jurisdictions.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

Inspection and audit frequency and duration

The most intense scrutiny of food retail and service businesses appears to be in New Zealand and Victoria with around 50 per cent more inspections per premise than most other jurisdictions, although Victoria does not charge for the inspections. Both jurisdictions also have higher rates of re-inspections.

With regard to the health departments, the much higher number of inspections conducted by the two Australian territories reflects the absence of local councils. They conduct far more inspections than any other regulator except for the NSWFA (which also regulates PPP).

Enforcement tool kits and compliance strategies

It is clear that most councils, and the core agencies overseeing their activities, are influenced by the concept of responsive regulation, with emphasis on cooperative as opposed to combative enforcement mechanisms in dealing with breaches of food laws, unless a business is unresponsive. All jurisdictions emphasise the use of education and warnings (which involve lower business compliance burdens compared to other enforcement tools) to improve food safety awareness and address specific compliance breaches.

The core consumer safety regulators demonstrated a high level of knowledge of and capacities in: providing assistance to businesses to comply with the law; focusing regulatory efforts on products with the highest inherent risks and on those businesses most likely to offend; assessing alternative ways to achieving regulatory outcomes and applying enforcement responses which are flexible to the nature of the breach and the motivation of the business to comply. More punitive responses are rarely used as a first response. ACT Health stated it:

> … practises a philosophy of educating food business operators. The first warning may be verbal or written before formalised notice provisions are activated. It is considered better to encourage compliance with legislative and standards requirements. Enforcement actions such as prosecution are considered a last resort.

Limited use by all agencies of instruments at the top of the enforcement pyramid (prohibition notices, licence cancellation and prosecution) also indicates agencies are generally applying a responsive enforcement strategy so only the most egregious non-compliances receive extreme penalties. Similarly, data for the NSWFA, Victorian Health and Northern Territory Health show that education or advice is used far more than verbal warnings, and verbal warnings are used far more than written warnings.

The importance of cooperation and education is well established in the regulatory approach, and used where the opportunity arises. For example, the NSWFA commented:

> During audits, auditors do not just check compliance with legislative requirements. A lot of time is spent educating licence holders and explaining requirements. Therefore, about 50% of the time spent auditing should be read as time also spent educating.

Queensland and Tasmania were the main jurisdictions providing training services to food businesses (doing so without charge). Western Australia (small sample size) and Victoria had the lowest proportion of councils reporting that they provided food handler training.

Importantly, variations in the ability to tailor regulatory responses to the severity of compliance breaches can lead to differences in the extent to which food laws are

enforced (including failure to enforce those laws) and/or reliance on more punitive (and costly) remedies in some jurisdictions. For example, councils in Victoria, with no access to on-the-spot-fines and improvement notices, were more likely to resort to litigation than other jurisdictions in 2008-09.

As with local councils, some core regulators do not have access to some enforcement tools, notably financial penalties, enforceable undertakings and adverse publicity orders. For example, the NSWFA uses fines (penalty notices) much more than other agencies, but often this reflects that other agencies either do not have the remit to issue fines or need to prosecute before a fine can be levied.

Even the constrained agencies generally made infrequent use of combative tools and applied a graduated approach used to rectify compliance breaches. Only South Australian Health said enforcement powers were a high level constraint on its ability to enforce food safety regulations, while Queensland, Victorian and Northern Territory Health nominated enforcement powers as a medium level constraint.

Six jurisdictions (New South Wales, Queensland, Western Australia,[5] South Australia,[6] some councils in New Zealand and the ACT) currently 'name and shame' businesses for breaching food safety regulations.[7] While such powers can provide a potentially large deterrent at little relative cost to the regulator, they are a blunt enforcement instrument in that their impact on food businesses is uncertain and, for those which rely purely on the judgement of one regulator (Western Australia) or which publish all breaches and not just prosecutions (New South Wales), may not be at all related to the severity of the breach. In contrast, Queensland, South Australia and the ACT list only those businesses which have been prosecuted.

Complaints and other reactive responses, such as the investigation of food-borne disease outbreaks and food safety recalls, were consistently rated as a high or medium priority by all agencies. If the proactive, preventative method works well, then reactive responses should not be required as often even though a high priority is placed on them when they are needed.

Information supplied on the number of businesses fined, the value of fines collected, number of prosecutions and the use of adverse publicity powers suggests that the regulatory stance adopted by the NSWFA is more combative than those adopted by their regulatory counterparts. However, as NSWFA's combative activity is still low

5 In Western Australia, reporting of all hygiene prosecutions has just become mandatory with the introduction of the *Food Act 2008*.

6 On 1 July 2009, South Australia set up a Prosecutions Register to publish details of businesses or individuals that have been found guilty by a Court of a breach of South Australia's Food Act.

7 Amendments to Victorian food legislation will provide scope for businesses convicted of a breach of the *Food Act 1984* to be entered on a register accessible to the public.

relative to the number of regulated food businesses in the jurisdiction, it would appear that it is used more as a response of last resort and as a signalling device to other food businesses rather than as their standard strategy.

While incentives such as licence fee reductions and positive advertising were rarely (if at all) used in most jurisdictions, they featured prominently in New Zealand. The use of food industry awards was even rarer.

Requirements to employ a food safety supervisor (FSS) and to prepare a food safety plan (FSP) are intended to increase awareness of risks and increase engagement in managing them. There are significant differences in requirements across jurisdictions. Only Victoria and Queensland require a food business to employ an FSS, although New South Wales intends to introduce a requirement in 2010 for the hospitality industry. The main additional cost is attending a training course and lost work time, estimated to be around $700 per FSS. The total costs can mount where there is high staff turnover and where 24-hour food businesses are required to have an FSS present at all times.

Under the ANZFS Code, FSPs are only mandatory for certain high risk businesses. However, an important difference among the jurisdictions arises from Victoria where most food businesses rather than just high risk businesses are required to prepare an FSP. This broader requirement has been estimated to impose an additional aggregate regulatory burden in the vicinity of $30 million per annum, although some of this will decline with the recent reduction in the number of Victorian businesses required to prepare FSPs under the *Food Amendment (Regulation Reform) Act 2009* (Vic).

Nationally, considerable work has been undertaken in developing the standard for Food Safety Programs for Food Service to Vulnerable Persons and the supporting documents outline which businesses are required to have an FSP. The collaborative and phased introduction of this standard reflects state and territory governments' aim to minimise unnecessary compliance costs in an area that is inherently costly. New South Wales estimates that FSPs are likely to cost a small business over $3000 to develop and approximately $2000 per annum in ongoing compliance costs, though costs should be lower where a template is provided by the regulator. An added complication for Western Australia and the Northern Territory derives from them having no legislative authority for auditing and thus enforcing the plans.

Risk management

Local government

More than 80 per cent of councils responding to the survey used risk profiling (mainly employing common frameworks developed centrally at either the state/territory or national level) to prioritise businesses according to the inherent level of risk posed to public health. Inspection frequency is usually (but not consistently) tied to the inherent risk posed by classes of premises and the compliance history of individual food businesses to target businesses posing a heightened threat to consumers. Councils in South Australia appear to link inspection frequency more closely with the risks posed to the public than in other jurisdictions. If riskier businesses face higher inspection burdens than low risk businesses, this is consistent with making the best use of limited resources to improve food safety outcomes and should result in lower risk businesses not being unnecessarily burdened with inspections.

Councils in different jurisdictions vary considerably in the proportion of businesses they classify as high risk. According to survey responses, at one extreme, Queensland and New South Wales councils classify nearly two thirds of food businesses as high risk while at the other extreme, South Australia accords just 12 per cent of businesses that category. While New South Wales classifies respectively 66 and 24 per cent of businesses as high and medium risk, Victoria puts a much smaller proportion in the high risk category: respectively 22 and 63 per cent of businesses as high and medium risk. It is unclear the extent to which this difference reflects higher costs being imposed on similar business in New South Wales and Queensland or differences in food industry composition.

Core regulators

Risk profiling was used by every core regulator except Queensland Health and Western Australia Health as a basis on which audits and inspections are conducted. Compliance histories (except by WA Health and ACT Health (in the ACT for businesses not requiring an FSP)) and the inherent risks posed by different businesses (the only exceptions being Queensland Health and Western Australian Health) were both used by most regulators. Given ACT Health's responsibility for regulating food retail and service establishments it is surprising that compliance histories are not more widely used.

In contrast, risk classifications were rarely used to determine the fees and charges for different businesses. Only Victoria, South Australia and the ACT set fees according to

risk in 2008-09.[8] Hence, the charges on businesses in those jurisdictions are more likely to reflect the actual cost of their regulation than food businesses operating elsewhere.

Facilitating uniform interpretation of food safety laws

Councils in all jurisdictions recognise the importance of applying food laws consistently. Except for councils employing one EHO, every respondent reported at least one measure aimed at facilitating the uniform interpretation of food regulations, such as supervisory oversight; structured training staff rotation; discussions concerning consistency with higher level regulators.

Each core consumer food safety regulator also reported similar initiatives. The NZFSA and the NSWFA used the widest range of measures to achieve uniformity and devoted significant resources to the training and professional development of food safety field staff, reflecting their broader set of responsibilities.

Despite these efforts, differing interpretations still occur. Examples include Karicare milk products and cassava chips. In this regard, businesses would find it easier to comply, and regulators would find it easier to make assessments, if it were possible to access more easily expert advice on how to apply and interpret the ANZFS Code.

Transparency and accountability

Public information about enforcement strategies and outcomes can be an effective compliance tool as businesses are made aware of the consequences of continued or serious non-compliance and of what councils prioritise. There was considerable variability on this. However, the best performing jurisdictions only had around 25 per cent of councils publishing both their enforcement strategies and outcomes.

There is also considerable variability on council websites in the ease of access to general and specific information relevant to food businesses (such as the level and basis on which fees would be charged). This would appear to be an area where business compliance burdens could be reduced cost-effectively.

Measures to make regulatory processes transparent, provide procedural fairness (appeal avenues) and client feedback mechanisms featured prominently in the activities of many core regulatory agencies.

While a lack of appeal mechanisms does not regularly impact on the costs faced by business, they are an important recourse when regulators make mistakes, and cost

8 The NSW Food Authority commented that it would introduce a risk-based fee system shortly.

effective appeal mechanisms can ameliorate costs for businesses. All jurisdictions performed well in terms of accountability with 73 per cent of councils having appealable enforcement decisions. Internal review mechanisms (which are less costly but also less independent than external appeal mechanisms) were most common in councils in South Australia, Queensland and Victoria. Among the core agencies, external appeal mechanisms were available in nearly all jurisdictions, with internal review a feature in New South Wales, South Australia, Tasmania and the ACT.

Coordination between core agencies and local government

Most core agencies are unable to collect, manage and analyse data related to the enforcement activities of local government which would allow better targeting of resources to public health risks and better coordination of enforcement (with associated implications for regulatory burdens). The power to mandatorily obtain such information is currently available only in New South Wales as part of the Food Regulation Partnership between the NSWFA and local councils in that state.[9]

Findings — primary production and processing

Regulation

While much harmonisation of food safety law has been achieved at the retail end of the food chain within Australia, there is greater inconsistency in the legislation and requirements for food safety in PPP activities.

There has been very slow progress in establishing national Australian standards for PPP. While this has been recently achieved for seafood and dairy, FSANZ standards are still outstanding in much of red meat, poultry meat and eggs after many years of development. Also, even when they have been developed, jurisdictions have been slow to remove pre-existing guidelines and codes of practice that duplicate the standards.

9 Recent amendments to Victoria's *Food Act 1984* include new requirements for councils to report data about the administration of the Act to the Department of Health from 1 July 2010, in order to use the better information to improve policy making and education programs, and to focus enforcement efforts on areas where improvements are most needed.

Regulators

The Commission's survey also shed light on the core PPP regulators, much of the regulatory role of which focuses on audits to test controls or outcomes rather than traditional inspection.

Resources

Within Australia, PrimeSafe, the Dairy Authority of South Australian (DASA) and Safe Food Production Queensland (SFPQ) were similarly resourced while the Tasmanian Dairy Industry Authority (TDIA) and Dairy Food Safety Victoria (DFSV) had the lowest levels of financial resources available per food business. There was also considerable variation among the PPP regulators over the number of businesses regulated per employee: the NZFSA (26 businesses per employee), PIRSA (75 businesses per employee); and DFSV (446 businesses per employee).

Reliance on fee and non-fee income and the types of fees charged varied considerably. While taxpayer funding dominated the budgets of the NSWFA, Tasmanian Department of Primary Industries, Parks, Water & the Environment (Tas DPIPWE) and Northern Territory Department of Regional Development, Primary Industry, Fisheries and Resources (NT DRDPIFR) (Meat), primary producers in New Zealand, Queensland and Victoria and dairy businesses in Victoria, South Australia and Tasmania contributed a much higher share (in some cases 100 per cent) of the cost of their regulation than elsewhere.

There is a large diversity in regulator fees. Some jurisdictions do not charge any audit fees (or they are charged directly by third party auditors), while those that do set their charges on a range of bases (including cost recovery). PrimeSafe, DFSV, the TDIA and NT DRDPIFR (Fisheries), relied almost exclusively on licence fees, while agencies such as SFPQ and the DASA relied on a combination of registration/accreditation fees and audit fees. Audit fees accounted for nearly all the income base for the NZFSA.

There is considerable variation in salary/experience/qualification levels of regulatory staff. Officers in South Australia and Tasmania received among the lowest salaries (DASA had the lowest) and qualification levels also appeared to be lower. Interestingly, inspectors and auditors in those two jurisdictions also had the most experience, on average, than field staff in higher paid jurisdictions.

Tas DPIPWE and NT DRDPIFR (Fisheries) said staffing constraints are high. Some respondents also indicated low levels of private capacities; for example, Tas DPIPWE noted that the state's low third party auditor capacity constrained its ability to fully enforce food safety regulations.

Audit frequency and duration

The most intense scrutiny of primary production businesses is apparent in South Australia and Victoria (respectively averaging 2.5 and 1.7 audits/inspections/visits per non-dairy business in 2008-09) and the Northern Territory with around two visits per meat business in 2008-09. Most other jurisdictions inspect about once a year except for New Zealand which is less frequent, although New Zealand also provides permanent on-site verification officers in many New Zealand meat exporting facilities.

Interestingly, overall audit frequency did not appear to be correlated with differences in the detection of compliance breaches serious enough to warrant an on-site follow-up (the share of total inspections accounted for by re-inspections).

Influencing the culture of compliance with responsive enforcement

Overall, the regulators with the broadest suite of what could be described as good governance practices likely to lead to the lowest business compliance burdens were the NZFSA, the NSWFA, SFPQ and PIRSA. The NZFSA commented on its enforcement approach in the following terms:

> Where possible we operate an escalating response to non-compliances. This may mean that we inform the operator that what they are doing is wrong and how they can fix it. This may be through a visit, a letter or a warning notice. Continued non-compliance means that we may seize product and/or prosecute.

A responsive enforcement approach is reflected in the figures for a number of agencies — NSWFA, DFSV, SFPQ, DASA and TDIA — where education or advice are used far more than verbal warnings, and verbal warnings are used far more than written warnings. NSWFA and DFSV use improvement notices much more than either written or verbal warnings DSFV and TDIA are the only agencies to use enforceable undertakings at all during 2008-09.

Risk management

In terms of the basis on which audits and inspections are conducted, risk profiling was used by every PPP regulator except WA Health. Compliance histories featured in risk assessments except for DASA and WA Health.

There was considerable variability in the proportion of businesses allocated to each risk classification across jurisdictions. In particular:

- *smallgoods manufacturers* — Queensland classifies most (97 per cent) as medium risk while other jurisdictions place all these activities in the high risk category

- *poultry* — Queensland and Victoria classify all poultry businesses as medium risk while New South Wales and South Australia grade all such businesses as high risk
- *seafood* — low risk in Victoria and Tasmania, medium risk in New South Wales
- *abattoirs* — low risk in the Northern Territory, medium risk in Queensland and Tasmania, high risk elsewhere
- *meat transport* — low risk in Queensland and South Australia, medium risk in New South Wales and the Northern Territory
- *dairy farms* — low risk in Victoria, Queensland and South Australia, medium risk in New South Wales and Tasmania
- *dairy transport* — low risk in Victoria, South Australia and Tasmania, medium risk in New South Wales.

In sum, there is no consistent application of criteria to primary products and processing and thus no consistent classification of the riskiness of different products and processes to ensure each product and process is regulated proportionately to the risk it poses to food safety.

Facilitating uniform interpretation of food safety laws

Supervisory oversight, structured training and, to a lesser extent, staff rotation were the main avenues by which better regulatory outcomes were pursued. The NZFSA, the NSWFA and SFPQ employed the widest range of measures to achieve uniformity. PrimeSafe (100 hours per annum on average), the NSWFA (100 hours) and the NZFSA (80 hours) devoted significant resources to the training and professional development of food safety field staff.

Transparency and accountability

Information on enforcement strategies and outcomes (proactive tools as they relay the consequences of ongoing or serious compliance breaches) were commonly provided by regulators with broader primary production responsibilities.

Particular concerns relating to primary production and processing

Participants raised concerns around requirements to prepare FSPs, including a perceived lack of clarity in the requirements. Some businesses engaged consultants to prepare their FSPs in order to provide some assurance that they were compliant. Others were more concerned with the burden of the number of programs (both government and private sector) that they need to comply with and the different ways in which compliance must be demonstrated.

Many New Zealand primary food producers and processors meet the highest export standard and incur the associated auditing costs, whether or not they are exporting their product. This is largely because most of New Zealand's food is exported. While many producers like the simplicity of having to meet just one set of requirements, others may prefer the option of meeting a domestic standard where it would be cost effective to distinguish between products destined for domestic consumption and those produced for overseas markets. For them, meeting the standards of overseas markets would be an unnecessary cost of production.

Red meat and poultry meat

The safety of primary meat production in Australia is currently implemented through reference to Australian Standards (rather than the ANZFS Code). These standards have been endorsed by state and territory Ministers and underpin much of the current meat safety regulation and practices in the jurisdictions. The development of a red meat PPP standard in the ANZFS Code has just commenced. While standards for the production and processing of poultry meat have been under development since 2004, lack of agreement among the jurisdictions has delayed its completion. In the absence of the ANZFS Code, there is little flexibility in most jurisdictions for businesses in how they deliver food safety outcomes and there is no formal means by which the current prescriptive standards and practices can be consistently reviewed or updated.

New Zealand red and poultry meat businesses operate under industry-agreed, HACCP-based standards, and broad principles documented in the *Animal Products Act 1999* and associated regulations.

Based on a thorough comparison of the legal requirements, fees charged and the frequency of audits and inspections, the Commission found:

- apart from the production of ready-to-eat meat, FSANZ have assessed that meat from domestically reared cattle, sheep, goats and pigs presents only a low risk to public health. Despite this, red meat (particularly that destined for export markets) is more intensely monitored than many other food activities that are often considered to be of a higher risk to public health and safety
- New South Wales, Victoria and Queensland each have specific provisions on the content of food safety programs that are additional to those specified in the relevant Australian Standards required by the other Australian jurisdictions
- New Zealand has an extremely demanding standard to manage campylobacter
- initial licence application fees are highest for primary meat processing businesses in Victoria. However, given its accumulative fee structure, ongoing annual fees are

likely to be highest for large non-exporting meat processor businesses in South Australia

- audit activity varies in intensity from a simple check against Australian Standards in Western Australia, to a compliance audit against a formally approved food safety plan (or risk management program) in New Zealand, New South Wales, Victoria and Queensland. Given the frequency and cost of regulator inspections/audits, compliant meat businesses (such as abattoirs) in New Zealand, New South Wales and Queensland and secondary meat processing businesses in Tasmania, Victoria, Queensland and New Zealand are likely to incur the greatest annual cost of inspection/audits
- penalties and fines for non-compliant activity are greatest in New South Wales, Queensland and the Northern Territory for primary producers/processors that are not appropriately licensed/accredited, and in these jurisdictions and New Zealand and the ACT for the production of unsafe food.

Eggs

A standard for the PPP of eggs in Australia has been under development since April 2006 and was released by FSANZ in draft form in September 2009. The PPP standard supplements existing standards in the ANZFS Code (which control the presence of Salmonella in egg products) by addressing the issue of when/how dirty or cracked eggs may be used in further food production and extends coverage of standards to egg producers that also undertake some processing. Parallel development of the standard with its implementation strategy is a new approach which is being trialed for eggs, through the Implementation Subcommittee of FRSC. This is an important innovation and should reduce uncertainties and impracticalities in implementing and enforcing the standard.

Without benefit of a PPP standard, the safety of eggs and egg products in Australia is currently regulated by industry and by state and territory governments. The majority of Australian jurisdictions do not regulate primary egg producers separately. Egg businesses which produce a substantially transformed product or which sell to the public are usually regulated as 'food businesses' under the relevant jurisdiction's food Act. Only Tasmania and Queensland have specific food safety legislation for eggs.

The Commission was advised of differences in the interpretation of food safety requirements, including differences in interpretation of a 'cracked' egg and in storage requirements for shelf life, temperature, humidity. The development of a national standard for safety in the production and processing of eggs should go some way toward reducing these types of differences between jurisdictions.

In New Zealand, the egg industry is regulated under the *Animal Products Act 1999* and its associated regulations and notices. In addition, NZFSA and the Egg Producers Federation have produced a *Generic Code of Practice for Egg Production* to guide producers in approaches that can be used to comply with legislated requirements.

The Commission found:

- notification or licensing requirements are minimal for most egg businesses in Australia. Only in New Zealand, Queensland, and Tasmania are primary egg producers required to have FSPs, as well as those in Victoria with a retail function
- in New South Wales, South Australia and the Northern Territory egg producers and processors can meet food safety requirements without incurring registration or licence fees. Those in Western Australia and the ACT incur an annual fee while those in other jurisdictions potentially incur both an annual fee and a cost associated with demonstrating compliance against an FSP
- four of the nine jurisdictions have record keeping requirements specific to their jurisdictions. In New Zealand, Victoria and Queensland, these requirements are broad and apply to all FSPs or Risk Management Plans (RMPs), not just egg businesses. In Tasmania, extra record-keeping requirements may be imposed through a producer's 'Egg Production Program' and documents may be seized
- although notification/licensing requirements are minimal in most jurisdictions, all can impose penalties for failing to meet the requirements, with the highest penalties in New South Wales, Queensland and the Northern Territory. Provision of eggs and egg products that are unsafe attract comparatively high penalties in all jurisdictions except Western Australia
- Tasmania has an extremely limited range of enforcement responses, with repeated fines and exclusion from the industry being the only options even for minor non-compliances
- only Queensland requires all eggs to be stamped with a unique producer identity number or cartons sealed, with the identity number on the carton at some cost to egg producers in this jurisdiction.

Dairy

The primary production standard for dairy in the ANZFS Code has been enforceable in all Australian jurisdictions since October 2008. It is outcome based and allows for innovation and some operational variation among businesses. The standard has not been adopted in New Zealand.

The Commission has found the following differences in burdens in Australian and New Zealand jurisdictions:

- while FSPs for dairy businesses are generally required to be HACCP-based, New South Wales and Queensland also have prescriptive provisions on the content of FSPs which vary for different types of dairy businesses. Regulators in New Zealand and New South Wales provide generic template FSPs which may reduce regulatory compliance costs for businesses in these jurisdictions
- New Zealand allows more than one business to operate under the one registered plan and this may reduce the costs to business of operating under an RMP
- the manuals and/or codes of practice in New South Wales, Victoria, South Australia and Tasmania contain specific requirements on dairy premises, equipment and processes that are additional to requirements in the ANZFS Code. New South Wales is the most prescriptive in its requirements of dairy businesses
- in most jurisdictions, the temperature at which milk is stored on dairy farms is guided by the ANZFS Code. However, the requirements in related guidance material are more stringent than the ANZFS Code in New South Wales and more relaxed in New Zealand, and likely to impact differentially on dairy farm compliance costs
- licensing or registration of dairy producers and processors is required in all jurisdictions. For a medium-size milk processor, licence fees are estimated to be highest in New South Wales, Victoria and New Zealand
- New Zealand and New South Wales' audit regimes have the potential for the most frequent audits on compliant businesses, the longest duration for audits was reported for Western Australia (eight hours), South Australia and Tasmania (five hours) and the highest per hourly charges were reported for Queensland and Victoria. Overall, the annual cost of meeting licensing and compliance audit requirements is likely to be highest in New Zealand, Victoria (particularly for large businesses) and Queensland
- even though New Zealand only exports 10 per cent of its fresh milk products to the European Union, EU standards are broadly enforced so even producers supplying the domestic market must implement demanding monitoring and reporting systems
- in all Australian states and territories, key dairy regulators also undertake audits and inspections on behalf of AQIS, which potentially reduces the regulatory compliance costs for dairy exporters.

Seafood

The national primary production standard for seafood has been mandatory in Australia since May 2007. It is not mandatory in New Zealand. An Australian seafood business is required to identify potential seafood safety hazards and implement controls that are

commensurate with the risk and comply with food safety and suitability requirements for seafood from pre-harvesting of the seafood up to the point of manufacturing.

At the time the seafood standard was developed, FSANZ assessed that 10 per cent of all food-borne illness in Australia may be attributable to seafood (FSANZ 2005) and cost the Australia community about $150 million per year. The risks of food-borne illnesses are considered to be higher for cold smoked fin fish and bivalve molluscs (such as mussels, oysters and scallops) than for other fin fish or shellfish. Prior to the introduction of the national seafood standard, the higher risk shellfish industry demonstrated compliance with voluntary codes of practice and guidelines and legislated requirements on water quality. So FSANZ judged that the additional compliance costs associated with the PPP standard would be small for most operators.

All jurisdictions require licensing/accreditation of shellfish operators for food safety and bivalve mollusc seafood businesses are required to have an FSP. In Australia, only New South Wales and Victoria require other seafood harvesters and processors to have an FSP.

Instead of the seafood standards in the ANZFS Code, New Zealand has an extensive risk management program for most seafood operators and regulated control schemes for particular sectors.

Some seafood businesses in Australia hold a number of FSPs to meet requirements for export, state regulations and customer demands. The initial development costs for the FSPs have been estimated to be around $20 000, with annual plan maintenance costs of approximately $8000 and annual audit costs of around $2500 per business.

Findings — chemical residues in food

There are a number of differences between Australia and New Zealand in regulatory requirements for Maximum Residue Limits (MRLs) and their administration:

- in New Zealand the processes for registering new chemicals and specifying the appropriate MRLs are more streamlined and timely than in Australia. In New Zealand the processes are undertaken by one body (NZFSA), while in Australia registering chemicals and specifying MRLs are the responsibility of the Australian Pesticides and Veterinary Medicines Authority (APVMA) and FSANZ which involves duplication and much longer time periods
- in contrast to New Zealand, the Australian assessment considers business compliance costs and has an appeals process, both potentially contributing to better outcomes for business

- while the administration and enforcement of MRLs in New Zealand is the responsibility of one body (the NZFSA), up to 22 state and territory departments/agencies and one Commonwealth agency (AQIS) have responsibility for aspects of the administration and enforcement of MRLs, and some of these departments/agencies are administering MRLs prescribed by the APVMA rather than those contained in the ANZFS Code.

Another matter continuing to impact on compliance costs in Australia arises from non-implementation of the COAG decision that the MRLs declared by the APVMA should be included in the ANZFS Code as soon as practicable.

Findings — internationally traded food

Imported food

The Commission has found that:

- the charging structure for food imports into Australia is considerably more complex than that faced by New Zealand importers and, in general, fees for importing into Australia are higher
- despite charging businesses for import clearance for food safety on an hourly basis, neither AQIS nor the NZFSA could provide information on the time taken for the process
- a lack of consistency in interpretation of food safety regulations across Australian jurisdictions increases the costs to businesses in ascertaining import requirements and managing imported product recalls
- application of food safety requirements throughout the production chain for domestic businesses may unduly raise the opportunity costs of domestic businesses unless similar requirements are also imposed on the importer in the importer's home country.

Food for export

The Commission has found that:

- charges faced by Australian exporters of food are generally higher than those for similar activities in New Zealand (even with a 40 per cent Australian Government subsidy). The costs to business of AQIS services are also higher than some comparable domestic services provided by other agencies

- duplication in export and domestic requirements places an undue compliance burden on some Australian primary product exporters, while the integrated regulatory structure in New Zealand means this may be less of an issue there. Both countries sometimes impose stricter requirements than necessary on exports going to countries with less demanding requirements
- the extent to which multiple and overlapping audits impose additional costs on businesses varies more between industries than jurisdictions. In both Australia and New Zealand, red meat exporters incur greater costs and more regulatory intervention than other businesses. In Australia, about $80 million per year or 80 per cent of export certification costs relate to red meat
- businesses in both Australia and New Zealand noted areas where low skills or knowledge of regulator staff result in additional regulatory compliance costs
- New Zealand's greater use of electronic processing than Australia is likely to reduce the business compliance costs associated with registering and processing exports.

Conclusion

This study has identified a number of areas where there are differences in the nature of regulation, administrative and enforcement practices and fees and charges that are likely to point to unnecessary burdens on business. The Commission was unable to establish whether the higher burdens deliver improved food safety outcomes.

This study has pointed to a number of positive developments in food safety regulation, with a general trend towards greater consistency between jurisdictions and clear intentions among some regulators to reduce the burden on business. However, progress has been slow.

This exercise has also demonstrated that there appear to be benefits from benchmarking regulatory regimes given the number of differences that have been identified and opportunities for all jurisdictions to reduce regulatory burdens on business.

1 About the Study

1.1 Origins of this study

In February 2006, the Council of Australian Governments (COAG) agreed that all governments would aim to adopt a common framework for benchmarking, measuring and reporting the regulatory burden on business (COAG 2006). Since then, the Commission has produced three reports on these matters (box 1.1).

On 24 October 2008, COAG's Business Regulation and Competition Working Group agreed that the Commission should study the regulatory burden of food safety and occupational health and safety (OHS), for the next phase of the benchmarking program and complete these reports by December 2009.[1] The Terms of Reference for this study were received in a letter from the Assistant Treasurer on 23 December 2008. In benchmarking the regulatory burdens, the Commission has been asked to take account of 'the objectives of Commonwealth, state and territory and local government regulatory systems'.

This report considers the burdens placed on business by food safety regulation. A separate companion report considers the burdens created by OHS regulation.

1.2 Harmonisation of food regulation

Historically, food regulations have been developed and enacted by states and territory governments, as the Australian Government has no explicit constitutional power to regulate domestic food supply. In the past, there were stark differences in food regulations among the jurisdictions. Over the last three decades, there has been a series of reforms aimed at unifying the food regulatory system. Much of that reform momentum has been in the last 10 years. Reform in this area is on-going.

[1] The OHS report has been granted an extension to the end of March 2010.

Box 1.1 Performance Benchmarking of Australian Business Regulation — the Commission's previous studies

The 'feasibility' study

The Commission was asked to examine the feasibility of developing quantitative and qualitative indicators and reporting framework options. This feasibility study concluded that benchmarking was technically possible and could yield benefits (PC 2007b).

The 'quantity and quality of regulation' & 'cost of business registrations' reports

In April 2007, COAG agreed to proceed to the second stage of the program of regulation benchmarking. In light of this, the Commission was requested to examine the quantity and quality of regulation and benchmark the administrative compliance costs of business registrations. In December 2008, the Commission released two companion reports addressing these areas.

Performance Benchmarking of Australian Business Regulation: Quantity and Quality

The 'quantity and 'quality' report provides indicators of the stock and flow of regulation and regulatory activities, and quality indicators for a range of regulatory processes, across all levels of government (PC 2008d). The indicators provide some baseline information for each jurisdiction, against which trends in the quantity and quality of regulation might be assessed in the future. It is apparent that there are significant differences across jurisdictions, reflecting different regulatory approaches as well as the characteristics of the jurisdictions themselves.

Performance Benchmarking of Australian Business Regulation: Cost of Business Registrations

The 'cost of business registrations' report provides estimates of compliance costs for business in obtaining a range of registrations required by the Australian, state, territory and selected local governments (PC 2008c). The registrations include generic requirements for incorporation, taxation and business name registrations. In addition, the Commission benchmarked specific registration costs incurred for five types of business (a café, builder, long-day child care, real estate agent and winery). It emerged that the estimated time costs of business registrations were generally relatively low, with most costs and differences in costs across jurisdictions relating to fees and charges.

A first step was taken in 1991, when a central Australian authority for food was created by drawing together food policy areas from the Department of Health and food standards areas from the Attorney-General's Department (Federal Bureau of Consumer Affairs). This body was the National Food Authority (NFA).

In 1994, a comprehensive review of the Australian food code commenced, taking almost six years to complete. The outcome of this work was to change the old code

from one that prescriptively defined the nature and composition of the individual foods to a code that more broadly defined classes of foods (FSANZ 2009a). For example, under the old code, the broad standard for cream had over 40 types of cream as prescribed names — each with its own standard. The current food code — Australia New Zealand Food Standards Code (ANZFS Code) — has one standard for cream.

At the same time as Australia was reviewing its code, work also progressed on developing a joint ANZFS Code. A Treaty was signed in December 1995 to establish such a joint code and to form the Australia New Zealand Food Authority (FSANZ 2009a).

In 1996, initiatives by the Commonwealth Government to reduce the regulatory burden on industry led to the decision to review the food regulatory system (Blair Review 1998). The Blair Review of the national food regulatory system found that approximately 150 Acts and secondary instruments controlled food in Australia, and concluded that the regulatory framework for food was 'complicated, fragmented, inconsistent and wasteful'. The review recommended an integrated and coordinated national food regulatory system with nationally uniform laws. It proposed a co-regulatory approach, whereby governments set performance-based standards through consultation, and businesses have greater flexibility in how they meet the standards but with no less responsibility (Blair Review 1998). Following this review, the Australian, state and territory governments agreed to move towards a national system of food regulation.

In January 2007, the Australian Government announced an independent review (Bethwaite Review) to examine ways to streamline Australia's food regulations and make them more nationally consistent. This review was prompted by a recommendation of the Regulation Taskforce report (2006) *Rethinking Regulation*. The Bethwaite Review was asked to report on three broad areas highlighted by the Regulation Taskforce:

- implementation of the outstanding recommendations from the Blair Review on the consistent application of food laws
- alignment of the levels of enforcement across jurisdictions
- role of the Australian Government in the food regulatory system, including whether it could play a greater role in enforcing the standards.

Unfortunately, the Bethwaite Review was never completed. Instead, the review and the submissions were referred to the COAG Business Regulation and Competition Working Group in September 2008.

The New Zealand Food Safety Authority (NZFSA) has recently completed a review of the regulation of New Zealand's food sector. A new system to regulate the domestic food industry has been designed but the new food laws are yet to be passed. Despite this, some parts of the proposed reforms are being trialled under the current Food Act (NZFSA 2008g).

1.3 Purpose and scope of the study

The purpose of this study is to benchmark indicators of regulatory burden associated with food safety regulatory regimes across the jurisdictions (including New Zealand). For this study, 'regulatory regime' is broadly defined to include the regulatory requirements placed on business by governments as well as the strategies adopted by regulators to achieve compliance with these requirements, including education and enforcement.

The inclusion of New Zealand in the study broadens the regulatory functions which can be benchmarked by providing a basis of comparison for activities where there would otherwise not be one (such as national regulation of international trade in food).

While this study will not make recommendations regarding food safety regulation, the results of this study should inform COAG and the New Zealand Government about those areas of food safety regulation where there are differences in the compliance burdens between jurisdictions. In doing so, this study can highlight areas where there may be benefits from further reform or progressing reform already underway.

What regulations are in scope?

Regulation includes statutes and formal delegated legislative instruments, as well as quasi-regulation such as some codes of conduct (or codes of practice) and guidance materials that are not strictly mandatory.

Food-related regulation has a number of objectives, including: the protection of public health and safety; ensuring export market access and protecting the

international reputation of food products; providing consumers with information to enable informed choices; and preventing misleading and deceptive conduct.

This study is concerned with regulation directed at *food safety*, that is, those regulations concerned with reducing the *direct* risk of an adverse effect from eating food (box 1.2). This includes food safety regulations aimed at:

- preventing food borne illnesses
- preventing foreign objects and contaminants entering food
- minimising the risk of physical harm from chemicals in food.

Box 1.2 **Food safety hazards**

Food hazards can result from a broad range of microbiological, chemical and physical factors. Microbiological hazards including infectious and toxin-producing bacteria, parasitic worms, viruses and moulds. The most common food borne illnesses are caused by bacteria such as Campylobacter and Salmonella. Nevertheless, more serious illness can be caused by E-coli and Listeria. A more recent biological risk factor is a protein infectious agent (a prion) most notably associated with bovine spongiform encephalopathy in cattle and variant Creutzfeldt-Jakob disease in humans.

There are many chemical risk factors associated with foods including:

- agricultural and veterinary chemicals
- naturally occurring toxins in certain foods
- chemicals used in food production, such as food additives and processing aids
- chemicals which may contaminate foods such as environmental chemicals (such as mercury) or chemicals from packaging materials
- allergens.

Physical hazards are wide ranging, including any object that should not be found in food such as metal, glass, or bone fragments.

Source: FSANZ (2009b).

Food safety regulations include requirements around the health and hygiene of food workers, and food storage and transport requirements (including having a temperature controlled environment for potentially hazardous food). For businesses operating in Australia, these requirements are generally set out in the ANZFS Code (in chapter 3 'Food Safety Standards' and in chapter 4 'Primary Production Standards'). Other food safety regulations in scope include those establishing safe limits for the presence of certain chemicals and labelling of ingredients to indicate

the presence of certain chemicals (such as preservatives, food colourings and foods that are likely to cause allergies).

As well as the food safety regulations which enact the ANZFS Code, there is a range of other regulations which include food safety as an objective (albeit, often one of several objectives) — such as those dealing with farm and veterinary chemicals, stock disease control, product tracing requirements, and controls on the import and export of food. These regulations are also covered in this study.

The Acts covered in this study are outlined in table 1.1.

Table 1.1 **Acts covered in the study**

Australia	Imported Food Control Act 1992 Export Control Act 1982
New Zealand	Food Act 1981 Animal Products Act 1999
NSW	Food Act 2003
Vic	Food Act 1984 Meat Industry Act 1993 Seafood Safety Act 2003 Dairy Act 2000
Qld	Food Act 2006 Food Production (Safety) Act 2000
SA	Food Act 2001 Primary Produce (Food Safety Schemes) Act 2004
WA	Health Act 1911 Food Act 2008[a]
Tas	Food Act 2003 Meat Hygiene Act 1985 Egg Industry Act 2002 Dairy Industry Act 1994
NT	Food Act 2004 Meat Industries Act 1996 Fisheries Act 1988
ACT	Food Act 2001

[a] The *Food Act 2008* (WA) commenced on 23 October 2009 — outside the benchmarking period.

Regulation not within the scope of the study

Another aim of food regulations, which is closely related and often overlapping with food safety objectives, is the promotion of public health outcomes such as reducing obesity, heart disease and diabetes. Food regulation has the potential to influence these desired health outcomes by controlling the quality and composition of food and the way food is labelled and marketed to consumers. Food regulations

aimed at these public health outcomes are concerned with reducing and minimising *indirect* risks of harm or adverse impacts from eating food.

Unlike the direct risk factors discussed above, these types of adverse impacts are *indirect* as other factors including genetic background and personal choices (such as the level of physical exercise undertaken) influence the overall risk of these adverse effects actually occurring. Related to the multidimensional nature of the problem, food regulations are only one element of a wider policy strategy to address these health issues.

Regulations primarily aimed at preventing these indirect adverse health outcomes do not fall within the scope of this study. These include regulations relating to nutritional information labelling requirements (nutritional panels and nutritional claims). The Commission acknowledges many food regulations have multiple objectives and the boundaries between food safety objectives and other objectives are not always clear.

The exclusion of these regulations from the scope of this study does not mean that the indirect adverse health outcomes that can be associated with eating certain types of food are not a significant public policy issue. These broader health issues are important and are being examined in other forums, including the Australian and New Zealand Food Regulation Ministerial Council's proposed review of food labelling law and policy and the Australian Government's Preventative Health Taskforce.

Which regulators?

A regulator, in the context of this study, refers to a body that administers and enforces regulation or upon whose interpretation the application and enforcement of regulation is based. Not only are there such regulatory bodies in the national, state and territory governments, but local government authorities also have extensive responsibilities for food safety. Regulators in all three levels of government in Australia are within scope of this study. This covers Australian, state and territory government bodies as well as the 548 local councils. In New Zealand, the study includes national bodies and territorial authorities. The Australian, New Zealand, state and territory government regulators covered in this study are outlined in table 1.2.

Table 1.2 **Australia, New Zealand and state and territory government regulators**

Australia	Australian Quarantine and Inspection Service
New Zealand	New Zealand Food Safe Authority
NSW	NSW Food Authority
Vic	Department of Health[a]
	PrimeSafe
	Dairy Food Safety Victoria
Qld	Queensland Health
	Safe Food Production Queensland
SA	Department of Health
	Primary Industries and Resources South Australia
	Dairy Authority of South Australia
WA	Department of Health
	Department of Agriculture and Food
Tas	Department of Health and Human Services
	Department of Primary Industries, Parks, Water and Environment
	Tasmanian Dairy Industry Authority
NT	Department of Health and Families
	Department of Regional Development, Primary Industry, Fisheries and Resources
ACT	ACT Health

[a] Responsibility for food safety regulation passed to the newly created Department of Health from the Department of Human Services (Food Safety Unit) in August 2009.

Which regulatory burdens on business?

For this study, regulatory burdens relate to the costs imposed by regulation that, in their absence, would otherwise not arise for businesses. However, for regulation to achieve its objectives, it is usually a necessary consequence that some burden is placed on business. That said, where regulations are poorly designed, or their enforcement and administration is not implemented well, they may impose greater burdens than necessary on business to achieve their objectives. In this study, it is those regulatory burdens that are unnecessary that are of primary interest (box 1.3).

Box 1.3 **Example of unnecessary burdens**

Unnecessary burdens might arise from:

- excessive coverage of the regulations, including 'regulatory creep' — that is, regulations that encompass more activity than was intended or required to achieve their objective
- subject-specific regulations that cover much the same ground as other generic regulation
- unduly prescriptive regulation that limits the ways in which businesses may meet the underlying objectives of regulation
- unwieldy licence application and approval processes
- excessive time delays in obtaining responses and decisions from regulators
- rules or enforcement approaches that inadvertently provide incentives to operate in less efficient ways
- unnecessarily invasive regulator behaviour, such as overly frequent inspections or information requests
- an overlap or conflict in the activities of different regulators.

Sometimes regulation does not impose any additional burden. This occurs when a business behaves in an identical manner regardless of whether a certain regulation is in operation. There are a number of circumstances where aspects of food safety regulation may not result in an additional burden on business when compared to 'business as usual' practices. For example, where industries and organisations establish standards or codes of practice that embrace more stringent food safety requirements than those contained in regulations.

1.4 Conduct of the study

In December 2008, on receipt of the terms of reference, the Commission issued a circular announcing the study to interested parties. In January 2009, the Commission advertised the study in *The Australian Financial Review* and *The Australian.*

In conducting its study, the Commission has been assisted by an Advisory Panel comprised of representatives from each government. In February 2009, the study's Advisory Panel met to discuss the scope, coverage and methodology. It also agreed that the benchmarking study on food safety regulations would benefit from New

Zealand's participation. New Zealand accepted an invitation to participate in the food safety regulation benchmarking study on 6 March 2009.

The Commission held informal discussions in all Australian capital cities and in New Zealand with various interested parties, including representatives from companies with food-related activities, industry associations, government departments and regulatory agencies, as well as some community organisations.

In April 2009, the Commission released an issues paper and invited interested parties to make a submission to the study. The Commission acknowledged that some interested parties had already invested significant resources in drafting submissions to other reviews of food safety regulation and made clear it would accept material from other reviews, such as the Bethwaite Review, as a submission to this study. The Commission received 15 formal submissions.

The Commission gathered information for this study from published sources, in particular annual reports published by regulators. To fill some of the gaps in information, the Commission surveyed Australian state and territory regulators, AQIS, the New Zealand Food Safety Authority, local governments in Australia, and territorial authorities in New Zealand. For certain technical matters, the Commission also sought information directly from regulators at all levels of government. To gain an understanding of the introduction of food safety plans for delivered meals organisations, Meals on Wheels in each state and territory were also surveyed. The Commission engaged a consultant, Baldwins-FoodLegal, to identify the key areas of difference and similarity in the food safety regulation applying to primary production and processing activities.

The Advisory Panel met again on 1 October 2009 in Canberra, with a number of jurisdictions participating by teleconference, to discuss a working draft of the report. The Panel members also provided comments from their jurisdictions to be included in the report.

The terms of reference, study particulars, survey questionnaires and submissions are also listed on the Commission's website at www.pc.gov.au/projects/study/regulation benchmarking/food-safety. Further details of the conduct of the study are provided in appendix A.

1.5 Outline of the report

Chapter 2 provides an overview of the objectives and framework of the food regulatory regime. Chapter 3 examines food safety outcomes in Australia and New Zealand. The approach to benchmarking regulatory burdens and the criteria used for selecting specific aspects of food safety regulation are described in chapter 4. The benchmarking of specific aspects of food safety regulation is covered in chapters 5 to 14:

- chapter 5 — Consumer food safety regulation
- chapter 6 — Influencing the culture of compliance
- chapter 7 — Local government: enforcement and accountability
- chapter 8 — Core regulatory agencies: enforcement and accountability
- chapter 9 — Food safety in meat production and processing
- chapter 10 — Food safety in egg production and processing
- chapter 11 — Food safety in dairy production and processing
- chapter 12 — Food safety in seafood production and processing
- chapter 13 — Maximum residue limits
- chapter 14 — Compliance with food import and export regulations

Chapter 15 contains responses from governments to the report.

Appendix A provides details of the conduct of the study by providing the Terms of Reference, submission and visit lists as well as the details of those parties that responded to the surveys. Appendix B outlines the various data collection methods used to obtain data for this benchmarking study. Appendix C describes the framework in place in Australia and New Zealand to regulate food imports and exports.

2 The regulatory objectives and framework

Key points

- The Inter-Governmental Agreement on Food Regulation and the Joint Food Standards Setting Treaty underpin the food regulatory system within Australia and between Australia and New Zealand.
- A number of key bodies develop and set policies and standards for food regulation in Australia and/or New Zealand, such as the Australia and New Zealand Food Regulation Ministerial Council, Food Regulation Standing Committee, Implementation Sub Committee, Food Standards Australia New Zealand and the New Zealand Food Safety Authority (NZFSA).
- Within the jurisdictional regulatory system, most jurisdictions have two streams of food safety regulation: food and primary production.
  - The Food Acts of each state and territory government in Australia and New Zealand define 'food' within the scope of the respective acts and their associated regulations. The Food Acts detail offences relating to food and provide for the administration and enforcement of the respective acts, regulations and standards.
  - The legislative basis for primary production regulation differs markedly across jurisdictions. In some jurisdictions, primary industries regulation is consolidated into a single act (Queensland and South Australia). Victoria uses separate legislation and objectives for its meat, dairy and seafood activities while New South Wales relies on its Food Act to regulate all food operations in that state.
- In Australia, local councils largely have the primary responsibility for auditing and inspecting food businesses to ensure compliance with the Food Acts. At the broad level, state regulators (the Department of Health or equivalent) are responsible for investigating and managing outbreaks of food-borne illness, and any food recalls that require coordination from the state level. In New Zealand, the enforcement and administration of the *Food Act 1981* is shared by NZFSA, Public Health Units and territorial authorities.
- In addition to the food and primary production Acts, there are other regulations that have a food safety objective, including import and export arrangements; chemical residues and livestock identification; and fair trading.

2.1 The broad regulatory and institutional framework

Domestically, the Australian Government has no explicit constitutional power to regulate food produced or sold in Australia. The regulation of food safety is the responsibility of the states and territories. The Australian Government relies on the Inter-Governmental Agreement on Food Regulation (the Food Agreement) with the states and territories to coordinate a national approach along with other constitutional powers to regulate areas such as imported and exported food (VCEC 2007).

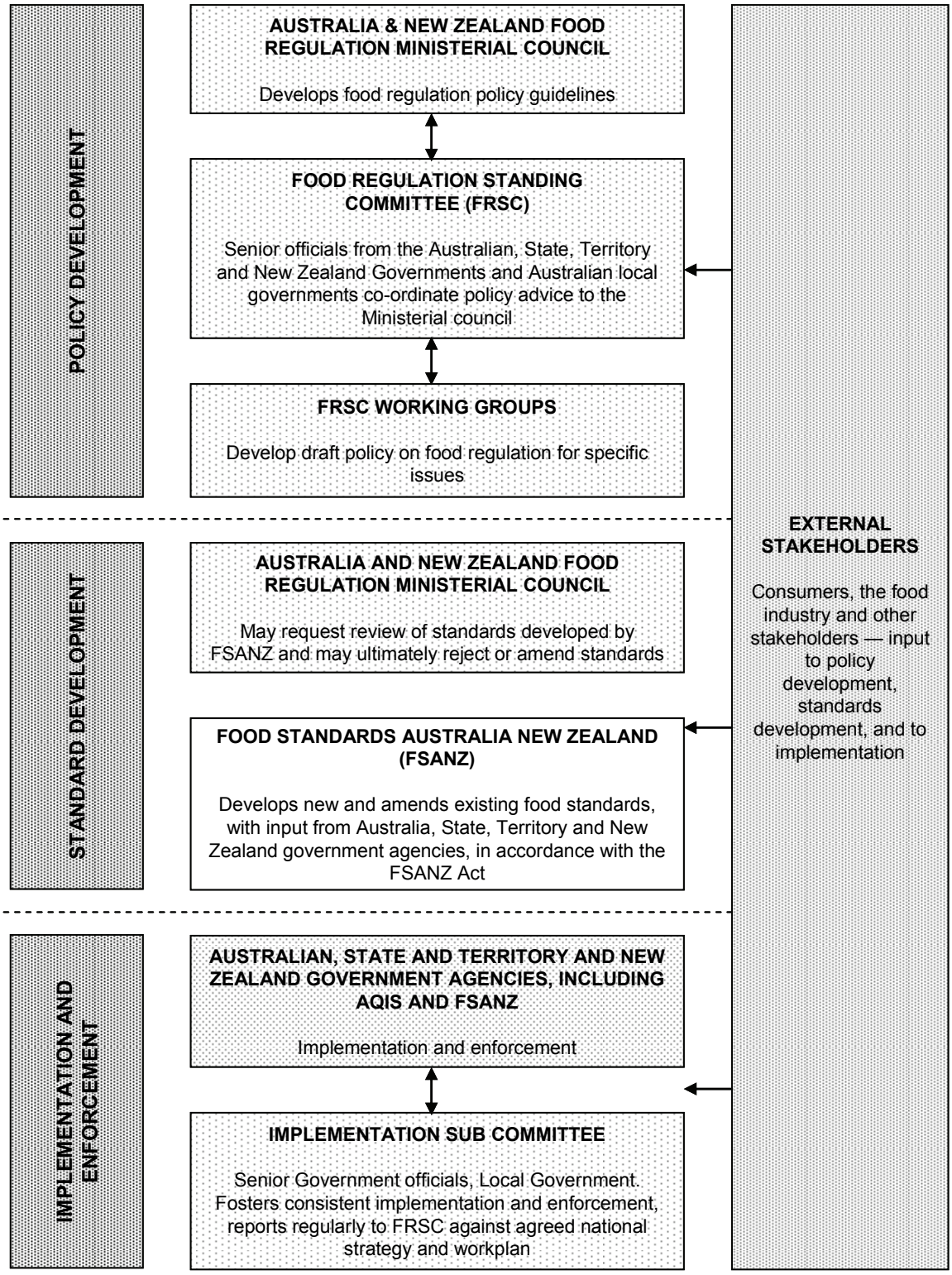
Australian and New Zealand governments have also worked together on food regulation for some time in a bid to achieve a more integrated approach. The two countries first harmonised some of their food standards in 1983 as part of the Australia New Zealand Closer Economic Relations Trade Agreement. This cooperation extended further in 1995, when both countries signed the Joint Food Standards Setting Treaty. This Treaty established a framework to harmonise food standards between the two countries.

The Food Agreement and the Joint Food Standards Setting Treaty, therefore, underpin the current food regulatory framework. Stemming from these agreements, the following bodies make-up the over-arching institutional framework of food regulation:

- Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC)
- Food Regulation Standing Committee (FRSC) and the Implementation Sub Committee (ISC) of FRSC
- Food Standards Australia New Zealand (FSANZ)
- New Zealand Food Safety Authority (NZFSA).

Figure 2.1 provides an overview of the institutional arrangements in the food regulation system.

Figure 2.1 **Institutional arrangements governing food regulation**



Source: FRS (2008).

The Food Agreement

In November 2000, the Council of Australian Governments (COAG) signed the Food Agreement committing to a new food regulatory system that seeks to '… implement a co-operative national system of food regulation…' (COAG 2002). The Australian state and territory governments are all signatories to the Food Agreement.

While including the protection of public health and safety, the Food Agreement's objectives also include harmonisation of standards, increasing consistency in enforcement, reducing regulatory burdens and recognising responsibility for food safety at all levels of government and in a variety of portfolios. Importantly, the objectives of the Food Agreement seek to balance the interests of consumers and food businesses through explicit recognition of the regulatory and compliance burden the latter face in the pursuit of public health and safety goals.

Under the Food Agreement, Australian states and territories agreed that the Model Food Act would serve as the basis for their respective Food Acts. The Model Food Act contain:

- Annex A — the essential 'core provisions' that every state and territory was obligated to implement 'in the same terms'.[1] These include provisions relating to definitions, offences and emergency powers
- Annex B — the 'non core provisions' relating to administration and enforcement matters that could be removed or amended at the discretion of each jurisdiction in light of their differing administration or enforcement arrangements.

The objectives contained in the Model Food Act have been replicated (in large part) in each of the state and territory Food Acts. They are:

- to ensure food for sale is both safe and suitable for human consumption
- to prevent misleading conduct in connection with the sale of food
- to provide for the application of the Australian New Zealand Food Standards Code (ANZFS Code — see below).

[1] In the Food Agreement, 'in the same terms' means that the same words must be used in the jurisdiction's Food Act as are used in Annex A (subject to the Parliamentary conventions of the jurisdiction).

Joint Food Standards Setting Treaty

The Joint Food Standards Setting Treaty between Australia and New Zealand creates a food regulatory framework that is trans-Tasman. This treaty is broadly aimed at protecting public health and reducing barriers to trade and it provides the vehicle for harmonising food standards between both countries (NZFSA 2008g). The scope of the Food Treaty covers composition and labelling requirements and contains provisions which allow New Zealand to opt out of a joint standard for exceptional reasons relating to health, safety, environmental concerns, trade or cultural issues.

Some areas of food regulation are outside the scope of the Treaty, such as maximum residue limits, food hygiene and export standards. New Zealand issues its own standards on these areas of food safety.

Australia and New Zealand Food Regulation Ministerial Council

The Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC), established by the Food Agreement, is responsible for the development of food regulatory policy and the development of policy guidelines for setting domestic food standards. These policies are developed with the aim of providing a 'whole of government' and 'whole of food chain' (paddock to plate) approach to a national system. ANZFRMC also has the capacity to adopt, amend or reject the food standards developed by FSANZ (see below) and to request that these standards be reviewed. The Council comprises one member from each Australian jurisdiction and one from New Zealand and from the Commonwealth as follows:

- the Australian Minister for Health and the New Zealand Minister for Food Safety
- the health ministers from all Australian states and territories
  - other ministers from related portfolios (such as primary industries, consumer affairs) of Australia and New Zealand — if nominated by that jurisdiction (in place of the health portfolio (for example, New South Wales has nominated the Minister of Primary Industries to be its member).

The Food Regulation Standing Committee

Food Regulation Standing Committee (FRSC) is a high level officials group which provides advice to ANZFRMC on policy development and food standards, as well as providing advice on the best ways to involve stakeholders in policy development.

To fulfil its role, FRSC often forms working groups to consider policy issues including the:

- Strategic Planning Working Group
- Food Safety Management Working Group
- Front of Pack Working Group (food labelling)
- Primary Production and Processing Working Group
- Principles and Protocols Working Group
- Infant Formula (Standard 2.9.1) Working Group.

The Food Standards Implementation Sub Committee

The Food Standards Implementation Sub Committee (ISC) is a subcommittee of FRSC. ISC is a group of senior government officials and local government representatives, which facilitates consistent implementation, compliance and enforcement of policy, regulation and standards. ISC develops guidelines on consistent enforcement of food regulations and standards. ISC also forms working groups to address specific issues (box 2.1). It aims to minimise costs to industry and meet the objective of minimum effective regulation. The Food Regulation Secretariat in the Department of Health and Ageing provides administrative support.

New Zealand's participation in the ISC provides the opportunity for broader cooperation with New Zealand in areas outside the scope of the Treaty. Although New Zealand's involvement in ISC was originally limited to areas directly related to food labelling and composition, New Zealand has continued to expand its participation in addressing issues related to consistent implementation and between 2006 and 2008 undertook the role of ISC Chair (sub. 12).

Over the last eight years, ISC (and its predecessor) has made progress in achieving the aim of ensuring a nationally consistent approach to the implementation and enforcement of food standards. One example, is the development of a national framework for food safety auditor accreditation and management.

FRSC established seven priorities for ISC in 2008-09 to improve consistent implementation. These were:

1. piloting of an integrated model for standards development and consistent implementation using the development of the egg primary production and processing standard
2. piloting the national audit policy implementation plan

3. implementation of the draft enforcement policy for Australia, including local government
4. consistent interpretation of standards, including the operation of an interim process for industry to report interpretation issues and development of options to ensure consistent interpretation of standards
5. completion of the Food Surveillance System Linkages Project
6. development of a program framework for evaluation of the ISC Strategic Plan implementation
7. stakeholder Consultation Forums in 2009 and 2011.

Box 2.1 **ISC food regulation working groups as at June 2009**

The following working groups and committees reported to the ISC:

- Consistent Implementation Working Group - Survey Group
- Surveillance Working Group
- Food Medicine Interface Working Group
- Consistent Interpretation Working Group
- Date marking of frozen foods – Nationally consistent guidelines
- Australian Implementation Working Group (AIPWG)
- Consistent Implementation Sub Group - Incident Response Plan
- Chemical Response Plan
- Intentional Interference Working Group
- Nationally Consistent Principles for the Environmental Investigation associated with Foodborne Illness Working Group
- Environmental Health Officers Workforce Shortage Working Group
- Health Claims Watchdog Working Group
- National Enforcement Policy Working Group
- Sprouts Working Group
- Food Industry Support and Education Working Group
- Government Food Communicators Group
- Stakeholder Consultation Forum Steering Committee
- Performance Measurement Framework Working Group
- Food Operational, Regulatory and Technical Electronic Web Forum

Source: Department of Health pers. comm. 9 June 2009.

Food Standards Australia New Zealand

FSANZ is a bi-national agency responsible for researching, developing and submitting proposals for food standards to ANZFRMC that will apply in both Australia and New Zealand or Australia only. Once proposals are adopted by ANZFRMC, they become part of the ANZFS Code. FSANZ also undertakes a range of other functions in Australia, such as national coordination of food surveillance and food recall systems, providing food handling advice to consumers, conducting research and supporting the Australian Quarantine and Inspection Service (AQIS) in the control of imported foods (FSANZ 2009a).

FSANZ's objective is to ensure a high standard of public health protection throughout Australia and New Zealand via:

- a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand
- an effective, transparent and accountable regulatory framework within which the food industry can work efficiently
- the provision of adequate information relating to food to enable consumers to make informed choices
- the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection. (*Food Standards Australia New Zealand Act 1991*)

Australia and New Zealand Food Standard Code

The Food Agreement provides for the ANZFS Code to promote national consistency in Australia's food laws. It prescribes in detail the legally enforceable obligations relating to the composition, production, handling and labelling of food across the food supply chain (box 2.2).

The ANZFS Code contains some 71 food standards. Of these, 60 standards are in Chapters 1 and 2 which cover matters largely within the scope of the Treaty. Most standards generally apply in both New Zealand and Australia with the exception of:

- four standards which are 'Australia only' standards (country of origin labelling, maximum residue limits, mandatory fortification of bread with folic acid, processing requirements for foods such as milk, cheese, eggs, poultry, and processed meat)
- one standard is a 'New Zealand only' standard: Standard 1.1A.6 – Transitional Standard for Special Purpose Foods (including Amino Acid Modified Foods).

The remaining standards cover food hygiene provisions, including specific hygiene requirements for primary production, are Australia only standards. They do not apply in New Zealand (as they are not within the scope of the Treaty).

The ANZFS Code is incorporated (subject to amendment) into the Food Acts of each of the states and territories and New Zealand (which has established its own standards and laws with respect to food hygiene, primary production, residue limits, export requirements, dietary supplements and country of origin labelling). In addition to protecting public health and safety, the ANZFS Code requires the:

- provision of adequate information to consumers relating to food to enable consumers to make informed choices (primarily via labelling standards)
- prevention of misleading and deceptive conduct (such as in relation to health claims).

Box 2.2 **The Australia New Zealand Food Standards Code**

The ANZFS Code has four chapters:

- chapter 1 — standards applying to all foods in regard to labelling, substances added to food, contaminants and chemical residues, foods requiring pre-market clearance and microbiological and processing requirements
- chapter 2 — food product requirements applying to particular types of foods (for example, cereals, meat, eggs, fruit, vegetables, edible oils and alcoholic beverages)
- chapter 3 — food hygiene (including requirements for food premises and equipment, as well as safety programs)
- chapter 4 — standards dealing with primary production and processing: seafood and dairy.

The follow standards within these chapters of the ANZFS Code do not apply in New Zealand:

- maximum residue limits (Standard 1.4.2)
- country of origin labelling (Standard 1.2.11)
- processing requirements for milk, cheese, eggs, dried meat, eviscerated poultry, crocodile meat, game and fermented comminuted processed meat (Standard 1.6.2)
- fortification of wheat flour for making bread with folic acid (Standard 2.1.1)
- requirements relating bovine meat and meat products being derived from animals free from bovine spongiform encephalopathy (Standard 2.2.1 (clause 11))
- food hygiene standards (chapter 3)
- primary production and processing standards (chapter 4).

Source: ANZFS Code.

International standards

In addition to adhering to the ANZFS Code, some food businesses, mainly exporting businesses, also comply with the standards of foreign countries. Often, these foreign standards incorporate the Codex Alimentarius (Codex) or are informed by the Codex. The Codex is an international food standards code developed by the Codex Alimentarius Commission (CAC). The CAC is an international food standards agency that was established jointly by the Food and Agriculture Organization of the United Nations and the World Health Organization in 1963. The CAC develops standards for use by all member nations. Codex standards are designed to protect the health of consumers and promote fair practices in food trade.

New Zealand Food Safety Authority

NZFSA is New Zealand's core food agency. NZFSA undertakes a number of diverse roles. Its responsibilities include:

- the development and implementation of food hygiene principles for all New Zealand businesses including primary production and processing, and establishing maximum residue levels for agricultural and veterinary chemicals
- bringing the applicable elements of the ANZFS Code into law and providing interpretative guides
- setting food standards for New Zealand in those areas in which it deviates from the ANZFS Code
- implementing and enforcing all food regulations for domestically produced, imported and exported food
- issuing export certification for all food exported requiring such documentation
- administering and enforcing the *Food Act 1981*, *Animal Products Act 1999*, *Wine Act 2003* and *Agricultural Compounds and Veterinary Medicines Act 1997*.

In addition to the agreement established under the Joint Food Standards Setting Treaty, NZFSA and the NSW Food Authority (NSWFA) signed a Memorandum of Understanding in September 2006, to increase cooperation on a range of food safety and regulatory issues. These include policy development, standards and systems, incident response, science, communications, local government operations, and compliance and enforcement (NZFSA, sub. 2). This agreement was renewed in September 2009.

2.2 The jurisdiction-based food regulatory system

The ANZFS Code, provisions of the model food Act (outlined above) and other regulations are implemented and enforced (with variation) by individual jurisdictions. Therefore, there are nine sets of legislation and supporting regulations dealing with food standards and hygiene requirements in addition to Australian and New Zealand government legislation dealing with other food related activities.

Most jurisdictions have two principal streams of food safety regulation. The first stream applies to the manufacture, transport and handling of food that is for sale and the manner in which food is sold. The second stream applies to production, manufacture, transport and wholesale of primary products such as meat, poultry, seafood, eggs and dairy products regulated through primary production and commodity legislation. An overview of the food regulation system in Australia and New Zealand is provided in figure 2.2.

Consumer food regulation

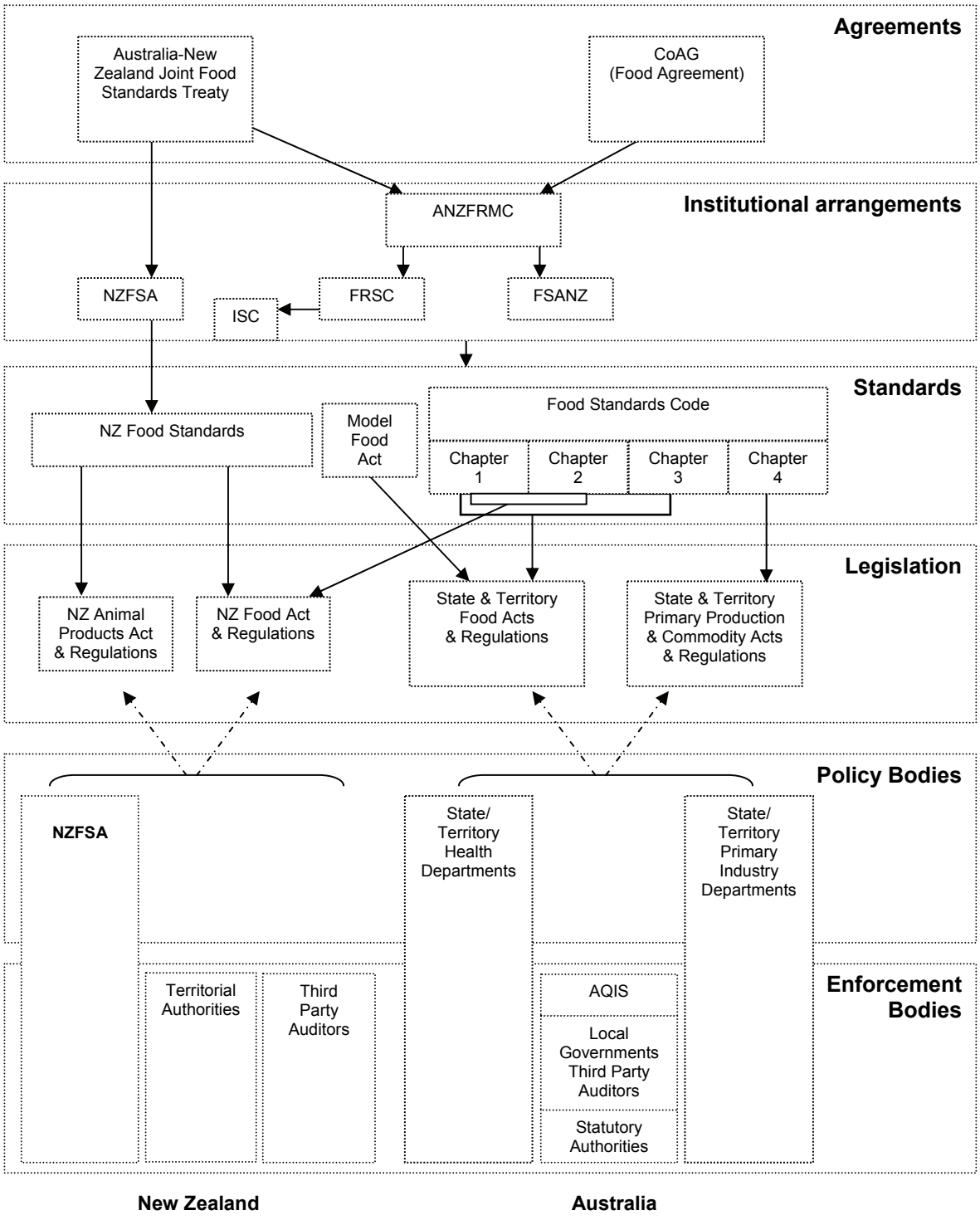
The Food Acts of each state and territory government in Australia and the Act in New Zealand define 'food' falling within the scope of the respective Acts and their associated regulations. They detail offences relating to food and provide for the administration and enforcement of the respective Acts, regulations and standards. The Food Acts and, in some instances, their supporting regulations also provide the means by which the ANZFS Code comes into law in each jurisdiction (table 2.1).

Table 2.1 **Food Acts and supporting regulations**

	Act(s)	*Regulations(s)*
NZ	Food Act 1981	Food Hygiene Regulations 1974 Food (Safety) Regulations 2002 New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002 Dietary Supplements Regulations 1985 Food (Fees and Charges) Regulations 2007
NSW	Food Act 2003	Food Regulations 2004
Vic	Food Act 1984	Food (Competency Standards Body) Regulations 2001 Food (Forms and Registration Details) Regulations 2005
Qld	Food Act 2006	Food Regulations 2006
SA	Food Act 2001	Food Regulations 2002
WA	Health Act 1911 Food Act 2008[a]	Health (Food Standards) (Administration) Regulations 1986 Health (Food Hygiene) Regulations 1993 Health (ANZ Food Standards Code Adoption) Regulations 2001
Tas	Food Act 2003	Food Regulations 2003
NT	Food Act 2004	
ACT	Food Act 2001	Food Regulations 2002

[a] The *Food Act 2008* (WA) commenced on 23 October 2009 – outside the benchmarking period.

Figure 2.2 **Australia-New Zealand food regulatory system**



Similar to the Food Acts of the Australian states and territories, New Zealand's *Food Act 1981* deals with definitions and offences, as well as matters of

enforcement and administration. As with the Australian states and territories, there are a number of regulations that have been issued under the Act.

The *New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002* regulation gives effect to the *relevant* parts of chapters 1 and 2 of the ANZFS Code in New Zealand. New Zealand also has 'New Zealand Food Standards' (table 2.2) — some of these standards relate to the regulation of primary production matters and 'other food regulation' (see below). In addition to the food safety regulations set in New Zealand at the national level, many of New Zealand's territorial authorities have implemented local by-laws related to food safety matters.

Table 2.2 **New Zealand Food Standards**

Regulation implementing New Zealand standards
Food (Tutin in Honey) Standard 2008
New Zealand (Mandatory Fortification of Bread with Folic Acid) Food Standard 2007
Food (Prescribed Foods) Standard 2007
New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008
Food (Milk and Milk Products Processing) Standard 2007
New Zealand (Bee Product Warning Statements - Dietary Supplements) Food Standards 2002
Food (Uncooked Comminuted Fermented Meat) Standard 2008
Food (Importer Listing) Standard 2008
Food (Importer General Requirements) Standard 2008

Source: NZFSA (2009i).

Primary production and processing regulations

In addition to the Food Acts, most jurisdictions regulate the primary production, manufacture and transport of meat, poultry, seafood and dairy products through specific primary industries legislation (table 2.3). However, the legislative basis for such regulation differs markedly across jurisdictions. In Queensland, South Australia and New Zealand all primary industries regulation is consolidated into a single Act. Victoria, on the other hand, uses separate legislation and objectives for its meat, dairy and seafood activities. In contrast to these models, New South Wales and Western Australia rely on their *Food Act* and *Health Act*, respectively, to regulate all food operations.[2] The remaining Australian states and territories have included additional food safety requirements in industry-specific legislation. In most cases, in addition to a main act that covers general food safety for primary production, there is a raft of regulations to deal with industry-specific issues.

2 Since 23 October 2009, Western Australia operates under the *Food Act 2008*.

Table 2.3 **Food safety legislation — Primary production and processing**

	Act(s)	*Regulations(s)*
NZ	Animal Products Act 1999	Animal Products Regulations 2000 Animal Products (Fees, Charges, and Levies) Regulations 2007 Animal Products (Dairy) Regulations 2005 Animal Products (Dairy Industry Fees and Charges) Regulations 2007 Animal Products (Regulated Control Scheme-Dairy Export Quota Products) Regulations 2008 Animal Products (Regulated Control Scheme Bivalve Molluscan Shellfish) Regulations 2006 Animal Products (Regulated Control Scheme — Contaminant Monitoring and Surveillance) Regulations 2004 Animal Products (Regulated Control Scheme — Limited Processing Fishing Vessels) Regulations 2001 Dairy Industry (National Residue Monitoring Programme) Regulations 2002
NSW	Food Act 2003	Food Regulations 2004
Vic	Meat Industry Act 1993 Seafood Safety Act 2003 Dairy Act 2000	Meat Industry Regulations 2005
Qld	Food Production (Safety) Act 2000	Food Production (Safety) Regulation 2002
SA	Primary Produce (Food Safety Schemes) Act 2004	Primary Produce (Food Safety Schemes) (Meat Industry) Regulations 2006 Primary Produce (Food Safety Schemes) (Seafood) Regulations 2006 Primary Produce (Food Safety Schemes) (Dairy Industry) Regulations 2005 Primary Produce (Food Safety Schemes) (Citrus Industry) Regulations 2006
WA[a]	Health Act 1911	Health (Meat Hygiene) Regulations 2001 Health (Food Hygiene) Regulations 1993 Health (ANZ Food Standards Code Adoption) Regulations 2001
Tas	Meat Hygiene Act 1985 Egg Industry Act 2002 Dairy Industry Act 1994 Living Marine Resources Management Act 1995	Meat Hygiene Regulations 2003 Egg Industry Regulations 2004 Dairy Industry Regulations 2004
NT	Food Act 2004 Meat Industries Act 1996 Fisheries Act 1988	Meat Industries Regulations 1997 Fisheries Regulations 1993
ACT	Food Act 2001	Food Regulations 2002

a The *Food Act 2008* (WA) commenced on 23 October 2009 – outside the benchmarking period.

Regulators

Food Act regulators

At the broad level, state/territory regulators are generally responsible for investigating and managing outbreaks of food-borne illness, and any food recalls that require coordination from the state level (table 2.4).[3] One exception is New South Wales where the NSWFA has similar responsibilities to the Departments of Health in the other jurisdictions, but it also takes on some broader 'front line' enforcement responsibilities in conjunction with the local councils of New South Wales. Given that it also covers primary producers of food, the regulatory coverage of the NSWFA is the most extensive of the food regulators across Australia.

Table 2.4 **State and territory regulators — the 'Food Acts'**

NSW	NSW Food Authority
Vic	Department of Health[a]
Qld	Queensland Health
SA	Department of Health
WA	Department of Health
Tas	Department of Health and Human Services
NT	Department of Health and Families
ACT	ACT Health

[a] Responsibility for food safety regulation passed to the newly created Department of Health from the Department of Human Services (Food Safety Unit) in August 2009.

The state regulators also provide support to the 550 local councils with responsibility for food safety through the development of guidance material and by providing professional development training. Most of the local councils with regulatory responsibilities employ environmental health officers whose duties include auditing and inspecting food businesses to ensure compliance with the Food Acts.[4] The Department of Health and Families (in the Northern Territory) and ACT Health (in the ACT) are responsible for the administration and enforcement of their respective Food Acts in their entirety — effectively fulfilling the roles performed by the state level regulators and local councils of the other jurisdictions.

In New Zealand, the enforcement and administration of the *Food Act 1981*, and its associated regulations, is spread across:

- the national body of NZFSA

[3] In some jurisdictions, as part of this process, the state regulators also provide assistance to local councils in dealing with outbreaks of foodborne illness.

[4] In South Australia and Western Australia, the respective Departments of Health are responsible for enforcing their respective Food Acts with respect to those food businesses that do not lie within a designated local government area.

- regionally through 10 Public Health Units in District Health Boards (box 2.3)
- locally through 73 territorial authorities which are akin to Australia's local councils.

Box 2.3 **Public Health Units**

There are 10 Public Health Units located across New Zealand. The Public Health Units provide environmental health, disease/illness investigation and control, and food regulatory functions to the areas administered by the 21 District Health Boards. The District Health Boards operate under the *Public Health and Disability Act 2000* and are the funders, planners and providers of certain health and disability services for their respective regions.

Public Health Unit programmes cover a range of areas including food safety, nutrition, communicable disease, environmental health and bio-security. Public Health Units also play a pivotal role in the investigation of food-borne illness.

Public Health Units employ Health Protection Officers, Food Act Officers, Food Sampling Officers and Medical Officers of Health, all of whom have powers under the *Food Act 1981*. For example, the responsibilities of Health Protection Officers include the oversight of labelling and composition requirements while Food Sampling Officers and Food Act Officers attend to the inspection, sampling and testing of foods.

Source: NZFSA (2004).

Primary production and processing regulators

With the different approaches to regulation of food safety in primary production, the number of organisations with a regulatory role and the scope of each organisation's authority differs between jurisdictions (table 2.5):

- The NZFSA is the sole authority in New Zealand for regulating primary processing of all animal products and providing official assurances related to their export. The NZFSA also develops standards, investigates and verifies compliance, and undertakes monitoring programs across a range of food producers, including primary producers
- New South Wales and the ACT each have a single regulatory body that governs food safety across all aspects of food production, including primary production and processing
- The remaining Australian states and territory all have at least one regulator of primary production. In South Australia, Western Australia, Tasmania and Northern Territory, the state/territory department of primary industries (or equivalent) has a role in regulating the food safety of primary produce. In Queensland and Victoria, this role has been devolved to statutory authorities.

Table 2.5 **Food safety regulators — Primary production and processing**

NZ	New Zealand Food Safety Authority
NSW	NSW Food Authority
Vic	PrimeSafe
	Dairy Food Safety Victoria
Qld	Safe Food Production Queensland
SA	Primary Industries and Resources South Australia
	Dairy Authority of South Australia
WA	Department of Health
Tas	Department of Primary Industries, Parks Water and Environment
	Tasmanian Dairy Industry Authority
	Department of Health and Human Services
NT	Department of Regional Development, Primary Industry, Fisheries and Resources
	Department of Health and Families
ACT	ACT Health

2.3 Other food safety regulation

As well as the regulations discussed above, there are other regulations that also have a food safety focus or objective. Such regulations are considered below under the broad categories of: import and export regulations; chemical residues and livestock identification; and fair trading regulations.

Import regulations

The *Imported Food Control Act 1992* (Cwlth) provides for control of food safety at Australia's national border. It is administered and enforced by AQIS. AQIS uses a risk-based approach to border inspection, with priority given to those foods that FSANZ considers to pose a medium to high risk to public health.[5] Once AQIS allows imported food into Australia, the subsequent regulatory responsibility for food safety outcomes falls to the state or territory into which the food has been imported.

All food imported into New Zealand for sale must comply with the *Food Act 1981*, delegated legislation under that Act, relevant sections of the ANZFS Code and New Zealand's Food Standards.

5 Food coming into Australia is also subject to the provisions of the *Quarantine Act 1908* (Cwlth).

In recent years (following a review of New Zealand's imported food regulation in 2004), New Zealand's approach to imported food regulation has shifted focus. There is now less dependence on inspection at the border and a greater reliance on factors such as the food safety processes of importers (including listing, record keeping, food storage and transport requirements for importers) and the categorisation of imported foods by level of regulatory interest, with differential risk management based on that categorisation. Those foods which New Zealand considers present a greater risk to public health than others are termed 'prescribed foods'. New Zealand's imported food inspection program focuses on these prescribed foods and other foods that are suspected of non-compliance. Most foods are considered 'low risk' and are imported without restriction.

Export regulations

The *Export Control Act 1982* provides conditions and restrictions on the export of goods from Australia (including food). The Act defines a number of goods as 'prescribed', including (but not limited to): dairy foods; egg and egg products; fresh fruit and vegetables; and meat and meat products. In general, AQIS only becomes involved in the export of food if it is a prescribed food, or if 'government to government certification' of a product is required for export.

One way that AQIS ensures adherence by Australia's exporters to domestic and overseas requirements is by an inspection and audit program. In the case of red meat processing (the most intensive of these compliance programs), AQIS places its inspection and verification staff at every export facility and requires these facilities to undergo multi level verification audits to ensure compliance.

The NZFSA provides the primary regulatory oversight for food to be exported from New Zealand. Part of its regulatory brief is to ensure the 'safety and suitability' of New Zealand's exports. Over 80 per cent of food produced in New Zealand is exported and much of the regulation of food exports focuses on the primary production sector (NZFSA 2009f).

The *Animal Products Act 1999* (NZ) covers the provision of official assurances related to the export of products such as meat, game, seafood and honey. The official assurances confirm to the importing countries' governments that the particular food export complies with both New Zealand's and the importing country's standards.

While New Zealand does not have specific legislation covering production or export of plant or organic products (with the exception of wine), NZFSA does provide health assurances for the export of plant products.

Trans–Tasman Mutual Recognition Arrangement

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) is an arrangement between the Australian, state and territory governments, and the New Zealand government. It allows goods, including certain foods, to be traded freely between New Zealand and Australia. In the context of food safety regulation, the TTMRA allows many food products to be sold in Australia provided they are made in New Zealand in compliance with New Zealand's food safety regulation (and vice versa). These foods are generally not subject to inspection at the border, nor require certification, when being traded between Australia and New Zealand. A small number of food products are, however, exempted from the TTMRA, including 'high-risk foods' (such as beef, fish, dried coconut, peanuts, pistachios and seaweed) and so are inspected at the border when traded between Australia and New Zealand.

Chemical residues

Limits for the residues of agricultural and veterinary chemicals that can be found in food are contained in the ANZFS Code (Standard 1.4.2) for Australia and the *New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008* for New Zealand. These limits are more commonly referred to as Maximum Residue Limits (MRLs). In addition to the MRL requirements, there are other regulations affecting the approval and use of agricultural and veterinary chemicals in both Australia and New Zealand.

In Australia, the Australian Pesticides and Veterinary Medicines Authority (APVMA) administers the National Registration Scheme for these chemicals. Any such chemicals must be registered under the scheme before they can be used. As part of this registration process, the APVMA sets an MRL(s) for the chemical — the MRLs set by the APVMA are separate to those contained in the ANZFS Code.

Once a chemical is registered under the National Registration Scheme, the use of the chemical is regulated by Australian states and territories — typically through the Department of Primary Industries or equivalent. Depending on the state or territory, these regulations can include matters such as the training and licensing of chemical users, residue monitoring and chemical application practices (for example, to address spray drift). Depending upon the nature of a primary producer's operation and produce, these 'control of use' regulations may be complementary to, or in addition to, anything that a producer will need to do to ensure compliance with the MRLs stated in the ANZFS Code.

In New Zealand, the *Agricultural Compounds and Veterinary Medicines Act 1997* (ACVM Act) regulates the import, sale and use of agricultural and veterinary chemicals. The Agricultural Compounds and Veterinary Medicines Group of the NZFSA administers and enforces the ACVM Act to both promote food safety outcomes and to meet export market requirements.

Control of livestock

The National Livestock Identification System (NLIS) is Australia's scheme for the identification and tracing of livestock. It takes effect from state and territory legislation and is administered and enforced by state and territory regulators (typically through the Department of Primary Industries or equivalent). As the NLIS allows stock to be traced throughout their lives, it enhances Australia's ability to respond to a food safety issue arising from animals subject to the scheme.

'Fair Trading' Acts

The 'Fair Trading' Acts of the Australian states and territories, *Trade Practices Act 1974* (Cwlth) and *Fair Trading Act 1986* (NZ), impose certain obligations on those selling goods to the public, including provisions relating to product safety and information. In the absence of any food-specific safety regulations, businesses in Australia and New Zealand would still have certain obligations to consumers regarding the safety of their product and the information they disclosed to consumers about their product.

3 Food safety outcomes

Key points

- Intermediate indicators of regulatory outcomes, such as changes in food control practices, have shown an increased knowledge of and improved food handling practices since the implementation of Food Safety Standards.
- Most attempts to measure the outcomes from food safety regulation focus on the incidence of food-borne illness, as evidenced by notifications and outbreak data.
- In Australia in 2008, there were 25 000 notifications of illnesses that are commonly transmitted by food.
  - The Northern Territory recorded the highest rates of these illnesses (per person) while Western Australia and Tasmania recorded the lowest rates, although not all cases of these illnesses were caused by food-borne transmission.
  - Campylobacteriosis (15 500 cases) was the most frequently notified illness.
- New Zealand reported 6693 notifications of campylobacteriosis in 2008 but different reporting systems complicates comparisons with Australia.
- In 2007, there were 149 food-borne outbreaks in Australia — 2300 people were affected, over 260 people were hospitalised and five people died as a result of these outbreaks.
  - The Northern Territory recorded the highest rate of outbreaks (per person) while South Australia and Western Australia reported relatively low rates.
  - The majority of people hospitalised were in New South Wales.
  - All five fatalities were recorded in Victoria.
- In New Zealand, 89 outbreaks, affecting 1206 people, were reported in 2008.
- It is difficult to use outcomes data to draw conclusions on the performance of food safety regulation. The main reasons are that:
  - data on notifications is severely under-reported and the inherent variability of outbreak data makes it difficult to identify any trends over time
  - linking food-borne illness data to food safety regulation is problematic because of a range of other factors which affect food safety outcomes.
- Outcomes data is most useful at identifying the types of food and preparation areas at highest risk. When used with current and intermediate indicators, it provides a broad context for benchmarking different approaches to food safety regulation.

Food safety regulation exists for a purpose — to reduce food-related illness and its impact on individuals, families the community and economy. Poor food safety outcomes can lead to greater use of health sector resources and lower workforce productivity. Outcome measurement potentially provides a systematic way of monitoring and evaluating the overall effectiveness of regulation. Measuring food safety outcomes should deliver findings that governments, regulators and businesses can use to adapt, improve, and become more effective at managing food safety.

In considering the most appropriate indicators to assess outcomes from food safety regulation, it is important to recognise the multiplicity of influences on both narrow and broader interpretations of what constitutes safe food or the protection of public health. Knowing what would have happened in the absence of food safety regulation (the counterfactual) and isolating the impact of that regulation from other non-regulatory determinants of food safety outcomes is problematic. For example, it is difficult to assess the impact of regulation against non-regulatory factors such as a company's individual effort to manage food safety to maintain viability, market share and reputation, changes in food processing techniques and changes in consumer tastes over time. Regulatory arrangements can also influence the reporting of outcomes, as distinct from the underlying patterns.

The inherent attribution difficulties are magnified when the definition of safe food is broadened to include the promotion of good health and when potential indicators of success or failure include longevity and trends in conditions linked to food consumption (such as obesity, diabetes and heart disease). Most attempts to measure the outcomes from food safety regulation focus on the incidence of food-borne illness (or food poisoning). This is most commonly measured using data on notifications and outbreaks of food-related illnesses (section 3.2). An alternative approach is the use of intermediate indicators.

3.1 Intermediate indicators

Intermediate indicators are checks of the effectiveness of regulation at an intermediate stage or between regulatory requirements and outcomes of regulation. In relation to food safety, intermediate indicators are changes in food control practices which can impact positively or negatively on outcomes. The use of intermediate indicators for food safety regulation is in line with the key objective enunciated in the COAG Food Regulation Agreement of providing safe food *controls* for the purpose of protecting public health and safety.

Food controls cover all aspects of food handling, preparation, cooking, storage and transport that combine to determine the condition of food consumed by the public.

The legally enforceable protocols that direct food control practices in Australia are contained in the Australia New Zealand Food Standards (ANZFS) Code developed by Food Standards Australia New Zealand (FSANZ). The aim is to provide a nationally consistent set of food safety requirements for food businesses. New standards relating to food safety practices, premises and equipment were introduced between 2001 and 2003 by FSANZ in relation to:

- the skills and knowledge of food handlers and their supervisors
- specific food handling controls for certain steps in the production chain
- having a system to recall unsafe food
- the health and hygiene of food handlers
- the cleaning, sanitation and maintenance of equipment and the premises
- the suitability of the food premises and equipment.

FSANZ established an evaluation program to assess the impact of the new standards on food handling knowledge and practices in food businesses. FSANZ justified its focus on intermediate indicators of food safety outcomes in these terms:

> At the time of introduction of the Food Safety Standards, it was decided that FSANZ would evaluate their impact. It was acknowledged that it was not possible to measure the effect of implementing the Standards on the end objective of setting those Standards – the protection of public health and safety. This is because the external influences on public health and safety as a whole are so complex and influenced by many external factors that a measured change to the level of health and safety of a given population group cannot generally be attributed to a single influence, a single agency or action by an agency, such as a change in food regulatory measures. Therefore, evaluation of the Standards was conducted under the assumption that a measure of any improvement in the food safety knowledge of food businesses and the food handling practices carried out by food businesses would consequently impact on the incidence of food poisoning. (FSANZ 2008a)

The impact of the new standards was assessed by FSANZ by comparing responses to a national food handling survey (comprising a telephone component to measure food safety knowledge and awareness and an observational component to measure actual on-site food handling practices) conducted prior (in 2001) and subsequent (in 2007) to the introduction of the new standards. According to FSANZ, the results demonstrate '… increased knowledge of safe food handling and improved food handling practices since the implementation of the Food Safety Standards.' (FSANZ 2008a). For example, the results showed that in 2007 (compared with 2001) more businesses:

- knew the correct storage temperature for chilled food
- knew the correct temperature for holding hot food

- knew the correct temperature and time for safely cooling food
- knew when chemical sanitisers should be used
- had temperature probes that were more frequently used
- checked that potentially hazardous food was received at a safe temperature
- had improved their storage practices for chilled food
- monitored cooking temperature
- improved their protection of food from contamination
- provided appropriate hand washing facilities for staff
- used commercial dishwashers and hot water glass washers.

FSANZ also commented that, in general, greater knowledge and safer food handling practices were identified in businesses that directly supply to or manufacture food for high-risk businesses such as hospitals, nursing homes or child care centres, large businesses, businesses with a food safety program, Victorian businesses, and those in which English was the main language spoken at the business. Further, the survey results found that the staff of businesses with a Food Safety Plan had better food handling knowledge and practices (chapter 6).

Despite improvements, FSANZ stated that at least 10 per cent of food businesses failed to:

- check the temperature of potentially hazardous food upon delivery
- cool food within the specified time and temperature limits
- protect stored chilled food from contamination in the cool room
- supervise displays of ready-to-eat food
- dispose of leftover displayed food
- provide warm running water for hand washing
- supply single use towels for hand drying
- ensure staff wash and dry their hands correctly
- maintain clean premises
- contact a pest control company or have a pest control program.

There were also gaps in knowledge about the storage temperature of chilled food, holding temperature of hot food, cooling times and temperatures for cooked food, hand contact with ready-to-eat food (such as bread and ham) and correct cleaning and sanitising temperatures (FSANZ 2008a).

3.2 Food-borne illness

Food-borne illness has a significant impact on individuals, families, the community and economy (box 3.1).

Box 3.1 The cost of food-borne illness

Cost to consumers

For consumers, food-borne illness means enduring the physical discomfort of the symptoms (and in some cases long-term health issues) as well as costs associated with medical expenses and time off work both for the sufferers and carers. Poor food safety outcomes can also reduce consumer confidence in food safety and affect consumer eating habits.

Cost to government

All levels of government face significant cost from food-borne illness. In Australia, each case of food-borne illness which involves a medical consultation, hospitalisation or pathology test costs the government through the Medicare rebate. The government also faces the expense of investigating sporadic cases and outbreaks as well as any follow-up action required. Further, there are costs associated with lost productivity and its impact on government revenue.

Cost to industry

Food-borne illness costs industry through employee absence and can be extremely expensive for the food business identified as causing the illness. These costs can include loss of sales from both closure and lower levels of consumer confidence, loss of stock from withdrawals or recalls, costs associated with re-establishing goodwill and market share, increased insurance premiums, bankruptcy and prosecution. There can also be flow-on effects to whole industry sectors and to Australia's international reputation as a supplier of safe food.

Quantifying the cost of food-borne illness in Australia

Estimates of the cost of food-borne illness in Australia have found that it may be in excess of $2.6 billion a year.

- The 1999 Australian New Zealand Food Authority report, *Food safety standards — costs and benefits* estimated the national cost of food-borne illness to be about $2.6 billion per year, based on 4.2 million cases of food-borne illness per year (derived from the average of four surveys) at an average of $630 per case.
- A more recent estimate by Abelson, Forbes and Hall (2006 report on the *Annual Cost of Food-borne illness in Australia* prepared for the Department of Health and Ageing*)* found the annual cost to be significantly lower at $1.25 billion per year, comprising productivity and lifestyle costs ($770 million), premature mortality costs ($230 million) and health care service costs ($220 million).

The key difference between the two aggregate estimates of food-borne illness was a lower cost per case of food-borne illness used in the 2006 study.

Source: Abelson et al. (2006).

Trends in the incidence of food-borne illness are most commonly measured using surveillance data on notifications and outbreaks of food-related illnesses and food safety recalls.

Notification arrangements

All jurisdictions have public health legislation that requires medical practitioners and/or pathology laboratories to report cases of illness that are important to public health. Surveillance data on notifications can be used to monitor trends in the incidence of food-borne illness over time.

The most common illnesses transmitted by food include campylobacteriosis, salmonellas, shigellosis, listeriosis, typhoid, shiga toxin producing *E coli*. (STEC), haemolytic uraemic syndrome (HUS) and botulism. In Australia, these are notifiable through OzFoodNet, Australia's enhanced food-borne illness surveillance system, which was established by the Australian Government Department of Health and Ageing in 2000 to improve national surveillance of gastrointestinal and food-borne illness.

However, food-borne transmission is only one of the routes by which humans are exposed to pathogens; other routes include water, animal contact and person to person contact. According to OzFoodNet, just under 90 per cent of salmonellosis infections and around 75 per cent of campylobacteriosis infections are acquired through food-borne transmission. These rates can vary across geographical areas. For example, a number of the salmonella cases in the Northern Territory have been attributed to environmental factors and/or person-to-person contact, rather than food-borne sources (CDCNT 2006 and CDCNT 2009). Also, the proportion of cases which are food-borne are estimated to be lower in New Zealand — around 60 per cent for both pathogen types — but differences in reporting systems complicates comparisons between the two countries.

This tends to suggest that food-borne illness could be overstated in notifications statistics; however, the reliability of notifications data as an indicator of food-borne illness is more likely to be questioned on the grounds of underreporting. It is estimated that less than one per cent of cases of food-borne illness are captured in existing notification schemes in Australia and overseas (FSANZ 1999). There are a number of reasons for this including:

- not all food-borne illnesses are notifiable. There are over 200 different types of illness that may be transmitted by food but only a few are notifiable to health departments (OzFoodNet 2005). Further, there are differences in reporting

systems between jurisdictions — of particular significance, campylobacteriosis is not notifiable in New South Wales.

- food-borne illnesses which are notifiable are also underreported. In Australia it is estimated that for every notification of salmonellosis and campylobacteriosis there are about seven and 10, respectively unreported cases in the community (OzFoodNet 2005). The main reason for this is that the short duration and mild nature of many food-borne illnesses means that most of those affected are unlikely to visit a doctor or report the incident to their local health authority.
- even if those affected seek medical help, it is difficult to determine the cause of a reported illness. Generally, the attribution is based on the subjective opinion of the notifying physician without a microbiological demonstration of a food-borne pathogen nor epidemiological evidence to support the attribution.

While the Commission presents data on notifications of food-borne illness in Australia and New Zealand, because of the data concerns discussed above the Commission does not attempt to attribute causation to any differences.

Reported notification of food-borne illness in Australia

In Australia in 2008, there were 25 000 notifications (or 152 notified cases per 100 000 population) of eight illnesses commonly transmitted by food. The most frequently notified were campylobacteriosis (15 500 cases), salmonellosis (8300 cases) and shigellosis (800 cases) (table 3.1).

In 2008 by jurisdiction, the Northern Territory (423 notified cases per 100 000 population) and South Australia (177 notified cases per 100 000 population) reported the highest rates of illness commonly transmitted by food (not all of the notified cases would have been transmitted by food). Apart from New South Wales (where campylobacteriosis is not notifiable), Western Australia and Tasmania had the lowest rate of notified cases — 133 and 137 notified cases per 100 000 population, respectively.

By pathogen type, the highest reported rate of campylobacteriosis was recorded in South Australia at 124 cases per 100 000 population in 2008. Salmonellosis was reported most frequently in the Northern Territory — 497 cases or 226 cases per 100 000 population. Again, the Northern Territory reported the highest rate of shigellosis at almost 80 cases per 100 000 population (table 3.1).

Table 3.1 **Illness commonly transmitted by food, Australia — 2008**

Number of cases and notification rate per 100 000 population

		NSW[a]	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*Aus*
Campylobacteriosis	no.	nn	5 774	4 821	1 993	1 829	474	257	381	15 529
	rate	nn	109.0	112.7	124.4	84.5	95.1	116.8	110.7	107.8
Salmonellosis	no.	2 261	1 651	2 047	661	855	206	497	132	8 310
	rate	32.5	31.2	47.8	41.3	39.5	41.4	226.0	38.3	38.9
Shigellosis	no.	109	136	97	137	169	3	175	3	829
	rate	1.6	2.6	2.3	8.6	7.8	0.6	79.6	0.9	3.9
Listeriosis	no.	34	11	12	1	8	1	0	1	68
	rate	0.5	0.2	0.3	0.1	0.4	0.2	0.0	0.3	0.3
Typhoid	no.	43	32	18	2	8	0	1	0	104
	rate	0.6	0.6	0.4	0.1	0.4	0.0	0.5	0.0	0.5
STEC/VTEC	no.	19	11	37	38	0	0	0	0	105
	rate	0.3	0.2	0.9	2.4	0.0	0.0	0.0	0.0	0.5
HUS[a]	no.	17	4	7	2	0	0	1	0	31
	rate	0.2	0.1	0.0	0.1	0.0	0.0	0.5	0	0.1
Botulism	no.	0	0	0	0	0	0	0	0	0
	rate	0	0	0	0	0	0	0	0	0
Total	no.	2 483	7 619	7 039	2 834	2 869	684	931	517	24 976
	rate	35.7	143.9	164.6	177.0	132.6	137.3	423.4	150.2	152.0

nn not notifiable. [a] Haemolytic uraemic syndrome.

Source: Department of Health and Ageing, Australian Government, National Notifiable Diseases Surveillance System, http://www9.health.gov.au/cda/Source/Rpt_2_sel.cfm, accessed 25 August 2009.

At the same time as Australian jurisdictions were progressively adopting uniform food safety arrangements, between 2001 and 2008, notification rates across the three major pathogen types were relatively stable. In Australia:

- notification rates for campylobacteriosis were downward trending over the period, declining from 126 cases per 100 000 population in 2001 to 108 notified cases per 100 000 population in 2008
- over the same period notifications of salmonellosis ranged from 35 to 45 notified cases per 100 000 population
- shigellosis notifications ranged from 2.2 to 3.9 notified cases per 100 000 population (table 3.2).

Table 3.2 **Trend in illness commonly transmitted by food, by state**

2001 to 2008, notification rate per 100 000 population

	2001	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*
NSW								
Campylobacteriosis	nn	nn	nn	nn	nn	nn	nn	nn
Salmonellosis	25.2	31.9	27.9	32	32.2	30.2	37.1	32.5
Shigellosis	2.0	1.3	0.9	1.4	2.0	1.1	1.0	1.6
Vic								
Campylobacteriosis	114.4	103.1	113.6	127.9	120.8	111.7	122.0	109.0
Salmonellosis	22.9	25.7	26.4	22.6	29.1	27.2	36.1	31.2
Shigellosis	2.0	1.4	1.0	1.4	2.0	1.5	1.8	2.6
Qld								
Campylobacteriosis	109.1	104.3	100.8	105.3	110.5	97	106.1	112.7
Salmonellosis	60.6	72.0	57.4	71.8	65	66.1	56.6	47.8
Shigellosis	2.9	2.5	1.4	1.7	2.0	2.4	2.1	2.3
SA								
Campylobacteriosis	176.6	164.4	172.7	127.7	135.9	160.8	169.5	124.4
Salmonellosis	40.4	34	29.2	34.2	37.9	36.4	55.5	41.3
Shigellosis	2.2	1.7	2.1	3.6	3.1	2.4	4.2	8.6
WA								
Campylobacteriosis	136.5	111.4	101.2	97.8	121.6	94.5	99.7	84.5
Salmonellosis	44.2	37.6	31.4	32	39.8	38.8	47	39.5
Shigellosis	4.1	6.6	5.7	5.6	7.7	6.3	4.9	7.8
Tas								
Campylobacteriosis	143.5	128.0	131.9	126.8	156.7	122.3	144.5	95.1
Salmonellosis	34.5	35.1	30.8	24.9	62.1	39.0	45.4	41.4
Shigellosis	1.3	0.2	0.8	0.6	1.0	0.6	0.6	0.6
NT								
Campylobacteriosis	143.1	104.3	136	105.9	124	124.4	136.3	116.8
Salmonellosis	196.2	164.0	181	191.5	191.9	190.9	246.1	226
Shigellosis	53.6	51.7	66.5	57.4	95.5	59.3	81	79.6
ACT								
Campylobacteriosis	133.1	113.4	125	115.7	122.1	120.6	120.4	110.7
Salmonellosis	23.8	29.4	24.6	30.5	28.5	39.8	31.5	38.3
Shigellosis	1.9	0.0	0.9	0.6	2.1	0.6	0.0	0.9
Australia								
Campylobacter	125.5	113.0	116.2	116.2	121.0	111.1	120.3	107.8
Salmonella	36.2	40.0	35.2	39.0	41.3	39.9	45.4	38.9
Shigellosis	2.9	2.6	2.2	2.6	3.6	2.6	2.9	3.9

nn not notifiable.

Source: Department of Health and Ageing, Australian Government, National Notifiable Diseases Surveillance System, http://www9.health.gov.au/cda/Source/Rpt_2_sel.cfm, accessed 25 August 2009.

However, by jurisdiction, notification rates varied considerably, with no clear trends over the eight year period. For example:

- in Tasmania campylobacteriosis increased from 122 notified cases per 100 000 population in 2006 to 145 notified cases per 100 000 population in 2007 and then decreased significantly to 95 notified cases per 100 000 population in 2008
- notifications of salmonellosis in Queensland fell from 72 cases per 100 000 population in 2002 to 57 cases per 100 000 population in 2003 before increasing again to 72 cases per 100 000 population in 2004
- in South Australia shigellosis notifications more than doubled in 2008 — 4.2 notified cases per 100 000 population in 2007 compared with 8.6 notified cases per 100 000 population in 2008 (table 3.2).

Reported notification of food-borne illness in New Zealand

The New Zealand Food Safety Authority's 2008 Annual Report, *Concerning Food-borne Disease in New Zealand,* summarises a number of illnesses which could potentially be food-borne conditions. These are listed in table 3.3. Again, it is important to note that the data reflect the number of cases of the illness and not the mode of transmission. For example, cryptosporidiosis, while potentially a food-borne condition, is more commonly transmitted through water.

Similar to Australia, campylobacteriosis is the most frequently reported illness that can be transmitted by food in New Zealand. In 2008, there were 6 693 cases or 157 cases per 100 000 population of campylobacteriosis. This was significantly lower than the number of cases reported in recent years. The decline in incidence can partly be attributed to a concerted government and industry effort from late 2007 to reduce the key risks associated with campylobacteriosis in the poultry meat industry (chapter 9).

Giardiasis and salmonellosis were the second and third most frequently reported food-borne illnesses in New Zealand in 2008. The reported rate of salmonellosis has fallen considerably over the past few years in New Zealand — from 65 cases per 100 000 population in 2001 to 32 cases per 100 000 population in 2008. While the reported rate of giardiasis fell between 2001 and 2006, it then subsequently increased in 2008 (table 3.3).

Table 3.3 **Illnesses commonly transmitted by food, New Zealand**

2001 to 2008, number of cases and notification rate per 100 000 population

		2001	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*
Campylobacteriosis	no.	10 145	12 494	14 790	12 213	13 836	15 873	12 778	6 693
	rate	271.5	334.3	395.7	326.8	337.6	379.3	302.2	156.8
Cryptosporidiosis	no.	1 208	975	817	612	889	737	924	764
	rate	32.3	26.1	21.9	16.4	21.7	17.6	21.9	17.9
Gastroenteritis[a]	no.	940	1 087	1 025	1 363	557	931	622	690
	rate	25.2	29.1	27.4	36.5	13.6	22.5	14.7	16.2
Giardiasis	no.	1 603	1 547	1 570	1 514	1 231	1 214	1 402	1 662
	rate	42.9	41.4	42.0	40.5	30.0	29.0	33.2	38.9
Hepatitis A	no.	61	106	70	49	51	123	42	91
	rate	1.6	2.8	1.9	1.3	1.2	2.9	1.0	2.1
Listeriosis	no.	18	19	24	26	20	19	26	27
	rate	0.5	0.5	0.6	0.7	0.5	0.5	0.6	0.6
Salmonellosis	no.	2 417	1 880	1 401	1 081	1 382	1 335	1 274	1 346
	rate	64.7	50.3	37.5	28.9	33.7	31.9	30.1	31.5
Shigellosis	no.	157	112	87	140	183	102	129	113
	rate	4.2	3.0	2.3	3.7	4.5	2.4	3.1	2.6
VTEC/STEC	no.	76	73	104	89	92	87	100	128
	rate	2.0	2.0	2.8	2.4	2.5	2.1	2.4	3.0
Yersiniosis	no.	429	476	439	420	407	487	502	509
	rate	11.5	12.7	11.7	11.2	9.9	11.6	11.9	11.9

a Cases of gastroenteritis from a common source or food-borne intoxication such as staphylococcal.

Source: NZFSA (2006-08); Population and Environmental Health Group (2001–2008).

Food-borne outbreaks

Outbreaks, defined as a situation in which two or more people experience a similar illness after eating a common food or meal, are another measure of the prevalence of food-borne illness. Outbreak data are generally more reliable than notifications data because outbreaks are more likely to be reported and investigated than sporadic cases even though there is evidence that sporadic cases cause far more illness than do recognised outbreaks.

In 2007 there were 149 food-borne outbreaks or 0.7 outbreaks per 100 000 population reported in Australia. Nearly 2 300 people were affected, over 260 people were hospitalised and five people died as a result of these outbreaks.

The Northern Territory recorded the highest rate of outbreaks — over two outbreaks per 100 000 population, significantly higher than the national average of 0.7 outbreaks per 100 000 population. Conversely, relatively low rates of food-borne outbreaks were recorded in South Australia and Western Australia — both recording about 0.4 outbreaks per 100 000 population in 2007. The majority of people affected (36 per cent) and hospitalised (70 per cent) were in New South Wales. All five fatalities were recorded in Victoria (although in the three preceding years Victoria recorded no fatalities associated with food-borne outbreaks) (table 3.4).

Table 3.4 **Food-borne outbreaks, summary statistics — 2003 to 2007**

	NSW	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*Aus*
Number of outbreaks									
2003	29	20	30	1	8	1	7	3	99
2004	43	21	27	17	2	1	2	5	118
2005	19	27	32	6	5	6	2	5	102
2006	44	21	28	7	5	1	3	3	115[a]
2007	53	36	32	6	9	5	5	3	149
Outbreaks per 100 000 population									
2003	0.43	0.41	0.79	0.07	0.41	0.21	3.53	0.93	0.50
2004	0.64	0.43	0.71	1.11	0.10	0.21	1.01	1.55	0.59
2005	0.07	0.54	0.81	0.39	0.25	1.24	0.99	1.54	0.50
2006	0.64	0.41	0.69	0.45	0.24	0.20	1.45	0.91	0.56
2007	0.77	0.69	0.77	0.38	0.43	1.01	2.33	0.88	0.71
Number of people affected									
2003	521	499	311	6	182	22	110	35	1 686
2004	635	550	254	153	119	57	14	294	2 076
2005	246	808	292	163	198	205	9	51	1 972
2006	496	293	403	65	92	9	26	27	1 411
2007	829	642	406	115	171	55	26	46	2 290
Hospitalisations									
2003	29	27	28	1	7	2	4	7	105
2004	45	37	20	10	0	0	2	2	116
2005	24	40	69	5	13	10	1	4	166
2006	65	18	23	8	4	2	5	1	126
2007	187	39	19	0	16	2	3	0	266
Fatalities									
2003	1	1	2	0	1	0	0	1	6
2004	0	0	0	2	0	0	0	0	2
2005	1	0	3	0	0	0	0	0	4
2006	0	0	0	0	0	0	0	0	0
2007	0	5	0	0	0	0	0	0	5

[a] The total includes three outbreaks across multiple states.
Source: OzFoodNet (2003–2007).

Although investigators could not identify a specific food vehicle in 40 per cent of outbreaks, contaminated seafood was identified as the most common food vehicle for an outbreak. However, the most number of people affected and hospitalised resulted from outbreaks where mixed foods were identified as the food source. Fresh produce, eggs and desserts were also identified as high risk foods (table 3.5).

Table 3.5 **Outbreaks by food source, Australia — 2007**

	Number of outbreaks	*Number of people affected*	*Number hospitalised*
Seafood	20	117	7
Mixed foods	13	550	151
Egg-containing dish	11	129	15
Dessert	9	124	23
Meat and meat products	7	46	3
Fresh produce	7	186	13
Poultry	5	41	1
Water	4	85	3
Beverage	3	16	2
Dips	2	77	10
Egg-based sauce/dressing	2	31	9
Pasta	2	34	0
Sushi	2	35	5
Cheese	1	10	0
Sandwich	1	6	0
Unknown	60	803	24
Total	**149**	**2 290**	**266**

Source: OzFoodNet (2007).

Restaurants were the most likely setting for an outbreak to occur. In 2007, 57 outbreaks or 38 per cent of all outbreaks were sourced to a restaurant. The majority of people affected by food outbreaks was also sourced to restaurants — of the 2290 people affected by a food-borne outbreak in 2007 the majority (31 per cent or 714 people) were affected by restaurant food. Bakeries, commercial caterers and takeaway businesses were also relatively high-risk settings for outbreaks (table 3.6).

Over the past five years, the number of reported outbreaks has ranged from 100 to 150 a year (or between 0.5 and 0.7 outbreaks per 100 000 population), with no clear trend evident. The number of people affected by food-borne outbreaks was highest in 2007 (2290 people affected) and lowest in 2003 (1411 people affected). Hospitalisations were also highest in 2007 (266 people hospitalised) and lowest in 2003 (105 people hospitalised). Over the same (2003 to 2007) period, the number of fatalities recorded from food-borne outbreaks ranged from no deaths in 2006 to six deaths in 2003 (table 3.4).

At the jurisdictional level, there has been considerable volatility in outbreak data annually. For example:

- In Tasmania, there were six reported outbreaks in 2005 compared with one outbreak in 2004 and 2006.
- In South Australia, there was one reported outbreak in 2003 compared with 17 outbreaks in the following year.
- In New South, there were 187 hospitalisations for food-borne outbreaks in 2007, compared with only 65 in the previous year.
- In Victoria, 808 people were affected by food-borne outbreaks in 2005 compared with only 293 people affected in 2006.
- In the ACT, 294 people were affected by food-borne outbreaks in 2004 compared with only 35 people affected in the previous year (table 3.4).

Outbreak data by food source and setting is collected for each jurisdiction, however numbers are small and standard errors too high for analysis.

Table 3.6 **Outbreaks by preparation setting, Australia — 2007**

Setting prepared	*Number of outbreaks*	*Per cent of total outbreaks*	*Number of people affected*	*Per cent of total people affected*
Restaurant	57	38	714	31
Private residence	17	11	134	6
Takeaway	15	10	152	7
Commercial caterer	12	8	285	12
Aged care facility	10	7	107	5
Primary produce	9	6	79	3
Institution	6	4	108	5
Bakery	5	3	413	18
Camp	4	3	85	4
Other	4	3	84	4
Unknown	3	2	94	4
Commercial manufacturer	3	2	17	1
Cruise/airline	1	1	8	0
Hospital	1	1	4	0
Fast food restaurant	1	1	4	0
Grocery store/delicatessen	1	1	2	0
Total	**149**	**100**	**2 290**	**100**

Source: OzFoodNet (2007).

In New Zealand, the number of reported food-borne outbreaks ranged from 74 in 2007 to 183 in 2005, with no clear trend evident. The number of people affected was highest in 2008 when there were 89 food-borne outbreaks affecting over 1200

people. The main food types that could be identified in the 2008 outbreaks were seafood and meat (tables 3.7 and 3.8).

Table 3.7 **Food-borne outbreaks, New Zealand — 2003 to 2008**

	Number of outbreaks	*People affected*
2003	144	638
2004	116	630
2005	183	753
2006	146	909
2007	74	611
2008	89	1 206

Source: Population and Environmental Health Group (2003–2008).

Table 3.8 **Outbreaks by food source, New Zealand — 2008**

	Number of outbreaks[a]	*People affected*
Seafood	14	227
Meat	10	122
Fish	9	29
Rice/noodles/pasta	8	75
Poultry	7	94
Fresh produce	6	88
Eggs	4	38
Infected food handler	3	67
Sandwich/burger	3	15
Pulses	2	24
Dairy	2	4
Flour	1	67
Honey	1	22
Water	1	4
Unspecified	3	324
No source identified	35	238
Total	**89**	**1 206**

[a] More than one outbreak source was listed in some outbreaks.

Source: Population and Environmental Health Group (2008).

Food recalls

Food recalls are actions taken to remove from sale, distribution and consumption foods that may pose an unacceptable risk to consumers. Data collected on food recalls can be used to identify problems occurring in the food industry as well as informing food businesses which hazards are occurring most frequently. FSANZ

coordinates and monitors food recalls within Australia. Recalls occur in consultation between state and territory authorities and a sponsor who is usually the product's supplier, for example, the manufacturer or the importer (FSANZ 2009d).

Food recall data in Australia is published only at the national level. In 2008 there were 51 recalls. The majority of products were recalled for foreign matter, microbiological, and labelling reasons (table 3.9). Recalls can be initiated as a result of reports referred from a variety of sources — manufacturers, wholesalers, retailers, medical practitioners, government agencies and consumers — but many are initiated by food companies themselves. In 2008, the majority of recalls occurred because of company testing or consumer complaint (table 3.10).

Table 3.9 **Number of recalls by reason, Australia — 2001 to 2008**

	Micro biological	*Foreign matter*	*Chemical*	*Labelling*	*Processing faults or deterioration*	*Other*	*Total*
2001	22	14	16	9	2	2	65
2002	26	6	13	8	4	1	58
2003	26	10	8	40	2	0	86
2004	19	10	3	34	4	0	70
2005	14	10	4	23	4	5	60
2006	18	18	3	23	5	1	68
2007	22	14	3	13	1	1	54
2008	15	16	4	12	2	2	51

Source: 2001 to 2007 data from FSANZ (2009c) and 2008 data provided by FSANZ.

Table 3.10 **Recalls by initiation source, Australia — 2001 to 2008**

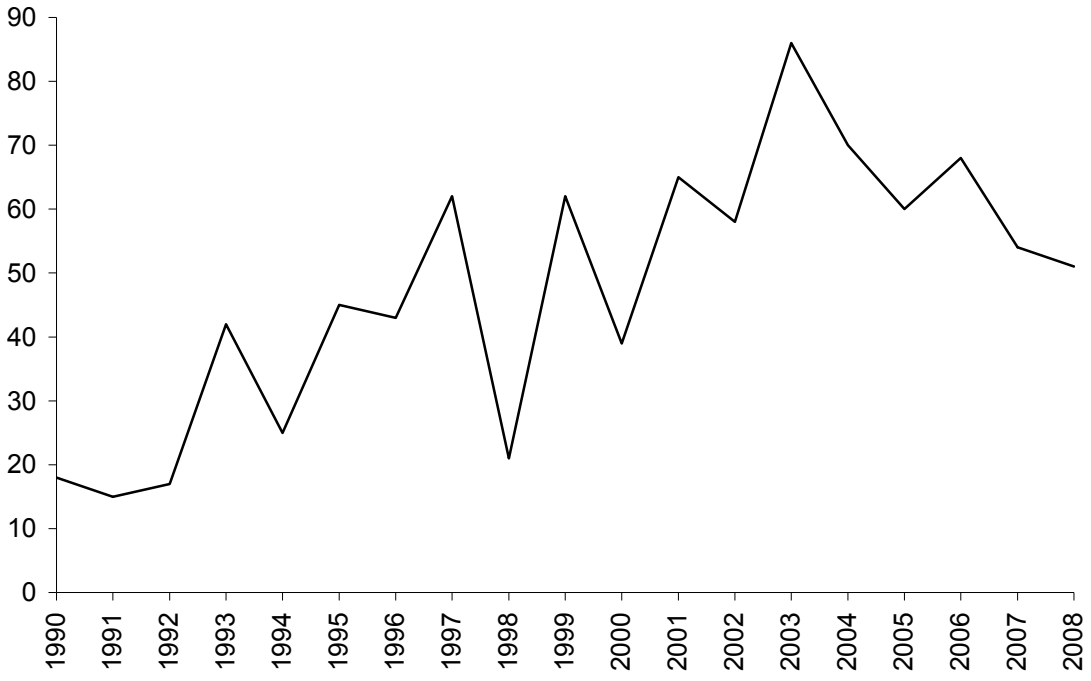
	Company testing	*Government testing*	*Consumer complaint*	*Other*	*Total*
2001	11	24	23	7	65
2002	14	22	19	3	58
2003	27	34	22	3	86
2004	11	18	35	6	70
2005	11	16	30	3	60
2006	16	16	31	5	68
2007	20	7	22	5	54
2008	21	5	20	5	51

Source: Data provided by FSANZ (unpublished).

Between 1990 and 2003, the number of food recalls was generally upwards trending, but since 2003 there has been a noticeable downward trend in the number of food recalls. However, there has been considerable variation in the number of

recalls recorded annually. Of particular significance, the introduction of more stringent food labelling requirements (relating to allergens) in 2002 coincided with a sharp rise in the proportion of recalls caused by labelling problems. The number of recalls resulting from labelling problems increased from 8 recalls in 2002 to 40 recalls in 2003 but has since been declining steadily (figure 3.1).

Figure 3.1 **Number of food recalls, Australia — 1990 to 2008**



Data source: 2001 to 2007 data from FSANZ (2009c) and 2008 data provided by FSANZ.

Since 2001 there has been a steady decline in the number of recalls for chemical reasons (from 16 recalls in 2001 to four recalls in 2008). Over the same period, the number of recalls for microbiological, foreign matter and processing faults or deterioration remained relatively stable (table 3.9).

In recent years, there has been a gradual shift away from the share of total recalls initiated by government testing towards recalls initiated by company testing. In 2001, 37 per cent of recalls were initiated by government testing and 17 per cent from company testing. By 2008 the share of recalls from government testing had fallen to 10 per cent and the share of recalls from company testing had increased to over 41 per cent (table 3.10).

In New Zealand, food recalls are co-ordinated by the New Zealand Food Safety Authority (NZFSA). The NZFSA has been collecting data since 2001. In 2008 there were 17 food recalls in New Zealand, the majority for foreign matter or allergen reasons.

Between 2001 and 2008 the number of food recalls in New Zealand ranged from 11 in 2002 to 36 in 2003. As in Australia, after December 2002, when mandatory-warning statements on labels for food allergens were introduced, there was a sharp increase in the number of recalls due to allergens, but since 2005 recalls relating to allergens have fallen significantly (table 3.11).

Table 3.11 **Number of food recalls, New Zealand — 2001 to 2008**

	Microbiological	*Foreign matter*	*Allergen*	*Quality*	*Chemical*	***Total***
2001	8	9	1	2	2	**22**
2002	0	8	1	0	2	**11**
2003	3	7	21	2	3	**36**
2004	8	7	12	0	2	**29**
2005	4	1	16	0	0	**21**
2006	5	10	6	2	3	**26**
2007	6	7	6	1	0	**20**
2008	4	7	5	0	1	**17**

Source: NZFSA (2009g).

3.3 Outcomes and regulation

It is difficult to draw conclusions on the performance of food safety regulation from outcomes data.

Firstly, there are data limitations. Notifications of food-borne illness are severely underreported — only a few food-borne illnesses are notifiable and many cases of foodborne illness, although notifiable (such as salmonellosis) are unreported because of their short duration and mild nature. Food-borne disease outbreaks and food recall statistics are more likely to be accurately investigated and reported. However, with relatively small numbers, the data are subject to considerable annual variability making it difficult to identify trends over time.

Secondly, notwithstanding data limitations, it is usually impossible to link changes in outcomes with particular regulatory changes. Even attributing better or worse performance to whole regulatory regimes is dubious. A higher incidence of food safety incidents might reflect better reporting due to better management by the regulators. In addition, there is a broad range of factors which make it difficult to isolate the impact of regulation from other non-regulatory determinants of food safety outcomes. These include a company's own efforts to manage food safety in order to maintain viability and reputation, changes in production processes, changing demographic characteristics, cultural shifts in food preferences and the

settings in which they are consumed, general economic conditions and variations in seasonal weather conditions.

Finally, outcome indicators have been criticised for being backward-looking. For example, it can be argued that outcome indicators give no information about how well food safety is currently being managed. Indeed, it is not unusual that investigations into an outbreak or recall reveal that the company previously had a good food safety record.

At best, the data provide the regulator with an indication of the types of foods and preparation areas where there are higher risks and regulation may need to be more focussed. For example, food-borne outbreak data in Australia in 2007 found that:

- the Northern Territory had a significantly higher risk of an outbreak (per 100 000 population) than any other state and territory in Australia
- most outbreaks were caused by contaminated seafood
- most people were affected from contamination of mixed foods
- fresh produce, eggs and desserts were also high risk foods
- restaurants were the most likely preparation setting for an outbreak
- most people were affected by food prepared by a restaurant, bakery, commercial caterer or takeaway food outlet.

This information does not usually help to judge the effectiveness of a particular regulation, let alone particular aspects of a regulation. However, when used in conjunction with current indicators (such as the number of inspectors, number of food inspections conducted and percentage of sub-standard conditions identified) and intermediate indicators (relating to changes in food control practices), it provides a broad context for benchmarking different approaches to food safety regulation.

4 Approach to benchmarking food safety regulation

Key points

- The Commission's approach to this benchmarking study has been informed by the rationale for the broader benchmarking program as well as the lessons from the Commission's previous regulation benchmarking studies and international studies.
- There are many challenges in undertaking a regulation benchmarking study. The Commission has been mindful of these challenges and has sought to mitigate the risks posed by them through its design of the study. Where it has not been possible to satisfactorily mitigate the risks, appropriate caveats and qualifications have been made in the report.
- Stakeholders raised a number of concerns regarding specific food safety regulations, including:
  - the requirements for Victorian and Queensland food businesses to have food safety supervisors
  - Queensland's notification requirements for the suspected intentional contamination of food
  - requirements for food safety plans
  - the lack of consistency in primary production and processing regulation across jurisdictions.
- Stakeholders also raised concerns about the way food safety regulation is administered and enforced, including:
  - uncertainty for businesses in how they are to demonstrate compliance with outcomes-based regulations
  - the uncertainty caused by differing interpretations of regulatory requirements — both across jurisdictions and within jurisdictions
  - regulatory overlap and duplication — both between government regulators and between regulators and private sector requirements (the latter being beyond the scope of this study)
  - delays and costs in getting maximum residue levels approved.

This chapter outlines the Commission's approach to this benchmarking study from both a theoretical and an applied perspective ('benchmarking' is defined in box 4.1). First, the chapter draws together the rationale for the broader

benchmarking program and the lessons from international studies, along with a discussion of the challenges of benchmarking and the selection of benchmarking indicators, to form the basis of the Commission's approach to this study. Then, the chapter outlines how submissions and consultation with stakeholders informed the Commission's choice of the areas of food safety regulation to benchmark.

Box 4.1 **What is benchmarking?**

Benchmarking is the process of comparing an area of interest using one or more indicators resulting in a point of reference against which that area of interest can be compared, assessed, measured or judged. Benchmarking depends upon having a standardised method for collecting and reporting the data or information underpinning the indicators on which the comparisons will be based.

Benchmarking helps an organisation understand its performance (or, in the context of this study, the regulatory regime it administers) relative to either its peers or against some standard (such as a best-practice standard). Organisations make such comparisons in order to diagnose problems in their performance, identify their strengths and weaknesses (relative to their peers) and/or to determine best practice. The organisations (or regulatory regimes) being compared usually share some features — for example, they may regulate the same markets or regulate similar aspects of business activity.

In general, benchmarking is best used as a tool to inform decision making rather than to simply establish some hierarchy of performance amongst a peer group. In using benchmarking to inform decision making, the benchmarking outcomes need to be considered in light of the circumstances of the organisations being compared. For example, it would reasonably be expected that in order for a regulator in a larger state (such as Western Australia) to achieve the same level of regulatory coverage as a smaller state (such as Tasmania), the larger state regulator will need to have a greater number of regional offices, or have their staff spending more time travelling. If both states recover the full cost of regulation from business, then the geography of the larger states will contribute to a potentially higher cost of regulation for businesses in those states.

Source: OECD (2006); Vlăsceanu, Grünberg and Pârlea (2004).

4.1 Why benchmark business regulation?

The Regulation Taskforce (2006) provided the impetus for a program of benchmarking business regulation when it concluded that benchmarking across jurisdictions would assist in improving regulatory regimes. This view was endorsed by the Australian Bankers' Association in their submission to the Commission's 2008 benchmarking study (ABA 2008) wherein it noted that benchmarking could

lead to a number of benefits, including: improving the efficiency and effectiveness of regulation; ensuring the consistency of regulation across jurisdictions; improving the transparency of decision making and accountability of regulators; and ensuring regulation delivers 'net benefits'.

The use of benchmarking to identify improvements in regulatory regimes has precedent in international studies. In fact, the OECD (2007b) has observed that many international studies focused on benchmarking of regulatory regimes shared common objectives, including to:

- create sustained pressure for improvement in the public sector
- expose areas where improvement is needed and reveal underlying problems of an organisation (or group of organisations)
- identify superior processes which can be adopted and provide insights as to what constitutes best practice
- focus on the links between processes and performance
- assess performance objectively
- test whether the implementation of improvement plans and strategies resulting from benchmarking have been successful.

The majority of these objectives are also of relevance to this study.

The simple public reporting of benchmarking indicators on regulatory burdens, even without any accompanying analysis, can also be beneficial. Benchmarking can promote 'yardstick' competition across jurisdictions (or levels of government) and, through this competition, foster ongoing improvement in the regulatory environments of those jurisdictions. This increased transparency and accountability also places incentives on policy makers to improve their regulatory regimes and, in turn, to reduce unnecessary burdens on business. To the extent that gaps between current and better practices can be identified and made transparent, benchmarking can promote the accountability of regulators for moving to the better regulatory practices (PC 2009).

The benchmarking of regulatory burdens over time may assist in identifying the jurisdictions that have been the most successful in reducing the burdens on business. Benchmarking could also strengthen the accountability of regulators to business and the community by requiring them to demonstrate the benefits of regulation where those benefits are said to more than offset the costs of the regulation (PC 2007b).

Finally, benchmarking provides a useful tool for identifying unnecessary regulatory burdens through the comparison of the costs imposed by different regulations and regulatory approaches aimed at achieving the same outcomes.

4.2 Insights from international benchmarking studies

Outside of Australia and New Zealand there are a number of examples of benchmarking studies in which attempts have been made to compare regulatory regimes at a point in time or regulatory burdens over time (box 4.2). These international studies provide valuable insights that have been applied in this study, including:

- planning the study so that it is not heavily reliant on representative data from business
- establishing comparable measures of regulatory burden through an analysis of the actual requirements on business and, where appropriate, using simplifying assumptions (such as assumed time frames for certain business processes)
- using the smart principles for promoting regulatory compliance (box 4.3) as the basis for some of the indicators used to compare regulators and their administration and enforcement of food safety regulation (see chapters 7 and 8)
- narrowing the scope of the study, wherever possible, to specific aspects of regulation (or business activity)
- linking the benchmarking indicators to specific regulatory requirements.

Collectively, the international studies suggest a range of alternative measures for quantifying regulatory burdens. The studies also suggest that reliance on a single measure (such as a count of regulatory requirements) or on a single aspect of the regulatory burden (such as the administrative burden) may result in a failure to identify the major source(s) of regulatory burden on businesses.

Box 4.2 International studies of regulatory burden

Comparisons across countries

The World Bank's *'Doing Business'* report presents a range of quantitative indicators on business regulations and the protection of property rights across 181 countries. This annual exercise can be used to compare aspects of regulatory regimes across countries. For example, in the 2009 report, Australia was ranked ninth in terms of ease of doing business and third in terms of ease of starting a business.

The OECD's report*, Cutting Red Tape: Comparing Administrative Burdens across Countries,* considers the administrative burdens faced by transport businesses in 11 countries undertaking two activities: 'hiring a worker' and 'operating a vehicle'. This report produced a number of insights into how the regulatory regimes could be simplified or made more efficient.

Comparisons within countries (or jurisdictions)

Most benchmarking studies of a country or jurisdiction are undertaken as part of a broader government program of 'red tape reduction'. The studies are typically undertaken to establish a baseline regulatory burden and then to track progress against a stated goal of reducing that regulatory burden. As a result, these studies are typically making comparisons over time, rather than a comparison at a point in time (which is the primary purpose of the Commission's benchmarking program).

Many countries have adopted the Standard Cost Model to measure and track the administrative burdens on business due to regulation. In the course of its *Administrative Burden Measurement Exercise,* the Health and Safety Executive (UK) found that while administrative burdens can be large when measured in aggregate across the economy, the actual cost to individual businesses was quite small.

The Canadian province of *British Columbia* took a unique approach to measuring regulatory burdens by using a count of regulatory requirements to quantify the burden. A regulatory requirement was defined as 'a compulsion, obligation, demand or prohibition placed on an individual, entity or activity by or under the authority of a provincial Act, regulation or related policy'. This approach has the advantage of being readily measured and providing a consistent basis for measurement over time, but the disadvantage of giving equal weight to each requirement, regardless of its nature.

Other studies

Reducing the risk of policy failure: challenges for regulatory compliance (Parker) considers the emerging issues for regulatory compliance and the possible explanations for differing compliance levels. A number of 'smart principles' for promoting regulatory compliance can be gleaned from the report (box 4.3).

Source: HSE (2009); Jones et al (2005); Ministry of Small Business and Revenue — Government of British Columbia (2008); OECD (2007a); Parker (2000); World Bank (2008).

Box 4.3 **'Smart' principles for promoting regulatory compliance**

- Maximise the potential for voluntary compliance:
  - avoid unnecessarily complex regulation
  - ensure regulation is effectively communicated
  - minimise the costs of compliance (in terms of time, money and effort)
  - ensure regulation fits well with existing market incentives and is supported by cultural norms and civic institutions
  - consider providing rewards and incentives for high/voluntary compliance, for example, by reducing the burden of routine inspections and granting penalty discounts when minor lapses occur
  - nurture compliance capacity in business, for example, by providing technical advice to help businesses, especially small- and medium-sized enterprises, to comply with regulation.
- Maintain an ongoing dialogue between government and the business community, to ensure that regulators have a good understanding of the types of businesses they are targeting.
- Adequately resource regulatory agencies.
- Use risk analysis to identify targets of possible low compliance.
- Develop a range of enforcement instruments so regulators can respond to different types of non-compliance.
- Monitor compliance trends in order to gauge the effectiveness and efficiency of enforcement activities.

Source: Based on Parker (2000).

4.3 Challenges in benchmarking

Selecting benchmarking indicators

Benchmarking indicators are the specific pieces of data and information (processed data) on which the comparisons of regulatory burdens are based. These indicators can either be quantitative (statistical or empirical) or qualitative (descriptive). Not all indicators used in the study are direct indicators of the regulatory burden and, in some instances, indirect indicators are used where they provide guidance on the likely nature of the burden on business attributable to an aspect of the regulatory regime.

While quantitative indicators provide a direct basis for the benchmarking comparisons, there is normally only a narrow range of indicators suitable for direct quantitative measurement. Also, the range of such indicators is further limited by the need to ensure comparability of the results. In contrast, while qualitative indicators are usually less precise and require close attention to ensure consistent application and analysis, they can capture more broadly-based sources of costs, such as the costs imposed by the approach of regulators to the administration and enforcement of regulation. Accordingly, a mix of quantitative and qualitative indicators is required in order to provide a reasonable balance of precision and coverage in the study.

In selecting the indicators used in this study, the Commission was mindful of the following principles:

- *relevance* — the indicators should illuminate an important aspect of the burden of regulation on business and also be relevant to the possible policy responses for reducing unnecessary burdens
- *ease of interpretation* — wherever possible, the indicators should be easy to interpret and it should be apparent what they are being used to measure
- *ease of data collection* — the data required for an indicator should be obtainable at a reasonable cost or already be available. Where gaps or limitations in the data exist, they should not materially undermine the usefulness of the indicator(s) reliant on that data
- *timeliness* — the indicators should be based on a reference period as close to the present as possible
- *comparability* — the indicators should facilitate meaningful comparisons between jurisdictions
- *robustness* — the indicators should be conducive to producing comparable benchmarking results over time.

The indicators used in this study have to be tailored to the specific aspects of the regulatory burden being benchmarked. Further, the indicators have been developed in light of the feedback received from stakeholders through their submissions and the Commission's consultation process.

Sourcing the data

When examining regulatory compliance costs, a number of previous studies (such as PC (2004), PC (2008c), KPMG (2007) and Allen Consulting Group (2007)) have experienced difficulty in obtaining data on the compliance costs incurred by

business. In the context of food safety regulation, the Blair Review (1998) noted the difficulty in quantifying the cost of business regulation aside from the fees and charges specified by the regulations or regulators.

In addition to these challenges, the Commission was also mindful that this study should minimise the burden on those businesses and regulators supplying data — especially given the considerable resources they have expended in the supply of information to a number of other studies into food safety in recent times. In order to minimise the burden on businesses and regulators, the Commission sought to source the data used in this study from publicly-available sources wherever possible. For those instances where public data were not available, and direct indicators of the burden on business were required, the Commission worked with organisations that had expressed an interest in providing to the benchmarking study, or had recently collected such data. The Commission also sought information from governments on their administration and enforcement practices through a survey of local councils and national, state and territory regulators. Appendix B contains further details of the Commission's approach to collecting data.

This approach reflects the lessons from the 'cost of business registrations' report (PC 2008c), namely:

- using a wide round of stakeholder consultation to help ensure surveys and other information gathering activities are well constructed and appropriately targeted
- that data should be sought from the source best placed to provide it. For example, businesses complying with particular requirements would be best placed to know the costs of complying with those requirements. Similarly, regulators should have the best knowledge of the regulations they enforce and administer, and how they undertake their responsibilities
- the importance of working closely with those supplying data in order to achieve an acceptable response rate and quality of data.

Controlling for the objectives of the regulation

All of the regulations covered in this study include food safety among their objectives. However, certain regulations also include other objectives, such as the objective of 'industry development' contained in some of the primary production acts. As a result, it can be difficult in some instances to determine whether it is a 'food safety requirement' that is being considered when comparing certain regulations and the burden they impose on business. Some of this difficulty can be overcome by focusing the benchmarking on individual requirements within the regulations that are obviously related to food safety considerations. However, there

are some cases where a requirement might be serving more than one objective. In such cases, close liaison with regulators and those supplying the data has ensured that appropriate caveats have been included in the report in order to put the benchmarking outcomes in the proper context.

Controlling for business specific factors

Factors unique to a given business can affect that business' estimate of the burden imposed by a given regulatory requirement (PC 2008c). As part of the data quality assurance processes used in this study, any anomalies in business data were investigated and, where applicable, caveats noted in the report. Appendix B contains further details of the Commission's data quality assurance processes.

Interpreting the benchmarking results

Even though the Commission has been careful to design its data requirements and benchmarking indicators to minimise the limitations of previous benchmarking studies, not all of the challenges referred to above can be completely overcome. This results in data sets that are subject to caveats and qualifications. Further, the indicators initially selected may not illustrate the regulatory burden as well as was first thought. The 'Cutting Red Tape' report (OECD 2007a) provides an example of the difficulties that can be experienced in this regard — out of an original 17 indicators, only eight were deemed appropriate for comparative analysis.

The interpretation of the benchmarking results can become awkward in light of any caveats and qualifications on the benchmarking data. This in turn presents another challenge for the use of the benchmarking results for policy purposes.

The Commission has sought to minimise the significance of these challenges, by:

- basing its data specifications and approach to data collection on a thorough understanding of the underlying regulatory requirements
- consulting with regulators to clarify any aspects of the regulations and requirements on business that may affect the data collected
- not reporting data or using indicators where their comparability has been substantially compromised
- providing suitably detailed caveats to the benchmarking indicators where appropriate.

Realising the potential benefits from benchmarking

The benefits potentially available from benchmarking the burdens arising from food safety regulation will depend, in part, on the extent to which the jurisdictions investigate, and act upon, the differences identified in the study and share relevant information that may contribute to more effective and less burdensome regulatory regimes.

4.4 Process for selecting areas of food safety regulation to benchmark

It is not feasible to benchmark all aspects of a given area of regulation, such as food safety regulation. Rather, as foreshadowed in the Issues Paper for this study (PC 2009), the Commission developed criteria (box 4.4) to be applied to the concerns raised by stakeholders (section 4.5) in order to select the regulations and administration and enforcement practices to be benchmarked (section 4.6).

Box 4.4 Criteria for selecting areas of food safety regulation to benchmark

1. There are differences in either the regulation itself or in the administration/ enforcement of that regulation.
2. The benchmarking analysis of the regulation or its enforcement/administration is likely to inform either current or proposed reforms.
3. There appears to be a difference between jurisdictions in the cost the regulation or its enforcement/administration imposes on business.
4. Where there are differences in the costs imposed by regulations, those differences do not appear to be matched by a difference in the effectiveness of those regulations.
5. It appears feasible to construct indicators which will enable informative benchmarking across jurisdictions, wherever possible based on existing data.

4.5 Regulatory concerns raised in submissions and during consultation

Through submissions and stakeholder consultations, the Commission was made aware of various areas of food safety regulation where differences existed among Australian jurisdictions (and between Australia and New Zealand) and which

imposed significant burdens on businesses. A number of participants pointed out that the burden of food safety regulation varies with the nature of the business — even for common regulatory requirements. For example, the cost of cleaning an older restaurant in order to comply with hygiene requirements is likely to be higher than for cleaning a newer restaurant.

The concerns raised by participants in relation to the burdens imposed by food safety regulation can be classified into three groups:

1. the requirements under principal Food Acts (including the regulations and food standards issued under these acts), as well as the administration and enforcement of those acts (and regulations and standards)
2. the requirements under the acts (and regulations) for primary production and processing activities, as well as the administration and enforcement of those acts (and regulations)
3. the requirements contained in 'other food safety regulation', as well as the administration and enforcement of those acts and regulations.

The principal Food Acts and delegated regulations

Regulatory requirements

Two specific concerns were repeatedly raised with the Commission as being burdensome or a significant point of difference in the regulatory burden across jurisdictions:

1. the requirement in Victoria and Queensland for a business to employ a food safety supervisor (FSS)
2. the requirement for most Victorian food businesses to have a Food Safety Plan (FSP).[1]

The concerns with the FSS requirements of Victoria and Queensland centred on the costs of training these staff. In the case of Queensland, these training costs are said to be compounded by the uncertainty over how local councils interpret and apply the requirement for the FSS to be 'reasonably available'. On the other hand, many of the concerns raised regarding Victoria's regime of 'FSPs for all' were based on

[1] The Food Amendment (Regulation Reform) Bill 2009 (which was passed on 28 July 2009) reduced the number of Victorian businesses required to prepare FSPs. For example, most low risk businesses (such as such those dealing with pre-packaged food that requires temperature control) will no longer require an FSP.

the opinion that the FSPs had not produced any material improvement in Victoria's food safety outcomes, or at least not to an extent that justified the costs.[2] In comparing the requirements of an FSS and an FSP, a number of participants considered the FSPs to be more a burdensome requirement than the requirement for an FSS.

Most Australian jurisdictions are currently in the process of implementing Standard 3.2.1 (Food Safety Programs) of the Australia New Zealand Food Standards Code (ANZFS Code) for specific sectors. However, despite this requirement being in the implementation phase, a number of matters were brought to the Commission's attention, including:

- differences in how the FSPs will be audited — including differences in who may complete the audits (local councils, state/territory-level regulator and/or third party auditors, depending on the jurisdiction) and the cost of the audits
- the cost of preparing the plans
- the differing timelines and approaches of the jurisdictions for their implementation of the requirements.

The divergence of the Food Acts of the Australian jurisdictions from the Model Food Act is a notable difference in regulatory regimes. The notification requirement for the suspected intentional contamination of food within Queensland's Food Act was raised regularly as being both unique among Australian jurisdictions and also a possible source of significant cost to Queensland food businesses.

A number of participants considered there to be material differences in the requirements to be met by new food businesses before they can commence operations. In addition to this concern, the duplication of requirements for a new food business was a concern raised by Woolworths:

> … some Local Councils in Tasmania count each department within a supermarket (eg butcher, bakery, deli) as separate food businesses requiring separate registration and are invoiced separately. (sub. 10, p. 5)

Clubs Australia considered:

> The greatest compliance burdens for clubs are the inspection and administration fees charged by local councils. These fees vary considerably and councils determine the fees depending on different features of the food businesses in their area. (sub. 5, p.3)

[2] These comments did not reflect the current reforms to FSP requirements being implemented in Victoria — these reforms are aimed at reducing the regulatory burden and are discussed further detail in chapter 6.

Fees were also a concern raised by a number of other participants, many of whom noted that this was a greater issue in those states providing discretion to local councils regarding the fees they charge. Further, where the ability of a council to charge a fee was dependent upon that council undertaking some action, for example a routine inspection, some participants suggested there has been increase in those 'fee justifying' activities thereby compounding the cost of the fee.

Some of the differences that were raised less frequently than those issues above include:

- differences in treatment of dietary substances by Australia and New Zealand — for example, due to the differences in regulations, some products cannot legally be produced in Australia but can be produced in New Zealand
- differences across the jurisdictions in their interpretation of the Standard 1.5.1 (Novel Foods) of the ANZFS Code
- the burden on businesses arising from food labelling requirements (subs. 6 and 7)
- having to provide the same or similar information to a number of regulators and/or government departments in the event of a food recall (sub. 10).

Enforcement and administration

The administration and enforcement practices of New Zealand's national regulator (the New Zealand Food Safety Authority (NZFSA)), Australian state and territory regulators and local councils (Australia) and territorial authorities (New Zealand) were raised as concerns by many participants. The concerns raised include:

- the differing inspection and audit regimes of local councils/territorial authorities, including those within the same jurisdiction (subs. 7 and 10)
- the overlap and duplication of inspection requirements (sub. 10) — eg butchers being inspected by the local council and then being audited (or inspected) on food safety matters by other regulators
- inconsistent or invalid interpretation of regulatory requirements by regulators and their inspectors (subs. 3 and 10)
- the consequences for a breach of the regulatory requirements — a number of participants offered the opinion that the New South Wales approach of 'name and shame' was unduly burdensome.

A number of participants offered possible causes for these differences in administration and enforcement practices, including:

- the difficulties experienced by the regulators (including local councils and territorial authorities) in attracting and retaining staff
- the differing geographies of the jurisdictions. For example, the size of Western Australia may warrant a more decentralised approach compared to that taken in a more compact jurisdiction, such as Tasmania or the ACT.

Primary production and processing activities

Regulatory requirements

One of the most common concerns raised by participants in relation to the regulation of primary production and processing activities was the overall cost of demonstrating compliance with the regulatory requirements. While these concerns were, in part, related to the direct costs of audits/inspections and licensing requirements (including fees and charges), a number of participants also identified inconsistencies across jurisdictions. For example, some jurisdictions do not charge any audit/inspection fees, while those jurisdictions that do charge fees, do so on a range of bases (including cost recovery). In respect to New South Wales, the NSW Food Authority noted:

> The current structure of licence fees reflects the arrangements of earlier commodity-based primary production regulators. Inconsistent licence fees between industries represent an inequitable sharing of the cost of food regulation. As a result, the fees charged for regulatory activities do not maximise equity or efficiency. (sub. 4, p. 6)

The preparation of FSPs (where they are required) was also an area of particular concern for participants. A perceived lack of clarity in the requirements prompted some business participants to engage a consultant to prepare their FSPs in order to gain some assurance that they were compliant with the requirements. Other business participants indicated that their concern was not so much with the clarity of the requirements, but rather the burden of the number of programs (both government and private sector) they need to comply with and the different ways in which compliance must be demonstrated.

At a more fundamental level, participants raised concerns around the nature of regulatory requirements for primary production activities in general. For example, some small businesses cited a lack a clarity regarding which of their current (and potential) business activities fall within the ambit of the primary production regulator and which fall within that of the local council or Department of Health (or equivalent). A lack of consistency in the legislation and standards for food safety in primary production and processing activities was another area of concern for

stakeholders. The concern was expressed in relation to both those industries where Food Standards Australia New Zealand (FSANZ) has established a standard within the ANZFS Code (such as seafood) and those industries where such a standard is yet to be established (such as poultry and eggs). For example, some of the concerns raised in regard to egg production, included:

- the thresholds of production at which regulation comes into effect
- differing requirements for the pasteurisation of egg pulp
- differing requirements for the stamping and/or labelling of eggs.

Enforcement and administration

A number of New Zealand participants felt that New Zealand businesses are held to higher scrutiny than their Australian counterparts. They attributed this to the fact that the majority of New Zealand's primary produce is exported and, as a result, the NZFSA's regulatory oversight is simultaneously directed at compliance with domestic food safety requirements along with ensuring compliance with overseas standards/requirements and preserving 'brand New Zealand'. To further illustrate the extent of this issue, some New Zealand producers said they had difficulty establishing which of the regulator's requirements were directed at 'domestic compliance' and which are directed at 'export compliance' — this was particularly an issue for those producers for whom it was cost effective to distinguish between products destined for domestic consumption and those produced for overseas markets, and having those products regulated accordingly.

Other food safety regulation: imports, exports and chemical residues

The regulation of imported food, food for export and agricultural and veterinary chemicals,[3] which lie outside of the core food and primary production regulation, were often also cited as posing concerns to businesses.

[3] Although Maximum Residue Limits (MRLs) are listed in the ANZFS Code, they have been included in this category given they are one aspect of the concerns raised in respect to agricultural and veterinary chemicals.

Imported food

The most common concern raised by participants was that imported food and domestically provided food are not subject to the same regulations and/or the same level of regulatory scrutiny.[4] For example, it was contended that not all food entering Australia or New Zealand was tested for compliance with all the standards that domestic producers must meet (that is, some regulations are not applied). Also, where such testing is undertaken by the Australian Quarantine and Inspection Service (AQIS) and NZFSA, it is not to the same extent that domestically produced food is tested (that is, differing levels of regulatory scrutiny are applied). Some participants were also concerned about the level of fees charged in relation to the regulation of imported food and the length of time taken for clearance.

Although there is widespread concern with 'control of imports', some of the regulatory burdens attributed to food safety may in fact relate to other regulatory concerns:

> … legitimate quarantine/biosecurity restrictions … are often misinterpreted as food safety restrictions. (NZFSA, sub. 2, p. 11)

Food for export

Both Australian and New Zealand participants raised concerns over the duplication and overlap of export regulations with other food safety regulation applying to primary production and processing activities. More specifically, these concerns included:

- the time and costs associated with multiple audits/inspections — some being for 'domestic compliance' and some being for 'export compliance' (this was particularly a concern in Australia)
- the burdens associated with complying with the two sets of regulations — domestic and export — especially given the differences between the two.

On the other hand, some producers in New Zealand questioned why the more demanding requirements of export countries were imposed on all domestic production, thereby imposing higher costs than necessary for some primary food producers.

Many viewed the regulations applying to exported food to be more complex and onerous than those applying to domestic primary production and processing

[4] Appendix C (section C.1) provides further detail on the regulation of imported food in Australia and New Zealand — including changes coming into effect in New Zealand during 2008-09.

activities. However, as noted by the Northern Territory Horticultural Association, some of the factors contributing to the complexity of export regulations is due to foreign, rather than domestic, governments:

> Variation in national standards, for example between Australian requirements and Eurogap [a commercial standard applied by many European importers] requirements, add[s] an additional layer of difficulty to the challenging process of exporting fruit and vegetables. (sub. 9, p. 2)

More generally, concerns were also raised about the high level of fees charged by AQIS and the NZFSA and the level of expertise of the 'enforcement officers'. For example, officers undertaking duties in relation to industries with which they were neither familiar nor trained.

Agricultural and veterinary chemicals — Maximum Residue Limits

Both the Australian Hydroponic & Greenhouse Association and the Northern Territory Horticultural Association raised concerns in relation to the regulation of agricultural and veterinary chemicals:

> Currently permits issued by the [Australian Pesticides and Veterinary Medicines Authority (APVMA)] for a new use have an [Maximum Residue Limit (MRL)] set following a rigorous process. The approved use is subsequently gazetted. The MRL then has to be adopted into the FSANZ Food Standard Code for the MRL to be officially recognized. This also involves a rigorous process independent of that conducted by the APVMA, which can delay the adoption of an MRL for up to 18 months. This makes many permits unavailable to growers, sometimes for the entire approval period of the permit. (sub. 13, p.1)
>
> The chemical permit application process is also unwieldy… for example, growers of Asian vegetables which are not commonly listed for chemical use must apply separately for each chemical and each crop. (sub. 9, p. 2)

A number of participants raised additional concerns about the opportunity costs to both chemical producers and primary producers due to chemicals not being produced on account of the extended approval times and associated compliance costs.

Choice, on the other hand, raised concerns about how MRLs are enforced once they have been established:

> There is no consistent enforcement program across the states and territories that assesses the level of compliance with the MRLs in both imported and locally produced foods. The level of monitoring varies from state to state.
>
> Australia also imports produce, some of which comes from countries with a less stringent approach to agricultural chemicals. Some produce may be contaminated by

> pesticides that aren't permitted here or contain pesticide residues at levels that exceed the Australian MRL …
>
> The Australian Quarantine and Inspection Service is responsible for ensuring that imports comply with the Food Standards Code but their testing regime means only a small minority of fruit and vegetable imports are tested for pesticide residues. (sub. 7, p. 7)

Costs from commercial requirements

Various businesses complained about the costs they face on account of commercial requirements (box 4.5). Their concerns lay not only with the costs of these commercial requirements, but also with the costs arising due to the overlap with, and duplication of, commercial requirements with government food safety regulation.

Some participants considered that while aspects of the commercial requirements are directed at food safety concerns, their overriding focus was 'food quality'. Even so, the Food Regulation Implementation Sub Committee (ISC) cautioned:

> Consideration should also be given to:
>
> Compliance costs associated with meeting standards/legislative requirements, with recognition of costs associated with meeting existing industry and commercial arrangements, including information already collected as a cost of doing business. Examples are … the requirements imposed by the major supermarkets. Caution must be exercised when examining the matter of compliance cost with a clear distinction being made between what are private benefits and what are public benefits. (sub 12, p. 5)

ISC's caution is well founded as separating the burdens posed from such commercial arrangements from those of a regulatory nature can be problematic, especially where the commercial arrangements are based on some aspect of the regulatory requirements. For example:

> Freshzest subsequently received a residue violation from Woolworths because [Woolworth's] random testing had detected a residue of the [pesticide] of 0.8 ppm. This use had not been adopted into the Food Standard Codes by FSANZ and as such there was no legal residue limit. Freshzest produce was suspended from trade for a period of time costing them several tens of thousands of dollars. (sub. 14, p.2)

The burdens arising from commercial requirements lie beyond the scope of this study as they are not the result of government regulation. However, there is an acknowledgement of the issues on the part of governments and government forums (such as ISC) and indications of a preparedness to engage in dialogue regarding the interplay between commercial requirements and government regulation.

Box 4.5 Participants' comments on the costs imposed by commercial requirements with respect to food safety and food quality

NSW Food Authority:

> In its dealings with food businesses, the Authority often receives questions in relation to food industry quality assurance audits and why the results of the audits conducted by government regulators cannot be used by customers such as major food retailers in relation to a supplier's food safety performance.
>
> It is clear that a large proportion of the audit burden for the food industry is not related to legislated requirements (Acts and Regulations), but rather to industry-imposed quality assurance programs which have a different scope than food safety compliance audits. The quality assurance programs tend to focus more on individual customer and consumer requirements, with varying levels of attention placed on regulatory food safety requirements. This often leads to audit duplication because major food retailers and other entities do not wish to share audit data with potential market competitors. (sub. 4, p. 1–2)

Northern Territory Horticultural Association:

> Quality assurance systems are becoming increasingly complicated and costly. Previously Freshcare accreditation [a private sector quality assurance program] would allow a grower to sell produce to most retailers and wholesalers. However, Freshcare is currently being superseded by much more stringent systems including HACCP (Hazard Analysis and Critical Control Points) and WQA (Woolworths Quality Assurance). This means that growers are not only investing increasing amounts of time and money into attaining the current standard but they often have to undertake several quality assurance programs in order to provide produce to several different suppliers each with their own unique quality assurance program. (sub. 9, p.1)

Biocontrol Solutions:

> … we are continually seeing the "Goal Posts" moved as our two major supermarkets jostle to see who can have the most prescriptive set of requirements for their suppliers. A grower supplying both chains is required to have separate Q/A manuals and undergo separate audits to achieve the same result (time consuming, costly and unnecessary). (sub. 14)

New Zealand Food Safety Authority:

> Where food safety requirements are included in private sector standards, they may not be proportionate to any food safety risk the product may actually pose, or may not be equivalent to requirements set under regulatory standards. The lack of equivalence between government and private food safety standards can present a burdensome array of duplicative verification checks by multiple agents. (sub. 2, p. 8)

4.6 Areas of food safety regulation selected for benchmarking

In applying the criteria (box 4.4) to the concerns outlined in section 4.5, it became clear that only one of those concerns did not satisfy the criteria, namely the registration requirements for new businesses under the Food Acts (sub. 10) — the Commission's earlier benchmarking report (PC 2008c) examined these costs and found the cost for the registration of a food business were generally $600 or less. Further, for the 'typical food business', there was found to be no significant differences in registration costs across Australian jurisdictions.

Accordingly, this report does not benchmark the costs arising for new businesses from the 'registration' requirements contained in the Food Acts. However, this report does consider the costs of registration for businesses required to do so under primary production and processing regulations (which were not covered in the Commission's earlier report).

As the costs of registration for new businesses were not significant, the burdens arising from the duplication of these requirements (raised by Woolworths in sub. 10) have not been explored in this report. Rather, the broader issue of duplicated regulatory oversight, and indicators of the overall burdens this duplication creates, have been addressed in chapter 8.

A number of the concerns raised by participants form the basis of chapters within the report. For example, the concerns raised regarding the take up of the Model Food Act provisions are explored in chapter 5. Other concerns addressed directly within chapters include: food recalls (chapter 5); food safety supervisors (chapter 6); food safety plans (chapter 6); fees charged under the Food Act (chapters 7 and 8); enforcement of regulation under the Food Acts and primary production and processing acts (chapters 7 and 8); fees charged under the primary production and processing acts (chapters 8–12); inconsistency and lack of clarity in primary production and processing regulations (chapters 9–12); agricultural and veterinary chemicals (Maximum Residue Limits) (chapter 13); imported and exported food (chapter 14).

Some of the other concerns regarding food safety regulation, such as the regulators' interpretations of Standard 1.5.1 (Novel Foods), are not addressed directly in the report but the issues they raise are considered in a broader context. In the case of the interpretation of Standard 1.5.1, the key issues relate to the consistency of regulatory interpretations and, in turn, the measures regulators have in place to promote such consistency. These issues are considered in chapters 7 and 8. Similarly, the issues underpinning the concerns regarding labelling and dietary

substances are examined in chapter 8, and, to a lesser extent, in chapters 9 and 10 for those instances where such requirements apply to primary production and processing activities.

5 Consumer food safety regulation

Key points

- All Australian jurisdictions have reformed their respective Food Acts to include Annex A of the Model Food Act.
  - However, Western Australia proclaimed its new food act only in October 2009 — nine years after the initial agreement. Victoria, South Australia and the ACT introduced the Model Food Act within the agreed timeframe of 12 months.
  - New South Wales, Victoria, South Australia and Tasmania have implemented between 85 to 90 per cent of Annex A provisions with the same wording. Further, New South Wales and Victoria have not added to or excluded any of the Annex A provisions in their respective Food Acts.
  - Despite having a national Model Food Act and the relative consistency in the implementation of Annex A of that Model Act, the size of the Foods Acts in each jurisdiction varies considerably. The *Queensland Food Act 2006* contains almost twice as many sections as the Model Food Act.
  - As the adoption of Annex B was not mandatory, there is considerably more variation among the jurisdictions in their adoption of these provisions into the Food Acts.
- During 2008-09, there were a number of key differences between Australian jurisdictions' food laws and regulations. For example:
  - Western Australia had separate hygiene regulations which prevailed over the Australia New Zealand Food Standards Code (ANZFS Code) when inconsistency occurred. These hygiene regulations were repealed when the Western Australia Food Act was fully proclaimed
  - despite the national recall protocol, Queensland has the additional requirement, of mandatory reporting of suspected intentional food tampering.
- Australia and New Zealand essentially share the same food standards relating to food composition and labelling (except country of origin labelling). However, New Zealand and Australia have fundamentally different food hygiene standards. Those for Australia are contained in the ANZFS Code and are outcome based whereas those for New Zealand are in quite prescriptive regulations.

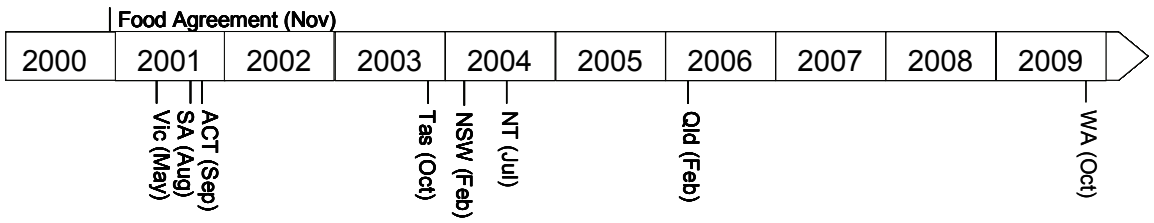
5.1 Adoption of the Model Food Act in Australia

The agreement in 2000 by the Australian state and territory governments to adopt the Model Food Act provided an opportunity for all jurisdictions to address food safety issues in a consistent manner in an effort to reduce the regulatory burden on the food industry while providing safe food controls to protect public health and safety. The states and territories agreed to submit to their respective parliaments, within 12 months, legislation which gave effect to the Annex A and Annex B of the Model Food Act.

Annex A of the Model Food Act forms the core provisions which each state and territory agreed to adopt. It mainly relates to definitions, offences and defences and provides the method of adoption of the ANZFS Code. Annex B forms the non-core provisions and each state and territory has some discretion over these. It includes issues such as notification of the existence of a food business, licensing, registration, food safety programs and auditing.

All jurisdictions have reformed their Food Acts to include the provisions from the Model Food Act (figure 5.1). Victoria, South Australia and the ACT introduced the Model Food Act within the agreed timeframe. Queensland, Northern Territory, New South Wales and Tasmania introduced the agreed laws, somewhat later, between 2003 and 2006. However, almost nine years after agreeing to reform food laws which gives effect to the provisions of the Model Food Act, Western Australia implemented these reforms in late October 2009. During the benchmarking period, Western Australia operated under the *Health Act 1911.*

Figure 5.1 **Initial implementation date of Model Food Act**



Data sources: Food Acts of the Australian jurisdictions

Despite having a Model Food Act, there is variation in how the jurisdictions have incorporated these provisions into their respective Food Acts. A simple comparison of the number of sections and subsections illustrates which jurisdictions may not have closely followed the Model Food Act. For example, Queensland's *Food Act 2006* contains around twice the number of sections and subsections

compared to the Model Food Act.[1] In contrast, the Food Act in South Australia contains fewer sections than the Model Food Act (table 5.1). The difference in the size of the Acts is a broad indicator of inconsistency between jurisdictions. It provides an indicator of the seamlessness to which business can find information regarding their legislative requirements relating to food safety. Differences in the presentation and location of this information may add to regulatory costs for businesses operating across jurisdictions (for example, additional time taken to establish requirements, inform and educate staff and develop different policies or guidelines, if necessary).

Table 5.1 **Comparison of jurisdictions' Food Acts with the Model Food Act as at 31 July 2007**

Total number	***Model Food Act***	*NSW*	*Vic*	*Qld*	*SA*	*WA*[a]	*Tas*	*NT*	*ACT*
Sections	**156**	147	157	296	115	153	137	145	153
Sections & subsections	**368**	410	389	716	293	426	317	365	365

[a] Relates to the *Food Act 2008* (WA), rather than the *Health Act 1911* (WA).

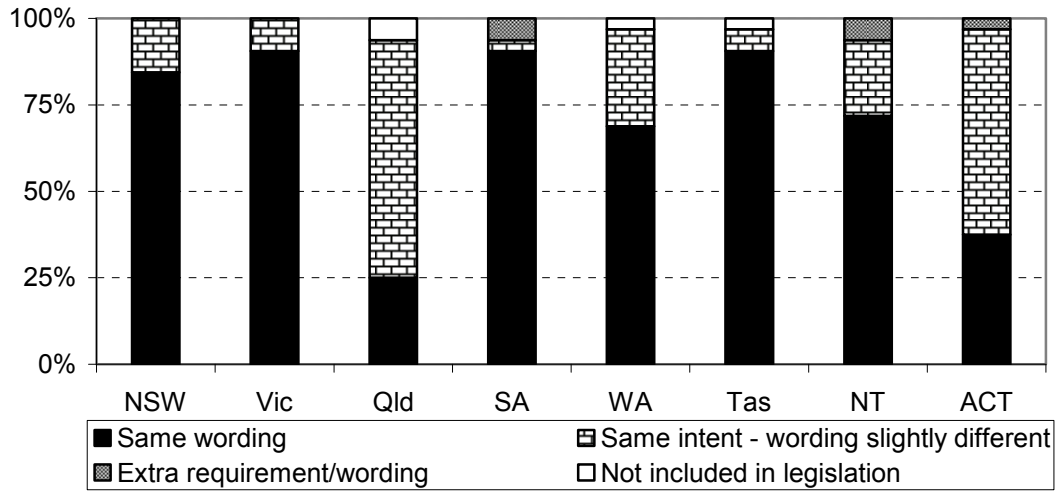
Source: Theobald (2007).

Annex A Model Food provisions

The provisions in Annex A were intended to be adopted consistently by each state and territory government and for the most part this has been achieved. Of the 32 sections, New South Wales, Victoria, South Australia and Tasmania have implemented between 85 per cent to 90 per cent of Annex A provisions with the same wording (figure 5.2). New South Wales and Victoria have no extra requirements and have not excluded any of the Annex A provisions.

[1] Queensland claims that part of the reason for the comparatively high number of sections and subsections within the *Food Act 2006* (Qld) is the Queensland approach to drafting legislation which entails a separation of provisions to support improved interpretation and understanding and ensure clarity of intent.

Figure 5.2 **Consistency of Annex A provisions with jurisdiction Food Acts**
as at 31 July 2007



Data source: Theobald (2007).

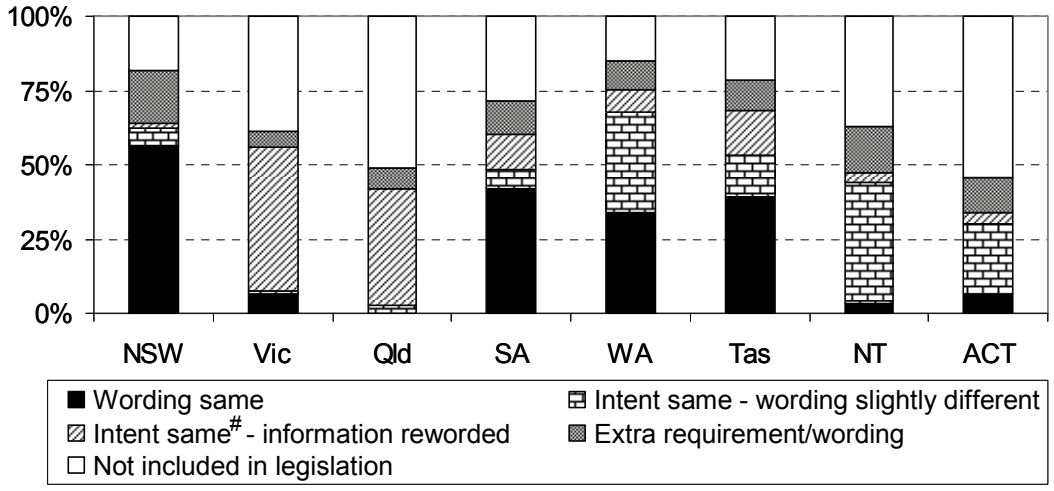
Annex B Model Food provisions

As the adoption of Annex B was not mandatory[2], there is considerably more variation among the jurisdictions in their adoption of these provisions (figure 5.3) For example, Queensland's Food Act does not keep with the general structure of the Model Food Act with many sections being omitted, significantly reworded, amended or added to. In some jurisdictions a number of the provisions from Annex B are not included in the Food Acts. This does not necessarily mean the activities are not undertaken as they may be contained in other acts and regulations. For example, the ACT Food Act does not contain provisions for administering food safety auditors. Instead these requirements are outlined in the *Food Regulation 2002.*

The different approaches used for establishing the regulatory requirements across the jurisdictions highlight the complexities for food businesses and the lack of consistency at a high level.

[2] One of the reasons for this is that, as food safety laws are enforced by the states and territories, these laws must align with the administrative law (relevant to licensing and appeals against orders) and criminal law of the respective jurisdictions. Accordingly some flexibility in the take up of the Annex B provisions was required.

Figure 5.3 **Adoption of (optional) Annex B provisions in the jurisdictions' Food Acts**
as at 31 July 2007



Intent same – information reworded and/or contained in more than one section/subsection.

Data source: Theobald (2007).

5.2 Differences in Australian food laws, regulations and standards

Differences in key definitions contained in the Food Acts

Four jurisdictions (South Australia, Tasmania, Queensland and New South Wales) have made subtle variations to the definition of primary production from that contained in the Model Food Act.

In South Australia and Tasmania, an extra provision in the definition of 'primary food production' excludes places where food is packed or treated on premises where the food was 'grown' and those actions are undertaken by those who have purchased the food or who are undertaking the actions under a contract (but not employment). Instead, this provision means these food businesses come under the Food Act in South Australia and Tasmania. However, in other jurisdictions food businesses undertaking this activity would come under the relevant primary production acts. This represents a cross-jurisdictional difference in the regulation and may add to regulatory costs for businesses operating across jurisdictions (for example, additional time taken to establish different requirements, educate staff and develop different policies or guidelines for these jurisdictions).

There may also be some confusion over which stream of legislation covers a particular activity within these two jurisdictions (South Australia and Tasmania). This arises because the extra provision only applies to food businesses which purchase the food or to the activities that are performed under contract for the primary producer. The same activities undertaken by the primary producer would be governed by the relevant primary production act. For example, if a primary producer washes the strawberries on the premise where they are grown, the activity of washing is considered to be governed by primary production regulations. However, if the primary producer sells the strawberries to a separate business and this business washes the strawberries on the producer's premise, the activity of washing will be governed by the relevant Food Act.

In Queensland, the meaning of primary food production is not contained in the *Food Act 2006,* therefore primary production is not excluded from the definition of 'food business'. Instead a definition of production of primary produce is contained in the *Food Production (Safety) Act 2000* (Qld) — the Queensland Act that deals with food safety matters relating to the primary production. Nevertheless, Queensland has not adopted the standard definition contained in the Model Food Act.[3]

The New South Wales *Food Act 2003* also has a subtle variation in the definition of 'food business'. Like Queensland, it does not exclude primary production from the definition of food business.

In the South Australian Food Act an extra provision has been added to the definition of 'unsafe food'. This clause appears to clarify components of the definition by specifying that the definition of 'unsafe' is applied at the time of sale and that the physical harm suffered can be reasonably attributed to the food. This is unlikely to add extra regulatory costs on food businesses in South Australia.

Penalties and fines

Penalties and fines are not a regulatory compliance cost for a compliant business, but the severity of repercussions for non-compliance can act as a strong incentive for some businesses to meet regulatory requirements.

Every jurisdiction has a range of offences that incur fines and penalties. The severity of these varies substantially between jurisdictions. Fines and penalties associated with three basic offences — failure to be licensed (or equivalent),

[3] The Commission understands the legislative intent was that the *Food Act 2006* (Qld) and the *Food Production (Safety) Act 2000* (Qld) would be read together with a view to establishing a comprehensive food safety regime that complied with the Food Agreement (see chapter 2).

provision of food that is unsafe (either unknowingly or deliberately), and failure to follow a compliance order or directive — are presented in table 5.2.

Table 5.2 **Penalties (as at 30 June 2009)**

	Operating an unlicensed (or equivalent) food business	*Sale of unsafe food*	*Obstructing an authorised officer*
NZ[a]	Max: $407 plus $41 per day for a continuing offence	Max: $4 065 (indiv) $16 260 (comp)	Max: $1 626 or 3 months imprisonment plus up to $100 per day for a continuing offence
NSW	Max: $55 000 (indiv) $275 000 (comp)	Max: $110 000 or 2 years imprisonment (indiv) $550 000 (comp)[b]	Max: $55 000
Vic	1st offence: $5 671 2nd & sub. offence: $11 342	Max: $100 000 or 2 years imprisonment (indiv) and $500 000 (comp)[b]	1st offence $2 836 2nd and subsequent offence $5 671
Qld	Max: $100 000 (operating without a licence) Max: $50 000 (for operating from premises other than stated on the licence)	Max: $100 000 or 2 years imprisonment[b]	Max: $10 000
SA	Max: $25 000 (indiv) and $120 000 (comp) Plus an expiation fee of $300 (indiv) or $1 500 (comp)	Max: $100 000 or 4 years imprisonment (indiv) and $500 000 (comp)[b]	Max: $50 000
WA	1st offence: $100–$1 000 2nd offence: $200–$1 000 3rd & subs. offence: $500–$1 000 plus, $50–$100 per day for a continuing offence	1st offence: $250–$2 500 2nd offence: $500–$2 500 3rd & subs. offence: $1 250-$2 500 plus, $125–$250 per day if for a continuing offence	1st offence:$300–$3 000 2nd offence: $600–$3 000 3rd & subs. offence: $1 500–$3 000 plus $150–$300 per day if offence is a continuing offence
Tas	Max: $60 000 (indiv) and $144 000 (comp)	Max: $120 000 or 2 years imprisonment or both (indiv) and $600 000 (comp)[b]	Max: $60 000
NT	Max: $55 000 (indiv) and $275 000 (comp)	Max: $110 000 or 2 years imprisonment (indiv) and $550 000 (comp).[b]	$55 000 or 6 months imprisonment
ACT	Max: $5 000, 6 months imprisonment or both (indiv) $25 000 (comp)	Max: $100 000 or 2 years imprisonment or both (indiv) and $500 000 (comp)[b]	Max: $5 000 (indiv) and $25 000 (comp)

[a] New Zealand penalties are converted to Australian dollars based on an average exchange rate for 2008-09 of 1.23. [b] Maximum penalty relates to the intentional sale of unsafe food. Lower maximums apply for the unintentional sale of unsafe food and the sale of unsafe food.

Sources: Food Acts of the Australian jurisdictions.

Across the jurisdictions, a failure to be appropriately licensed (or registered or accredited) as a food business incurs the greatest penalty for an individual in Queensland — up to $100 000 — and the lowest maximum penalty in New Zealand

of only $407. The penalties tend to be higher for companies. This fine may be levied even when a business is otherwise compliant in the provision of safe food. The ACT is the only jurisdiction that can impose a prison term.

Provision of food that is unsafe generally incurs greater penalties in those cases where food is sold to the public (rather than to another business for further processing) and when the food is known to be unsafe yet still provided. Maximum penalties for the provision of unsafe food are of a similar magnitude in most states and territories for individuals (around $100 000 to $120 000) and for companies ($500 000 to $600 000). The maximum penalties in New Zealand, Western Australia and Queensland (companies only) are considerably lower. Most jurisdictions also have the option of possible imprisonment of two years except New Zealand and Western Australia (no imprisonment) and South Australia (four years).

The penalties associated with failing to comply with a compliance order or directive of an authorised officer show considerable variations across the jurisdictions. Failure to comply incurs the greatest penalty in Tasmania ($60 000 for individuals) and the Northern Territory ($275 000 for a company).

A comparison of penalties and fines between jurisdictions provides no indication of how often or how vigorously particular offences are pursued by the regulators. Some indication of regulator enforcement approaches is provided (across all regulated businesses within each jurisdiction) in chapters 7 and 8 of this report.

Variations in adoption of the ANZFS Code

Despite the provisions contained in the Food Agreement, not all jurisdictions adopt the ANZFS Code in its entirety.[4] New South Wales, Queensland, South Australia and Western Australia have provisions within their legislation/regulations that provide for partial application of the ANZFS Code and/or modifications to the operation of the ANZFS Code in their jurisdictions (table 5.3).

Some of the modifications are minor or transitory such as the delay in the start of food safety plans for vulnerable persons in New South Wales and Queensland (chapter 6). Other changes are ongoing but are designed to lower the regulatory burden in these states (presumably, with a less than proportionate decrease in

[4] The Food Agreement provides that individual provisions may be made for a state or territory where ANZFRMC is satisfied they are needed given exceptional conditions in that state or territory, and where the provision would not present a risk to public health or safety, or contravene Australia's international treaty obligations.

outcomes), such as not requiring fundraising activities to notify the appropriate authorities of a food event.

Table 5.3 **Variations to the adoption of the ANZFS Code**

	Standard	*Variation*
NSW	3.2.2 (clause 4) – requires food businesses to notify appropriate authorities before commencing business	An exemption for fundraising activities
	3.3.1 – food safety plans for vulnerable persons	An exemption for child care businesses and a delay in the start date for other applicable food businesses[a]
Qld	3.3.1 – food safety plans for vulnerable persons	Does not apply (for 12 months) The definitions for: • sell is altered to align with the Act • primary food production replaced with the definition in the *Food Production (Safety) Act 2000*
	1.6.2 (clause 9) – uncooked comminuted fermented meat[b]	Does not apply
	3.2.1 – food safety plans	Does not apply
	3.2.2 (clause 4) – required food businesses to notify appropriate authorities before commencing business	Does not apply
	chapter 4 – primary production standards	Does not apply
SA	2.5.1 subclause – application of primary production standard 4.2.4	Does not apply to goat's milk
	3.1.1 (clause 3) – subtext added	Excludes primary production business covered by other Acts (such as *Meat Hygiene Act 1994*) and a number of other specific cases
WA	2.5.1 subclause – application of primary production standard 4.2.4	Does not apply to goat's milk
	1.6.1 – microbiological limits for food	Amendments to the microbiological requirements for packaged water and packaged ice and mineral water
	3.3.1 – food premise & vehicle	Definition altered to align with the *Health Act 1911*
	3.3.1 – primary production	The following is added to the definition: • extracting milk from an animal • storing untreated milk • transporting untreated milk
	3.3.1 – definition of proprietor	Altered to align with the *Health Act 1911* with a distinction between the proprietor of a food premise and a food vehicle.
	3.3.1 – definition of sell	Altered to align with the *Health Act 1911* – a number of sections from the code not included[c]
	3.2.3 – definition of sewage	Altered to align with the *Health Act 1911*

a See chapter 6. **b** This clause does not exist. **c** As the definition of sell in the WA *Food Act 2008* is the same as the ANZFS Code, this modification disappeared with the proclamation of the act on 23 October 2009

Sources: Adopted from Theobald (2007); Food Acts and regulations for each state.

Western Australia's hygiene laws

In 2008-09, Western Australia had not reformed its food law. As a result, Western Australia had separate hygiene regulations in addition to those contained in chapter 3 of the ANZFS Code. Furthermore, if there was any inconsistency between the ANZFS Code and the *Health (Food Hygiene) Regulations 1993* (WA), the regulations prevailed. These regulations covered essentially the same broad topic areas as the ANZFS Code but can differ in wording or content (table 5.4).

Some of the sections of the *Health Regulations 1993* (WA) appear to duplicate the ANZFS Code. Slight wording changes may leave open the possibility of different interpretation and uncertainty (particularly for businesses operating across jurisdictions). For example, the Western Australian health regulations require all food premises and food vehicles to be designed and constructed to enable easy and adequate cleaning (schedule 4). However, the ANZFS Code also has an equivalent provision — but with slightly different wording (Standard 3.2.3, division 2).

The Western Australian regulations also have prescriptive requirements. For example, when the dining floor area is on the food premise the regulations specify the kitchen to be no less than 25 per cent of the total floor area. This requirement is presumably to ensure that food handlers have sufficient space to work and the work area is not compromised for more dining area. While not prescriptive, the ANZFS Code states that the design and construction of food premises must 'provide adequate space for the activities to be conducted' (Standard 3.2.3, division 2).

Nevertheless, with the proclamation of the *Food Act 2008* (WA) on 23 October 2009, Western Australia has repealed these food hygiene regulations.

Table 5.4 **Selected examples of additional hygiene provisions in Western Australia**

Area	*Details*
Food premise & equipment	
General requirements	Duplicates the ANZFS Code
Kitchen space	Specified as a percentage of dining area
Walls	Prescriptive requirements including the need to be 'finished in a light colour' and tiling requirements for some businesses
Floors	Additional requirements
Ceilings	Additional requirements including the need to be 'finished in a light colour'
Supply of water	Duplicates the ANZFS Code
Cleaning equipment	Glass washing machines must have water that is not less than 50°C when washing with a chemical sanitizer or alternatively not less than 75°C
Lighting	Light fitting must have protective covers to prevent contamination of food with broken glass
Ventilation & exhaust equipment	All kitchens and cooking areas in food premises and vehicles must have exhaust hoods in compliance with the Australian Standard AS 1668.2-1991
Change rooms	Change rooms must be at least 3 square metres with an additional 0.75 square metres for each person in excess of 4
Personal hygiene & conduct of food handlers	
Cleanliness of persons	Food handlers are required to wear 'hair coverings'
Unwell employees	Duplicates the ANZFS Code Requires records to be kept on all absences from work of persons due to illness

Source: *Health (Food Hygiene) Regulations 1993* (WA).

Food recall and deliberate tampering requirements

The ANZFS Code (Standard 3.2.2) outlines that a food business in wholesale supply, manufacture or importation must have a documented (written) system to recall unsafe food. The purpose of a recall plan is to enable a food business to 'remove unsafe food effectively and efficiently to protect public health and safety' (FSANZ 2008l).

Food retail businesses are not required to have a recall plan unless they are also engaged in the wholesale supply, manufacture or importation of food. It may be the case that mixed businesses, such as supermarket chains, are required to have a recall system because they also operate as wholesale suppliers, for example. While food retail businesses may not need a recall plan, they must comply with the food disposal requirements of the ANZFS Code if they are involved in another business' recall. For example, they may need to remove recalled stock from shelves and

return it to the appropriate business (manufacturer, importer or wholesaler). Retail businesses within the food service sector (such as restaurants, cafes, takeaways) are generally not required to have a recall plan. This is because the food processed by them is eaten shortly after it has been made, and in the case that a problem was to occur, the food will have been consumed before it can be recalled.

The *Food Standards Australia New Zealand Act 1991* (Cwlth) specifies that FSANZ, at the request of states and territories, is responsible for coordinating recall action. This means that when FSANZ is notified of a recall, it liaises with the food business and state and territory authorities to gather and collate all necessary information. One industry participant expressed the view that this system is working well:

> Woolworths acknowledges that in some areas co-ordination between the States and Territories is good. For example, in respect of recalls the practice is that a manufacturer only needs to notify the ACCC, FSANZ and the manufacturer's 'home state'. (sub 10, p. 7)

The national protocol requires the following parties to be notified of a recall:

- government authorities (FSANZ, consumer affairs, 'home' state or territory authority)
- the distribution network/chain, trade customers, retailers
- the public (in the case of a consumer level recall)
- food industry organisations.

Queensland's notification requirements for suspected intentional food tampering

Queensland has overlaid the national food recall arrangement with a unique requirement for the mandatory reporting to the health authority where a business suspects intentional food tampering/contamination has occurred. This includes all businesses: wholesalers, manufacturers, food importers as well as retail businesses. This additional requirement in the Food Act was introduced in 2006, following a case of food contamination in a number of buffet style family restaurants.

The *Food Act 2006* (Qld) requires that a food business must verbally notify Queensland Health (via a hotline) of the suspected intentional tampering/contamination immediately after first forming the reasonable suspicion. The Industry Protocol, developed by Queensland Health, provides guidance material on when it is reasonable to suspect that intentional contamination has occurred (Queensland Health 2006).

After Queensland Health receives notification of a suspected case of intentional food tampering, it contacts the Queensland Police to advise them of the matter. Queensland Health works with the Queensland Police and the notifying business to balance the 'criminal investigation' and 'food safety' aspects of any confirmed tampering event. Queensland Health also works with the notifying business to establish whether tampering/contamination has occurred, the extent of the tampering/contamination (if it has occurred) and, if required, to prepare the business to initiate a recall.

Not all notifications will result in a recall and, for some businesses (such as food service) a food recall cannot be initiated and other measures (such as a temporary cessation of business or part of the business) are required. In the event of a recall, the notifying business is required to contact FSANZ (as per the national protocol), but Queensland Health prepares the business for that event and ensuing recall process.

The Queensland protocol provides a template detailing the information needed when notifying suspected intentional contamination of food to Queensland Health. A summary of the information is provided in box 5.1. Similar information is required by FSANZ for all recalls (including intentional contamination) and also needs to be supplied to FSANZ if a food recall is initiated.

While the Queensland government argued, at the time the notification requirement was introduced, that it did not want to overly burden businesses with compliance, a number of food businesses and organisations have claimed that the additional requirement was introduced without consultation. One industry participant views the additional requirements as:

- an 'add-on' to the national policy
- not necessarily best practice
- having an excessive number of mandated tasks.

A number of participants to the Bethwaite Review stated that these requirements create an additional regulatory burden on Queensland food businesses.

> These discrepancies are costly as they force national multi-plant companies to institute different rules and procedures in each state or territory … and differing and/or more complex training programs …
>
> The recent changes to the *Queensland Food Act 2006* mean that Queensland has differing requirements with respect to tampering provisions. The ABCL has in place a national recall reporting protocol with appropriate contacts for all states, commonwealth and territories health authorities. These are no longer applicable to Queensland. (Australian Beverages 2007)

> … the recent amendment of the *Queensland Food Act 2006* (without consultation) with respect to tampering provisions now requires separate reporting provisions for Queensland (to the Director General Health) on suspicion of a tampering incident. AFGC has in place a national recall reporting protocol with appropriate contacts in health and police for all states and territories which is no longer applicable in Queensland (Australian Food and Grocery Council 2007).
>
> Another example of inconsistency in terms of food regulation is the recent addition of food tampering provisions within the *Queensland Food Act 2006* (without consultation). This requires mandatory reporting of suspected tampering incidents in Queensland to the Director General Health, which is different to the established national reporting protocol we already have in place. (Coles 2007)

However, now that the system is operational, this additional requirement appears to be offset to a degree by the guidance provided to business by Queensland Health in dealing with an issue (intentional tampering/contamination) that would be outside the experience of many business operators — particularly the police liaison aspects. Food businesses operating only in Queensland may have higher compliance costs than other jurisdictions as they need to be familiar with the additional requirements for intentional tampering/contamination.

Box 5.1 **Information requirements when intentional contamination has occurred in Queensland**

Prior to reporting a deliberate tampering incident to Queensland Health the following information needs to be collected and then provided:

- name of caller
- caller's position in business
- phone number & alternative phone number
- name of business
- address of business & post code
- brand of suspect food
- name of suspect food
- package size
- quantity
- further description of food
- detail of contamination
- date of incident
- reason for suspicion
- any other comments

While speaking with a representative of Queensland Health, the following information needs to be recorded:

- name of call centre representative
- date call lodged
- time call lodged
- any directions given

Source: Queensland Health (2006).

The Commission invites food businesses operating in Queensland to specify the additional regulatory burden of the deliberate tampering requirements that only apply in that State.

5.3 Comparisons with New Zealand food safety laws

New Zealand's food laws are governed by the *Food Act 1981*.[5] New Zealand's Food Act has some similar provisions to those contained in Australia's Model Food Act, including definitions and offences, as well as matters of enforcement, administration and recall.

Nevertheless, this is where the similarities stop. Overall, New Zealand's Food Act has limited resemblance to the Food Acts in Australia. Differences in the nature and structure of the act reflect, in part, the different food safety and hygiene system. For example, the New Zealand Food Act has a considerable number of sections devoted to situations where food businesses could be exempted from the food hygiene regulations. There also is a section outlining the creation of food standards (in addition to the standards adopted in the ANZFS Code). These types of provisions are not replicated in Australians laws.

Unlike the Australian Food Acts, the New Zealand Food Act has provisions relating to sales and advertising, including misleading and false labelling and packaging. These types of provisions are contained in the jurisdictional fair trading acts and the *Trade Practices Act 1974* in Australia. New Zealand also has laws governing false or misleading representations in the New Zealand *Fair Trading Act 1986*.

The New Zealand Food Act also brings the control of imported food within its ambit — unlike Australia where this is in separate legislation. In Australia, the *Imported Food Control Act 1992* provides for the compliance of food imported into Australia with the ANZFS Code and the requirements of public health and safety. The differences in this area are examined in chapter 14.

Comparison of key definitions

Both the Model Food Act in Australia and the New Zealand Food Act define 'to sell' — a pivotal concept in defining a food business — with a common number of elements (table 5.5). Nevertheless, the Australian definition, contained in the Model

[5] A new system to regulate the domestic food industry has been designed following four years of consultation and policy development. It is expected that a new Food Bill will be passed in the near future.

Food Act, has a number of additional elements, presumably capturing more operations within the scope of the Food Acts across Australia. For example, public hospitals and prisons are considered food businesses in Australia and must comply with food standards and laws.

While some elements are not contained in the definition in the New Zealand Act, they are covered in other sections of the Act. For example, food 'given away' in a raffle or as a prize is considered to be 'sold' and, therefore, comes under the scope of the relevant Food Acts and associated laws in both countries.

Both countries define 'food' in their respective Food Acts in a similar way (table 5.6). Even so, Australia has two additional elements to the definition for 'food'. Substances that come into contact with 'food,' such as processing aids, are also considered to be 'food' in Australia. Also, there is another legislative mechanism under which a substance can be declared as 'food' in Australia. While not part of the definition, Australian laws also clearly delineate that the definition of food does not include therapeutic goods as defined in the *Therapeutic Goods Act 1989*.

Table 5.5 **Definition of 'sell'**

Elements of the definition of 'sell'	*Australia*	*New Zealand*
Sell for the purpose of resale	✓	✓
Barter	✓	✓
Offering or attempting to sell	✓	✓
Having in possession for sale	✓	✓
Display for sale (exposing for sale)	✓	✓
Send, forward or deliver for sale	✓	✓
Cause or permit to be sold or offered for sale	✓	✓
Supplying under a contract, together with accommodation, service, or entertainment, in consideration of an inclusive charge for the article supplied and the accommodation, service, or entertainment	✓	✓
Dispose of by any method for valuable consideration	✓	×
Dispose of to an agent for sale on consignment	✓	×
Provide under a contract of service	✓	×
Dispose of by way of raffle, lottery or other game of chance	✓	a
Offer as a prize or reward	✓	a
Give away for the purpose of advertisement or in furtherance of trade or business	✓	×
Supply food (whether or not for consideration) in the course of providing services to patients or inmates in public institutions	✓	×

a Within scope of the Act but not contained in the definition.

Sources: *Food Act (1981) NZ*; Model Food Act (Annex A).

Table 5.6 **Definition of food**

Elements of the definition of 'food'	*Australia*	*New Zealand*
Any substance, ingredient, nutrient or thing of a kind used, or represented as being for use, for human consumption or used in preparation of 'food'	✓	✓
Chewing gum, and any ingredient of chewing gum, and anything that is or is intended to be mixed with or added to chewing gum	✓	✓
Any substance used in preparing 'food' that comes into direct contact with the 'food' such as a processing aid	✓	×
Any substance or thing declared to be a food under *Australia New Zealand Food Authority Act 1991* (Cwlth)	✓	×

Sources: Food Act (1981) NZ; Model Food Act (Annex A).

There are a number of other definitions in the Australian Food Acts which are not replicated in the New Zealand Food Act such as the meaning of a 'food business', 'unsafe food' and 'unsuitable food' or similar terms.

New Zealand food and hygiene standards

Despite FSANZ being a bi-national body responsible for developing food standards for both Australia and New Zealand, a number of standards within the ANZFS Code are not applicable in New Zealand — some of these standards relate to areas outside the Joint Food Standards Setting Treaty and, for other standards (such as Country of Origin Labelling — Standard 1.2.11) New Zealand has exercised its right under the Joint Food Standards Setting Treaty to 'opt out'.

The *New Zealand Food Standards 2002* regulation gives effect to the relevant parts of chapters 1 and 2 of the ANZFS Code in New Zealand. The following standards within these chapters of the ANZFS Code do not apply in New Zealand:

- maximum residue limits (Standard 1.4.2)
- country of origin labelling (Standard 1.2.11)
- processing requirements for milk, cheese, eggs, dried meat, eviscerated poultry, crocodile meat, game and fermented comminuted processed meat (Standard 1.6.2)
- fortification of wheat flour for making bread with folic acid (Standard 2.1.1)
- requirements relating to bovine meat and meat products being derived from animals free from bovine spongiform encephalopathy (Standard 2.2.1 (clause 11)).

In New Zealand, the food hygiene standard (chapter 3 of the ANZFS Code) and the primary production standards (chapter 4 of the ANZFS Code) do not apply. Consequently, New Zealand has a number of its own food standards (table 5.7). The differences in regulations relating to primary production and process and maximum residue limits in Australia and New Zealand are examined in chapters 9 to 13.

Table 5.7 **New Zealand Food Standards**

New Zealand Food Standards
Food (Tutin in Honey) Standard 2008
New Zealand (Mandatory Fortification of Bread with Folic Acid) Food Standard 2007
Food (Prescribed Foods) Standard 2007
New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008
Food (Milk and Milk Products Processing) Standard 2007
New Zealand (Bee Product Warning Statements - Dietary Supplements) Food Standards 2002
Food (Uncooked Comminuted Fermented Meat) Standard 2008
Food (Importer Listing) Standard 2008
Food (Importer General Requirements) Standard 2008

Source: NZFSA (2009i).

Differences in fortification of bread

The food standard requirement for the composition of bread differs between Australia and New Zealand (Standard 2.1.1). From 13 September 2009, the standard requires bread to be fortified with folic acid and thiamine in Australia. It outlines the amount of thiamine and folic acid required for each kilogram of flour.

The proposed mandatory fortification requirements of bread are outlined in the New Zealand *(Mandatory Fortification of Bread with Folic Acid) Food Standard 2007*. The New Zealand standard specifies the fortification quantity for folic acid that is to be added during the bread-making process rather than to the flour. However, New Zealand requirements do not specify the way manufacturers are required to fortify the bread so long as the final bread product contains between 0.8 and 1.8 mg/kg of folic acid. This is lower than the Australian requirement — 2 mg/kg and no more than 3 mg/kg of folic acid.

Nevertheless, the New Zealand government recently announced the decision to defer the commencement date of the New Zealand mandatory fortification of bread with folic acid until 31 May 2012. The reason for the deferred commencement is that the New Zealand government is concerned that the New Zealand folic acid standard may place an unnecessary cost burden on industry and limit consumer choice. There are also concerns about whether or not folic acid can be evenly distributed within a loaf of bread (NZFSA 2009j). NZFSA argues that the delayed

commencement date would allow new evidence to be considered (including the planned 2011 independent review of the Australian standard) before making a decision in 2012 regarding the standard.

With New Zealand's decision to delay the introduction of mandatory fortification of bread with folic acid, Australian food businesses affected will face higher regulatory costs in comparison. Australian millers will face higher upfront costs, estimated to be at a minimum of $7.9 million, and higher ongoing costs of about $1.1 million per annum (FSANZ 2007b) Nevertheless, Australia is expected to receive the (projected) benefit of reduced incidence of neural tube defects (NTD) — the central aim of fortification of bread with folic acid (table 5.8).

Table 5.8 **Projected number of NTD cases prevented per year**

	Australia	*New Zealand*
Live NTD births prevented	5.0	1.3
Still NTD births prevented	3.0	1.3
Terminations of pregnancy prevented	18.0	5.2
Total NTD cases prevented	**26.0**	**7.9**

Source: FSANZ (2006).

New Zealand's hygiene standards

New Zealand's food hygiene standards are set out in *Food Hygiene Regulations 1974*. This regulation has some broader categories similar to the ANZFS Code (applicable in Australia) such as the registration of premises, maintenance of food premises and conduct of workers. However, unlike the ANZFS Code, the regulations are generally prescriptive. For example, food handlers engaged in the manufacture, preparation, packing, or handling of food are required to wear:

- light-coloured outer overalls or smock over clothing
- 'effective apparel' (such as a hat or hair net) to restrain hair from touching any food and food contact surfaces. This apparel also needs to be clean, washable, light-coloured or disposable.

The similar requirement in the ANZFS Code for Australia is outcome focused with no prescriptive requirements on what food holders need to wear:

> A food handler must, when engaging in any food handling operation –
>
> (a) take all practicable measures to ensure his or her body, anything from his or her body, and anything he or she is wearing does not contaminate food or surfaces likely to come into contact with food…

(c) ensure outer clothing is of a level of cleanliness that is appropriate for the handling of food that is being conducted. (Standard 3.2.2)

Presumably, under the Australian requirements, food handlers do not *need* to wear light coloured clothing or wear a hat or hair net. In many situations, however, food handlers will wear a hat or hair net as a method of fulfilling the requirement of the ANZFS Code.

A benefit of outcome-based standards is that they are able to capture a broad range of circumstances without the need to explicitly state each one. For example, the Australian standard is broader than the New Zealand standard requiring food handlers to take steps to ensure objects like jewellery and bandages do not contaminate the food being prepared (not just hair). This is not to say that outcome-based standards are necessarily better than prescriptive standards — there are costs and benefits to both (box 5.2).

The New Zealand food hygiene regulations also differ from the ANZFS Code in that there are specific regulations for particular types of food businesses, including bakeries, delicatessens and eating houses. These regulations relate to the food premise and equipment of these types of businesses and are also prescriptive in their requirements. For example, a bakery is required to have a separate, damp-free room or compartment to store flour and no other food can be stored in the same room. In addition, the regulations require that the floor area (clear of furniture, fittings, and stored goods) be either 9.5 square metres or 3 square metres multiplied by the number of workers engaged in the premises — which ever is greater. In contrast, Australia has generic food premise and equipment requirements that apply to all food businesses without such prescriptive space requirements (Standard 3.2.3).

Box 5.2 **Outcome-based and prescriptive standards**

Prescriptive standards may provide greater certainty and information to businesses, which is especially valued by small and medium sized enterprises. However, they can limit flexibility, prevent adoption of new technologies and lead to regulatory overload with managers and workers adopting a minimum compliance mentality. They can also impose costs without the desired improvement in outcomes. One potential example of the latter, in the New Zealand regulations, is the requirement for food business owners to place a sign in each toilet and near every changing room requesting workers to wash their hands thoroughly before commencing, before handling food and on every occasion after using the toilet.

In contrast, outcome-based standards give businesses much greater flexibility in how they will meet regulatory requirements. They are usually valued highly by larger enterprises which may find significant cost savings by discovering innovative ways to deliver mandatory outcomes.

This greater flexibility comes at the price of greater uncertainty both in terms of what inspectors or auditors will accept as compliant and likely outcomes if prosecuted. In commenting on the nature of the regulations contained in the ANZFS Code, the South Australian Health Department said:

> The majority of food businesses in South Australia are small and medium enterprises (SMEs) who struggle [to understand and meet] the outcomes based nature of many standards. As these outcomes based standards do not include 'deemed to comply' provisions [that incorporate codes of practice or other prescriptive requirements] SA Health must provide considerable assistance.

Similarly, the Victorian Department of Health also commented:

> Where possible, regulation should be outcome-based (such as the Food Standards Code) so that businesses are not subject to arbitrary rules designed for the majority that do not work for the minority. But they should also be supplemented by additional guidance or assistance which explains how to comply, for those businesses (particularly smaller businesses and community groups) that need this advice.

The inclusion of ‘deemed to comply’ provisions (or equivalent) within outcomes-based standards is one way to gain the benefits provided by the certainty of prescriptive standards and the flexibility afforded by outcomes based standards. However, there are few examples of such provisions within food safety regimes of Australia and New Zealand.

Sources: Bardach and Kagan (1982); PC (1998); Productivity Commission survey of core food safety regulators (2009, unpublished).

The New Zealand food hygiene regulations also outline requirements relating to particular food products including the manufacturing and sale of ice-cream and beverages (along with some primary products). Like other provisions in the regulation, they relate to the conduct of food handlers or to the food premise and equipment and are highly prescriptive. For example, a food business selling

ice-cream must store scoops and servers either in running water, or in a covered container that is free from water. The regulation also requires scoops, servers and the storage containers to be cleaned every four hours.

New Zealand food businesses have the option of seeking an exemption to the *Food Hygiene Regulations 1974*, instead operating according to a food safety program that is approved and audited by the NZFSA. These food businesses are not subject to the inspection regime under the food hygiene regulations but instead require auditing against their food safety plan. This differs from the Australian hygiene standards in that the food safety program system works in conjunction with food hygiene standards (see chapter 6).

Not all of New Zealand's food safety and hygiene provisions are contained in the hygiene regulations. New Zealand's *Food Safety Regulations 2002* also include provisions relating to 'infected' people not working as food handlers. This includes manufacture, preparation, storage, packing, carriage or delivery of food. These regulations only apply when a person is unwell and this illness is a concern for greater public health and safety (such as a person suffering from a communicable disease). More generic requirements are outlined in the ANZFS Code for Australia (table 5.9).

As part of New Zealand's domestic food review, it is proposed that the *Food Hygiene Regulations 1974* be revoked and be replaced by new regulations made solely under the new Food Bill. The proposed regulations are expected to be outcomebased — similar to Australia. No date has been set for the introduction of the new regulations.

Table 5.9 **Obligations relating to the health of food handlers**

Australia	*New Zealand*
Standard 3.2.2	**Food Safety Regulations 2002**
(16) Health of persons who handle food – duties of food businesses	(10) Infected persons
(1) A food business must ensure the following persons do not engage in the handling of food for the food business where there is a reasonable likelihood of food contamination: (a) a person known to be suffering from a food-borne disease, or who is a carrier of a food-borne disease; and (b) a person known or reasonably suspected to have a symptom that may indicate he or she is suffering from a food-borne disease.	(1) No person referred to in subclause (2) may be engaged, or employed, in the manufacture, preparation, storage, packing, carriage, or delivery, for sale, of— (a) a food (b) an article used or likely to be used as a food (c) any material or article that is used, or is likely to be used, as a wrapper, package, or container for a food. (2) The persons are— (a) a person who is suffering from a communicable disease (b) a person who is a carrier as defined in the *Health Act 1956* (c) a person who is suffering from a condition causing a discharge of pus or serum from any part of the head, neck, hands, or arms.

Sources: The ANZFS Code; *Food Safety Regulations 2002 (NZ)*.

6 Influencing the culture of compliance

Key points

- Food safety supervisors are required only in Victoria and Queensland. The costs of attending a training course and lost work time is estimated to be around $700 per supervisor. These costs can be substantial where there is high staff turnover and where 24-hour food businesses are required to have a food safety supervisor present at all times.
- Food safety programs (FSPs) are mandatory only for certain high risk businesses in Australia. Differences in jurisdictions include:
  - Victoria: in the 2008-09 benchmarking period, most food businesses were required to have an FSP. Many of these businesses could satisfy this regulatory requirement using a standard template. There is some evidence to suggest the FSP requirements have improved the knowledge of safe food handling processes in Victoria, but also that these requirements impose additional costs.
  - Queensland: catering businesses are required to implement an FSP. This requirement has been introduced in advance of the development of a national standard. Currently, this represents an additional regulatory burden on this sector. Depending on the national standard, the sector may also face transitional costs once the national standard is introduced.
- Nationally, considerable work has been undertaken in developing the standard for FSPs for Food Service to Vulnerable Persons. Supporting documents outline which businesses are required to have a food safety program. As the standard is not fully operational in all jurisdictions, there is potential for differences in coverage to arise across the jurisdictions. Current differences include:
  - New South Wales has delayed the introduction of the standard for child care centres, electing to undertake more research and additional community consultation. No start date has been set.
  - Western Australia and the Northern Territory have no regulatory authority to audit and thus to enforce safety plans.

Food hygiene standards are designed to improve the safety of food prepared through better practices and greater understanding of factors which may increase food risks. Australian food hygiene standards are contained in chapter 3 of the Australia New Zealand Food Standards Code (ANZFS Code) (box 6.1). These standards cover general safety practices, information and training requirements, safety relating to food premises and equipment and food safety plans (FSPs).

This chapter examines two key requirements intended to raise awareness and increase accountability: the use of food safety supervisors in Victoria and Queensland (an additional requirement to ANZFS Code) and the adoption of FSPs across the Australian jurisdictions — where particular attention is given to the standard for businesses serving vulnerable populations. Both of these requirements aim to influence the food hygiene culture within a food business, ultimately aligning it with the outcomes of the ANZFS Code.

The information presented in this chapter relates to the period between 1 July 2008 and 30 June 2009. Accordingly, it does not consider the changes in the requirements for Victorian food businesses to prepare a food safety plan or appoint a food safety supervisor that come into effect from 1 July 2010 — the relevant legislation having been passed on 28 July 2009.

Box 6.1 **Food Hygiene Standards – Australia**

Standard 3.1.1 Interpretation and Application*:* defines the main terms used within the Food Safety Standards.

Standard 3.2.1 Food Safety Programs: outlines the general requirements of FSPs.

Standard 3.2.2 Food Safety Practices and General Requirements*:* sets out specific food handling controls related to the receipt, storage, processing, display, packaging, transportation, disposal and recall of food. Other requirements relate to the skills of food handlers and their supervisors, the health of food handlers, and the cleaning and maintenance of equipment and of the premise.

Standard 3.2.3 Food Premises and Equipment*:* ensures that food premises, equipment and transport vehicles are designed and constructed to be cleaned and sanitised. Other requirements relate to necessary services of water, waste disposal, light, ventilation, storage space and access to toilets. The aim of this standard is to ensure good design so that, if it is complied with, it will facilitate compliance by food businesses with the Standard 3.2.2.

Standard 3.3.1 Food Safety Programs for Food Service to Vulnerable Persons: requires food businesses that process food for service to vulnerable persons to implement a documented and audited FSP.

Source: The ANZFS Code.

6.1 Food safety supervisors

Victoria and Queensland are the only jurisdictions that require food businesses to employ a food safety supervisor.[1] New South Wales has announced that it will introduce such a requirement for the hospitality industry in 2010.

The requirement for a food business to have a food safety supervisor is an additional requirement to that specified in the ANZFS Code (box 6.2). However, it is argued that by having at least one person competent with matters relating to food hygiene and safety, it will help ensure that food produced is safe and suitable.

Box 6.2 **Required skills and knowledge of food handlers**

In the ANZFS Code, Standard 3.2.2 (Food Safety Practices and General Requirements) requires that people who handle food and the people who supervise food handling have the skills and knowledge relating to food safety and food hygiene matters appropriate to their work activities.

The guidance material for this standard explicitly states that it is not the intent of this clause to require mandatory training, recognising that skills and knowledge may be gained in different ways. Examples of these include:

- in-house training by employees or the proprietor
- distribution of relevant documentation to employees
- having operating procedures in place that clarify the responsibilities of food handlers and supervisors
- attendance at food safety courses run by local councils or other bodies such as industry associations
- hiring a consultant to present a course to employees.

Source: FSANZ (2001).

In Queensland under the *Food Act 2006*, a licensed food business must have a food safety supervisor within 30 days of the licence being issued and notify the local council of the name of the supervisor (within 14 days). Food businesses are required to have a supervisor at all times and changes in the details of the food safety supervisor (person or contact details) need to be notified to the local council within 14 days.

1 From mid-2010, the requirement to have a food safety supervisor in Victoria will only apply to 'high' and 'medium' risk food businesses.

In Victoria, the requirements for food safety supervisors are outlined in the *Food Act 1984*. Unlike Queensland, food businesses are only required to provide details of food safety supervisors (name and qualifications) to the local council within seven days of being requested or at registration or at the annual re-registration process.

In Victoria, one-off or irregular events, run solely to raise funds for charitable causes, are not required to have a food safety supervisor. Instead, the organisers of the event are required to ensure that the people who handle the food at the event can do this safely.

Characteristics for food safety supervisors

In guidance material issued by Queensland Health, a food safety supervisor is described as a person who has advanced food safety skills and knowledge and has the ability to oversee the food safety operations of the food business (Queensland Health 2008). Specifically, they are required to have:

- obtained the required competencies
- the ability to supervise and give directions about matters relating to food safety in the food premise
- the authority to supervise food handlers
- skills and knowledge relating to food safety, and the identification and prevention of food safety hazards relevant to the food business (Queensland Health 2008).

Victoria has similar requirements to that of Queensland, however, the requirements are detailed in the Food Act rather than guidance material (which is not legally binding). Specifically, food safety supervisors are required to:

- know how to recognise, prevent and alleviate the hazards associated with the handling of food
- meet appropriate food safety competency standards
- have the ability and the authority to supervise other people handling food and ensure that that handling is done safely.

Training requirements for food safety supervisors

Unlike the requirements in the ANZFS Code, food safety supervisors are required to undertake some form of formal training. In both Victoria and Queensland, the

competency standards for a food safety supervisor are dependent on the industry sector in which the food safety supervisor is working (table 6.1). Both jurisdictions provide guidelines to help determine which food sector a particular business may fall within.

Within the guidance material for Queensland, there is scope for recognition of prior learning, previous work experience and other training (formal and informal). While this option may appear to offer lower compliance costs for businesses, the guidance material notes that the process to recognise prior learning involves similar time and resources to the cost of conducting the training. Nevertheless, if a person has completed an appropriate food industry trade qualification or a Bachelor degree or higher qualification from a recognised institution that includes food safety and hygiene subjects, then the person may be eligible for automatic accreditation to be a food safety supervisor.

Table 6.1 **Training requirements for food safety supervisors by sector – Queensland and Victoria**

Food sector	*Course title*
Food processing	Implement food safety program and procedures
Retail and hospitality	Follow workplace hygiene procedures and Implement food safety procedures or Apply retail food safety practices
Health and community services	Follow basic food safety practice Oversee the day-to-day implementation of food safety in the workplace Apply and monitor food safety requirements
Transport and distribution[a]	Follow workplace hygiene procedures Implement food safety procedures

[a] In Victoria, businesses in the transport and distribution sectors are advised to use relevant units from other sectors where as Queensland has specified these courses.

Source: DHS (Victoria) (2008b); Queensland Health (2008).

In Victoria, there are two ways a food safety supervisor can obtain a statement of attainment by:

- attending a training course (classroom/workplace based, computer based or a combination)
- having previously completed training and/or work experience recognised against the required competency standard by an Registered Training Organisation.

Availability of food safety supervisors

In Queensland, the guidance material states that the food safety supervisor is expected to be involved in the day-to-day operations of the food business and must be reasonably available to food handlers and the relevant local government. In the event the food safety supervisor is absent, there must be a 'documented mechanism' to ensure directions about matters relating to food safety are available to persons who handle food.[2] The food safety supervisor must be contactable by the local government or food handlers when food handling activities are being undertaken.

The guidance material gives local governments discretion as to what is 'reasonably available'. For example, this material suggests that a food safety supervisor is not required to be reasonably available when the business is operating but no food handling is being undertaken — such as when a sporting club kitchen closes at 9 pm but the club remains open until 11 pm for entertainment activities.

However, this flexibility in interpretation has caused inconsistency in application for one food business in Queensland that operates across a number of local councils. This business claims that some councils require food safety supervisors to be 'reasonably available' but other councils require the food safety supervisor to be on-site at all times. In 24-hour operations, food businesses must train a number food safety supervisors so that a supervisor is always onsite for those local councils requiring it.

In Victoria, there is no requirement for a food safety supervisor to be at the premises at all times. Nevertheless, the Victorian government health website indicates that there must be a way for the food safety supervisor to know how food is being handled and to ensure that people handling food are doing so safely when the food safety supervisor is not on the premises (Department of Health (Victoria) 2009a). The Commission has not been presented with evidence from food businesses on how this requirement is enforced, in practice, in Victoria. Nevertheless, the Victorian system appears to place a lower regulatory burden on business by not having to train as many supervisors than Queensland food businesses.

Costs of requirements and effectiveness

The Victorian Competition and Efficiency Commission (VCEC), in its review of food regulation in Victoria, estimated that the total costs of training a food safety

[2] A documented mechanism is a written set of procedures that enables matters relating to food safety and handling to be efficiently dealt with within a food business.

supervisor to be between $600 and $800. This includes the cost of the training course and the cost of lost work time of one day (VCEC 2007).[3] Extrapolating this estimate, the VCEC assessed that the annual cost to Victorian businesses of the requirement to have a food safety supervisor would be around $2.7–3.6 million (VCEC 2007). As the Queensland training requirements are the same as Victoria, the training costs per food safety supervisor would be of a similar magnitude.

One participant to the VCEC review noted that high mobility and exit rates within the food industry means this training cost is commonly an ongoing cost. This view is also supported by Clubs Australia in their submission to this study:

> Although the club may pay for an employee's training, the qualification belongs to the individual and if they leave the venue, it may mean the club has to again cover the cost of training, if the new employee does not possess the requisite competencies. (sub 5, p. 5)

One business informed the Commission that it felt that using food safety supervisors is a 'much cheaper option' than using FSPs. However, the Commission has received no evidence on the relative effectiveness of the two options.

6.2 Food safety programs

What are food safety programs and when are they required?

Broadly, an FSP is a process where food businesses identify hazards that might occur and identify how they will be controlled. These components are written up in a document – the food safety plan — that shows how the business will manage the safety of the food it prepares, serves, manufactures or sells. This system is based upon the principle that food safety is best ensured through the identification and control of hazards in the production, manufacturing, and handling of food as described in Hazards Analysis and Critical Control Point (HACCP) system.[4] A food safety plan is, therefore, the written document within an FSP. However, within this report, the terms are used interchangeably as the distinction is not of substance for this report.

The contents of FSPs are based on requirements in the ANZFS Code. The process of writing an FSP aims to educate food handlers about the best practice standards (as contained in the ANZFS Code) so as to use this knowledge when they are

[3] For some staff, such as chefs, the relevant food safety supervisor training may be included in their broader professional training/education and so, in some instances, the cost of training may not be a cost to business.

[4] HACCP was developed in the 1960s for NASA (FSANZ 2007a).

preparing food. In addition to documenting the potential hazards and practices to ensure safe food, FSPs also have a range of records to demonstrate that food businesses are following their FSP (for example, a temperature control log). Regulations usually require that FSPs are kept at the business premise and are reviewed to ensure they remain relevant.

The ANZFS Code outlines the general principles required of a business, however, it does not specify the exact list of contents for FSPs. To assist food businesses, a number of tools and templates have been developed by various government organisations — including a number of cross jurisdictional groups to help ensure consistent implementation. Box 6.3 outlines some of the suggested items that may be included in FSPs.

Box 6.3 **Example contents of an FSP**

The following background details are recommended for inclusion in an FSP:

- business detail: business name, licence/registration information, name of proprietor or company, address and contact details of the business, a general description of the nature of the business, key food personnel
- a description of how the FSP was developed: template, employed external consultants, or developed the program in-house
- auditing of the FSP: the FSP should contain information on how often the program is required to be audited and who will be conducting the audit.

The following records may be included in an FSP, depending on the nature of the business:

- approved food suppliers list
- approved food supplier agreement form
- incoming goods
- food recall
- customer complaints
- temperature control log
- the 4 hour/2 hour guide
- cleaning and sanitising
- equipment maintenance and calibration of thermometers
- pest control
- staff illness/accidents
- staff instruction/training off site events.

Sources: FSANZ (2007a); Queensland Health (2007).

Nationally, there is agreement that FSPs should be introduced only when the costs of complying with such requirements are outweighed by the benefits. In 2003, the ANZFRMC has endorsed policy guidelines identifying four high risk food sectors that are required to prepare FSPs:[5]

- the harvesting, processing and distribution of raw oysters and other bivalves
- the production of manufactured and fermented meat
- catering operations serving food to the general public
- where potentially hazardous food is served to vulnerable populations (box 6.4).

Box 6.4 **High risk sectors that require FSPs**

Raw oysters and other bivalves

The Primary Production and Processing Standard (PPPS) for Seafood (4.2.1) requires primary producers and processors of certain bivalve molluscs (such as oysters, scallops, clams and mussels) to implement a documented food safety management system. This requirement has been mandatory since May 2007. Further discussion of the differences in food safety regulation for seafood is contained in chapter 12.

Manufactured and fermented meat

The PPPS for meat requires producers of manufactured and fermented meat to develop a food safety management system. This has been mandatory since November 2007. Differences in food safety regulation for meat is examined in chapter 9.

Catering operations serving food to the general public

FSANZ is currently working on a standard to require businesses that engage in certain off-site and on-site catering activities to develop and implement FSPs in accordance with Standard 3.2.1.

Vulnerable persons

This standard requires food businesses that process food for service to vulnerable persons to implement a documented and audited FSP (see below). This standard has been mandatory since October 2008.

In the years following, FSANZ developed food standards requiring FSPs for the identified high-risk sectors, except the catering sector. A standard for the catering sector is still under development, with a draft standard issued for comment in late 2007.

5 Aside from the primary sectors identified as high risk by ANZFRMC, the dairy industry (primary production only) is required to have a documented FSP as outlined in the Primary Production Standard (4.2.4).

In New Zealand, Food Control Plans (akin to FSPs in Australia) are not yet required under legislation but instead are being trialled on a voluntary basis — pending the introduction of new food laws and regulations in New Zealand. As a result, New Zealand's regulatory regime has not been benchmarked in this chapter as the costs incurred by New Zealand food businesses are voluntary at the present stage. Nevertheless, a brief overview of the system in New Zealand is provided in box 6.5.

Box 6.5 Food Control Plans in New Zealand

A new system to regulate the food industry in New Zealand has been designed following four years of consultation and policy development. While a new Food Bill is being developed, some parts of it are being trialled under the current New Zealand Food Act — Food Control Plans are one element. It is anticipated that Food Control Plans (FCPs) will be required by those businesses selling food that poses a medium to high risk to consumers (for example restaurants and manufacturers of foods for vulnerable populations). The FCP templates developed by NZFSA give consideration to the risk assessment and categorisation of the food sector, however food businesses will still be able to develop their own FCP if they choose to do so.

Like FSPs, FCPs consist of a set of procedures which document the controls a business has in place to manage each risk in their particular process. Similar to Australia, New Zealand is proposing two types of plans:

- Off-the-peg FCPs (template): will be designed to be a ready-to-use system for managing food safety. They will be developed by NZFSA.
- Custom-made FCPs: will be written by operators of complex businesses to suit their particular process. They could be developed from scratch or adapted from one or more off-the-peg FCPs.

Before the new Food Bill is passed, NZFSA and most of New Zealand's local councils are working together in a scheme called the Voluntary Implementation Programme to implement an off-the-peg FCP for the food service and catering sectors.

Under the *Food Act 1981*, most food operators register their premises with their local council. An Environmental Health Officer inspects these registered premises each year to assess compliance with the *Food Hygiene Regulations 1974*. With an FCP in place the food business will be exempt from the Food Hygiene Regulations. A council Environmental Health Officer (or representative) will verify that the business is following its FCP and that it is appropriate for that business.

Source: NZSFA (2009c).

Additional jurisdictional requirements for FSPs

Queensland requirements

Since February 2008, Queensland catering companies are required to have FSPs, including mixed food businesses such as a hotel catering for its functions rooms and as serving restaurant meals (Queensland Health 2007). As this requirement precedes the finalisation of a national standard, it represents an additional regulatory burden on this sector in Queensland compared with catering businesses in other jurisdictions. However, this does not account for any benefit that the regulatory requirement may bring. While the industry may transition easily to the national standard (when finalised), any changes from the existing Queensland system to the national standard will represent an extra (unnecessary) burden on the industry.

Approach taken by Victoria

In 1997, Victoria was the first jurisdiction to voluntarily adopt the use of FSPs for all Victorian food businesses.[6] This decision followed a number of outbreaks of foodborne illness and the belief (at the time) that other jurisdictions were not likely to adopt such requirements (DHS (Victoria) 2006).

The Victorian system currently classifies businesses into two categories based on risk. Class 1 businesses (covering hospitals, aged care facilities and child care centres) are required to develop their own FSPs. Class 1 businesses are required to be audited by a third-party auditor. This category is similar to the businesses captured by the standard for vulnerable populations. Class 2 premises cover all other types of business such as restaurants and cafes (apart from those specifically exempt).[7] These businesses have the option of using templates covering fixed and temporary food premises. FSPs from Class 2 food businesses are audited by the local council.

No overall benefit-cost analysis has been undertaken on the requirement for FSPs in Victoria making it difficult to determine cost of the additional regulatory burden associated with the requirement for most food businesses to prepare FSPs and

6 This does not apply to businesses involved in primary food production. These are regulated through the Dairy Act, Meat Industry Act and Seafood Safety Act.

7 The only activities exempt from the FSP requirement are retailers of low risk pre-packaged food.

whether it is less than the additional benefits.[8] Nevertheless, the survey results from the FSANZ National Food Handling Survey found that the staff of businesses with FSPs had better food handling knowledge and practices (box 6.6 and chapter 3). This provides evidence that FSPs may provide some benefits.

Effectiveness aside, the compliance costs associated with FSPs will be higher in Victoria than in any other jurisdictions as almost all Victorian retail food businesses are required to prepare FSPs — not just those businesses serving vulnerable persons. The additional coverage in Victoria roughly equates to that of Class 2 businesses. The VCEC estimated that eliminating FSPs for Class 2 businesses would save these businesses $30.5 million in the first year alone (VCEC 2007). The regulatory changes due to come into force in July 2010 will reduce *some* of this additional burden on Victorian food businesses but not all (box 6.7).

Box 6.6 **FSPs and food handling knowledge and practices**

Businesses with FSPs were more likely to:

- know the correct temperature that chilled foods should be stored at (88 per cent) than those businesses without an FSP (79 per cent)
- have a probe thermometer (93 per cent) compared to those that did not have an FSP (74 per cent)
- have a system for checking the safety of delivered potentially hazardous food (92 per cent) compared to businesses without an FSP (73 per cent)
- feel '*at least well informed on current food safety regulations*' (91 per cent) compared to those that did not have an FSP (76 per cent)
- have a staff sickness policy (96 per cent) compared to those without an FSP (85 per cent)
- correctly identify that the temperature of delivered frozen food always needed checking (82 per cent) compared to those who did not have an FSP (68 per cent).

Source: FSANZ (2008a).

[8] The legislation requiring the preparation of an FSP was introduced in 1997 prior to the requirement to prepare a RIS (also known as Business Impact Assessment in Victoria). Subsequent amendments have lessened the regulatory impact and, therefore, also do not require a RIS.

Box 6.7 **Victorian food regulatory reforms**

In September 2006, the Victorian Government commissioned the VCEC to examine the nature of compliance and administrative burdens of food regulation on businesses, consumers and the not-for-profit sector, whether the objectives of current food regulation were being met, and the opportunities for reducing or reforming regulation whilst still meeting the objectives of current regulation. VCEC released its final report in September 2007.

In January 2008, the Victorian Government issued a response to the VCEC Report, announcing that changes could be made to the law to protect the food supply and that it would implement the majority of VCEC's recommendations. On 7 July 2008, the Victorian Department of Human Services released its Consultation Paper. This consultation paper also contains recommendations to alter the *Food Act 1984*. The Food Amendment (Regulation Reform) Bill 2009 was passed by the Victorian Parliament in July 2009. From 1 July 2010, the *Food Act 1984* will incorporate a new food premises classification system.

- Class 1 – for food premises similar to current Class 1
- Class 2 – for food premises engaged in manufacture or handling of any unpackaged, potentially hazardous foods
- Class 3 – for food premises handling low risk food (for example, baking bread) or wholesale of pre-packaged food, or selling pre-packaged, potentially hazardous food that requires temperature control and also includes some community group food events.
- Class 4 – for food premises selling shelf-stable, pre-packaged food or running low risk community food activities.

The new classification system changes the requirements relating to FSPs, audit requirements and council inspects. The new requirement will lower the regulatory burden on businesses, particularly the lower risk food businesses.

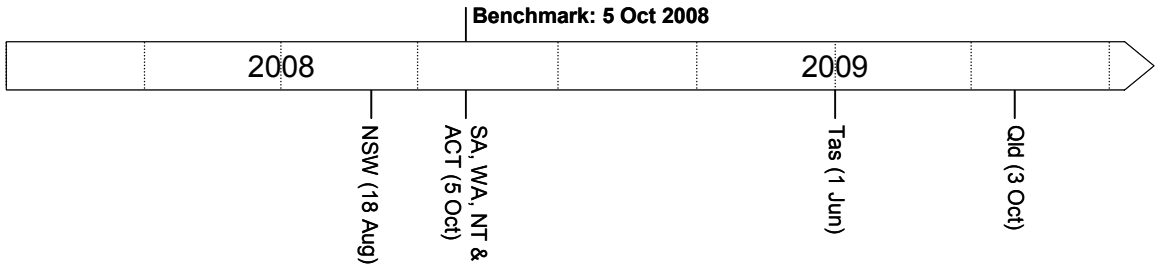
Sources: DHS (Victoria) (2009); Food Legal (2009a).

Food safety program for businesses serving vulnerable populations

Standard 3.3.1 requires *food businesses* that process or serve ready-to-eat *potentially hazardous food* to *six or more vulnerable persons* to implement a documented and audited FSP in accordance with Standard 3.2.1. This standard was gazetted on 5 October 2006 with a two-year transition period, taking effect on 5 October 2008. After this date food businesses affected are required to have in place an FSP and an audit report from a qualified and approved auditor subject to the necessary legislation being passed by the respective state and territory governments.

Most jurisdictions at the broad level have implemented the standard or are in the process. Some jurisdictions have opted for a longer transition period to help reduce the compliance costs on food businesses and ensure the regulatory requirements were in place (figure 6.1). For example, the NSW Food Authority (NSWFA) argues that the decision to delay the introduction of the standard for child care businesses was to allow it to assess the most effective way to implement the standard with the children's services sector (NSWFA 2008g). For the child care sector, a separate industry consultation process and study, including a survey, was undertaken to better understand the likely costs imposed on the industry. These consultations are currently ongoing. No proposed start date has been set for the standard for child care businesses in New South Wales. Until the national standard is introduced into child care centres in New South Wales, these food businesses will have a lower regulatory burden than similar businesses in other states and territories.

Figure 6.1 **Commencement date of food safety plans for businesses serving vulnerable persons** [ab]



[a] Almost all Victorian food businesses are required to have an FSP. This requirement was introduced in 1997. [b] NSW has introduced FSPs for all businesses serving vulnerable persons except child care centres.

Sources: ACT Health (2009); ANZFS Code; DHHS (Tasmania) (2008); Department of Health (South Australia) (2009); NSWFA (2009b).

Businesses covered by the standard

For the purpose of the standard, vulnerable persons are defined by whether they are in the care of the identified facilities or are clients of a delivered meal organisation such as Meals on Wheels. Vulnerable persons include those in aged care facilities, hospital patients, children in child care, respite patients and nursing home residents. Under the standard, the key concept is being *'in the care of the identified facilities'* as children under five or pregnant women are not considered 'vulnerable persons' when served food at a restaurant.

Considerable work has been undertaken at a national level in developing the standard and supporting documents that clearly outline which businesses are

required to prepare FSPs — reflecting the continuing support from the states and territories for a nationally consistent food safety system (FSANZ 2008m).

Despite this, there are differences between the national standard and the Victorian system. Currently, in Victoria, the definition of vulnerable persons is considerably wider than the national standard because of the inclusion of an age-based criterion.[9] As a result, a greater number of businesses are required to prepare FSPs, representing a greater regulatory burden on these businesses compared with the national standard. Box 6.8 describes two examples of food businesses that need to prepare FSPs under Victorian regulations that are not generally required to do so in other jurisdictions. The intention of the amendments to the Victorian Food Act, due to come into effect from July 2010, is to ensure that the scope of premises that fall with the new class 1 will be consistent with Standard 3.3.1.

Furthermore, while the standard is in effect in Western Australia, this situation would not necessarily be clear to applicable food businesses as information on the Department of Health (Western Australia) website indicates that FSPs apply to hospitals only (Department of Health (Western Australia) 2009a).

Assistance to reduce the regulatory burden on business

To help businesses comply with their regulatory obligations to develop FSPs, governments and industry have developed templates for businesses to use or adopt for their own business. New South Wales, Queensland, South Australia, the Northern Territory and the ACT provide FSP templates for businesses serving vulnerable persons. In Western Australia and Tasmania no templates were found on the relevant departmental websites. The use of templates can help reduce the cost of developing FSPs.

In 2008-09, Victorian businesses selling food to 'at risk' people (such as the very young, the elderly or the sick) were required to write their own FSP. This requirement is likely to increase the regulatory burden on these Victorian food businesses. However, the amendments to the *Food Act 1984,* due to come into effect from July 2010, provide for the use of templates for food premises selling food to vulnerable persons.

9 An at 'risk or vulnerable person' is defined to include children aged 5 and under, adults aged 65 and over, in house patients of a hospital and the immuno-compromised. Amendments to the *Food Act 1984* (Vic) are intended to bring better alignment with standard 3.3.1 of the ANZFS Code.

Box 6.8 **Victorian food businesses serving at risk/vulnerable persons**

Senior citizens

A Melbourne metropolitan council has 34 seniors groups meeting in a range of council-owned senior citizen centres or rented buildings. These groups provide food to members as part of their activities. The nature and preparation of food varies but includes cooking full meals at the centres, re-heating purchased snacks, preparing sandwiches, bringing in food from home and buying in take-away food and occasionally having caterers bring in prepared food.

Initial enquiries by this council indicate that most groups would appear to be conducting a 'sale of food'. The Food Act places an obligation on the operator of a food business to register the premises where the handling or sale of food takes place. This council also believes each of the seniors groups must apply separately for registration, irrespective of the fact that one or more groups may share the use of council's kitchens. Practically, this means that up to five seniors groups which share a kitchen facility must register with the council, prepare an FSP and engage a third party auditor. The council believes these groups have been captured by regulations designed primarily for hospitals, nursing homes and Meals on Wheels Services.

Following the amendments to the *Food Act 1984* passed in July 2009, these groups may still be required to have an FSP depending upon the food prepared. However, where the FSP requirement applies, a template FSP can be used and the group will be subject to an annual local council inspection rather than a third party audit of their FSP.

Kindergartens

Kindergartens provide educational programs for children aged three to five years in short blocks (two to fours hours per day) for two to five days per week. There are a variety of management models but the majority of kindergartens are 'stand-alone' and are managed by volunteer committees, usually parents. These committees change annually. Kindergarten Parents Victoria claim the Food Act and the accompanying guides are complex and do not provide clear advice in relation to whether kindergartens are considered a 'food business'. This has implications for the provisions of snacks and their cooking program which can provide benefits to the children such as mathematics, social skills (sharing, taking turns, etc), communication and literacy, food awareness and good hygiene. Changes to the Food Act to be introduced in July 2010, will re-classify 'sessional kindergartens' to a lower risk class of food business and they will no longer be required to develop an FSP (among other regulatory requirements).

Sources: DHS (Victoria) (2009); Kindergarten Parents Victoria (2007); Moreland City Council (2007).

Audit requirements

Differing or more frequent auditing requirements (for the same type of food business) have the potential to increase regulatory costs for food businesses.

All states and territories have audit requirements for businesses serving vulnerable persons, except Western Australia and the Northern Territory (table 6.2). The Northern Territory is still in the process of developing regulations to support the audit requirements of the standard. Similarly, the auditing can not be undertaken within Western Australia until the relevant parts of the *Food Act 2008* commence (Department of Health (Western Australia) 2008). Until auditing requirements are introduced in Western Australia and the Northern Territory, the regulatory burden associated with FSPs for businesses serving vulnerable people will be lower than other jurisdictions that have auditing requirements.

The frequency of the audit requirements are set out in general terms in most Food Acts. In Victoria and South Australia, food businesses serving vulnerable persons are audited at least once a year. In New South Wales, the frequency of audits varies from monthly to once a year depending a food businesses' audit rating (table 6.3). In Queensland, Tasmania and the ACT, the local council or chief health officer determines the frequency of the audit schedule.

Table 6.2 **A comparison of audit systems**

Jurisdiction	*Audit frequency*	*3rd party auditors*
NSW	See table 6.3	✓
Vic	At least annual	must use
QLD	Local council determines	✓
SA	At least annual	×
WA	**a**	**a**
Tas	Local council determines	✓
NT	**b**	**b**
ACT	Chief Health Officer determines	×

a In Western Australia, there are no legislative provisions for auditing. As such, the auditing requirements of Standard 3.3.1 can not be undertaken within Western Australia until Part 8 (Auditing) of the *Food Act 2008* commences. **b** There are no regulatory provisions for auditing in the Northern Territory.

Source: NSWFA (2008b); DHS (Victoria) (2008a); DOH (SA) (2009); Department of Health (Western Australia) (2008).

Table 6.3 **Audit frequency – New South Wales**

Audit rating **a**	*Frequency of audits*
A	12 monthly
B	6 monthly
C	3 monthly
D	Monthly
E	Monthly or more frequently depending on severity of issues raised

a Audit ratings are based on the number and type of corrective actions issued at a food business' initial audit.

Source: NSWFA (2008b).

The NSWFA estimates that audit costs are likely to range from $500 to $2500 per annum, depending on firm size (table 6.4). Audits commenced on 1 March 2009 in New South Wales (NSWFA 2009a).

Third party auditors are used in New South Wales, Victoria, Queensland and Tasmania. In South Australia, auditing of FSPs is undertaken by the Department of Health (for delivered meals organisations and public hospitals) and by the local councils (for private hospitals, child care centres and aged care homes). There are no plans to use third party auditors in South Australia. Similarly, the ACT propose to use 'second party auditors' — namely public health officers from the Health Protection Service within ACT Health. No fees are proposed for these 'second party audits'.

Third party auditors may be more costly to business compared to the audits performed by state governments or local councils — particularly where the latter do not charge fees or only partially recover costs (such as the ACT). However, some larger businesses indicated to the Commission that the third party auditor model was their preferred model as, even though the third party audits may (only may) cost more than state government/local council audits, they gain the benefits by using a common auditor for all of their businesses including:

- the budget certainty of a fixed cost per store/outlet
- greater consistency in the audit results and comparability of results across stores/outlets.

Some stakeholders also considered that, concurrent with their auditing work, third party auditors may also undertake quality assurance work for businesses, thereby providing greater efficiency and broader outcomes for business from the auditing process.

In addition to FSP audits in Victoria, local councils also carry out inspections before they allow, renew or transfer the registration of food premises. The VCEC found in its review of food regulation in Victoria that these inspections imposes unnecessary costs on councils and businesses. Subsequently, the Victorian Government has announced plans to streamline these arrangements which should reduce the costs imposed on businesses (and local councils) by reducing the duplication or overlap in inspections and audits (DHS (Victoria) 2009).

During consultations to this study, ACT Health also indicated that as well as auditing FSPs it will conduct more 'traditional inspections' of those same premises — although these measures should only remain in effect during the introduction phase of FSPs. In the longer term, with the phasing out of traditional inspections

and no fees for FSP audits, the regulatory burden will be lower in the ACT compared with other jurisdictions.

Table 6.4 **Compliance costs of a food safety plan for businesses serving vulnerable populations by firm size, New South Wales**

Costs / Firm size[a]	*Very small*	*Small*	*Medium*	*Large*	*Very large*
Establishment[b]	3 200	3 200	4 200	4 200	4 200
Application fee	50	50	50	50	50
Initial costs	***3 250***	***3 250***	***4 250***	***4 250***	***4 250***
Management	1 700	1 700	2 400	2 400	2 400
Audit	500	750	1 250	2 250	2 500
Annual licence fee	239	306	565	820	1 077
Ongoing costs[c]	***2 439***	***2 756***	***4 215***	***5 470***	***5 977***

[a] Firm size: very small — up to 3 EFT food handlers, small 4–10 EFT food handlers, medium 11–30 EFT food handlers, large 31 to 49 EFT food handlers, very large EFT food handlers. [b] Establishment costs include: engaging a consultant to assess requirements; researching and developing an FSP; training of staff to establish and maintain an FSP, drafting of each FSP, on-going management of FSPs in the establishment year. [c] ongoing management of the document outlining the program; review and update of the document outlining the program; ongoing management of the FSP (e.g. internal audits); routine checking of records to ensure tasks have been completed; ensuring adequate records are kept; general staff supervision.

Source: NSWFA (2008c).

Overall compliance cost of FSPs

In the New South Wales RIS for the introduction of FSPs for businesses serving vulnerable populations, it was estimated that the costs to establish an FSP for these businesses ranged from $3250 for very small businesses to $4250 for very large businesses. Based on industry consultations, the NSWFA found the likely on-going management costs of food specifically to meet the vulnerable person requirements to range from $2400 for very small businesses to $6000 for very large businesses (table 6.4).

The NSWFA estimates that approximately 1870 businesses in New South Wales are covered by this standard (excluding child care) with over 90 per cent of businesses are either very small or small businesses.

A separate regulatory impact statement was prepared for the implementation of Standard 3.3.1 for child care centres. In this statement, the NSWFA estimated that establishment costs were likely to be around $400 with ongoing costs in the vicinity

of $850.[10] The NSWFA estimates that around 1850 child care centres would need to comply with the standard if such a requirement was extended to them.

The Commission surveyed Meals on Wheel associations across Australia. Information from that survey provided broad indicative evidence of the types of costs incurred by some providers (box 6.9).

The Commission is not aware of any other attempts to cost the introduction and ongoing cost of FSPs for food businesses serving vulnerable persons. This makes it difficult to benchmark the regulatory burden of FSPs for this group of food businesses.

[10] It is assumed that all child care centres are very small businesses (employing less than three full-time equivalent employees engaged in kitchen duties).

Box 6.9 **Compliance costs for selected Meals on Wheels providers**

New South Wales

Meals on Wheels provided the Commission with estimates for audits of its New South Wales members by the NSWFA in 2008-09. In light of this, audit costs in New South Wales for a Meals on Wheels operation are likely to range from $600 for a small provider to $1800 for a large production kitchen. However, these estimates may be conservative as in anecdotal feedback provided to the Commission, an audit of a small NSW Meals on Wheels operation took seven hours to complete.

Service size	*Time (hours)*	*Cost*[a]
Small (up to 120 meals/day)	4	608
Medium (over 120 meals/day)	8	1 180
Large	more than one day[b]	1 752

[a] Costs are based on NSWFA audit charges of $143 per hour plus a $35.77 travel charge.
[b] 'More than one day' is assumed to be 12 hours.

Most services in New South Wales have incurred the cost of purchasing an FSP (either template or customised) at an estimated cost of between $600 and $900. The New South Wales Meals on Wheels Association estimates that documentation of an FSP is a weekly job which costs services about $60 per week for a smaller service and $120 for a larger service and up to $5000 annually. FSPs are reviewed approximately every three months in New South Wales and reviews take around two hours to complete.

Other states

In Tasmania, despite services only delivering meals (and therefore exempted from the regulatory requirements), the Red Cross Delivered Meals Service has implemented FSPs across the state. They estimate that developing the plans took approximately 160 hours (20 working days) and cost around $5000 on equipment. The ongoing cost in staff hours to complete documentation, review and update and to carry our internal audits was estimated to be around 250 hours per year (an extra five hours per week). In South Australia, the introduction of FSPs resulted in additional staffing costs of $60 000 p.a. (sub 11).

In Western Australia, a medium size organisation (delivering around 80 000 meals per annum) estimated FSP set-up costs of $3000 of chef/manager's time. Another provider in that state estimated that the implementation of an FSP triggered additional expenditure of around $10 000 over two years, for additional equipment such as thermometers, data loggers, ice bricks and eskies, refrigerator monitoring equipment and software. In contrast, a larger organisation delivering 180 000 meals per annum estimated no set-up costs probably because it already had food safety standards beyond the minimum. The ongoing cost of one medium sized provider was estimated to be around $3800 per year consisting of kitchen staff time ($1500) and administration staff time ($1800), in addition to $500 additional stationery and printing.

Source: Adapted from Commission survey of Meals on Wheels.

7 Local councils: enforcement and accountability

Key points

- Around 620 local government agencies across Australia and New Zealand play a key role in the regulation of food safety through formal approval and surveillance of specific food businesses activities.
- Anecdotal evidence from food business interests suggests that disparities in regulatory enforcement practices within and across jurisdictions causes confusion, is costly to food businesses and represents an unnecessary compliance burden.
- The extent and nature of these problems was investigated through a detailed survey sent to all local governments in Australia and New Zealand. However, the snapshot of food safety enforcement captured by the surveys needs to be viewed in light of both the survey methodology and the significant recent operational changes and forthcoming legislative amendments to food laws in a number of jurisdictions.
- A range of regulatory similarities emerges from the survey results including the broad enforcement approach used, and specific priorities set, by regulators. Importantly, structured, multi-level efforts to reduce the regulatory compliance burden on food businesses through measures aimed at ensuring consistency in the interpretation and implementation of food safety laws were also a common feature.
- However, a number of enforcement differences are evident which have the potential to impact on business compliance burdens in a significant way. They include the:
  - framework employed to grade or categorise food businesses according to the risks posed to public health (with the incentive-based grading system used by a number of New Zealand councils the most detailed).
  - use of risk classifications to determine fees and inspection frequency
  - availability and use of different compliance tools (particularly on-the-spot fines)
  - type, range and level of fees and charges imposed
  - frequency and duration of audits and inspections
  - transparency and accountability of regulatory practices and outcomes.
- Variations in agency resourcing and the constraints this imposes on enforcement practices also featured in the results. Such differences can influence the approach to, and intensity of, regulation and thereby also impact on business compliance burdens.

7.1 Introduction

Consultations with food business interests during the course of this study suggested anecdotally that disparities in enforcement approaches and practices both within and across jurisdictions were confusing, costly and an unnecessary impost on their constituents. That said, the Commission received very little in the way of hard evidence from participants about the extent and magnitude of these problems (with the notable exception of a leading Australian retailer).

In order to investigate these concerns, the Commission sought to gauge the nature and significance of compliance burdens through detailed surveys of local government and core food safety regulators in Australia and New Zealand. This chapter reports the results of the local government component of that exercise. It shows a range of strategic and procedural similarities in the enforcement conduct of regulators. But there are also differences in:

- agency resourcing
- approach to risk profiling
- availability and use of different compliance tools
- range and level of fees and charges
- frequency and duration of audits and inspections
- the transparency, accountability and coordination of regulatory practices and outcomes.

Those differences can result in consequential variations in the regulatory compliance burden faced by food businesses. That said, many regulators also consciously endeavour to mitigate the compliance burdens associated with their responsibilities.

7.2 Role of local government in food safety regulation

Responsibility for the enforcement of food safety regulation across Australia and New Zealand is shared between the different tiers of government in most jurisdictions. Reflecting the advantages of local knowledge and economies of scope in the performance of both food and non-food regulatory functions, local councils play a prominent role in registering, licensing and inspecting retail and food service activities and certain and other food businesses (with the main exception of primary production activities), administering aspects of food safety recalls and undertaking (or assisting in) investigations into food-borne illness — the notable exceptions being the Northern Territory and the ACT.

There are around 620 local governments involved in food safety regulation in Australia and New Zealand which together employ more than a thousand environmental health or similarly qualified officers responsible for enforcing the food laws enacted in their respective jurisdictions. The sheer number of agencies and officers, the breadth and nature of regulations they are required to apply and the varied social, cultural, economic, environmental and geographic attributes of each jurisdiction, means the scope for differences in both the interpretation and implementation of food safety laws looms large.

Importantly, the existence of any differences should not be automatically treated as inappropriate. Indeed, where food regulations have been designed to enable tailored delivery of food safety outcomes (such as the general requirements in the Australia New Zealand Food Standards (ANZFS) Code relating to food premises and hygiene practices), discretion and judgement may be desirable features of the regulatory landscape.

7.3 Methodology

In examining differences in the enforcement of food safety laws in Australia and New Zealand, the Commission sought information through a survey of regulators in four broad areas (appendix B). This information covered:

- the level of human and financial *resources* devoted to food safety regulation and the training and experience of the officers charged with enforcing jurisdictional food safety laws (section 7.4)
- the *approach* to enforcement in terms of priorities across different food activities and regulations, the hierarchy of measures used to achieve compliance with food laws, processes used to ensure uniform application of those laws by food safety staff and whether or not enforcement was risk-based (section 7.5)
- the enforcement *practices* of regulators with regard to audits and inspections (frequency, duration and basis), fees and charges levied on food businesses, the use of different compliance tools and the success of those tools in encouraging compliance (section 7.6)
- *accessibility, transparency and coordination* with respect to publication of enforcement strategies and activities, availability and use of appeal mechanisms for food businesses subject to food regulation enforcement actions and awareness of the scope of regulatory responsibility (section 7.7).

On the ground, observed differences in these indicators can directly and indirectly, individually and in combination, manifest in variations in the regulatory compliance

burden placed on food businesses operating within and across different jurisdictions. Examples range across differences in the level and types of fees and charges, variations in the duration of audits and inspections, the use of compliance tools not suited to the severity of the breach, regulatory duplication and access to information regarding compliance strategies. Beyond these partial indicators, however, the subjective nature of food law interpretation and its application will potentially be one of the greatest sources of differential compliance burdens imposed on firms. This was a common theme relayed to the Commission in consultations with food businesses and their representative associations during the conduct of this study. It is also an aspect of food safety enforcement that cannot be readily captured in a desk-based survey of the type used here.

A word of caution about the survey

In considering the results, it is important to acknowledge the limits of the survey approach. In particular, the selection bias associated with the optional nature of participation, the associated (uneven) distribution of survey returns by jurisdiction, local government size and location (metropolitan versus rural) and the low overall response rate (and particularly that for New South Wales and Western Australia) mean that the results should be treated as impressionistic rather than providing a definitive statistical snapshot of food safety enforcement by local governments (table 7.1)[1]. That said, responses to individual questions can reflect jurisdiction-wide practices (often set in legislation) which can be used to draw inferences about regulatory and compliance burden differences on food businesses.

Table 7.1 **Survey response rates by council size and jurisdiction**
Number of councils

Population	*NZ*	*NSW*[a]	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Less than 50 000	7	7	9	5	14	3	7	52
50 000 — 100 000	6	2	6	2	4	4	2	26
More than 100 000	6	3	7	5	4	2	0	27
Total responses	**19**	**12**	**22**	**12**	**22**	**9**	**9**	**105**
Total councils	73	152	79	73	74	141	29	621
Response rate (%)	26.0	7.9	27.8	16.4	29.7	6.4	31.0	16.9
Food premises[b]	8 644	2 950	14 145	11 119	8 073	2 727	2 438	50 096

[a] Where practical in this chapter, the Commission has used the council population data for all 152 NSW councils available from the NSW Food Authority's *Summary report of NSW enforcement agencies' activities: Food retail and food service sector. (NSWFA 2009c)*. [b] Refers to total premises regulated by survey respondents.

Source: Productivity Commission survey of local councils (2009, unpublished).

1 The Commission is anticipating the receipt of additional council responses that may change the data and results to be presented in the final report.

The timing of the study also means the picture of food safety enforcement captured by the survey will be affected by *recent* legislative and operational changes in a number of jurisdictions. For example, New South Wales introduced a Food Regulation Partnership arrangement with local councils effective from 1 July 2008 to clarify responsibilities, improve coordination and transparency and enable councils to recover costs associated with food safety enforcement. While already in place at the time of the survey, many councils are still in the process of adjusting to the new regime.

Neither will the survey responses reflect the significant *forthcoming* changes to the legislative landscape in three jurisdictions. In that regard, major amendments to Victoria's food laws following an inquiry into food regulation in that state (VCEC 2007) will be implemented in stages between 1 July 2010 and mid-2011. The purpose of those amendments is, in part, to reduce the regulatory burden on food businesses by promoting a greater level of consistency and accountability in the administration of the *Food Act 1994* (Department of Health (Victoria) 2009b and Lederman and Jannetto 2009). A range of new enforcement mechanisms will be available to councils including the power to temporarily close food premises, obtain legally enforceable undertakings, issue on-the-spot fines (infringement notices) and the publication of convictions. Councils will also be granted power to charge fees for follow up food safety assessments and inspections of non-compliant businesses[2] and be mandatorily required to report specified data (including that in relation to the performance of food safety enforcement) to the Department of Health.

Western Australia proclaimed a new *Food Act 2008* on 23 October 2009. Under that legislation, councils will be fully responsible for local food regulation and a range of new enforcement powers will be available to them including on-the-spot fines, prohibition and improvement notices.

Also, a bill to introduce a new system of food regulation in New Zealand is currently being prepared. The proposed law (which is the result of a lengthy review process) will shift responsibility for food safety from inspectors to food businesses (a risk-based approach) over a five year transitional period. In anticipation of the Bill's passage, most New Zealand councils have implemented a voluntarily template-based system of food safety control plans (similar in intent to Australia's food safety programmes) for the food service and catering sectors.

While the survey results need to be viewed cautiously against that background, the results can still provide a valuable reference point against which to compare the

2 No fee will be charged for conducting the minimum number of inspections or assessments that apply under the *Food Act 1994* to particular classes of premises.

enforcement outcomes and business compliance burdens of the new legislative arrangements at some point in the future.[3]

7.4 Resourcing of local government regulators

The level of financial and human resources available to food safety regulators is a key influence on enforcement priorities, enforcement activities and the uniformity of food safety regulation. Differences in those resources can lead to inconsistent enforcement and variations in the compliance burden imposed on food businesses with higher resourcing levels potentially leading to more intensive oversight of food law compliance. Resourcing levels can also influence the approach adopted by regulatory officers with more combative deterrence strategies more likely in cases where enforcement resources are limited. Where resource availability is less constrained, more cooperative compliance strategies such as education and training are likely to be more effective (Office of Regulation Review 1995).

Resourcing characteristics can also amplify the burden of enforcement. For example, not only does a higher level of food safety resources increase the potential scrutiny of food businesses, it also increases the scope for inconsistent application of food laws. Against that background, an understanding of the adequacy of enforcement resources (perceived or real) can provide useful contextual information against which to view business compliance burdens.

Survey responses to resourcing questions reveal considerable variability between large and smaller jurisdictions with New Zealand, New South Wales and Victoria in particular facing higher average workload pressures than their less populous counterparts (table 7.2). A Victorian council specifically referred to the burden that legislated requirements placed on EHOs in Victoria[4]:

> The premises versus staff ratio has a major impact on completing annual work levels required by legislation.

3 Adjustment issues associated with council amalgamations in some jurisdictions (most recently Queensland) also have the potential to influence the survey outcomes in those localities.

4 Amendments to the *Food Act 1984* (Vic) that come into operation in January 2010 will enable councils to employ a broader range of skilled persons to conduct legislative enforcement. This will assist councils in addressing some of the workforce deficiencies.

Table 7.2 **Indicators of food safety unit resourcing: 2008-09[a]**
Average responses

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*
Premises/businesses per EHO	123	135	146	102	113	65	103
Population per EHO	21 424	26 433	17 793	17 232	14 772	14 030	11 141
Food safety budget per premise ($)[b]	623	274	513	637	355	317	366

[a] The results for indicators related to EHOs may have been influenced by the way councils interpreted the resourcing questions. Some caution is therefore required. [b] Four New Zealand, Queensland and South Australian councils, two Victorian and Western Australian councils and one NSW council did not provide a response to the food safety budget question.

Source: Productivity Commission survey of local councils (2009, unpublished).

Linked to staffing levels, larger jurisdictions (except New South Wales which has a small sample size) also appear to have greater financial capacity (relative to the number of food businesses/premises) to undertake enforcement tasks. Notably, there is also greater dispersion in resourcing indicators *within* larger jurisdictions.

The survey results indicate that food enforcement agencies generally consider themselves under-resourced for the tasks they are responsible for with 74 per cent of all respondents nominating budget (and 65 per cent nominating staffing) issues as either high or medium level constraints on their ability to enforce national and jurisdictional food laws (table 7.3). At an aggregate level, this suggests that, depending on the regulatory approach adopted by councils, compliance with food safety regulation and the associated burden on businesses could be higher if regulators were given more resources.

Table 7.3 **Constraints on enforcement activity: 2008-09[a]**
Per cent of responses

Constraint/Level	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Budget								
High	21	33	32	67	59	56	22	41
Medium	58	42	36	25	9	22	44	33
Low	16	25	27	8	27	22	11	21
Staffing								
High	16	42	9	58	14	44	44	27
Medium	53	17	59	17	36	44	11	38
Low	26	42	27	17	45	11	33	31

[a] Where the total of percentages do not total to 100, it reflects that some councils did not provide a response.

Source: Productivity Commission survey of local councils (2009, unpublished).

As mentioned earlier, resourcing differences can affect the enforcement style of EHOs. For example, EHOs in less well-resourced locations may view this as a

signal of the level of importance that their agency places on food safety activities compared to other functions and this may translate into a less stringent regulatory approach. While Queensland councils stand out as the group with the highest *perceived* level of under-resourcing, there does not appear to be a link between resourcing of environmental health units and compliance outcomes discernible from the survey returns.[5]

Given the extent of perceived under-resourcing, local governments need to prioritise their enforcement activities (table 7.4). In that respect, the survey highlighted the emphasis most respondents place on *proactively* monitoring health risks through regular *inspections* of retail premises with 83 per cent of all respondents nominating retail inspections as a high priority. Complaints from the public are also given a high priority in all jurisdictions (84 per cent of all responses) with many local governments investigating each and every complaint received.[6] Complaint-based inspections can be a less expensive means of identifying potential food hazards and may allow identification of breaches which are hard to detect during inspections. That said, they are a reactive as opposed to proactive enforcement tool as action (usually) occurs after a food safety incident.

Table 7.4 **High priority enforcement activities: 2008-09**
Per cent of responses

Priority	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Inspections								
Retail	89	92	95	67	91	67	44	83
Other food	32	42	100	75	77	67	44	66
Complaints	79	83	91	100	82	89	56	84
Registration[a]	79	8	95	75	14	67	67	58
ANZFS Code Standards								
Food handling	100	92	100	100	95	89	78	95
Premises	95	100	100	92	91	78	89	93
Labelling[b]	5	20	23	8	5	29	25	14

[a] Includes the processes of licensing, registration, notification and accreditation (where they apply in the different jurisdictions). [b] In South Australia, labelling is the responsibility of Department of Health rather than local councils. In Queensland, labelling, food composition and maximum residue limits are regulated by Queensland Health.

Source: Productivity Commission survey of local councils (2009, unpublished).

5 As another cautionary note, responses to this question need to be treated with some care because of the subjective nature of self-assessment and the incentives to overstate the extent of resource problems. In addition, it is worth keeping in mind that 65 percent of councils reported that they were able to fully enforce all food safety regulation for which they were responsible.

6 Tasmania (99 per cent), New South Wales (94 per cent) and New Zealand (81 per cent) had the highest inspection rates per complaint (table 7.13).

Food handling practices (95 per cent of councils nominating this as a high priority) and the condition and cleanliness of premises (93 per cent of councils) stood out as key elements of the ANZFS Code receiving attention. With resources focused on these priority areas, activities receiving much less consistent attention included labelling (with just 14 per cent of councils nominating this as a high priority), food sampling and food composition (though in some cases these activities were the responsibility of another agency such as the jurisdictional Department of Health or its equivalent).

In conducting inspection programs, most councils undertook systematic as opposed to random audits with inspection frequency (as discussed above) commonly (but not consistently) tied to the inherent risk posed by different classes of premises (table 7.5). Inspections are typically unannounced. Advance notice of an inspection can lower the associated compliance burden by allowing businesses to arrange for additional resources to ensure continuity of business operations. However, it can also reduce the effectiveness of inspections by giving businesses an opportunity to temporarily rectify likely compliance breaches prior to an inspector's arrival.[7]

Table 7.5 **Use of risk profiling: 2008-09**
Per cent of responses

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Risk basis								
Premise classification	68	92	100	67	95	78	67	84
Fees charged	63	58	95	58	23	11	33	53
Inspection frequency	58	92	45	58	82	89	67	68
Compliance history	74	58	68	50	82	89	89	72

Source: Productivity Commission survey of local councils (2009, unpublished).

The compliance history of individual food businesses also features prominently in inspection programs with 72 per cent of councils using this trait to target businesses posing a heightened threat to consumers.

Importantly, 84 per cent of surveyed councils used risk profiling (mainly employing common frameworks developed centrally at either the state/territory or national level) to prioritise businesses according to the level of risk posed to public health (figure 7.1). Risk targeting has the advantage of directing regulatory resources to areas where the likely pay-off is greatest and so is potentially more cost-effective than either random or uniform regulatory regimes. That said, the different costs

[7] Data supplied by a leading Australian retailer shows that no advance notice was provided by any one of the 36 local government inspections for which information was provided.

associated with regulating businesses in different risk classes (such as time involved in auditing and inspections) also needs to be taken into account.

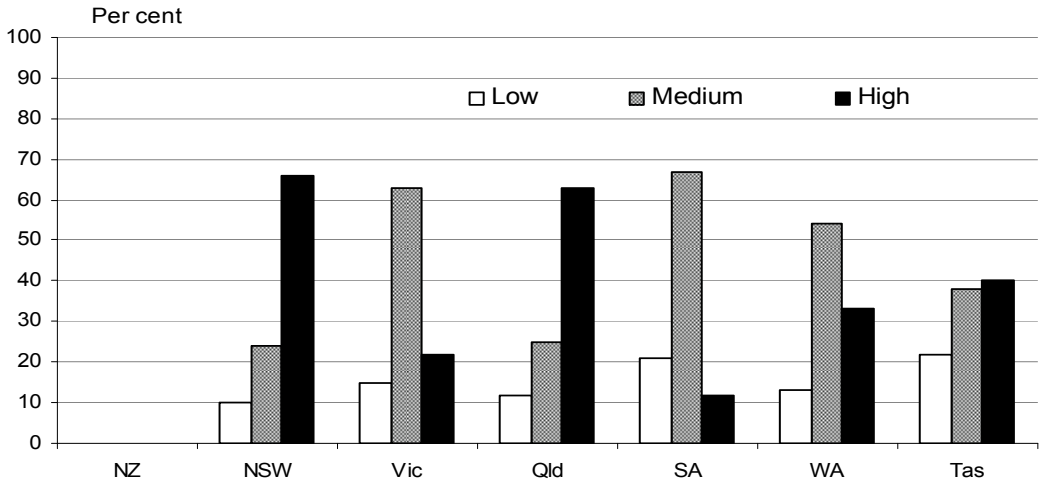
In that respect, there was considerable variability in the application of risk gradings to food business fees and charges and to audit and inspection frequency evident from the surveys (table 7.5). Ninety-five per cent of Victorian councils responding to the survey used risk-based charging in 2008-09 — risk-based charges were applied to annual registration fees paid by food businesses as councils were unable to charge inspection fees in the surveyed period. In contrast, local councils in South Australia and Tasmania were much less likely to charge fees to food businesses based on the inherent and other risks involved in those businesses.

This suggests the compliance cost burden on *low and medium risk* food businesses in South Australia and Tasmania could be higher than businesses in the same risk groups in jurisdictions like Victoria (if average charges in South Australia were the same as in Victoria). Further, *high risk* businesses in South Australia and Tasmania may incur lower regulatory compliance costs than *high risk* businesses in jurisdictions such as Victoria (again if average charges were the same).

A different picture emerges in terms of risk-based inspection frequency with South Australian food businesses much more likely to be scrutinised according to the risks they posed to the public in 2008-09. This suggests that the compliance burden (in terms of the number of inspections) on *low and medium risk* food businesses in jurisdictions such as Victoria could be higher than similar businesses in South Australia. It also suggests that *high risk* businesses in Victoria may incur lower compliance costs (comparatively fewer inspections) than similar businesses in South Australia.

At a broader level, while the use of common profiling *frameworks* should avoid differences in the treatment of firms *within* jurisdictions, the extent to which those classification systems vary across jurisdictions also provides scope for differences in food business compliance burdens. The potential impact of different classification frameworks can be seen in the marked variations in business grades across jurisdictions (figure 7.1). At one extreme, Queensland councils responding to the survey (and *all* New South Wales councils) collectively classified around two-thirds of food businesses as high risk. By contrast, South Australia accords just 12 per cent of businesses that title. New South Wales and Victoria, jurisdictions with the largest number of food businesses, show a mirror reversal in the proportion of firms in the high and medium risk categories.

Figure 7.1 **Business risk classifications : 2008-09[a]**



[a] New Zealand councils reported a risk/grading classification basis that is not directly comparable to responses from Australian councils. Business risk classification data for NSW based on NSWFA (2009c). Survey based classifications for NSW were high: 32 per cent, medium: 47 per cent; low: 22 per cent.

Data source: Productivity Commission survey of local councils (2009, unpublished); NSWFA (2009c).

At face value, these results suggest that uniform *application* of risk-based enforcement and the use of a common risk assessment tool (potentially either that developed by the New Zealand Food Safety Authority (NZFSA 2005) or that by the Australian Government's Food Regulation Standing Committee (Department of Health and Ageing (Commonwealth) 2007) which is currently used in New South Wales) may offer scope for less variability in the compliance burden associated with such mechanisms.

7.5 Enforcement approaches

In examining differences in enforcement approaches used by regulators, the survey sought information on the:

- types of compliance measures available and employed to address food safety breaches
- measures used to promote a culture of compliance among food businesses
- processes to facilitate uniform interpretation of food safety laws by agency staff
- issues on which councils liaised with other regulators.

The survey highlighted the importance of education and warnings (which also involve lower business compliance burdens compared to other enforcement

mechanisms) as the key council measures used to improve food safety awareness and address specific compliance breaches across all jurisdictions (table 7.6). While proactive strategies such as education can be more resource intensive than reactive alternatives such as surveillance, they can still be more cost-effective. For example, devoting resources to broad education campaigns can deliver higher compliance levels than under-resourced inspection regimes that either lack sufficient frequency or do not follow up compliance breaches — discovered or notified (Office of Regulation Review 1995).

Table 7.6 **Use of enforcement tools: 2008-09**
Per cent of respondents using tool

Tool	*NZ*	*NSW*[a]	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Education	84	92	100	100	91	100	100	90
Verbal warning	63	58	73	100	73	89	89	72
Written warning	74	83	95	83	86	100	89	83
Improvement notice	0	58	59	100	73	56	78	54
Prosecution	11	8	45	33	27	67	25	28
Fine[b]	5	25	14	33	27	0	56	20
Infringement notice	0	33	5	50	41	0	56	23
Prohibition notice	0	17	5	17	41	11	22	15
Adverse publicity	21	0	0	17	9	33	11	11
Other	21	0	18	0	0	0	11	8

[a] New South Wales' name and shame powers are administered by the NSWFA so councils may have interpreted this question as asking whether they themselves named and shamed food businesses. [b] The response to the fines question from New Zealand, Victoria and Western Australia may reflect the broader interpretation of the tool to include fines imposed by a court.

Source: Productivity Commission survey of local councils (2009, unpublished).

Food handler education, in particular, has a number of benefits in that it:

- directly addresses business ignorance regarding food safety issues (often the main underlying cause of compliance breaches)
- increases awareness and knowledge more broadly than in the circumstances of a specific individual breach
- enhances cooperative attitudes in food businesses, encouraging greater overall compliance (Office of Regulation Review 1995).

Comments from respondents emphasised the onus they placed on cooperative as opposed to combative enforcement mechanisms in dealing with breaches of food laws. Examples included the following response from a council in Western Australia:

> Education is always the first priority before resorting to other action. Compliance has been achieved through working together without the need for Notices and legal action against a premises.

Similarly, a New Zealand council commented:

> We believe in 80% education and 20% enforcement. We will always try and reach the desired outcome via education, negotiation and mediation before providing more formalised enforcement responses.

A South Australian council detailed the hierarchy of measures it used:

> Education, negotiation and advising proprietors/managers and staff is an enforcement tool that is used by all environmental health officers during inspections to achieve compliance. Expiations/fines are only issued if past records demonstrates a history of the same non compliance, fails to comply with an improvement notice, or breach poses a significant risk to public health and food safety.

As did a Victorian counterpart:

> Council works on the principle of education first and will provide food businesses with the opportunity to comply however if there are significant breaches or if there is an ongoing history of non compliance then more formal action will be taken in the form of Section 19 Orders. If an order has not been complied with then court action will normally follow.

Another South Australian contributor listed a suite of considerations in determining the most appropriate enforcement action:

> In coming to a decision on the most appropriate means of enforcement, the officer shall consider, amongst other relevant factors, the following:
>
> - the seriousness of the offence, ie: risk to public health
> - the degree of wilfulness involved
> - the offender's past history
> - the consequences of non-compliance
> - the likely effectiveness of the various enforcement options
> - deterrence
> - consistency of approach to similar breaches/offences.

The less frequent use of other (more burdensome) enforcement tools apparent in table 7.6 reflects a number of factors including the graduated approach used to rectify compliance breaches (the adoption of an enforcement pyramid), the unavailability of certain tools in specific jurisdictions and/or the cost of using some tools (particularly prosecution). Most if not all councils/agencies indicated the use

of a formal or informal enforcement pyramid. Typically, the hierarchies involved the use of some or all of the following generically described elements:

- education/advice on the nature of the problem and how to rectify it
- verbal warning given
- written warning issued
- formal rectification notice issued
- fines imposed, prosecution commenced, or closure orders issued.

As depicted in the above comments, regulators adopt increasingly combative approaches for continued or serious non-compliance with food laws. A number of councils explicitly *detailed* their enforcement hierarchy. For example, one New South Wales council outlined its approach in the following way:

> Verbal warning - Minor non-compliances (can be immediately rectified). Written warning - Minor non-compliances. Improvement Notice - Serious breaches or no action following warning. Prohibition Order - Major non-compliance or lack of action following Improvement Notice. Fine - Repeated offence.

A more general and qualified response was provided by a South Australian council:

> Council uses an Environmental Health Enforcement Policy which outlines the hierarchy of enforcement, and the appropriate tools to use to ensure fairness, consistency and transparency. A graduated response from no action, education, informal action, improvement notice, expiation notice, prohibition order and prosecution is contemplated by the policy.

And a Queensland council noted the use of incentives as well as deterrents as part of its strategy. It said it:

> … employs a broad spectrum of education and enforcement strategies equating to the circumstances and outcomes Council wants to achieve. These range from education and incentives for high performing businesses to increased auditing, enforcement and prosecution for poor performers.

Importantly, a number of councils pointed to restrictions on the availability of certain enforcement tools in their jurisdictions and the implications this had for dealing with certain types of breaches. In particular, existing legislation in New Zealand, Victoria and Western Australia does not provide councils with the scope to impose on-the-spot fines. Such fines have the advantage of being easy to dispense and administer, serve to provide a moral as well as financial penalty and create an ongoing and credible deterrent particularly for repeat or serious offenders (Office of Regulation Review 1995). They are most appropriate when some form of punishment is justified but the delays and costs of court action render that avenue problematic (see below). Ideally, the level of on-the-spot fines should be in a range

that reflects variations in the severity of compliance breaches and delivers an sufficient level of deterrence.

Importantly, Western Australian councils will gain access to on-the-spot fines (to be known there as penalty infringement notices) once the new *Food Act 2008* becomes fully operational. That legislation will also enable councils to issue improvement notices and prohibition (cessation) orders, both of which are also currently unavailable.

Victorian councils similarly indicated they were presently unable to impose on-the-spot fines or issue prohibition orders under existing legislation (though the amendments to food legislation in Victoria will provide councils with a broader range of enforcement tools, including on-the-spot fines). One Victorian council pointed to the inadequacies of the current suite of tools in dealing with compliance breaches:

> Most of the above enforcement options [in table 7.6] are not applicable under the Victorian legislation, however, we would like these tools [to be] available to us and believe they would be beneficial.

Another highlighted the relative cost-effectiveness of on-the-spot fines:

> Poor performing premises require substantial remedial action and resources, so the introduction of penalty infringement notices will be a welcome tool as currently there is a major gap between the serving of Food Act Notices and proceeding through the Court system with its often time consuming and delayed outcome.

New Zealand councils are similarly devoid of the power to issues fines with one survey respondent commenting:

> Regulations are at times not powerful enough. No avenues to fine people on the spot or by other means. Final resort will be legal action, which is costly and lengthy.

Another New Zealand council made a broader observation:

> There is an insufficiency of tools currently available to Council staff to deal with compliance breaches.

In another context, only four jurisdictions (New South Wales, Queensland, Western Australia and the ACT) provided formal avenues to publicly 'name and shame' businesses for breaching food safety regulations during the reference period. (Details of South Australian food businesses found guilty of a breach of the *Food Act 2001* are to be placed on a public register from 1 July 2009. Also, legislated amendments to Victorian food legislation will in the future provide scope for businesses convicted of a breach of the *Food Act 1984* to be entered on a register accessible to the public) (Lederman and Jannetto 2000; Department of Health

(South Australia) 2008).[8,9] Unlike other jurisdictions where these powers are subject to court-based oversight (the need for a successful prosecution), the legislation in New South Wales only requires the issuance of a penalty infringement notice by a council or the NSW Food Authority (NSWFA) for a food business to be publicly named and shamed.

While such powers can provide a potentially large deterrent at little relative cost to the regulator, they are a blunt enforcement instrument in that their impact on food businesses is uncertain (especially when applied to relatively minor breaches). This makes it difficult to match the severity of the breach with the level of corrective action required. The issue of 'natural justice' or procedural fairness in safeguarding against regulatory error is also a relevant consideration. For example, in New South Wales, food businesses are not entered onto the 'name and shame' register until the timeframes for appeal against the notice have expired and after an internal review of the matter.[10] More broadly, the need for deterrents such as name and shame powers in jurisdictions with access to other penalties such as on-the-spot or court imposed fines suggests the level of such fines (and hence the credibility of the associated threat) may be inadequate — a point made by a Western Australian council:

> Under current legislation, prosecution penalty fines are very small. This is generally balanced with legal costs being awarded on top of the fines. When the new Food Act is brought in, it will be much better to enforce as penalty provisions will be higher.

Importantly, variations in the ability to tailor regulatory responses to the severity of compliance breaches can lead to both differences in the extent to which food laws are enforced (including a failure to enforce those laws) and/or a reliance on more punitive (and costly) remedies in some jurisdictions. Either outcome will result in variations in business compliance burdens. Given the limits discussed above, it is perhaps no coincidence that councils in Victoria were more likely to resort to litigation than other jurisdictions in 2008-09 (except Western Australia which had a small sample size). The resource implications of such action was highlighted by councils in other jurisdictions. A contributor from New Zealand said in that respect:

> Prosecutions except for extremely serious situations are far too expensive to be a realistic tool.

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8 In Western Australia, reporting of all hygiene prosecutions will be mandatory upon the introduction of the *Food Act 2008*.

9 In the ACT (where ACT Health is responsible for regulating food retail and service and primary production businesses), the names of food businesses found guilty of a breach of the *Food Act 2001* can be published.

10 Food businesses may also seek removal of incorrect or inappropriate information and may appeal to the New South Wales Administrative Decisions Tribunal if the NSWFA refuses to do so.

Another from New Zealand compared that avenue with the risk-based charging system used by council:

> Prosecution is hardly ever used because it takes too long and costs too much - we have had much better results with our grading system.

A South Australian council also pointed to the costs of litigation and the inability to garner the associated penalties as disincentives to prosecute:

> No incentive to prosecute under our legislation, costs to council are too great and any court fines go to state consolidated revenue not back to council.

And a New South Wales council simply commented:

> Court attendance notices are costly and not used by councils at present.

This feedback suggests that current moves to expand the set of enforcement tools in some jurisdictions will both facilitate greater uniformity in enforcement across jurisdictions and reduce the associated variation in business compliance burdens that results from current gaps in regulatory toolkits. There may also be a case for aligning the level of financial penalties (on-the-spot and court-based) for food safety breaches in all jurisdictions.

Influencing the culture of compliance

The importance of education and media strategies (including newsletters, pamphlets and internet sites) also carried over into responses by regulators regarding measures used to improve the culture of compliance among food businesses (table 7.7). Food handler training (both free and fee-based) was the next most commonly used measure but there was considerable variation in the extent to which this measure was employed.

This may reflect different legislative requirements surrounding, for example, food safety supervisors where nominated staff are required to attain minimum competency standards and thus mitigating the need for councils to provide such services (chapter 6). One South Australian council called for the extension of such training to all staff before they could be employed as food handlers.

> Legislation does not currently prohibit the commencement of a food business without prior assessment by the Enforcement Agency … Appropriate food handler training & qualifications must meet minimum national standards prior to commencement of working as a food handler. Details of staff & certificate of notification should be displayed in an conspicuous place within the food premises. This should be enforceable!

Table 7.7 **Cultural change measures: 2008-09**
Per cent of responses citing regular use

Measure	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Education	84	83	95	100	91	100	100	92
Information strategies	68	58	77	58	77	67	44	68
Free training	16	33	14	58	9	11	67	25
Fee-based training	21	8	0	0	41	11	0	14
Incentives	58	0	9	8	5	33	11	18
Awards	0	8	9	0	5	0	0	4
Other	21	17	5	17	5	11	0	10

Source: Productivity Commission survey of local councils (2009, unpublished).

When asked about the main compliance costs imposed on food businesses, one New Zealand council commented:

> Non compliance due to premise owners, management, their staff not having knowledge/training in food safety.

A New South Wales council simply noted that there was a lack of understanding of food regulations by business operators and accordingly that 'compulsory training [of those operators was] required'.

Other councils have enacted local bylaws to mandate compulsory training for food workers. This is the approach taken by one council in New Zealand which also noted potentially severe financial penalties for breaching these requirements:

> Compulsory training was introduced to reduce the number of food complaints and food poisonings resulting from carelessness in food handling … The Bylaw makes it compulsory for all food workers [subject to certain exemptions] to undertake and complete a professional training programme in food hygiene … Any occupier who allows an untrained food handler to work at a food premises, or fails to meet the requirements of the bylaw is liable on summary conviction to a penalty of up to $20,000.

In respect of the training issue, an observation made by Queensland Health in its 1994 review of that state's Food Act would still appear to have contemporary relevance in some jurisdictions:

> The food industry is one of the few industries having the potential to impact on public health whereby no formal training or qualification requirements apply to operators. In view of the significant recorded level of the incidence of food borne illness (food poisoning) in recent years, consideration is being given to the introduction of a requirement that food establishment operators and food handlers are required to undertake formal training or obtain formal qualifications before they are permitted to be engaged in food preparation or food handling. (Queensland Health 1994)

Counterbalancing the potential benefits to public health, the cost to food businesses of obtaining the necessary qualifications needs to be considered (chapter 6). Indeed, the expense and prescription involved in food safety supervisor training was a common concern raised with the Commission in consultations with business in affected jurisdictions (particularly for firms with high staff turnover where the benefits from the training investment could be short-lived and the costs recurrent). Accordingly, the cost of obtaining competencies needs to be matched with the public health benefits they provide and the degree of training aligned to the activities performed by the individual (chapter 6).

Victorian and Western Australia (with a small sample size) stood out as having the lowest proportion of councils providing food handler training services. In Victoria's case, the educative role played by food safety plans (FSPs) in food handler instruction may also be relevant (though one council simply noted there was no legislative requirement to provide such training). Indeed, a recent survey of food handling practices by FSANZ (2008a) found that among other characteristics, Victorian food businesses and others with FSPs had generally greater knowledge and safer food handling practices than in other jurisdictions (chapter 3). That said, many Victorian councils also nominated FSPs as the major compliance cost issue facing food businesses in that state. In Western Australia, the result may reflect external involvement in the administration of such training. As one council commented:

> *"FoodSafe"* Food Safety Training is administered by Environmental Health Australia (EHA) & delivered to proprietors of food premises by the relevant Local Government Authority. Proprietors pay EHA for the *FoodSafe* training material. The Town's EHOs promote and provide advice on *FoodSafe*, as well as providing free guidance, auditing & approval of *FoodSafe* to food business proprietors.

South Australian councils were the most likely providers of fee-based training, though as one council pointed out, this was provided at less than cost recovery.

> … fee based food safety training is offered at a significantly reduced cost which aims to only cover administrative costs. Free education sessions are also held with schools and local community centres. EHOs also provide education material in different languages and also offer interpreters and translators for written and verbal communication.

While incentives such as licence fee reductions and positive advertising were rarely (if at all) used in most jurisdictions, they featured prominently in New Zealand. Survey responses from that jurisdiction did not shed light on the nature or success of those measures. The use of food industry awards as an incentive for food businesses to improve food safety was even rarer.

Measures specifically aimed at reducing business compliance burdens

Given that criticisms from food business interests centred around issues of inconsistent interpretation and implementation of food laws by environmental health and similarly authorised officers, the survey sought information on measures that councils employed to facilitate such consistency. The results are presented in table 7.8.

Table 7.8 **Measures to facilitate uniform interpretation: 2008-09**
Per cent of responses

Measure	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Supervisor oversight	95	83	95	83	68	100	67	85
Peer review	68	58	77	42	64	67	33	62
Structured training	53	58	59	50	64	67	67	59
Staff rotation	37	25	59	33	50	33	33	42
Secondment	11	25	0	8	18	11	0	10
Other	32	17	41	42	45	44	33	37

Source: Productivity Commission survey of local councils (2009, unpublished).

Councils in all jurisdictions clearly recognise the importance of applying food laws in a consistent manner. Aside from those councils employing just one EHO (where enforcement consistency is obviously not an issue), every respondent reported some measure (and in most cases multiple approaches) aimed at facilitating the uniform interpretation of food regulations within their respective council.

Supervisory oversight was the most common safeguard adopted in every jurisdiction. Structured training also featured prominently with at least 50 per cent of councils listing that element. Victoria stood out as the most likely jurisdiction to use staff rotation within councils as a means of exposing all food businesses to the same regulatory oversight. The issue of consistency was also one of the highest ranking topics in council discussions with core food safety regulators (which would facilitate greater consistency across councils in the same jurisdiction). This was especially the case in New South Wales, Victoria and South Australia (section 7.7).

A range of other uniformity mechanisms was also referred to by councils in their general comments on this topic including the use of the Australian Food Safety Assessment (ASFA) tool. Other examples included that from a South Australian council which detailed at length the procedures it used to achieve consistency in its administration and enforcement of food safety regulation:

> Induction of employees. Council's EHOs also conduct regular inspections in pairs to improve consistency and hold regular team meetings to discuss enforcement and education. Standard templates and procedures for enforcement are used and then

> reviewed by an internal quality assurance program to ensure consistency. Officers are encouraged to attend Environmental Health Australia's Food Special Interest Group meetings and use the Australian Food Safety Assessment (AFSA) checklist and guidance document.

One Western Australian council commented specifically on the importance with which it viewed this issue:

> Monthly team meetings are held, common issues are discussed and issues for particular attention are identified. The need for consistency in approach is paramount and is emphasised on a daily basis.

A similar approach was adopted by a South Australian contributor:

> A specific Food Safety Standard is selected for each team meeting and officers discussed their interpretation and application of the legislation.

And a New Zealand council commented on a joint agency effort to improve outcomes in this area:

> We have recently formed a regional food cluster group with other councils in the region. This group is sharing information, office systems, training of officers and training food premises operators signed up to the Voluntary Implementation Programme.

In a related context, EHO training also featured prominently in efforts to improve regulatory outcomes with specific food safety professional development provided to food safety staff. Survey wide, average staff training time was 31 hours per EHO in 2008-09 with Victoria, South Australia and New Zealand standing out as the jurisdictions doing most in this area (59, 49 and 40 hours, respectively).

7.6 Enforcement practices

In examining differences in enforcement practices, the survey sought information on the:

- types and level of fees and charges imposed on food retail and service businesses
- frequency, duration and basis of food safety audits and inspections.

Fees and charges

Variations in the types, level and basis of fees and charges imposed on food businesses were the source of greatest difference evident from the survey results both within and across jurisdictions (tables 7.9, 7.10 and 7.11). For example, formal approval requirements and associated charges associated with commencing and

continuing a food business vary significantly from one jurisdiction to the next. As described in the Commission's recent *Cost of Business Registrations* report (PC 2008c), a retail food business must *currently*:

- notify its operation in New South Wales (at no cost if completed electronically or for a $55 fee via hardcopy) and South Australia (without charge)
- register as a food business in the Northern Territory and the ACT
- register its premises as a 'permanent food premises' in Victoria[11]
- be licensed to carry on a food business in Queensland
- provide notification of its operation and register as a food business in Tasmania
- register the premises as an 'eating house' and be licensed to operate an 'eating house' in Western Australia.

Table 7.9 **Type of fee/charge for food businesses and/or premise: 2008-09**
Per cent of survey responses using the charge

Fee/charge	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Licence	11	0	0	50	0	86	44	18
Registration	26	0	100	0	0	71	44	29
Administration	14	67	0	17	0	14	11	11
Notification	0	0	0	0	0	14	11	2
Inspection	47	83	9	33	45	0	44	37
Re-inspection	63	83	14	42	18	14	22	35

Source: Productivity Commission survey of local councils (2009, unpublished).

Table 7.10 **Fee basis (all fee types): 2008-09**
Per cent of survey responses

Basis	*NZ*	*NSW*[a]	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Type of business	74	33	82	42	18	56	22	50
Risk category	53	50	68	50	23	11	22	43
Number food handlers	0	8	55	0	82	0	22	31
Premise area	26	0	0	33	5	0	0	10
Business turnover	5	0	9	0	5	0	11	5
Seating capacity	21	0	0	0	5	0	0	5
Other	21	33	9	42	9	11	78	24

[a] According to NSWFA (2008d), councils in NSW are able to charge (but may waive) an annual administration fee that depends on the number of full time equivalent food handlers at the premises.

Source: Productivity Commission survey of local councils (2009, unpublished).

11 Amendments to the *Food Act 1984* (Vic) mean that, from 2010, certain low risk and community group activities will no longer need to be registered, but will only need to notify councils.

Table 7.11 **Food hygiene licence renewal fees (by risk rating[a]) in a selected New Zealand council: 2009-10**

New Zealand dollars

Inspection rating[b]		*Grade*	*Risk Rating 1*	*Risk Rating 2*	*Risk Rating 3*	*Risk Rating 4*
18-20	A	Excellent	120	144	168	192
14-17	B	Good	180	88	336	384
Aug-13	C	Adequate	240	432	672	786
<8	D	Unsatisfactory	360	576	1 008	1 536

[a] Risk rating refers to the type of work being undertaken at the premises. [b] Inspection rating relates to the past performance of the premises.

Source: Productivity Commission survey of local councils (2009, unpublished).

Notification requirements do not empower regulators with the ability to disallow a food business application or to place conditions on the operation of that business. A council in South Australia commented specifically on the limits of notification systems:

> Currently in South Australia food businesses are not required to be licensed/registered, which at times makes it difficult to ensure businesses are captured.

Another South Australian council also compared the effectiveness of notification provisions with licensing:

> SA does not have licensing of food premises, an issue that has been raised with State over many years by officers trying to administer the notification system which is very difficult to administer and does not work effectively.

Registration and/or licensing requirements, on the other hand, can specify structural and fit-out requirements, operating procedures and training or educational qualifications for staff before approval is granted. Accordingly, aside from fees and charges, registration and licensing requirements impose a much higher compliance burden on food businesses in terms of the time taken to satisfy approval requirements and the conditions they place on the business operation. The main advantages of registration/licensing are that they:

- help ensure new establishments have appropriate premises and processes which can reduce or avoid high rectification expenses in the future. Further, they provide greater assurance that a business is ready to safely handle food before it commences operations (when compared to a 'notification arrangement')
- increase business awareness of food safety issues and regulations (particularly if businesses are able to self-assess as part of the application process)
- provide leverage for regulators to gain increased compliance with food laws (in addition to the that provide by the inspection process)

- can be a source of revenue to cover the cost of inspections and other enforcement activities without the business disincentives associated with fee-based inspection systems (notions of fee-for-service). (Office of Regulation Review 1995).

While the use of licence and/or registration fees as an alternative to inspection-based charging is reflected in the survey responses this is, in part, the result of current legislative restrictions in certain jurisdictions. For example, survey respondents from Victoria and Western Australia advised they are currently unable to charge inspection fees. Notably, councils in both jurisdictions commented that registration charges included a component to cover at least part of the cost of inspections (which could explain the 9 per cent of Victorian councils shown in table 7.9 charging inspection fees). In that respect, where a fixed license/registration fee is charged to all businesses and the frequency of inspections is risk-based (the case in Victoria[12] and Western Australia), the direct cost burden on lower risk firms will be greater than that for medium and high risk firms.

Indeed, a Western Australian council pointed to further discriminatory treatment of certain food businesses in the application of licence fees in that state (though it understood this would change once the new Food Act Regulations were proclaimed):

> Under current legislation in WA only food premises classed as Eating Houses pay fees, this has been long recognised as inequitable.

In jurisdictions where inspection fees where potentially applicable, there was a degree of discretion exercised by councils in their application. One in three Queensland councils charged for inspections while the figure in New Zealand, South Australia and Tasmania was closer to one in two. Underlying these broad indicators, a number of councils only charged for initial inspections (a common feature in South Australia with 32 per cent of councils so doing) while others only charged for follow-up inspections after a compliance breach was detected (a more common practice in Queensland and New Zealand involving 25 per cent and 21 per cent of respondents respectively). Although a fee regime based on detection of compliance breaches alone may be viewed by businesses as a form of fine (and hence motivate greater compliance), there was no evidence from the survey results that this reduced the incidence of food safety breaches (see below).

12 Amendments to the *Food Act 1984* (Vic) mean that, from 2010, certain low risk and community group activities will no longer need to be registered, but will only need to notify councils. As a result, these businesses will not be required to pay a registration (or notification) fee.

While the different approval requirements across jurisdictions has compliance implications for food businesses, these burdens are amplified by the sheer breadth of differences in fees and charges associated with those requirements. Such is the disparity in financial costs, the Commission's survey could not adequately capture the current situation (with a number of councils attaching or referring to often lengthy documentary material in response to the survey question). That said, a sense of the extent of differences in this area is provided by responses to the basis on which fees were charged (table 7.10).[13]

While business type and risk classification were the main influences on fees and charges in most jurisdictions, the number of food handlers featured prominently in South Australia and Victoria as did premise size in Queensland. Notably, 41 per cent of all respondents used multiple bases to set fees and charges with Victorian (77 per cent of respondents) and New Zealand (53 per cent of respondents) councils more likely to use multiple fee determinants than other jurisdictions.

By way of example (which may not be typical), one Victorian council noted that most councils in the state charged fees based on risk and the number of full time equivalent (FTE) employees in line with provisions of the *Food Act 1984* (Vic). Registration fees were currently set at:

- Class A – up to 5 employees per registration. GST free $340
- Class B – up to 5 employees per registration. GST free $320
- Class C – up to 5 employees per registration. GST free $240
- Class D – up to 5 employees per registration. GST free $120
- Class E – up to 5 employees per registration. GST free $60.

Each additional employee increased the registration fee by $15.

A New Zealand council said it uses a '… fee structure that reflects the cost it actually takes to regulate potentially high risk premises… ' with the risk potential based on the following factors:

- type of activity carried out on the premises
- standard of hygiene and work place practices
- size of business
- time involved for staff visits
- frequency of visits.

[13] The question was specifically asked in terms of inspection fees but most councils responded even where there was no inspection fee charged.

Similarly, others from New Zealand noted that they used an incentive-based rating system with the license/registration fee determined by the inherent risk of the activity and the compliance record (number of food safety breaches) of the food business (table 7.11). In some cases, food businesses were required to display the resulting gradings on the premise as an information source for consumers.

The survey responses revealed significant variability across regulators in the fees and charges imposed on food businesses (table 7.12). South Australia stands out as the jurisdiction with the lowest and most uniform fee structure for food businesses. According to the survey results, there are no annual fees payable in South Australia (given it operates a notification system) and the maximum inspection and re-inspection fees charged are close to the lowest of all jurisdictions. In addition, inspection (and re-inspection) fees were identical in those South Australian councils indicating a charge for this activity.[14]

Table 7.12 **Level of fees and charges for food businesses: 2008-09**
Australian dollars

Fee/charge	*NZ*	*NSW*[a]	*Vic*	*Qld*	*SA*	*WA*	*Tas*
Licence[b]	128-1280	na	0	0-1110	na	0-300	0-200
Registration[b]	128-1280	na	89-570	na	na	0-354	0-130
Administration	41	60-200	0	0-200	0	50	0-35
Notification	na	0	na	na	0	50	0-30
Inspection risk							
Low risk	0-98	45-140	0-80	0-317	0-88	0	0-100
Medium	0-98	50-140	0-80	0-350	0-88	0	0-196
High	0-98	50-170	0-80	0-450	0-88	0	0-294
Re-inspection							
Low	0-122	50-140	0-185	0-271	0-88	0-67	0-80
Medium	0-122	50-140	0-185	0-271	0-88	0-67	0-80
High	0-122	50-140	0-185	0-271	0-88	0-67	0-80

na not applicable. **a** In NSW, the maximum inspection fee that can be charged by councils is $143.08 per hour (NSWFA 2008d). The fee associated with improvement notices are proposed at $330 (which also covers the cost of one re-inspection). Councils have the power to waive or reduce administration and improvement notice fees. **b** Dependant on risk/grade classification. NZ dollars have been converted to Australian dollars using an exchange rate of $1.23.

Source: Productivity Commission survey of local councils (2009, unpublished); RBA (2009).

Queensland levied the highest, and exhibited the greatest disparity in, inspection and re-inspection fees of any jurisdiction. Based on the survey responses, New Zealand food businesses faced the highest annual registration or licence fee

14 The South Australian *Food Regulations 2002* sets maximum inspection fees of $80 for a business with not more than 20 food handlers and $200 in any other case. GST is payable on those fees.

(dependent on their compliance record) and the largest difference between low and high risk businesses — although the experience of individual businesses will depend on their location as local council fee structures are highly variable across New Zealand. One New Zealand council charged the highest risk business close to four times that levied on a business in the lowest risk category.

Importantly, there was no evidence from the survey results of a correlation between inspection fees and inspection frequency (a frequent proposition put to the Commission in consultations with food business interests). Equally however, a clear link between average inspection duration and inspection fees was also not apparent from the survey results (see below).

In addition to the fees and charges shown in table 7.12, there are a myriad of other one-off financial costs imposed on food businesses that also vary significantly across councils and across jurisdictions. These include pre-purchase inspection reports, improvement notice fees, registration transfer fees, plan approval fees for new premises and food sampling fees (for complying and/or non-complying samples) to name just a few.

Inspection frequency and duration

Business compliance burdens will also be affected by the frequency and duration of food safety inspection regimes (table 7.13). In line with the workload pressures described earlier, the most intense scrutiny of food businesses is apparent in New Zealand and Victoria with around 50 per cent more inspections per premise than most other jurisdictions (the survey sample in Western Australia is such that the results for that state at nearly three inspections per premise should be treated cautiously).

Not surprisingly, the level of attention given to premise inspections in these two jurisdictions is correlated with the more frequent detection of compliance breaches serious enough to warrant an on-site follow-up (the share of total inspections accounted for by re-inspections). More broadly, however, the results do not reveal a close link between inspection frequency and the relative food business risk profiles in each jurisdiction (figure 7.1).[15] Inspection duration (and the associated compliance burden) also appears to vary considerably (though the small sample size makes statistical comparisons unreliable). Across all council respondents, an average inspection is around one hour in duration.

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15 The Commission understands that, as part of the implementation of the amended Food Act, the Department of Health (Victoria) will be providing local councils with guidance on how they can refine their risk-based approaches to enforcement in light of the amendments to the Act.

Table 7.13 **Inspection frequency, duration and reason: 2008-09**
Average of survey responses

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Inspections per premise	1.6	1.3	1.6	1.1	1.1	2.6	1.2	1.4
Inspection duration (mins)	51	33	60	63	55	36	43	54
Re-inspection share of total inspections (%)	19	15	22	5	26	15	7	17
Ratio of complaint inspections to total complaints (%)	81	96	71	58	31	49	99	58

Source: Productivity Commission survey of local councils (2009, unpublished).

7.7 Transparency, accountability and coordination

In contrast to these efforts to reduce food business compliance burdens, there was considerable variability across jurisdictions in terms of informing food businesses about councils' enforcement strategies and outcomes (even taking account of those councils which noted the intention to introduce such transparency in the future). Such information can be both a proactive and cost-effective compliance tool as businesses are made aware in advance of the consequences of continued or serious non-compliance and the likelihood that combative measures will be applied in that event. As shown in table 7.14, no jurisdiction excelled in this area, with the best performers showing around one in four councils publishing *both* their enforcement strategy and outcomes.

Table 7.14 **Enforcement transparency and accountability: 2008-09**
Per cent of responses

Feature	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Publish strategy	32	50	41	8	36	44	33	35
Publish outcomes	32	17	45	17	9	33	22	26
Publish both	26	17	27	8	9	33	22	20
Decisions appealable	68	67	73	75	82	67	78	73
Internal review	63	50	68	75	77	67	56	67
External review	37	42	36	42	68	67	67	50

Source: Productivity Commission survey of local councils (2009, unpublished).

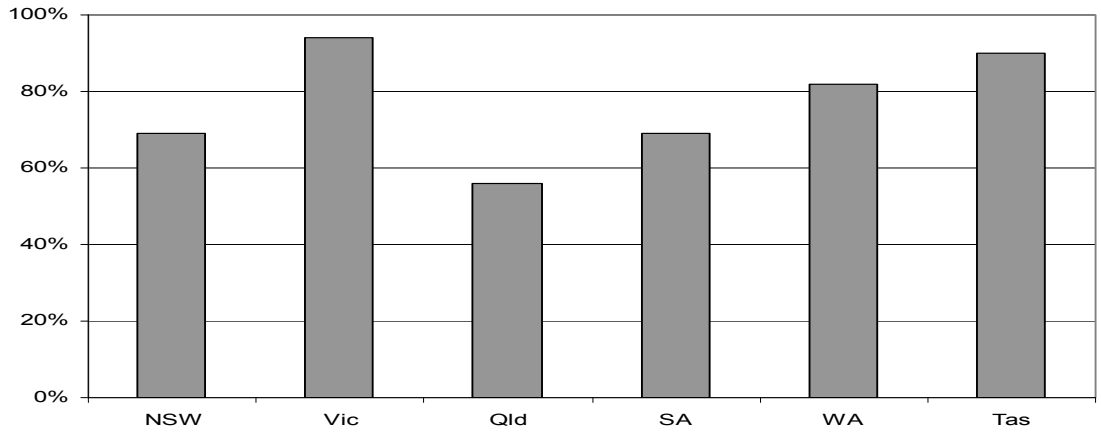
All jurisdictions performed better in terms of accountability indicators with 73 per cent of all council respondents signalling their enforcement decisions were appealable. The availability of internal review mechanisms (likely to be much less

costly than external alternatives which could include court-based appeals) were most prevalent in Queensland and South Australia.[16]

In an anecdotal context, the Commission's perusal of a number of council websites during the course of this study also found considerable variability in the ease of access to both general and specific information relevant to food businesses (including the level and basis on which different fees would be charged). In that light, this would appear to be an area where business compliance burdens (both in general and in terms of differences across jurisdictions) could be reduced in a cost-effective manner.

Indeed, in the conduct of the Commission's recent study into the *Cost of Business Registrations* (PC 2008c), a review of *every* Australian council website during 2007 found significant variations in the availability of *any* business information on food safety issues (figure 7.2).[17] Victoria and Tasmania were the jurisdictions with the most councils providing such information — accordingly, food businesses in these jurisdictions arguably have better access to local information than those in other jurisdictions and so may face lower burdens when seeking information on their obligations under food safety regulation.

Figure 7.2 **Availability of food safety issues online [a] — December 2007**
Per cent of all councils



a not applicable for New Zealand (as New Zealand was not covered in the study — PC (2008c)).

Data source: Productivity Commission estimates (2007, unpublished).

16 However, food businesses may view internal appeals as lacking the independence of external review mechanisms.

17 Information available on websites ranged from registration/licensing/notification requirements (and other regulatory matters) to information on safe food handling and food safety training. A council website was deemed to contain food safety information if it contained any of these types of information.

In addition to the consequences of non-uniform application of the same food laws, different interpretations of those laws can also lead to variations in business compliance burdens. As shown in table 7.15, communication and coordination between councils and higher level agencies was a common theme emerging from the survey responses. In particular, the resolution of uncertainties relating to food policy interpretation, EHO training and enforcement consistency were common issues of discussion.

Table 7.15 **Issues discussed with state/national agency : 2008-09**
Per cent of responses

Issue	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Policy interpretation	79	92	95	92	73	78	89	85
EHO training	79	92	64	67	59	100	56	71
Enforcement consistency	47	83	86	58	86	56	67	71
Fee setting	0	25	5	17	23	33	0	13
Other matters	37	33	5	33	18	56	22	26

Source: Productivity Commission survey of local councils (2009, unpublished).

However, the survey picture of awareness of regulatory responsibilities and hence the potential for regulatory overlap and duplication (in terms of, for example, food business audits and inspections) was less clear. As shown in table 7.16, there was considerable variability among councils within and across most jurisdictions in terms of the range what councils knew or understood to be the scope of their enforcement role.

Table 7.16 **Councils' understanding of regulatory coverage: 2008-09**
Per cent of survey responses

Activities not regulated by council	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*Total*
Butchers[a]	21	83	86	100	95	22	0	65
Smallgoods	21	67	73	75	77	78	22	60
Poultry processors	74	67	82	100	86	78	78	81
Shellfish processors	74	67	77	75	45	56	78	67
Other food processors	na	58	18	17	9	22	22	18
Abattoirs	68	75	91	100	82	56	89	80
Farms	68	75	91	92	73	44	78	76
Dairy	na	67	82	100	82	56	89	66

[a] According to the NZFSA, dual operator butchers (those that process unregulated meat and regulated meat that is inspected) are the responsibility of the NZFSA. Traditional butchers are council responsibility.

Source: Productivity Commission survey of local councils (2009, unpublished).

For example, *all* Queensland councils nominated butchers, poultry, abattoirs and dairy (and *most* nominated smallgoods manufacturers, shellfish and farms) as activities for which regulation was the sole responsibility of the core agency in that state (Safe Food Production Queensland). Within other jurisdictions, however, there were greater differences across councils. In South Australia, for instance, 45 per cent of councils responding to the survey viewed shellfish processors as the Department of Primary Industries and Resources' responsibility while 55 per cent (by default) considered that responsibility to be their own.

Information provided by the core regulatory agencies is more definitive about the respective roles of local government and non-local government agencies (figure 9.2, chapter 9). In New South Wales, for example, while council officers are authorised under the *Food Act 2003* (NSW) for all types of food businesses, councils are primarily responsible for retail and service food businesses. This does not include butchers, bakeries dairy factories, meat and seafood processors (which fall within the remit of the NSWFA among other activities) (NSWFA 2008d). In New Zealand, traditional butchers are the sole responsibility of local councils while butchers that also process meat and abattoirs fall within the NZSFA's regulatory remit.[18]

As a supplement to this material, the Commission obtained information from a leading Australian retailer (which also has operations in New Zealand) to provide an alternative perspective on the issue of regulatory overlap and the associated costs. This information is summarised in table 7.17. Some of the key points to emerge from this exercise include:

- in 2008-09, Queensland had the most separate regulators potentially involved in compliance visits to retailers for inspections, audits, complaint investigations, sampling and/or labelling reviews, with local councils, Queensland Health and Safe Food Production Queensland (SFPQ) all entering stores — some stores ('store 2' and 'store 3') received at least one visit from each regulator in the 12 months to 30 June 2009
  - further, Queensland was also the jurisdiction with the most overlap in the store aspects covered by different regulators — for example, both Queensland Health and SFPQ conducted separate visits to store 2 in relation to the meat department,[19] while all three regulators were said to have

[18] NZFSA regulates dual operator butchers (retail butchers that also provide a homekill and recreational catch service at the same premises or place).

[19] SFPQ is responsible for retailer meat departments while Queensland Health undertakes sampling activities in relation to those same departments (for example, to determine whether only permitted additives have been used in mince meat).

conducted a visit to store 3 that included the activities of the delicatessen (see note 'c' to table 7.17)[20]

- all Victorian stores were subject to at least one council inspection and a third party audit.[21] Similarly, the two New South Wales stores were both subject to an audit/inspection by the NSWFA as well as the relevant local council
- Victorian and Western Australian councils generally inspected/audited the entire store, whereas Queensland and New South Wales councils tended to make multiple visits, including visits to target specific areas of the store
- Western Australia was the only jurisdiction where a store was not inspected or audited in respect to food safety matters for the 2008-09 period.

The data in table 7.17 also broadly supports the average inspection times reported by councils (table 7.13), with most council inspections taking around 60 minutes to complete (although the inspections may be as short as 10 minutes or as long as 120 minutes, depending on the purpose). In relation to the fees charged by councils for inspections (table 7.12), the data in table 7.17 suggests that it is mainly New South Wales councils that charge inspection fees in practice.

The data suggests the cost of the third party auditors incurred by stores in New Zealand and Victoria are higher, on average, than the combined costs of regulatory inspections in the other jurisdictions. However, as discussed in chapter 6 (section 6.2), some larger businesses see these costs as being offset by benefits such as the budget certainty of a fixed cost per store/outlet and greater consistency in the audit results and comparability of results across stores/outlets.

Once an inspection or audit has been completed, businesses generally prefer to know the outcome of that inspection/audit as soon as possible. The sooner a business knows the outcome of the inspection/audit, the sooner it can address any issues raised. The period between completion of an inspection/audit and receipt of the outcome can be a time of uncertainty for a business. For the majority of the inspections/audits outlined in table 7.17, a report detailing the outcome of the visit was provided on the same day. However, some councils varied in the time taken to deliver the report and, in some instances, no report was provided (table 7.18).

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[20] While no data on South Australian stores was provided, the Commission understands through its consultation with South Australian stakeholders and the leading Australian retailer that retail butchers in South Australia may be inspected/audited by both local councils and the Department of Primary Industries and Resources (PIRSA) — also see figure 9.2 (chapter 9).

[21] The Victorian government is amending the *Food Act 1984* to remove the requirement for an annual council inspection for those businesses operating to quality assurance programs audited by appropriate third parties and for low risk businesses (Department of Treasury and Finance (Victoria) 2009).

Table 7.17 **Regulatory duplication and overlap — regulator compliance visits**
1 July 2008 to 30 June 2009

	Agency/ auditor	*Aspect of store*	*Number of visits*	*Cumulative fees*	*Cumulative time taken*
				Australian dollars[a]	minutes
New Zealand					
Store 1	3rd party	Entire store	1	894	300
New South Wales					
Store 1	NSWFA[a]	Meat	2	392	40
	Local council	Fresh food	1	150	15
	Local council	Deli	1 (following complaint)	nc	15
Store 2	NSWFA[a]	Meat	1	nc	45
	Local council	Perishables	1	nc	15
	Local council	Fresh food	1	300	120
Victoria					
Store 1	3rd party	Entire store	1	627	180
	Local council	Entire store	1	nc	60
Store 2	3rd party	Entire store	1	836	240
	Local council	Entire store	1	nc	60
Store 3	3rd party	Entire store	1	522	150
	Local council	Entire store	1	nc	60
Store 4	3rd party	Entire store	1	836	240
	Local council	Entire store	1	nc	np
	Local council	Meat	1	nc	60
	Local council	Long life products	1	nc	10
Store 5	3rd party	Entire store	1	836	240
	Local council	Entire store	2	nc	80
Store 6	3rd party	Entire store	1	731	210
	Local council	Entire store	1	nc	120
Store 7	3rd party	Entire store	1	836	240
	Local council	Entire store	1	nc	15
Store 8	3rd party	Entire store	1	np	210
	Local council	Entire store	2 (including 1 following complaint)	nc	120
	Local council	Fresh food	2 (including follow up on audit finding)	nc	90
Store 9	3rd party	Entire store	1	np	360
	Local council	Entire store	1	nc	60
	Local council	Deli	1 (sampling)	nc	30
Store 10	3rd party	Entire store	2	np	450
	Local council	Deli	1 (sampling)	nc	np
Store 11	3rd party	Entire store	2	np	195
	Local council	Entire store	1	nc	150
	Local council	Deli	1 (sampling)	nc	np

(continued next page)

Table 7.17 **(continued)**

	Agency/ auditor	*Aspect of store*	*Number of visits*	*Cumulative fees*	*Cumulative time taken*
				Australian dollars[a]	minutes
Queensland					
Store 1	SFPQ[b]	Meat and deli[c]	1	495	90
	Local council	Deli	1	nc	25
	Local council	Seafood	1	nc	20
Store 2	SFPQ[b]	Meat and deli[c]	1	371	40
	Qld Health	Meat	1 (following complaint)	nc	20
	Qld Health	Seafood	1[d]	nc	30
	Local council	Fresh food	1	nc	70
	Local council	Entire store	1	nc	50
Store 3	Qld Health	Perishables, deli, meat	2[d]	nc	np
	SFPQ[b]	Meat and deli[c]	1	371	50
	Local council	Seafood, deli, bakery	1	nc	60
	Local council	Entire store	1	nc	60
Store 4	SFPQ[b]	Entire store[c]	1	309	45
	Local council	Entire store	2	nc	120
Store 5	SFPQ[b]	Meat and deli[c]	1	433	75
	Local council	Deli, seafood and baker	1 (following complaint)	nc	60
	Local council	Entire store	1	nc	60
Store 6	SFPQ[b]	Deli[c]	2 (including 1 following non-conformance)	619	np
	Local council	Perishables	1 (following complaint)	nc	60
	Local council	Long life products	1 (following complaint)	nc	60
	Local council	Entire store	1	nc	60
Store 7	SFPQ[b]	Entire store[c]	1	371	60
Western Australia					
Store 1	No inspections or audits				
Store 2	Local council	Entire store	1	nc	30
Store 3	Local council	Entire store	1	nc	30
Store 4	Local council	Entire store	1	nc	30
Tasmania					
Store 1	Local council	Entire store	2 (including 1 follow-up inspection)	nc	180

nc no charge. **np** not provided. [a] Estimates for New Zealand are based on an average $A/$NZ exchange rate of 1.23. [a] NSW Food Authority. [b] Safe Food Production Queensland. [c] SFPQ noted that they do not undertake compliance visits in relation to delicatessens or 'entire stores'. The entries for these visits may reflect factors such as store layout (for example, the meat department and delicatessen may be located in close proximity and considered by the store to be one unit) or differing interpretations on the part of regulators/respondents regarding, for example, the nature of a 'delicatessen'. [d] The nature/purpose of visit was not disclosed in the information provided. Queensland Health's compliance visits usually relate to food sampling, labelling and complaints.

Source: Information provided by a leading Australian retailer (2009, unpublished).

Table 7.18 **Time taken by local councils to provide inspection report**

Number of inspections

	NZ	*NSW*	*Vic*[a]	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
No report		1	8	3					
Same days		3	6	8		3	1		
3 days or less			1						
3-7 days			1	2					
More than 7 days									

a Excluding 'sampling visits'.

Source: Information provided by a leading Australian retailer (2009, unpublished)

8 Core regulatory agencies: enforcement and accountability

Key points

- In addition to local government, one core agency in New Zealand and 17 agencies in Australia are responsible for regulating the different aspects of food safety affected by: the primary production; processing; manufacturing; transport; storage; wholesale; retail and international trade of food.
- The institutional structure varies across jurisdictions and between countries. At one extreme, New Zealand combines all food-safety responsibilities, apart from those of local government, into a single agency. Within Australia, the states make extensive use of local councils while the territories do not. Jurisdictions vary as to whether they allocate consumer, dairy and all other primary food production food safety to one, two or three agencies. In addition, there is a separate national agency responsible for the regulation of internationally traded food.
- The Commission investigated the extent and nature of enforcement differences across jurisdictions through a detailed questionnaire sent to the 18 core agencies.
- Australia and New Zealand are well served by their regulators. They commonly use a cooperative, graduated approach to ensuring food safety compliance, use harsh enforcement instruments sparingly and set broadly similar priorities. Within this context, the NSW Food Authority (NSWFA) in particular, resorts to punitive instruments more often than its regulatory counterparts in other jurisdictions.
- A number of enforcement differences are evident from the survey results which could impact significantly on business compliance burdens. They include:
  - the proportion of the costs of regulatory oversight which are recovered from food businesses rather than being funded from general government revenue
  - the level and nature of fees and charges including the use of risk-based fees
  - the inconsistent application of risk classifications to food businesses conducting broadly similar activities
  - the frequency and duration of audits and inspections
  - the availability and type of appeal mechanisms and the extent of transparency.
- Differences among the core agencies in collecting, managing and analysing data related to the enforcement activities of local government (thereby allowing better targeting and coordination of enforcement resources) could also indirectly influence business compliance burdens.

8.1 Institutional structure

Beyond the enforcement remit of local government, the institutional model used to regulate primary production, food processing, manufacturing and other food-related activities such as transport, storage and food imports and exports varies across jurisdictions. Eighteen core agencies have various enforcement responsibilities in the jurisdiction in which each operates (table 8.1). The institutional structures range from fully integrated to devolved.

New Zealand, with a unitary government, has a single agency which regulates all aspects of food safety (including internationally traded food) except for those activities regulated by local government (prescribed in the *Food Act 1981*), which it monitors and coordinates.

Australia, a federation, places the minimum necessary regulation and enforcement responsibilities in the hands of the national government — one Australian national agency to regulate internationally traded food. In all Australian states, the core food agency responsible for consumer food safety is also responsible for coordinating and monitoring the regulatory functions of local councils to differing degrees. In contrast, in the two Australian territories, the core food agency absorbs all the 'local council' functions. Jurisdictions vary as to whether they allocate consumer food safety, dairy and all other primary food production to one, two or three agencies.

The degree to which the core agencies in the Australian states coordinate and control the function of the local councils varies considerably and there is some variation over the allocation of food safety functions between the core agencies and the councils.[1]

The regulation of imported and exported foods is the responsibility of the Australian Quarantine and Inspection Service (AQIS) (though some functions related to exports, particularly inspections and audits are delegated to certain jurisdictional regulators) and the New Zealand Food Safety Verification Authority Agency (now part of New Zealand Food Safety Authority (NZFSA)). The arrangements relating to internationally traded food are discussed in chapter 14.

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[1] In Victoria, the Department of Health has some specific powers under the *Food Act 1984* relating to food safety emergencies of state-wide or national significance (eg food labelling, recalls and large scale destruction of contaminated food). The Department currently has sole power to order the immediate closure of food premises that pose an immediate risk to public health (though in practice this power is exercised at the request of local councils). Queensland Health and South Australian Health also provide assistance to, and coordinate the activities of, local councils in areas such as investigations of food-borne illness outbreaks. They are also responsible for enforcing food labelling laws.

Table 8.1 Australian, New Zealand and state and territory government food safety regulators

Cwlth	Australian Quarantine and Inspection Service (AQIS)
NZ	New Zealand Food Safety Authority (NZFSA)
NSW	NSW Food Authority (NSWFA)
Vic	Department of Health[a]
	PrimeSafe
	Dairy Food Safety Victoria (DFSV)
Qld	Queensland Health
	Safe Food Production Queensland (SFPQ)
SA	Department of Health
	Primary Industries and Resources South Australia (PIRSA)
	Dairy Authority of South Australia(DASA)
WA	Department of Health
Tas	Department of Health and Human Services
	Department of Primary Industries and Water
	Tasmanian Dairy Industry Authority (TDIA)
NT	Department of Health and Families
	Department of Regional Development, Primary Industry, Fisheries and Resources (Northern Territory Primary Industries)
ACT	ACT Health

[a] Responsibility for food safety regulation passed to the newly created Department of Health from the Department of Human Services in August 2009.

The different institutional models described above provide a relevant backdrop against which to compare regulatory activities. Indeed, the recent moves to integrate food regulatory functions in New Zealand, New South Wales and Queensland were motivated by a specific desire to deliver better, and more consistent, regulation. For example, in announcing the creation of the NZFSA, its agency head noted:

> More consumer protection and less bureaucracy will be just two of the major benefits of the establishment of the New Zealand Food Safety Authority. Te Pou Oranga kai Aoteaoroa, from July 1 [2002].
>
> Bringing these functions together under one agency will enable New Zealand to provide consistency in the management of food safety from the beginning of the food chain to the end … (NZFSA 2002).

Similarly, the consolidation of food safety functions from a number of agencies into a single food safety authority in New South Wales in 2004 was predicated on the grounds that:

> The establishment of the NSW Food Authority will create a more streamlined, consistent and efficient approach to food regulation in NSW and a single point of contact for both the industry and public. The Authority will work with local government to better define and support their continuing role in food regulation. (NSWFA 2009d)

In other jurisdictions the continuing division of responsibilities for primary production regulation (particularly dairy, seafood and red meat) reflects the historical development of these structures and views about the benefits of regulatory specialisation.

8.2 Methodology

In addition to the food safety information collected from local government (chapter 7), the Commission sent detailed questionnaires to the central food safety regulators. (See appendix B — table B.2 — for a copy of the questionnaire.) All these regulators provided a response (although the timing of the response by AQIS means that its activities will not be fully reflected in this chapter until the final report). As well as examining differences in their enforcement activities, questions were asked about the level of coordination between local government and core regulatory agencies in order to gain an insight into the existence, and extent, of any regulatory gaps and overlaps. The questionnaire covered the following broad areas:

- the level of *human* and *financial resources* devoted to food safety regulation and the training and experience of the officers charged with enforcing jurisdictional food safety laws
- the *approach to enforcement* in terms of priorities across different food activities and regulations, the hierarchy of measures used to achieve compliance with food laws and how often each is used, processes used to ensure uniform application of those laws by food safety staff and whether or not enforcement was risk-based
- the *enforcement activities* of regulators which directly impact on business costs including audits and inspections (frequency, duration and basis) and fees and charges levied on food businesses
- *transparency*, *accessibility* and *accountability* with respect to the publication of enforcement strategies and activities, availability of appeal mechanisms for food businesses in breach of food regulations

Specific survey questions on enforcement characteristics

With regard to the questionnaire, some judgements about the extent to which combative, responsive or cooperative approaches differ across regulators can be inferred from:

- amount collected from fines (Q.7)
- the proportion of enterprises fined (Q.8)

- time spent by staff on inspection versus the provisions of education and training services to food businesses, etc (Q.18)
- which enforcement activities are prioritised – including education (a cooperative measure) versus sampling (which is outcomes focused) etc (Q.19c)
- range of enforcement tools available and actual use made of each (Q.22)
- how much use is made of activities to improve compliance (Q.23a)
- use of prosecution (Q.32c).

Judgements about the capacity of staff both to apply a responsive regulatory approach and to judge whether outcomes and alternative methods of compliance meet regulatory requirements should be reflected in:

- minimum qualifications of inspectors (Q.11)
- level of experience of inspectors (Q.15)
- provision of professional development (Q.16)

Judgements about the use of a risk based approach can be indicated by:

- priorities (in terms of Australia New Zealand Food Standards Code (ANZFS Code) standards - Q.19e, alternative assessment methods involving inspections, audits and accreditation – Q.20)
- classifying different businesses according to risk and using those classifications to determine fees and the frequency of inspections and audits (Q.28a, Q.28b, Q.28c)
- use of compliance history to determine inspection and audit frequency (Q.28d)
- basis on which fees are set (Q.31a).

More directly, the Commission also asked about methods regulators had either already put in place (Q.26) or considered would be effective in reducing compliance burdens (Q.35) while they would still be able to achieve effective regulation.

The remainder of this chapter draws out the key differences across jurisdictions that were evident from the survey responses.

8.3 Resources of core food safety regulators

The level of financial and human resources available to food safety regulators is a key influence on enforcement activities and the uniformity of food safety regulation. With fewer resources, regulators are constrained in ensuring consistent

enforcement, in providing training and written information to businesses and regulatory officers may have to resort to more combative deterrence strategies rather than work methodically through a structured set of responses to non-compliance, moving from helpful to increasingly punitive. Also, the move from prescriptive regulation to more flexible outcome and performance-based regulation requires more highly skilled inspectors and auditors who are able to judge a range of alternative methods used by businesses to satisfy regulatory requirements.

Importantly, differences in the scope of regulatory responsibilities need to be kept in mind in comparing resourcing indicators across jurisdictions. In particular, the role of the NZFSA (which includes responsibility for significant internationally traded food activities) is much broader than those of food safety regulators in Australia. Similarly, the NSWFA is unique in devoting considerable resources to coordinating and analysing the role of local councils in food safety regulation in that jurisdiction. In addition, differences in the extent to which third parties are used to undertake regulatory surveillance (audits) will influence the interpretation of resourcing indicators (see table 8.18), comparisons of the costs imposed by core agency regulators on food businesses (where, for example, auditors charge businesses directly for their services) and conclusions regarding the extent of cost recovery.

Against that cautionary background, resourcing indicators reveal a degree of uniformity across many (though not all) agencies in 2008-09 (table 8.2). In terms of staffing ratios, a cluster of regulators exhibited a similar regulatory intensity of around 200 food businesses to each full time equivalent food safety officer. Prominent outliers include: the NZFSA (26 businesses per employee), Western Australian Health (36 businesses per employee); Primary Industries and Resources South Australia (PIRSA) (75 businesses per employee); Northern Territory Health (98 businesses per employee) and ACT Health (110 businesses per employee) both of which are also responsible for food retail and service regulation that is elsewhere the domain of local government; and DFSV (446 businesses per employee).

A similar (though not identical) picture emerges with respect to budget allocations relative to regulated business numbers with the NZFSA again (and to a lesser extent Western Australian Health, PIRSA and the NSW Food Authority (NSWFA)) standing out as being much 'better' resourced per regulated business than their counterparts in other jurisdictions. However, the NZFSA is responsible for covering a wider range of aspects of food safety than any other regulators. Within Australia, PrimeSafe, Safe Food Production Queensland (SFPQ), DASA and ACT Health were similarly resourced while DFSV and the TDIA, in particular, had the lowest level of financial resources available per food business.

Table 8.2 **Resourcing indicators: 2008-09**

	Agency	*Food safety staff (FTE)*	*Food safety budget*	*Fee income*	*Businesses regulated*	*Food safety budget per FTE staff*	*Businesses to food safety staff ratio*	*Food safety budget per business*	*Average fee income per business*
		Number	A$' 000	A$' 000	Number	A$' 000	Number	A$	A$
Cwlth	AQIS[b]	583	86 172	78 495	nr	148	na	na	na
NZ	NZFSA	257	30 212[a]	30 212[a]	6 669[b]	118[a]	26[a]	4 530[a]	4 530[a]
NSW	NSWFA	61	15 002	6 450	13 934	246	228	1 077	463
Vic	Vic Health	7	1 010	0	na	155	na	na	na
	PrimeSafe	10	1 777	1 727	2 109	178	211	842	819
	DFSV	13	2 472	3 803	5 800	190	446	426	655
Qld	Qld Health	nr	nr	0	0	na	na	na	na
	SFPQ	38	6 133	3 782	7 622	161	200	804	496
SA	SA Health	11	1 350	80	na	123	na	na	na
	PIRSA	14	1 590	1 047	1 031	116	75	1 542	1 016
	DASA	3	516	461	606[c]	178	209	851	760
WA	WA Health	12	1 075	13	430	91	36	2 500	30
Tas	Tas Health	3	nr	1	na	na	na	na	na
	Tas DPI [d]	8	676	38	960	85	120	704	40
	TDIA	3	368	437	544	123	181	676	803
NT	NT Health	23[e]	2 780	0	2 259	110	98	1230	0
	NT Meat	1	105	5	36	88	30	2 916	139
	NT Fisheries	1	18	18	424	36	848	42	42
ACT	ACT Health	17[e]	1 450	na	1 877	85	110	773	na

na not applicable. **nr** no response. [a] NZ dollars converted to $A using an exchange rate of 1.23 New Zealand dollars per Australian dollar. [b] NZFSA noted the potential for some double counting in the number of businesses registered. [c] DASA commented that from 1 July 2009, responsibility for regulating dairy distributors (of which there were 147 in 2008-09) was moved to local government. [d] Tas DPI commented that fee income is directed to consolidated revenue. The 960 regulated businesses shown include 800 low and medium risk seafood harvesting businesses that do not require a licence or a food safety plan and are not regularly inspected or audited. [e] Staff at NT Health and ACT Health also perform those duties performed by local governments in other jurisdictions.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished); RBA (2009).

While many regulators considered resourcing levels did not prevent them from fully enforcing the regulations they were responsible for, some cited budget and staffing levels as high level constraints on their enforcement ability. This has potential implications for their enforcement approach and associated business compliance burdens (table 8.3).

Table 8.3 **Enforcement constraints: 2008-09**

Level of constraint on enforcement ability

	Agency	*Able to fully enforce regulations*	*Budget*	*Staff*	*Policy interpret-ation*	*Regulatory respons-ibility*	*Enforcement powers*	*Other*
Cwlth	AQIS	Yes	High	Med	Low	Low	Low	nr
NZ	NZFSA	No	Med	Med	Low	Low	Low	nr
NSW	NSWFA	No	High	Low	Low	Low	Low	nr
Vic	Vic Health	Yes	na	na	High	na	Med	nr
	PrimeSafe	Yes	Med	Med	Med	Med	Med	nr
	DFSV	Yes	Med	Med	Med	Med	Low	nr
Qld	Qld Health	No	High	Med	Low	Low	Med	nr
	SFPQ	Yes	Med	Low	Low	Low	Low	nr
SA	SA Health	No	Med	Med	High	Med	High	High[a]
	PIRSA	Yes	Low	Low	Low	Low	Low	nr
	DASA	Yes	Low	Med	Low	Low	Low	nr
WA	WA Health	Yes	High	Med	Low	Low	Low	nr
Tas	Tas Health	No	High	High	Low	Low	Low	nr
	Tas DPI	No	High	High	Med	Low	Med	Med[b]
	TDIA	Yes	Low	Low	Med	Low	High	nr
NT	NT Health	No	High	Med	Low	Low	Med	High[c]
	NT Meat	Yes	Med	Low	Low	Low	Low	nr
	NT Fisheries	No	High	High	nr	High	nr	High[d]
ACT	ACT Health	No	Med	High	Low	Low	Low	nr

Med Medium. **na** not applicable. **nr** no response. [a] SA Health nominated the absence of legislative local council responsibility for food safety and the inability to collect, manage and analyse data from local councils as high level enforcement constraints. [b] Tasmanian DPI noted that the state's low third party auditor capacity was a medium level constraint on its enforcement capacity. [c] NT Health nominated distance/remoteness as a major constraint on enforcement. [d] NT Fisheries nominated risk analysis as a high level enforcement constraint.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

The NSWFA, Queensland Health, Western Australian Health, Tasmanian Health and Human Services, Tasmanian Primary Industries and Northern Territory Primary Industries (Fisheries), all nominated budgetary issues as high level constraints. Staffing constraints were viewed with the same level of importance by Tasmanian Department of Primary Industries, Parks, Water & the Environment, Tasmanian Health and Human Services, Northern Territory Department of Regional Development, Primary Industry, Fisheries and Resources (Fisheries) and ACT Health. Some agencies also indicated low levels of private capacities, for example, Tasmanian Primary Industries noted the state's low third party auditor capacity constrained its ability to fully enforce food safety regulations (see below).

Table 8.4 **Food safety income components: 2008-09**

Per cent of total food safety income

	Agency	Lice-nce fees	Registr-ation fees	Administ-ration fees	Inspe-ction fees	Audit fees	Accred-itation fees	Fines	Other income	Appropr-iation[a]	Total food safety income
Cwlth	AQIS[b]	1.2	3.0	0.0	76.1	5.9	0.0	0.0	9.2[c]	4.6	100.0
NZ	NZFSA	0.7	2.4	0.0	na	93.1	0.2	0.0	3.5[c]	0.0	100.0
NSW	NSWFA	22.5	0.0	0.0	0.0	4.7	0.0	1.2	4.0	67.5	100.0
Vic	Vic Health	nr	nr	nr	nr	nr	nr	0.0	nr		nr
	PrimeSafe	92.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	7.2	100.0
	DFSV	93.5	0.0	0.0	0.0	6.5	0.0	0.0	0.0	0.0	100.0
Qld	Qld Health	0.0	0.0	32.4	0.0	0.0	67.6	0.0	0.0	0.0	100.0
	SFPQ	na	na	0.0	na	20.6	41.8	0.4	37[d]	0.0	100.0
SA	SA Health	na	na	1.1	na	4.7	na	0.6	0.0	93.6	100.0
	PIRSA	0.0	0.0	0.0	0.0	13.3	52.5	0.0	6.9	27.3[e]	100.00
	DASA	0.0	55.4	0.0	0.0	32.1	0.0	0.0	0.0	12.5	100.0
WA	WA Health	0.3	0.1	0.7	0.0	0.0	0.0	0.0	0.2[f]	98.8	100.0
Tas	Tas Health	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	100.0
	Tas DPI[g]	2.3	0.0	0.0	0.0	3.5	0.0	0.0	0.0	94.2	100.0
	TDIA	99.2	0.0	0.8	0.0	0.0	0.0	0.0	0.0	0.0	100.0
NT	NT Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	100.00	100.0
	NT Meat	5.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	94.9	100.0
	NT Fish'ries	82.1	0.0	0.0	0.0	0.0	0.0	17.9	0.0	0.0	100.0
ACT	ACT Health	nr	nr	nr	nr	nr	nr	nr	nr		nr

na not applicable. **nr** no response. [a] Appropriation income was estimated as the difference between total food safety fee income and total food safety income. [b] The Australian Government provided a 40 per cent subsidy to businesses for export certification and inspection in 2008-09 (see chapter 14 and appendix C). It is not clear how that subsidy is reflected in the figures shown for AQIS. [c] Other income for AQIS and the NZFSA was related to certification activities. [d] Other income for SFPQ included a grant of $1.9 million. [e] Other income for PIRSA was related to fee for service activities. [f] Other income for WA Health included brand hire. [g] Tas DPI commented that fee income is directed to consolidated revenue.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

The means of raising the funds needed to administer and enforce regulation also impacts on the burdens borne by business. The more the cost of regulatory oversight is recovered through fees and charges on food businesses the greater is the comparative financial burden placed on those businesses. As shown in table 8.4, primary production activities generally in New Zealand, Victoria and Queensland and dairy businesses in Victoria, South Australia and Tasmania contributed a much higher share (in some cases 100 per cent) of the cost of their regulation than elsewhere. Assuming a consistent level of regulatory effectiveness, this suggests the compliance burden on food businesses in those jurisdictions was higher (and taxpayer funding lower) than in New South Wales, Tasmania (for food activities other than dairy) and the ACT. The issue of when businesses or taxpayers should

cover the cost of regulation is complex and has been analysed by the Commission in its report on *Cost Recovery by Government Agencies* (PC 2001).

8.4 Enforcement approaches and practices

The different approaches adopted by agencies to achieve regulatory compliance can impact differentially on business costs. Where bodies regulate well, businesses benefit from: having regulators focused on high risk areas; inspectors who can assess alternative ways to meet performance and outcome based regulation; and advice on how to comply. Indicators of good administration and enforcement by regulators include:

- consistent and clear interpretations of the same laws and legal definitions
- flexible regulatory styles (box 8.1)
- well-trained and experienced inspectors and auditors able to enforce responsively and to assess alternative ways to achieve compliance (box 8.1)
- the provision of education, training and information to facilitate compliance (box 8.1)
- the application of regulatory resources based on risk analysis
- having and using a range of regulatory instruments, commensurate with the circumstance and risk to the public
- providing low cost and independent appeal mechanisms
- being transparent about policies and reporting on past practices and outcomes.

The more regulators adopt these best practice techniques, the less will businesses be subject to unnecessary regulatory burdens. Differences in: the level and types of fees and charges; the frequency and duration of audits and inspections; and the extent of regulatory duplication are also likely to reflect differences in the regulatory compliance burden placed on food businesses.

Box 8.1 **Alternative enforcement approaches**

Proactive v reactive

The *proactive-reactive* framework refers to whether a regulatory agency seeks to modify behaviour before or after a breach occurs. Proactive approaches encourage (via education/training/information), persuade and highlight ways to achieve (via inspection) or require (via licensing) compliance before a breach occurs. They are preventative. In contrast, reactive approaches involve following up complaints, adverse inspection results or adverse food safety outcomes. Of course, in some respects, reactive strategies can have proactive effects where action to rectify a breach has a broader educative or deterrent effect.

At a general level, proactive strategies have advantages for matters where: breaches are hard to identify; the costs of a breach are very high; and initial mistakes are difficult to subsequently rectify.

Combative v cooperative v responsive

The *combative-cooperative* continuum refers to whether regulatory agencies adopt a threatening or friendly posture in dealing with those regulated. Combative approaches often involve the threat of severe penalties (fines, prosecution or closure) as the incentive for compliance. This has been described as regulating with 'a big stick'. Combative approaches may alternatively involve a frequently used 'little stick'. The central idea behind a combative approach is deterrence, which may manifest itself in a number of ways, often making it uneconomical for business not to comply with the regulations. In contrast, cooperative approaches focus on education, advice, working together, appealing to self-interest and mutual interdependence.

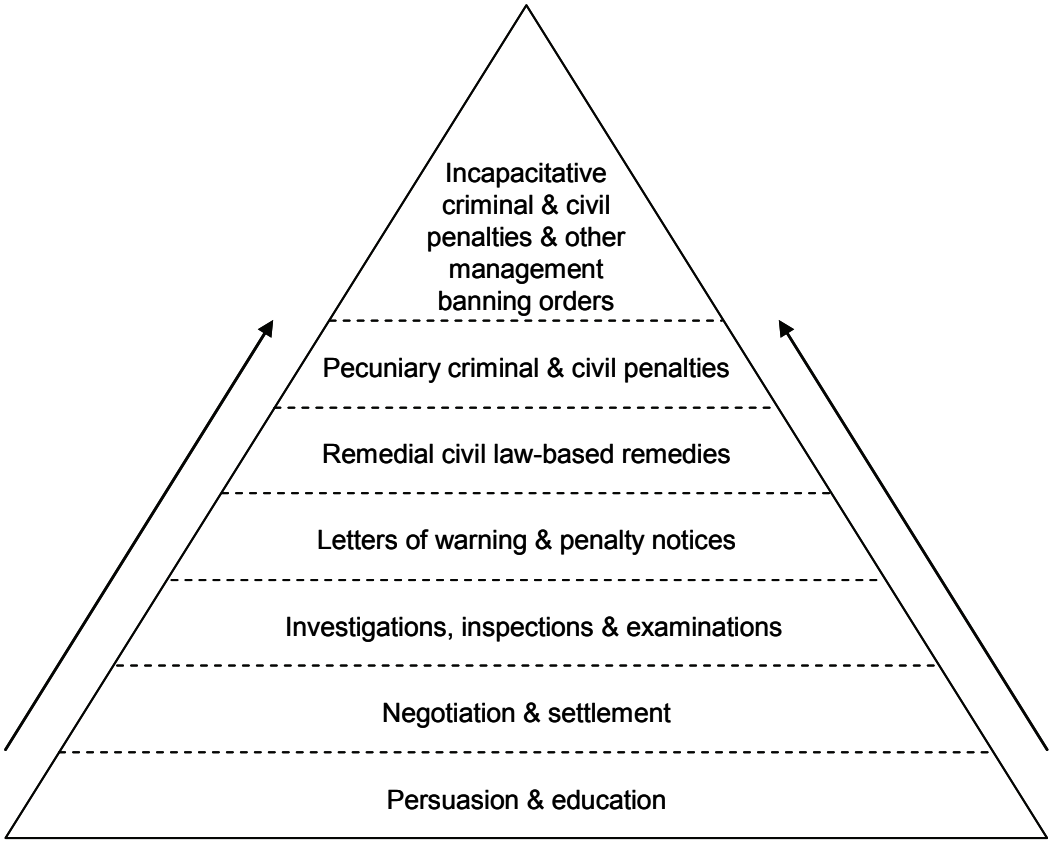
The most sophisticated regulators use combative and cooperative responses dependent on the nature of the non-compliance, as typified in the Braithwaitean enforcement pyramid (figure 8.1). This approach has been described as 'speaking softly but carrying a big stick'. The nature of the response that is appropriate in any particular situation will depend on factors like: variations in the cost of compliance for different businesses; the cooperativeness of business; the type of regulation being enforced; agency resource levels; available penalties; visibility of violations; the rate of firm turn-over; and aspects of the legal system.

Prescriptive v discretionary

The *prescriptive-discretionary* framework refers to the flexibility agencies show in interpreting regulations. While heavily influenced by the type of regulation (prescriptive, outcome or principle-based) being enforced, legalistic/prescriptive approaches entail strict enforcement and letter-of-the-law interpretation, whereas a discretionary approach is more tempered and able to assess alternative means of compliance.

Source: Office of Regulation Review (1995).

Figure 8.1 **Example of an enforcement pyramid**



Source: Gilligan, Bird and Ramsay (1999).

In examining differences in enforcement styles used by regulators, the survey sought information on the:

- prioritisation given to different enforcement activities
- types and hierarchy of measures used to achieve compliance with food laws
- steps used to promote a culture of compliance among food businesses
- developments aimed at reducing compliance burdens for business.

As well as information from the questionnaire detailed below, the Commission held a wide range of visits, including with the regulators. Regulators demonstrated a high level of knowledge and capacities at these meetings. In contrast to the old-fashioned image of public servants treating inspection with a 'tick and flick' mentality and using combative techniques to achieve compliance, administrators consistently demonstrated they were not only interested in achieving the social objectives set to them but also in doing this at low cost to business. They demonstrated knowledge of and capacities in: providing assistance to businesses to comply with the law; focusing regulatory efforts on products with the highest inherent risks and on those

businesses most likely to offend (so that demonstrated compliers receive the minimum of inspections, etc); assessing alternative ways to achieving regulatory outcomes and applying enforcement responses which are flexible to the nature of the breach and the motivation of the business to comply.

Priorities

Resourcing constraints require agencies to prioritise their enforcement activities (table 8.5). Survey responses highlighted the emphasis regulators place on pro-actively monitoring health risks through auditing and inspecting food businesses and, to a lesser extent, licensing, registration and accreditation functions. Although education and advice (another preventative measure) featured less prominently in the allocation of resources to specific activities, to some extent this reflects the dual role played by on-site surveillance. As the NSWFA commented:

> During audits, auditors do not just check compliance with legislative requirements. A lot of time is spent educating licence holders and explaining requirements. Therefore, about 50% of the time spent auditing should be read as time also spent educating.

But it also reflects resource limits with a number of agencies nominating food business education and research as areas they would target if they were allocated additional resources.

Complaints (a *reactive* measure) also rated highly in both subjective judgements regarding priority setting and in the allocation of resources to that activity. The NSWFA and NT Health stood out among their peers as investigating every complaint received in 2008-09. Other reactive responses, such as the investigation of disease outbreaks associated with food-borne pathogens and food safety recalls, were consistently rated as a high priority by all agencies responsible for these activities.[2] Of course, if the preventative method works well, then reactive responses should not be required as often even though a high priority is placed on them when they are needed.

[2] Note that areas nominated as a low priority by some agencies (such as labelling) may simply reflect primary responsibility for that function being allocated to another agency.

Table 8.5 **Enforcement priorities: 2008-09**

Level of priority given to enforcement activity

	Agency	*Licensing*	*Registration*	*Accreditation*	*Audits*	*Inspections*	*Education / advice*	*Sampling / testing*	*Recalls*	*Complaint*	*Investigations*	*Labelling*	*Other*
Cwlth	AQIS	Low	High	Med	High	High	Med	High	Low	Low	High	Med	nr
NZ	NZFSA	Med	Med	Low	Med	Med	Med	Med	High	Med	High	Low	nr
NSW	NSWFA	Med	na	na	High[a]	High	Low	Med	High	Med/ High	High	Med	nr
Vic	Vic Health	na	na	na	nr	High	Low	Med	High	High	High	Med	High[b]
	Prime Safe	High	na	na	na	High	High	High	nr	High	High	nr	nr
	DFSV	High	na	High	High	Med	Med	Med	High	High	High	Med	nr
Qld	Qld Health	na	na	na	Med	nr	High	High	High	Med	High	Med	nr
	SFPQ	na	na	High	High	Low	High	High	Low	nr	nr	Low	High[c]
SA	SA Health	na	na	na	High	High	High	High	High	Med	High	Med	High[d]
	PIRSA	na	na	High	High	High	Med	Med	High	High	High	Med	nr
	DASA	na	Med	na	High	Low	Med	High	High	High	High	Low	nr
WA	WA Health	Med	Med	na	High	Low	Med	Med	High	Med	High	Low	nr
Tas	Tas Health	Low	Low	Med	Low	Low	High	Low	High	High	High	Med	nr
	Tas DPI	High	na	High	High	High	Med	Med	nr	Low	na	Low	Med[e]
	TDIA	High	na	na	High	na	Low	High	High	Med	High	High	nr
NT	NT Health	na	High	na	na	High	Med	Med	High	High	High	High	nr
	NT Meat	Med	nr	Med	High	High	Med	Med	High	High	High	High	nr
	NT Fish'ries	High	nr	nr	nr	nr	High	nr	nr	nr	nr	nr	nr
ACT	ACT Health	High	High	na	na	High	High	High	nr	High	High	Low	nr

Med Medium. **na** not applicable. **nr** no response. **a** NSWFA noted that about 50 per cent of the time spent on audits is used to educate the business on food safety compliance. Also, most complaints are assessed as either medium or high priority. **b** Victorian Health nominated food standards development as a high enforcement priority. **c** SFPQ nominated the development of cost effective compliance strategies as a high enforcement priority. **d** SA Health noted that the most important activities should facilitate prevention of food safety issues/outbreaks as this will ultimately reduce the need to respond reactively. **e** Tasmanian DPI nominated the investigation of illegal activity as a medium level enforcement priority.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

How regulatory agencies allocate their time across their different functions differs dramatically (table 8.6), reflecting differences in the:

- instruments available to each agency

- nature of activities and products being regulated and inherent risks they present
- philosophies and strategies of the agencies.

For example, the NZFSA focuses solely on auditing, and the NSWFA, which also operates an integrated model, also spends a large portion of its time on auditing. In terms of product-specific regulators, DASA and Tasmanian Dairy devote most of their resources to auditing functions, in contrast to their Victorian counterparts.

The Northern Territory and the ACT spend a lot more time than other health agencies on inspections because they must perform roles fulfilled by local government in all other jurisdictions. Most other health departments oversee and supplement the regulatory activities of their local councils.

While two of the three bodies which specialise in regulating dairy food safety (South Australia and Tasmania), focus their efforts on auditing reinforced with some sampling, the other dairy specialist (Victoria) spreads its time fairly evenly across all the activities with more time being spent on sampling than any other administrative or enforcement activity. In contrast, PrimeSafe Victoria would appear to have both a different set of instruments at its disposal and a different enforcement strategy because it spends equal amounts of time on just 5 of 12 possible enforcement activities: licensing; inspections; providing information; complaints and investigations. Similarly, the regulatory role played by Northern Territory Primary Industries (Fisheries) solely concerns the licensing of fishers.

While a high level of attention is consistently paid to food safety controls through audits and inspections of food safety programs, premises and equipment, outcome-based indicators of food safety, such as the taking and testing of food samples, appear to have received less attention with most agencies allocating less than 10 per cent of their resources to this activity. Some jurisdictions touched on the reasons for this when asked how they would allocate additional resources. Tasmanian Health and Human Services, for example, said it would devote more resources to:

> Undertaking food sampling for compliance with the Code and undertaking research into the cause and cost of food borne illnesses and developing resources for food safety education.

Table 8.6 **Resource allocation by activity : 2008-09**

Per cent of time available

	Agency	Licensing	Registration	Accreditation	Audit export	Audit other	Inspection	Educ'n /advice	Sample/ test	Recall	Complaint	Investigation	Labelling	Oth'r
Cwlth	AQIS	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
NZ	NZFSA	0	0	0	90	10	0	0	0	0	0	0	0	0
NSW	NSWFA	2	0	0	0	60[a]	20	0[a]	2	1	13	2	0	0
Vic	Vic Health	0	0	0	0	0	5	5	10	15	30	20	15	0
	Prime Safe	20	0	0	0	0	20	20	0	0	20	20	0	0
	DFSV	9	1	9	8	6	5	9	15	1	2	8	1	27[b]
Qld	Qld Health	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
	SFPQ	na	na	15	na	35	5	5	5	0	10	5	0	20
SA	SA Health													
	Safety/ audit	na	na	na	na	90	0	5	0	0	0	0	0	5[c]
	Surveillance	0	0	0	0	0	0	15	40	5	10	10	20	0
	Regional services	0	0	0	0	5	88	5	0	0	2	0	0	0
	PIRSA	0	0	2	0	80[a]	5	0	1	nr	2.5	2.5	0[a]	7[d]
	DASA	0	10	0	10	50	0	0	5	0	0	5	0	20[e]
WA	WA Health	0	0	0	2	18	8	12	14	3	6	5	5	29[f]
Tas	Tas Health	5	0	0	0	0	0	50	0	15	10	10	10	0
	Tas DPI	10	0	5	0	50	15	5	5	0	5	5	0	0
	TDIA	10	0	0	25	50	0	5	3	0	2	3	2	0
NT	NT Health	na	10	na	na	na	50	20	8	1	5	5	1	na
	NT Meat	10	10	15	0	25	18	0	2	0	5	10	5	0
	NT Fisheries	100	0	0	0	0	0	0	0	0	0	0	nr	0
ACT	ACT Health	3	0	0	0	0	46	4	0	2	15	1	0	29

na not applicable. **nr** no response. [a] NSWFA noted that about 50 per cent of the time involved in conducting audits should be treated as time also spent on education. PIRSA noted that education/advice and labelling activity would be included in audit activity. [b] DFSV noted that 26.6 per cent of resources involved inter agency activities, national policy and implementation input, importing country and regulatory reviews. [c] SA Health indicated that 5 per cent of the resources used by the food safety and audit team (shown in the other category) were allocated to approved auditor and auditing system set up, management and oversight under the SA Health Food Act. [d] PIRSA noted that 7 per cent of resources shown in the other category were allocated to professional development. [e] DASA noted that 20 per cent of resources (shown in the other category) were allocated to administration. [f] WA Health noted that 29 per cent of resources (shown in the other category) were allocated to safety activities.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

On the other hand, for some agencies sampling appears to play a relatively small but essential role. For example, SFPQ uses accreditation of food safety programs and management systems as a means by which to educate and assist businesses to identify all the inherent risks, to assess their significance, devise ways to manage them and establish testable outcomes that demonstrate their risk management system is working. Sampling plays a crucial role in ensuring outcomes have been validated. In addition to sampling activities undertaken directly by SFPQ, the agency also used testing and sampling results provided by industry (specifically dairy factories during the reference period) to validate food safety outcomes.

Importantly, most regulators (the exceptions being AQIS, Queensland Health and Western Australian Health) classified businesses according to the risks posed to public health in 2008-09 (though as discussed below, the application of those classifications varied significantly).[3] Where businesses were classified according to risk, this was also used as the basis for audit and inspection frequency in 2008-09 (table 8.7).

The compliance history of individual food businesses also featured prominently in audit and inspection programs with most regulators using this trait to target their enforcement activity. The exceptions were DASA and Western Australian Health.[4]

In contrast, risk classifications were rarely used to determine the fees and charges for different businesses. Only Victorian Health, PIRSA and ACT Health set fees according to risk in 2008-09.[5] This suggests that the charges on businesses in those jurisdictions are more likely to reflect the actual cost of their regulation than food businesses operating elsewhere.[6]

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3 The New Zealand Food Safety Authority noted that businesses were classified according to risk in 2007-08 but these classifications were not used to determine fees or audit frequency in that year.

4 ACT Health noted that compliance history is used to determine audit frequency for those businesses that are required to complete FSPs under chapters 3 and 4 of the ANZFS Code (ie wholesalers of oysters, manufacturers of fermented meats and food businesses that prepare food for vulnerable populations). Compliance history is not used to determine inspection frequency for other food businesses (see chapter 7).

5 The NSWFA commented that it would introduce a risk-based fee system shortly.

6 Registration fees charged for a food business under the ACT Food Act 2001 vary from $150 (high hazard), $100 (medium hazard) and $50 (low hazard) and are unlikely to reflect differences in the actual risks posed by different business classifications.

Table 8.7 **Use of risk profiling: 2008-09**

Risk based activities

	Agency	*To classify businesses*	*Fee setting*	*Audit/inspection frequency*	*Compliance history*
Cwlth	AQIS	×	na	na	✓
NZ	NZFSA	✓	×	✓	✓
NSW	NSWFA	✓	×[a]	✓	✓
Vic	Vic Health	✓	✓	✓	nr
	PrimeSafe	✓	×	✓	✓
	DFSV	✓	×	✓	✓
Qld	Qld Health	×	na	na	na
	SFPQ	✓	×	✓	✓
SA	SA Health	✓	×	✓	✓
	PIRSA	✓	✓	✓	✓
	DASA	✓	nr	✓	×
WA	WA Health	×	×	×	×
Tas	Tas Health	na	na	nr	na
	Tas DPI	✓	×	✓	✓
	TDIA	✓	×	✓	✓
NT	NT Health	✓	na	✓	✓
	NT Meat	✓	nr	✓	✓
	NT Fisheries	nr	×	✓[b]	nr
ACT	ACT Health	✓	✓	✓	✓

na not applicable. **nr** no response. [a] NSWFA commented that currently fees are charged on the basis of sector and industry but a system based on activity type (or risk) and employee numbers will shortly be introduced. [b] NT Fisheries noted that enforcement of the Northern Territories Fisheries Act was undertaken by other agencies (NT Police and Fire and Emergency Services).

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

As noted above, there was considerable variability in the proportion of businesses allocated to each risk classification across jurisdictions (which may influence audit and inspection frequency and/or duration). In particular:

- smallgoods manufacturers — Queensland classifies most (97 per cent) as medium risk while other jurisdictions place all these activities in the high risk category
- *poultry* — Victoria and Queensland classify all poultry businesses as medium risk while New South Wales and South Australia grade all such businesses as high risk
- *seafood* — low risk in Victoria and Tasmania and medium risk in New South Wales
- *abattoirs* — low risk in the Northern Territory, medium risk in Queensland and Tasmania, high risk elsewhere

- *meat transport* — low risk in Queensland and South Australia and medium risk in New South Wales and the Northern Territory
- *dairy farms* — low risk in Victoria, Queensland and South Australia and medium risk in New South Wales and Tasmania
- *dairy transport* — low risk in Victoria, South Australia and Tasmania and medium risk in New South Wales.

Compliance tools and strategies

As touched on earlier, the survey highlighted the importance of cooperative mechanisms such as education and advice as the key measures used to improve food safety awareness and address specific compliance breaches across all jurisdictions (table 8.8). Comments from respondents highlighted the onus placed on cooperation in achieving compliance with food safety laws. For example, SFPQ said:

> The approach to the use of enforcement tools is to encourage industry to comply with the legislation and to use enforcement tools such as prosecution as a final resort.

ACT Health similarly commented that it:

> … practises a philosophy of educating food business operators. The first warning may be verbal or written before formalised notice provisions are activated. It is considered better to encourage compliance with legislative and standards requirements. Enforcement actions such as prosecution are considered a last resort.

It is thus surprising that the use of education or advice is not reflected more consistently across the regulators.

The Commission seeks further commentary on the reasons for this. It could be that education is used more than is reflected in these figures and further information can support this.

Table 8.8 **Use of enforcement tools : 2008-09**

	Agency	*Educate /advice*	*Verbal warning*	*Written warning*	*Improve-ment notice*	*Prohibit-ion order*	*Licence cancellation*	*Penalty notice*	*Fine*	*Infringe-ment notice*	*Enforceable undertaking*	*Prosec-ution*	*Adverse publicity*	*Oth'r*
Cwlth	AQIS											1		
NZ	NZFSA								**a**					
NSW	NSWFA	nr	nr	215	876	8	0	220[b]		na	0	12	1 215	na
Vic	Vic Health	~1 000		160			2[c]							
	Prime Safe											2		
	DFSV	150+	4	2	527	3	0				38	0		
Qld	Qld Health													
	SFPQ	2 351	92	33	32[d]		2			0	32[d]	3		
SA	SA Health		365	262	1	0		4[e]				0		
	PIRSA	Many		Many		0	0			6		0		
	DASA	Major	Used	Used			0		0			0		
WA	WA Health													
Tas	Tas Health[f]													
	Tas DPI[g]		1	1	0	0	0	0	0	0	0	0	0	
	TDIA	350	25	8	0	2	4	0	0	0	4	0	0	
NT	NT Health	nr	nr	nr	17				na	na	0	0	na	
	NT Meat	9		2	1	6	0	1	0	0	0	0	0	
	NT Fisheries													
ACT	ACT Health		nr	nr	nr	2	0	0	1	0	0	1	nr	

nr Not recorded. **na** not applicable. **a** NZFSA noted that fines can only be imposed by a court. **b** NSWFA noted that it does not distinguish between penalty notices, fines and infringement notices (monetary fines are imposed via penalty notices). **c** Vic Health noted that business closure was used in place of licence cancellation. **d** SFPQ noted that it used compliance notices which perform a similar function to improvement notices and are enforceable undertakings. **e** SA Health noted that an expiation notice was used in place of a penalty notice. **f** Tas Health commented that while all these tools are theoretically available, it relied on local councils to undertake these tasks. **g** Tas DPI noted that education and advice is used regularly (as shown in table 8.9) even though DPIPWE does not record its use in a form that can be quantified. This comment is likely to be equally relevant to other jurisdictions that did not quantify their use of this instrument.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

With a similar suite of enforcement tools generally being available to regulators (the main exceptions being financial penalties, enforceable undertakings and adverse publicity orders) the less frequent use of combative tools mainly reflected the graduated approach used to rectify compliance breaches (the adoption of an enforcement pyramid — figure 8.1).[7] Most if not all agencies indicated the use of a formal or informal enforcement pyramid with the focus on using cooperative responses unless they prove ineffective with a particular business at which point a more combative approach becomes appropriate, using instruments higher up the pyramid. An example of a more combative action is provided by Tasmanian Primary Industry's revocation of approval for an egg producer to operate on the grounds of sub-standard production and hygiene practices during 2007. That regulatory response led to corrective action being taken by the producer in order to regain approval to operate (Tasmanian Primary Industries, pers. comm. 13 October 2009). For example, the NZFSA commented on its enforcement approach in the following terms:

> Where possible we operate an escalating response to non-compliances. This may mean that we inform the operator that what they are doing is wrong and how they can fix it. This may be through a visit, a letter or a warning notice. Continued non-compliance means that we may seize product and/or prosecute.

Similarly, South Australian Health said that it:

> … uses a graduated and proportionate response commensurate with risk to the enforcement of breaches of the Food Act which is consistent with the approach proposed in the draft Implementation Sub-Committee (ISC) Enforcement Guideline.

The NSWFA was more specific:

> Enforcement officers use a graduated response for alleged breaches of food law that may increase in severity depending on the circumstances. Factors taken into consideration include, but are not limited to:
>
> - whether a warning has previously been given
> - whether the breaches pose a serious risk to public health or significantly mislead consumers, and
> - the number of breaches or repeat offences.

[7] Only one regulator, SA Health, said enforcement powers were a high level constraint on its ability to enforce food safety regulations. PrimeSafe, Tasmanian Primary Industries and Queensland and Victorian Health nominated enforcement powers as a medium level constraint on their enforcement ability. Victorian Health also commented that the enforcement powers under the *Food Act 1984* do not adapt well to outcome-based Standards relating to issues such as the making of product claims which are essentially about marketing.

Classically, this is reflected in the figures for a number of agencies — Victorian Health, Dairy Food Safety Victoria, SFPQ, and the TDIA — where education or advice is used far more than verbal warnings, and verbal warnings are used far more than written warnings. Interestingly, the NSWFA and DFSV use improvement notices much more than either written or verbal warnings.

Information supplied on the number of businesses fined, the value of fines collected, number of prosecutions initiated and the breadth and use of adverse publicity powers suggests that the regulatory stance adopted by the NSWFA, in particular, is more combative than their regulatory counterparts (tables 8.8 and 8.13). As combative activity is still low relative to the number of regulated food businesses in that jurisdiction, it would appear that it is used more as a response of last resort and as a signalling device to other food businesses about the consequences of non-compliance and thus is part of the regulators' tool kit rather than their standard strategy. Although, as discussed in chapter 7 and as reflected in table 8.8, New South Wales makes extensive use of adverse publicity that may sometimes result in costs to affected businesses far outweighing the size of the breach. It also uses fines (penalty notices) where all other agencies never use them or use them rarely, sometimes reflecting either not having the remit to issue fines or needing to prosecute before a fine can be levied.

The NSWFA, DFSV and SFPQ are the only agencies which use improvement/compliance notices on a regular basis, and DFSV, SFPQ and the TDIA are the only agencies to have used enforceable undertakings at all during 2008-09.[8]

The limited use by all agencies of instruments at the top of the enforcement pyramid (prohibition notices, licence cancellation and prosecution) is also reflective of agencies which generally are applying a responsive enforcement strategy so only the most egregious non-compliances receive extreme penalties.

The importance of education/advice and, to a lesser extent, media strategies (including newsletters, pamphlets and web-based material) also carried over into responses on measures used to improve the culture of compliance among food businesses (table 8.9).

8 SFPQ noted that it used compliance notices which perform a similar function to improvement notices and are enforceable undertakings.

Table 8.9 **Influencing the culture of compliance: 2008-09**

Level of use

	Agency	Education	Media strategies	Awards	Incentives	Training - free	Training – fee based	Other
Cwlth	AQIS	Regularly	Regularly	Not used	Not used	Not used	Not used	Regularly[a]
NZ	NZFSA	Regularly	Regularly	Rarely	Rarely	Not used	Rarely	nr
NSW	NSWFA	Regularly	Regularly	Not used	Regularly[b]	Regularly	Not used	nr
Vic	Vic Health	Rarely	Regularly	Not used	nr	nr	nr	nr
	Prime Safe	Regularly	Not used	Not used	Not used	Not used	Not used	nr
	DFSV	Regularly	Rarely	Not used	Rarely	Not used	Not used	Regularly[c]
Qld	Qld Health	Regularly	Regularly	Not used	Not used	Not used	Not used	Not used
	SFPQ	Regularly	Regularly	Regularly	Regularly	Regularly[d]	Not used	Not used
SA	SA Health	Regularly	Regularly	Not used	Not used	Regularly	Not used	nr
	PIRSA	Rarely	Regularly	Not used	Regularly	Regularly	Not used	nr
	DASA	Regularly	Rarely	Not used	Not used	Not used	Rarely	nr
WA	WA Health	Regularly	Regularly	Rarely	Not used	Rarely	Not used	nr
Tas	Tas Health	nr	nr	nr	nr	nr	nr	nr
	Tas DPI	Regularly	Regularly	Not used	Regularly	Not used	Not used	nr
	TDIA	Regularly	Rarely	Not used	Rarely	Rarely	Not used	Regularly[e]
NT	NT Health	Regularly	Regularly	Not used	Not used	Regularly	Not used	nr
	NT Meat	Regularly	Not used	Not used	Not used	Not used	Not used	Not used
	NT Fisheries	Regularly	Regularly	nr	nr	nr	nr	nr
ACT	ACT Health	Regularly	Regularly	Not used	Not used	Not used	Not used	nr

nr no response. [a] AQIS noted that other measures included AQIS/industry workshops, model food safety systems, guidelines, market access advice, industry advice notes and consultation through industry consultative committees. [b] NSWFA noted that incentives take the form of reduced audit frequency for good performance. [c] DFSV noted that other measures used to influence the culture of compliance included attendance at industry forums and sponsorship of industry events. [d] SFPQ noted that it offers regular free training for approved food safety auditors regarding legislative requirements and encourages businesses to adopt electronic record keeping systems which can be uploaded onto the SFPQ website. [e] Tasmanian Dairy noted that it referred food businesses to other organisations to assist them with compliance.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

Although not widely used, other cooperative mechanisms such as incentives or awards featured in the responses from the NZFSA, NSWFA, SFPQ and PIRSA (where incentives took the form of reduced audit frequency or duration for good performance). New South Wales, Queensland, South Australia and the Northern Territory were the only jurisdictions regularly providing training services to food businesses (all of which did so without charge).

Measures specifically aimed at reducing business compliance burdens

Given criticisms from food business interests surrounding issues of inconsistent interpretation, implementation and duplication of enforcement effort, the survey sought information on measures regulators employed to reduce or avoid such problems. Every respondent reported at least one initiative (and in most cases multiple approaches) aimed at facilitating the uniform interpretation of food regulations within their respective agency (table 8.10).

Supervisory oversight, structured training and, to a lesser extent, staff rotation were the main avenues by which better regulatory outcomes were pursued. The NZFSA, SFPQ and the NSWFA stood out as employing the widest range of measures to achieve uniformity. In a more specific context, the resources devoted to the training and professional development of food safety field staff showed PrimeSafe (100 hours per annum on average), the NSWFA (100 hours) and the NZFSA (80 hours) as the regulators doing the most in this area.

Differences in salary/experience/qualification levels of regulatory staff may also provide an indirect indication of the capacities of regulators to provide useful advice, assess alternatives means of compliance and successfully implement a responsive approach to enforcement (table 8.11). There was considerable variation in these indicators across jurisdictions. AQIS stood out in terms of providing the highest average salaries for auditors (and for inspectors along with the NZFSA and NSWFA). Food safety officers in DASA and PIRSA received the lowest starting and (among the lowest) average salaries (where qualification requirements also appeared to be less specialised). Interestingly, inspectors and auditors in those two agencies also had more experience, on average, than many field staff in higher paid jurisdictions.

Table 8.10 **Measures to facilitate uniform interpretation : 2008-09**

	Agency	*Supervisory oversight*	*Structured training*	*Staff rotation*	*Secondment*	*Peer review*	*Other*
Cwlth	AQIS	✓	✓	×	×	✓	×
NZ	NZFSA	✓	✓	✓	✓	✓	✓[a]
NSW	NSWFA	✓	✓	✓	✓	✓	×
Vic	Vic Health	×	×	×	×	×	✓[b]
	PrimeSafe	✓	✓	×	×	×	×
	DFSV	✓	×	×	×	✓	×
Qld	Qld Health	✓	×	×	×	✓	×
	SFPQ	✓	✓	✓	✓	✓	✓[c]
SA	SA Health	✓	✓	×	×	×	×
	PIRSA	✓	✓	✓	×	✓	×
	DASA	×	✓	✓	×	×	✓[d]
WA	WA Health	✓	✓	✓	×	✓	×
Tas	Tas Health	×	×	×	×	×	✓[e]
	Tas DPI	✓	✓	✓	×	✓	×
	TDIA	✓	✓	✓	×	✓	✓[f]
NT	NT Health	✓	×	×	×	✓	✓[g]
	NT Meat	✓	✓	×	×	×	×
	NT Fisheries	✓	×	×	×	×	×
ACT	ACT Health	✓	✓	✓	×	✓	×

[a] Compliance systems audits. [b] Staff meetings. [c] Internal workshops and auditor training. [d] Verification audits with other states and AQIS. [e] Workshops. [f] Standardisation exercises. [g] Workshops and meetings.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

The issue of consistency was also a common topic of discussion with other core food safety regulators and local governments (to facilitate greater enforcement consistency across councils in the same jurisdiction). Policy interpretation and regulatory gaps and overlaps were nominated by almost every agency as areas in which a dialogue with other regulators was conducted (table 8.12). However, despite these efforts there still appear to be differences in the way regulators interpret and apply food regulation even with respect to the same food product.

The Nutricia case study (box 8.2) illustrates how regulators can vary in their application of the ANZFS Code. Some of the difficulties faced by regulators in applying the ANZFS Code arise due to the manner in which it was drafted. Recognising this, FSANZ has initiated a full review of the ANZFS Code by the Commonwealth Office of Legislative Drafting and Publishing (New South Wales Government, pers. comm., 21 October 2009). The difficulty in interpreting the ANZFS Code, the variability in how it is applied by regulators and the prospect of

differential enforcement actions by regulators creates uncertainty for business and may stifle product innovation and the exploration of business opportunities.

Table 8.11 **Human resources (inspectors and auditors): 2008-09**

	Agency	*Min. qualifications*			*Average starting salary*	*Average salary all current staff*	*Staff turn over*	*Experience*		
		Bach. Science	Other degree	Other	$	$	% per annum	< 3 years (%)	3-10 years (%)	> 10 years (%)
Cwlth	AQIS (inspector)	✓	✓	✓	60 778	85 434	nr	nr	nr	nr
	AQIS (auditor)	✓	✓	✓	75 681	118 709	nr	nr	nr	nr
NZ	NZFSA[a]	✓	✓	✓[d]	60 000	85 000	2	13	50	34
NSW	NSWFA[b]	✓	✓	×	69 800	85 071	8	2	5	93
Vic	Vic Health	nr	nr	nr	nr	nr	nr	nr	nr	nr
	PrimeSafe	×	✓	×	nr	nr	10	0	80	20
	DFSV[a]	×	✓	×	66 056	76 834	14	0	14	86
Qld	Qld Health[c]	✓	×	×	50 000	70 000	nr	nr	nr	nr
	SFPQ (inspector)	✓	×	×	53 800[e]	69 000	0	nr	nr	nr
	SFPQ (auditor)	✓	×	✓[f]	53 800	69 000	0	6	19	75
SA	SA Health (inspector)	✓	✓	✓[g]	56 000	60 000	30	17	33	50
	SA Health (auditor)	✓	✓	✓[h]	62 000	66 000	0	0	0	100
	PIRSA[a]	×	×	✓[i]	54 000	63 000	0	0	20	80
	DASA[a]	×	✓	✓[f]	46 000	58 000	0	0	33	67
WA	WA Health[b]	✓	×	×	51 601	71 748	10	0	20	80
Tas	Tas Health[c]	✓	×	×	70 000	75 000	0	33	0	67
	Tas DPI[b]	×	×	✓[j]	59 500	63 500	0	0	0	100
	TDIA[a]	✓	✓	✓[k]	52 276	71 000	0	0	67	33
NT	NT Health[c]	✓	×	✓[l]	64 175	68 735	15	17	54	29
	NT Meat[b]	×	×	✓[m]	67 300	80 750	80	0	75	25
	NT Fisheries	nr	nr	nr	nr	nr	nr	nr	nr	nr
ACT	ACT Health[c]	✓	×	×	49 000	78 000	17	41	0	59

nr no response. [a] Responses relate to auditors. [b] Responses relate to inspectors and auditors [c] Responses relate to inspectors. [d] Police training/industry training. [e] 2007-08. [f] Graduate Diploma. [g] Graduate Diploma in Science. [h] Certificate IV. [i] Competencies/training as per national regulatory audit policy. [j] Certificate or Statement of Attainment of relevant Food Safety Auditor Units of Competency plus Certificate IV in Meat. [K] Ongoing professional development. [l] UG2 Diploma in Environmental Health. [m] Graduate Diploma (Meat Safety).

Source: Productivity Commission survey of core food safety regulators (2009, unpublished), RBA (2009).

Table 8.12 **Issues discussed with other regulatory agencies : 2008-09**

	Agency	Regulatory overlap	Regulatory gaps	Enforcement consistency	Policy interpretation	Food recalls	Other
Cwlth	AQIS	✓	✓	✓	✓	✓	×
NZ	NZFSA	×	×	✓	✓	✓	×
NSW	NSWFA	✓	✓	✓	✓	✓	×
Vic	Vic Health	✓	✓	✓	✓	✓	✓[a]
	PrimeSafe	✓	✓	✓	✓	×	×
	DFSV	✓	✓	×	✓	×	×
Qld	Qld Health	✓	✓	✓	✓	✓	×
	SFPQ	✓	✓	✓	✓	✓	✓[b]
SA	SA Health	✓	✓	✓	✓	✓	✓[c]
	PIRSA	✓	×	×	✓	✓	×
	DASA	✓	✓	✓	✓	✓	×
WA	WA Health	✓	✓	✓	✓	✓	×
Tas	Tas Health	✓	✓	✓	✓	✓	×
	Tas DPI	✓	✓	✓	✓	✓	×
	TDIA	✓	✓	×	×	✓	×
NT	NT Health	✓	✓	✓	✓	✓	×
	NT Meat	✓	✓	✓	✓	×	×
	NT Fisheries	✓	✓	×	✓	×	✓[d]
ACT	ACT Health	✓	✓	✓	✓	✓	×

a Specific compliance matters. **b** Issues discussed covered food-borne illness outbreaks and standards development. **c** Incident investigation, as well as standards implementation and interpretation consistency. **d** Legislation development.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

The regulatory response to the levels of cyanogencic glycoside[9] observed in cassava chips in early 2008 provides another example of differing regulatory responses to a common issue. The issue was brought to the public's attention following a warning on consuming cassava chips by the NSWFA (2008f) and a subsequent voluntary food recall by the producers. The warning followed tests conducted by the NSWFA on imported chips and Queensland produced chips — in the first instance, testing of these products would be the responsibility of AQIS and Queensland Health, respectively. The NSWFA requested FSANZ complete an urgent risk assessment on cassava chips which resulted in a standard for the maximum level of cyanogencic glycoside in cassava chips being established.

9 A chemical that can trigger the production of cyanide in the gut.

Box 8.2 Applying the Australia New Zealand Food Standards Code — Nutricia case study

In early 2007, Nutricia Australia Pty Limited ('Nutricia') introduced Karicare Gold Plus infant formula and Karicare Gold Plus follow-on formula (the Karicare products) into the Australian and New Zealand markets. The Karicare products contained fructo-oligosaccharides carbohydrates (FOS) and gluco-oligosaccharides carbohydrates (GOS), in part, to support the digestive system of infants/toddlers.

At the time of the Karicare products' release, there were no explicit provisions within the ANZFS Code for the inclusion (or exclusion) of FOS and GOS in relation to infant and toddler formulas sold within Australia and New Zealand.

Cooperation over the interpretation of the ANZFS Code

The Commission understands that FSANZ, NZFSA and NSWFA consulted with each other (and shared detailed legal advice prepared by FSANZ) regarding the status of the Karicare products. Both NZFSA and NSWFA were in agreement that FOS and GOS were nutritive substances. However, their different responses to the introduction of the Karicare products show how they can differ in their application of the ANZFS Code, even where there is agreement on technical matters of interpretation.

Differing application of the ANZFS Code

Between the Australian and New Zealand food safety regulators and Nutricia, the ANZFS Code was applied to the Karicare products in at least three different ways:

- the NSWFA considered FOS and GOS to be nutritive substances and saw their inclusion in food without prior regulatory approval as a breach of Standard 1.1.1 (Preliminary Provisions - Application, Interpretation and General Prohibitions). Separately, the NSWFA also considered the health claims made on the labels of the Karicare products breached the *Food Act 2003*. Accordingly, the NSWFA began legal action against Nutricia
- the NZFSA, like the NSWFA, considered FOS and GOS to be nutritive substances. However, unlike the NSWFA, Nutricia considered the NZFSA's primary concern was that, without express regulatory approval for the inclusion of FOS and GOS in infant formulas, there was a potential breach of Standard 2.9.1 (Infant Formula Products)
- the food safety regulators of Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory and ACT did not take any action in respect to the Karicare products — suggesting they were either applying the 'home jurisdiction' policy (where the primary responsibility for any regulatory response lies with the jurisdiction where the supplier's registered head office is located) and/or that, from their perspective, the potential breach of the ANZFS Code (or their Food Acts) did not warrant regulatory action such as a recall. According to Nutricia, they considered the products complied with the ANZFS Code.

(continued next page)

Box 8.2 **(continued)**

- In 2006, Nutricia obtained a published view from FSANZ that the GOS in the Karicare products was not considered a Novel Food under Standard 1.5.1 and, as such, no mandatory pre-market approval was required under that standard.

In August 2007, as a result of the differing responses of the NZFSA and NSWFA, Nutricia voluntarily withdrew certain products from sale in New Zealand (the 'Karicare products' only) and New South Wales (all products containing FOS and GOS) — replacing them with substitute products that did not contain FOS or GOS. However, products containing FOS and GOS remained available in all other jurisdictions. The products containing FOS and GOS were subsequently returned to sale in New Zealand and New South Wales following amendments to the ANZFS Code in January 2009.

Sources: FSANZ (2008i); (FSANZ 2008k); New South Wales Government, pers. comm., 21 October 2009; Nutricia, pers. comm., 1 September 2009; South Australian Government pers. comm., 20 October 2009; *Nutricia Australia Pty Ltd v NSW Food Authority [2007] NSWSC 861; Christine Tumney (NSW Food Authority) v Nutricia Australia Pty Ltd; Christine Tumney (NSW Food Authority) v Michael Speare Hocken Sharpe; Christine Tumney (NSW Food Authority Australia Pty Ltd) v Toni Lee Brendish [2008] NSWSC 1382*.

The jurisdictions differed in their responses to FSANZ's risk assessment and the resultant proposed food standard:

- New Zealand supported the proposal (although for a broader range of cassava products than chips)
- Victoria disputed the need for the standard proposed by FSANZ and considered it would be difficult to enforce or comply with the proposed standard in both practical and resource terms
- New South Wales supported the proposal and saw merit in extending to coverage to a broader range of cassava products
- Queensland supported the proposal in principle, however considered further analysis of certain aspects of the proposal was warranted
- South Australia supported the proposal, although it indicated the concentration limits within the standard may need to be amended to levels with which business could comply
- Western Australia supported the proposal, although for a broader range of cassava products than chips. In contrast to Victoria, Western Australia noted the enforcement costs were expected to be nominal (FSANZ 2008n).

Regulators were also specifically asked whether there were any regulatory compliance burdens on food businesses that could be reduced without affecting

food safety outcomes (the concept of minimum effective regulation). Use of third party auditing to reduce audit costs was highlighted by the NSWFA (which is moving toward such arrangements) and Tasmanian Primary Industries as examples of the scope for improvements in this area.

While the survey responses revealed that most regulators did use third party auditors in 2008-09, there were a few exceptions (table 8.18). In a related context, very few agencies recognised the private audit systems employed by industry to ensure the quality and safety of food products from their suppliers. The only exceptions were SFPQ, PIRSA and Tasmanian Primary Industries. The duplication and associated burden involved in separate auditing requirements was a common complaint from business during the course of this study. Tasmanian Primary Industries suggested a possible solution would involve:

> … third party auditors extending their audit scope and providing both proprietary and regulatory reports from a single audit.

Other initiatives suggested to lower compliance burdens included: recognition of jurisdictional food safety systems by national agencies such as AQIS (PrimeSafe), provision of food safety plan templates (NZFSA and Victorian Health), clarifying the roles and responsibilities involved in administering and complying with primary production legislation (Northern Territory Primary Industries — Fisheries), alternatives to, and reducing requirements for, food safety programs (Victorian Health and Queensland Health) and formal recognition of existing accredited food safety programs (Northern Territory Health).

SFPQ provided a detailed response arguing that the Model Food Act legislation adopted by most jurisdictions limited the ability to tailor compliance measures to the circumstances of different food businesses and food sectors. It also suggested alternative surveillance means to those currently employed in other jurisdictions:

> Providing a flexible, proactive approach to monitoring compliance reduces the regulatory burden on food businesses. While the Model Food Bill supports a one-size-fits-all approach to monitoring compliance this limits the ability to use a range of monitoring arrangements that can be adapted for each business or each food sector. This in turn places greater emphasis on prosecutions which are costly and resource intensive for all parties concerned and can result in negative consumer attitudes towards a whole food sector.
>
> The Food Production (Safety) Regulation 2002 enables SFPQ to use a wide range of monitoring arrangements to verify compliance with food safety schemes, including auditing, investigating or verification and sampling. SFPQ are currently implementing monitoring arrangements under the Seafood Food Safety Scheme which will enable businesses to upload electronic data relating to critical control measures undertaken by

the business, such as time/temperature data or results of independent food sampling results. This approach not only reduces the need to audit or inspect businesses but will provide SFPQ with value data to enable SFPQ to more effectively direct resources to areas in the supply chain that are of concern.

Finally, some regulators responded to an invitation to comment on innovative enforcement approaches or practices that could benefit other regulatory agencies (and by extension potentially food businesses). The NSWFA referred to the Food Regulation Partnership established to clarify the roles and responsibilities of local councils, improve coordination and transparency and enable councils to recover costs associated with food safety enforcement.

> In NSW, through the establishment of the Food Regulation Partnership, industry representatives report that greater consistency between local councils and between local councils and the Authority now exists when compared to the situation prior to the Food Regulation Partnership being implemented.
>
> The Food Regulation Partnership operates under the NSW Food Act and defines roles for each of the 152 councils in NSW. The legislation also provides a mechanism whereby councils can recover costs and monetary amounts for cost recovery have been set, ensuring consistency in fees and charges.
>
> In addition, the Authority has set up a Local Government Unit, specifically tasked with assisting local councils and promoting consistency, ultimately benefiting food businesses dealing with multiple councils in the state. The Unit has also developed guidelines for councils in relation to its food regulation activities and pro forma documents and templates have been drafted. (sub. 4, pp. 7-8)

In addition, industry-specific examples of innovative practices were provided by SFPQ. They said:

> An example of this [innovative] approach is the Egg and Egg Products Food Safety Scheme where the 'preferred supplier arrangement' was developed to ensure adequate food safety management while also reflecting the commercial arrangements within the egg industry – a 'win win' situation for industry and the community. SFPQ considers that similar approaches will need to be developed for other industry sectors.
>
> … SFPQ has entered into an alternative compliance arrangement with Parmalat and Dairy Farmers Group where the food safety arrangements for approximately 650 dairy producers are managed through the respective company's food safety arrangements. This approach has substantially reduced the audit costs for these producers while still ensuring that food safety is adequately managed. In addition, it has resulted in SFPQ receiving timely, quantitative data on food safety hazards and allows trends to be established for prioritising food safety risks.

8.5 Direct burdens on business

While the enforcement strategies discussed above reflect how well agencies manage and target their resources to ensure food safety while minimising unnecessary burdens on business, differences in the characteristics of audits and inspections and of fees and charges imposed on most businesses reflect the direct and regular costs imposed on business.

Audit and inspection frequency, duration and basis

Business compliance burdens will be directly affected by the frequency of food safety audit and inspections (table 8.13). The most intense scrutiny of primary production businesses is apparent in South Australia (2.5 visits per non-dairy business in 2008-09), the Northern Territory (around 2 visits per meat business a year in 2008-09) and Victoria (around 1.7 visits for non-dairy activities). Businesses in most other jurisdictions were clustered around an annual inspection frequency except for those in New Zealand which is lower. Interpretation of the unusually low figure recorded for that jurisdiction is complicated by the permanent on-site presence of verification officers in many New Zealand food plants.

Interestingly, overall audit and inspection frequency did not appear to be correlated with differences in the detection of compliance breaches serious enough to warrant an on-site follow-up (the share of total inspections accounted for by re-inspections). For example, the NSWFA, SFPQ and PIRSA shared very similar follow-up rates despite total audit/inspection frequencies varying from 0.75 per business to 2.5 per (non-dairy) business in 2008-09.

Table 8.13 **Activity indicators: 2008-09**

Number

	Agency	Total inspections	Total audits	Re-inspections and re-audits	Complaint initiated inspections	Total inspections/ audits per regulated business	Businesses fined	Prosecutions initiated	Recalls – state/ territory	Recalls - national
Cwlth	AQIS[a]	0	2978	31	0	na	0	1	0	0
NZ	NZFSA[b]	0	122	10	6	0.2	0	7	na	17
NSW	NSWFA	4433	5975	1256	1185	0.75	128	14	18	59
Vic	Vic Health	5	0	1	4	na	na	0	62	62
	PrimeSafe	0	3500	nr	unknown	1.66	na	2	0	0
	DFSV	127	278	11	19	0.07	na	0	3	0
Qld	Qld Health	nr	nr	nr	nr	na	nr	18	nr	nr
	SFPQ	317	8998	1502	150	1.21	3	3	0	0
SA	SA Health[c]	194	154	21	3	na	4	0	11	22
	PIRSA	26	1540	204	32	2.49	6	0	2	0
	DASA	0	647	nr	0	1.07	0	0	0	0
WA	WA Health	32	467	3	2	1.16	0	0	0	30
Tas	Tas Health	0	0	nr	0	na	nr	0	0	0
	Tas DPI[d]	0	169	nr	0	1.4	na	0	0	0
	TDIA	0	550	60	5	1.01	na	0	1	1
NT	NT Health	2 238	0	3	47	1.00	0	0	0	21
	NT Meat	40	30	nr	1	1.94	0	0	0	0
	NT Fisheries	nr	nr	nr	nr	na	2	nr	nr	nr
ACT	ACT Health	1847	0	93	369	0.98	1	1	0	0

na not applicable. **nr** no response. **a** AQIS noted that the audit figures relate to seafood and meat audits only. Re-audits relate to meat only. **b** The NZFSA noted that audit numbers refer to those performed by NZFSA as part of its overall systems audit (for national calibration etc), they do not include audits performed by recognised third party auditors and that verification numbers are complicated as many plants have a permanent on-site presence which could result in 365 inspections per plant per annum plus the monthly and 3 monthly audits. Prosecution activity refers to completions rather than initiations. Fines can only be imposed by a court following a conviction. **c** SA Health noted that the 194 inspections it conducted in 2008-09 were regional inspections in remote areas where there were no incorporated councils. They also commented that the table does not reflect the varied roles of different agencies (including local council activities). **d** Tas DPI noted that the figure for audits per regulated business overestimates the average ongoing frequency of audits due to the implementation process associated with the Seafood Primary Production Standard. Audits during the establishment phase of the new management system have been higher than will be the case in the future. This is also the case for meat processors.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

Audit and inspection duration (and the associated compliance burden) appears to vary considerably across activities. AQIS and the NZFSA (whose activities are dominated by internationally traded food products) conduct longer maximum site visits across a range of activities reported on, but there is otherwise no consistent

duration pattern evident across jurisdictional regulators (table 8.14). Given audit and inspection activities will combine other compliance initiatives (such as education and advice) and depend on business size and process complexity, the results reported here need to be kept in perspective.[10]

The largest differences in duration were evident for:

- *shellfish* (from 60 minutes on average for an audit in South Australia up to a maximum 360 minutes for an audit in New Zealand)
- *seafood* (from 60 minutes on average for an audit in New South Wales up to a maximum 360 minutes for an audit in New Zealand)
- *abattoirs* (from 120 minutes for an audit in South Australia and Tasmania up to a maximum of 480 minutes for an audit by AQIS and the NZFSA)
- *butchers* (from 45 minutes for an audit in New South Wales up to 120 minutes for an audit in Queensland)
- *smallgoods* (90 minutes for an audit in New South Wales up to 360 minutes for an audit by AQIS)
- *poultry* (from 120 minutes for an audit in Tasmania up to a maximum 360 minutes for an audit by AQIS and the NZFSA)
- *dairy farms* (from 45 minutes for an audit in Tasmania up to 120 minutes for an inspection in Victoria and an audit in South Australia)
- *dairy processors* (from 150 minutes for an audit in New South Wales up to 480 minutes for an audit in Victoria and Western Australia).

[10] The NSWFA commented that 50 per cent of the time spent during audits was devoted to education and advice.

Table 8.14 **Average audit/inspection duration : 2008-09**

Minutes

	Cwlth	*NZ*[a]	*NSW*	*Vic*	*Qld*	*SA*[b]		*WA*	*Tas*		*NT*	
Activity	*AQIS*	*NZFSA*	*NSW FA*	*PrimeSafe*[g] *DFSV*	*SFPQ*[c]	*PIRSA*[d]	*DASA*	*WA H'lth*	*Tas DPI*	*TDIA*	*NT*[e] *H'lth*	*NT Meat*
Butchers	nr	na	45	na	120	60	na	nr	nr	na	45	0
Small-goods	360	na	90	na	180	120–180	na	120	nr	na	na	180
Eggs	90–120	120	nr	na	90	nr	na	nr	120	na	na	0
Poultry	360–450[f]	360	210	na	180	180	na	150	120	na	na	0
Seafood	90–120	360	60	na	na	nr	na	nr	nr	na	45	0
Shellfish	90–120	360	90	na	na	60	na	nr	nr	na	na	0
Other food proc'rs	300–180[f]	nr	120	na	180	nr	na	nr	nr	na	nr	60–120
Abattoirs	480–1920[f]	480	210	na	240	120–180	na	270	120	na	na	180
Meat transport	nr	nr	30	na	30	15	na	105	nr	na	nr	30
Dairy farms	nr	nr	60	120[h]	90	nr	120	76	nr	45	60	0
Dairy proc'rs	nr	nr	150	180–480[h]	240	nr	300	480	nr	300	60	0
Dairy transport	nr	nr	30	na	na	nr	na	nr	nr	30	nr	0
Export	nr	nr	nr	na	480	nr	na	nr	nr	300	na	0
Import	nr	nr	nr	na	na	nr	na	nr	nr	na	na	0

na not applicable. **nr** no response. [a] Figures for New Zealand are maximums. [b] SA Health noted that audit duration for other regulated food activities were 300 minutes for hospitals and 120 minutes for not-for-profit DMOs. SA Health has no other audit/inspection responsibilities. [c] SFPQ noted that audit duration for other regulated food activities were 30 minutes for cold stores and 60 minutes for field depots and 30 minutes for field harvesters. [d] PIRSA noted audit duration for other regulated food activities were 60 minutes for cold stores. [e] NT Heath figures are for inspections. [f] Figure range refers to audit–inspection duration. [g] PrimeSafe noted that all audits are performed by third parties. [h] Figure for dairy farms is inspection duration. DFSV noted that inspection duration for dairy processors was 180 minutes while audit duration was between 180 for small establishments and 480 minutes for large establishments.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

In terms of the basis on which audits and inspections are conducted (table 8.7), risk profiling was used by every regulator except AQIS, Queensland Health and Western Australian Health. Compliance histories also featured prominently except

in South Australian dairy businesses and those regulated by Western Australian Health (table 8.7).

Types, level and basis of fees and charges imposed

As discussed above, reliance on fee and non-fee income and the types of fees charged varied considerably from one jurisdiction to the next (table 8.4). Appropriation income dominated the budgets of the NSWFA, Tasmanian Primary Industries, Northern Territory Primary Industries (Meat) and all the health departments. Food businesses regulated by those agencies are likely to have faced a lower compliance cost burden in 2008-09 than those regulated elsewhere.

For those regulators relying on non-appropriation income, there was also considerable variation in the types of fees charged. PrimeSafe, Dairy Food Safety Victoria, the TDIA and Northern Territory Primary Industries (Fisheries), relied almost exclusively on licence fees. As discussed in chapter 7, licensing/registration/accreditation requirements can impose a higher compliance burden on food businesses in terms of the time taken to satisfy approval processes and the conditions placed on food business operations. Indeed, a number of regulators nominated licensing requirements as the main issue on which food businesses inquiries were based.

Agencies such as SFPQ and DASA, on the other hand, relied on a combination of registration/accreditation fees and audit fees for their funding while audit fees accounted for nearly all the income base for the NZFSA (table 8.15). AQIS was the only regulator that charged inspection fees (where they were the major income source). Inspection fees were not charged in other jurisdictions where inspections were a major surveillance activity such as New South Wales and the ACT (which is also relevant to relative business compliance burdens for food retail and service businesses discussed in chapter 7).

Table 8.15 **Food safety income components : 2008-09**

A$'000[a]

	Agency	Licence fees	Regist-ration fees	Admin. fees	Insp-ection fees	Audit fees	Accr-editat-ion fees	Fines	Other income	Approp-riation[b]	Total food safety income
Cwlth	AQIS[c]	951	2 432	0	62 685	4 852	0	0	7 574	3 869	82 364
NZ	NZFSA	210	752	0	na	28 123	65	0	1 063[d]	0	30 213
NSW	NSWFA	4 652	0	0	0	981	0	258	817	13 961	20 669
Vic	Vic Health	nr	nr	nr	nr	nr	nr	0	nr	nr	nr
	Prime Safe	1 727	0	0	0	0	0	0	0	133.	1 860
	DFSV	3 557	0	0	0	246	0	0	0	0	4 471
Qld	Qld Health	0	0	1	0	0	2	0	0	0	3
	SFPQ	na	na	0	na	1 2478	2 535	27	2 249[e]	0	6 059
SA	SA Health	na	na	16	na	64	na	8	0	1 271	1 358
	PIRSA	0	0	0	0	212	835	0	106[f]	437	1 590
	DASA	0	292	0	0	169	0	0	0	66	527
WA	WA Health	3	1	8	0	0	na	0	2[g]	1 076	1 089
Tas	Tas Health	0	0	0.0	0	2	0	0	0	0	2
	Tas DPI	16	0	0	0	23	0	0	0	622	660
	TDIA	433	0	4	0	0	0	0	0	0	437
NT	NT Health	0	0	0	0	0	0	0	0	2 689	2 689
	NT Meat	5	0	0	0	0	0	0	0	100	105
	NT Fish'ries	18	0	0	0	0	0	4	0	0	22
ACT	ACT Health	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr

na not applicable. **nr** no response. [a] NZ dollars converted to $A using an exchange rate of 1.23 New Zealand dollars per Australian dollar. [b] Appropriation income was estimated as the difference between total food safety fee income and total food safety income. [c] The Australian Government provided a 40 per cent subsidy to businesses for export certification and inspection in 2008-09 (see chapter 14 and appendix C). It is not clear how that subsidy is reflected in the figures shown for AQIS. [d] Other income for the NZFSA was associated with certification. [e] Other income for SFPQ included a grant of $1.9 million. [f] Other income for PIRSA was related to fee for service activities. [g] Other income for Western Australian Health involved revenue from brand hire.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

While business and activity type were the most common basis on which fees and charges were levied, there was not a consistent pattern to fee determination evident from the survey responses. Risk-based charges were only applied by AQIS, NZFSA, SFPQ and ACT Health (table 8.16) but even those agencies did not use risk as a basis for *audit or inspection* charges (table 8.17).

Table 8.16 **Fee basis: 2008-09**

	Agency	*Type of business*	*Type of activity*	*Business turnover*	*Risk category*	*Employee numbers*	*Other*
Cwlth	AQIS	✓	✓	×	✓	×	×
NZ	NZFSA	✓	✓	×	✓	×	×
NSW	NSWFA	×	×	×	×	×	✓**a**
Vic	Vic Health	nr	nr	nr	nr	nr	nr
	PrimeSafe	**b**	**b**	**b**	**b**	**b**	**b**
	DFSV	✓	×	✓	×	×	×
Qld	Qld Health	na	na	na	na	na	na
	SFPQ	×	✓	×	✓	×	×
SA	SA Health	nr	nr	nr	nr	nr	✓**c**
	PIRSA	✓	✓	×	×	✓	×
	DASA	×	✓	✓	×	×	×
WA	WA Health						
Tas	Tas Health	na	na	na	na	na	na
	Tas DPI	×	×	×	×	×	✓**d**
	TDIA	✓	✓	×	×	×	✓**e**
NT	NT Health	na	na	na	na	na	na
	NT Meat**f**	×	×	×	×	×	×
	NT Fisheries**f**	×	×	×	×	×	×
ACT	ACT Health	×	×	×	✓**g**	×	×

na not applicable. **nr** no response. **a** NSWFA commented that currently fees are charged on the basis of sector and industry but a system based on activity type (or risk) and employee numbers will shortly be introduced. **b** PrimeSafe noted that all audits are performed by third parties. **c** SA Health noted that audit fees for public hospitals are based on the number of beds. Not for profit DMOs are not charged for audits. **d** Tas DPI noted that fee setting was based on agency pricing policy (formula generates an hourly rate) or Prescribed Fee (that applies to meat audits only). **e** TDIA noted that milk litre intake was another basis on which fees were levied. **f** NT Meat and Fisheries do not charge for audits/inspections. **g** ACT Health noted that registration fees depend on risk and are the only fee charged to food businesses.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished).

Table 8.17 **Audit/inspection fee by business risk category : 2008-09**

Australian dollars per hour[a]

	Agency	*Low risk business*	*Medium risk business*	*High risk business*
Cwlth	AQIS	63	63	63
NZ	NZFSA	90	90	90
NSW	NSWFA[c]	185	185	185
Vic	Vic Health	na	na	na
	PrimeSafe[d]			
	DFSV	0	0	215/322[e]
Qld	Qld Health	na	na	na
	SFPQ[f]	225	225	225
SA	SA Health	na	na	na
	PIRSA	167	167	167
	DASA[g]			
WA	WA Health			
Tas	Tas Health	na	na	na
	Tas DPI	not audited	224-234[h]	224[h]
	TDIA[i]			
NT	NT Health	na	na	na
	NT Meat	nr	nr	nr
	NT Fisheries	0	0	0
ACT	ACT Health	0	0	0

na not applicable. **nr** no response. [a] NZ dollars converted to $A using an exchange rate of 1.23 New Zealand dollars per Australian dollar. [b] AQIS noted that audit fees for fish exporters were $172 per hour, dairy exporters $268 per hour and meat export $182 per hour. [c] NSWFA noted fees included a flat $38 travel component. [d] PrimeSafe noted that all audits are performed by third party auditors. [e] DFSV noted that the standard audit fee in 2008-09 was $214.65 plus GST and the compliance audit fees was $321.98 plus GST. [f] FPQ noted that GST was payable on this audit fee. In addition to the audit fee an application fee of $116.6 and an accreditation fee ranging from $198.25 to $5835.15 depending on the activity was also payable in 2008-09. [g] DASA noted fees were varied and complex (see chapter 11, table 11.5). [h] Tas DPI noted that $224 is the pricing policy fee that currently applies to eggs and high risk seafood (bivalve molluscs). The other fees are prescribed under the Meat Hygiene legislation. [i] TDIA noted that audit fees were included in the licence fee.

Source: Productivity Commission survey of core food safety regulators (2009, unpublished), RBA (2009).

8.6 Transparency and accountability

Complementing efforts to reduce food business compliance burdens, measures aimed at making regulatory processes transparent, providing tailored assistance to specific business groups, procedural fairness (appeal avenues) and client feedback mechanisms featured prominently in responses from many core regulatory agencies (table 8.18).

Table 8.18 **Transparency, accessibility and accountability : 2008-09**

Access to, and availability of, good governance practices

	Agency	Publish enforce-ment strategy	Publish enforce-ment outco-mes	Appeal avail-able	Small busin-ess assist-ance	Engl-ish lang-uage assist-ance	Non-metrop-olitan assist-ance	Client feed-back mechan-isms	Private or 3rd party audits recogn-ised	Industry-based food safety systems recognised
Cwlth	AQIS	✓	×	✓**b**	×	×	×	✓	✓	×
NZ	NZFSA	✓	✓	✓**a**	✓	✓	×	✓	✓	×
NSW	NSWFA	✓	✓	✓**b**	✓	✓	✓**d**	✓	×**c**	×
Vic	Vic Health	✓	×**e**	nr	×	✓	×	×	nr	×
	Prime Safe	✓	✓	✓**a**	×	×	×	×	✓	×
	DFSV	×	×	✓**a**	×	×	×	✓	×	×
Qld	Qld Health	✓	✓	✓**b**	×	×	×	×	✓	nr
	SFPQ**g**	✓	✓	✓**a**	✓	×	✓	✓	✓**g**	✓
SA	SA Health	×	×**f**	✓**b**	✓	✓	✓	×	×	×
	PIRSA	✓	✓	✓**b**	✓	✓	✓	✓	✓**h**	✓
	DASA	×	×	nr	✓	×	×	×	✓	×
WA	WA Health	✓	✓	✓	✓	×	✓	✓	×	×
Tas	Tas Health	×	×	✓**b**	✓	✓	✓	×	✓	nr
	Tas DPI	✓	×	✓**b**	✓	×	×	×	✓	✓**i**
	TDIA	×	×	✓**a**	×	×	×	✓	×	×
NT	NT Health	×	✓	✓	✓	✓**j**	✓**j**	✓	×	×
	NT Meat	×	×	na	×	×	×	✓	×	×
	NT Fisheries	×	×	✓**a**	✓	✓	✓	✓**k**	na	nr
ACT	ACT Health	×	×	✓**b**	×	×	×	✓	×	×

na not applicable. **nr** no response. **a** External appeals only (courts or tribunals) were available for actions by NZFSA, PrimeSafe, Dairy Food Safety Victoria, SFPQ, TDIA and NT Fisheries. **b** Both internal and external appeal mechanisms were available for actions by AQIS, NSWFA, Qld Health, SA Health, PIRSA, Tas Health, Tas DPI, ACT Health and WA Health. **c** NSWFA noted in its submission that work on a new regulation that would allow certain food businesses to use a third party auditor for their compliance audit was well underway. **d** NSWFA noted that it provided fee relief for drought affected areas as a means of non-metropolitan assistance. **e** Vic Health noted that it will be publishing enforcement outcomes in the future. **f** SA health noted that it began publishing enforcement outcomes from 1 July 2009. **g** SFPQ noted that regional butchers and dairy activities have alternative compliance strategies via in house training with no audits. **h** PIRSA noted the audit fee charged for businesses located outside the metropolitan area did not include a travel component and was the same fee as that charged metropolitan businesses. **i** Tas DPI noted the Egg Corp Assured program as a recognised private food safety system. **j** NT Health offer culturally appropriate (free) training to remote communities. **k** NT Fisheries noted that feedback was obtained through client complaints. *Source:* Productivity Commission survey of core food safety regulators (2009, unpublished).

Information on enforcement strategies and outcomes (proactive tools as they relay the consequences of ongoing or serious compliance breaches and the likelihood of combative measures being applied) were commonly provided by regulators with broader primary production responsibilities and some health departments. In terms of specific assistance to target groups, there was considerable variability in the availability of such measures across jurisdictions with assistance more likely to be based on business size than location or English language differences.

While a lack of appeal mechanisms does not regularly impact on the costs faced by business, they are an important recourse when regulators make mistakes, and cost effective appeal mechanisms can ameliorate costs for businesses. Importantly, appeal mechanisms were available in nearly all jurisdictions with internal review (likely to be less costly and time-consuming but also less independent than external alternatives which include administrative tribunals and courts) a feature in New South Wales, South Australia, Tasmania and the ACT. Client feedback mechanisms (typically through regular stakeholder surveys and forums) were used by about half of respondents to inform their regulatory functions.

Overall, the regulators with the broadest suite of what could be described as good governance practices leading to the lowest business compliance burdens were the NZFSA, the NSWFA, SFPQ and PIRSA. In terms of structures to deliver good governance outcomes, SFPQ, pointed to the role played by legislation in this area:

> The Food Production (Safety) Act 2000 establishes the SFPQ Board and Food Safety Advisory Committee (FSAC) both of which include external non-government representatives to ensure transparency, focus and accountability. This also facilitates a greater degree of public participation in government activity and better access to government decision-making that would not be possible in a departmental body.

8.7 Coordination between core agencies and local government

Most core agencies are unable to collect, manage and analyse data related to the enforcement activities of local government which would allow better targeting of resources to public health risks and better coordination of enforcement (with associated implications for regulatory burdens). The power to mandatorily obtain such information is currently only available in New South Wales as part of the Food Regulation Partnership agreement between the NSWFA and local councils in that state. Councils are required to report annually on their enforcement activities and this information is publicly available on the NSWFA's website. Recent amendments

to Victoria's *Food Act 1984* include new requirements for councils to report data about the administration of the Act to the Department of Health from 1 July 2010. The intent of these changes is:

> … to contribute to greater knowledge about the safe handling of food, including major problem areas, to inform future policy and be integrated into education programs. Better information will also mean the department and councils will be able to focus enforcement efforts on areas where improvements are most needed. (DHS 2009c)

Some respondents to the Commission's questionnaire commented that the lack of access to such information was a high level constraint on their ability to enforce food safety regulation. South Australian Health said in this regard:

> SA Health does not have the ability to collect, manage and analyse data from 68 councils. Such data would enable SA Health to:
>
> - monitor whether enforcement is effective and consistent
> - identify emerging and priority issues and
> - plan and target interventions accordingly.

South Australian Health went on to note that such informational needs would be the area where additional resources would be deployed if they were to be made available. They commented that:

> … this would enable SA Health increase proactive preventative measures by:
>
> 1. better targeting of resources based on identification of trends/issues and risk
> 2. targeting of training and education for businesses and local government inspectors.

Such initiatives would likely reduce the compliance burden on lower risk food businesses outside New South Wales (and in the near future Victoria) and better align business compliance costs with the cost of regulation.[11]

[11] Food business education, extension and research were other common areas nominated by regulators for the allocation of additional resources.

9 Food safety in meat production and processing

Key points

- In Australia and New Zealand, the regulation of 'meat' as a food begins at the 'farm-gate' and covers all stages of production, including retail.
- In most jurisdictions (excluding Western Australia, Tasmania and New Zealand), a single state/territory authority regulates all types of meat businesses (from abattoir through to retail butchers which receive or process raw meat). Local councils in all jurisdictions (except the Northern Territory and ACT) monitor those meat businesses that have *only* a retail function (such as delicatessens). In Western Australia, Tasmania and New Zealand, they also monitor other meat businesses which have a retail function as a part of their operations. In the Northern Territory two territory authorities are responsible for the regulation of meat businesses.
- Most jurisdictions issue licences and levy annual fees either on the basis of the type of meat that a business deals with or the position of the business in the production chain. Across the jurisdictions, initial licence application fees are highest for meat processing businesses (particularly abattoirs) in Victoria. However, given its accumulative fee structure, ongoing annual fees are likely to be highest for a large non-exporting meat processor business in South Australia.
- All jurisdictions impose a level of quality assurance on meat licence holders but vary in the way this is implemented. In contrast to the other Australian jurisdictions, Victoria, New South Wales and Queensland each have specific provisions on the content of food safety programs that are additional to the Australian Standards.
- Audit activity varies in intensity from a simple check against Australian Standards in Western Australia, to a compliance audit against a formally approved food safety plan (or risk management program) in New Zealand, Victoria, Queensland and New South Wales. Given the frequency and cost of regulator inspections/audits, compliant primary meat processing businesses (such as abattoirs) in New Zealand, New South Wales and Queensland and secondary meat processing businesses in Tasmania, Victoria, Queensland and New Zealand are likely to incur the greatest annual costs of inspection/audits.
- Penalties and fines for non-compliant activity are greatest in Queensland, New South Wales and Northern Territory for primary producers/processors that are not appropriately licensed/accredited, and in these jurisdictions and the ACT and New Zealand, for the production of unsafe food by a primary producer/processor.

COAG's Food Regulation Agreement is aimed at a national, 'whole of food chain' approach to regulation. In the context of meat, the core food Acts generally cover food safety issues in the retail and service of food to the public, but expressly exclude the preceding step in the food chain — meat production and processing activities. The current chapter examines in detail the differences in food safety regulation for the production and processing of both red meat and poultry meat, and the implementation and enforcement of these regulations within jurisdictions. Where feasible, measurements are given or inferences are drawn about the likely differences in cost burdens imposed on business in each jurisdiction. In many areas though, it is not possible to attribute business cost information to differences in regulatory compliance burden.

The benchmarking in this chapter draws heavily on a comparison of regulatory differences between jurisdictions, as detailed in a consultancy report prepared for this study (Baldwins-FoodLegal 2009). The cost implications for businesses of these regulatory differences are then explored by drawing on jurisdiction fees and charges information, and case study examples provided by study participants.

9.1 Scope of meat regulation

Meat and meat businesses

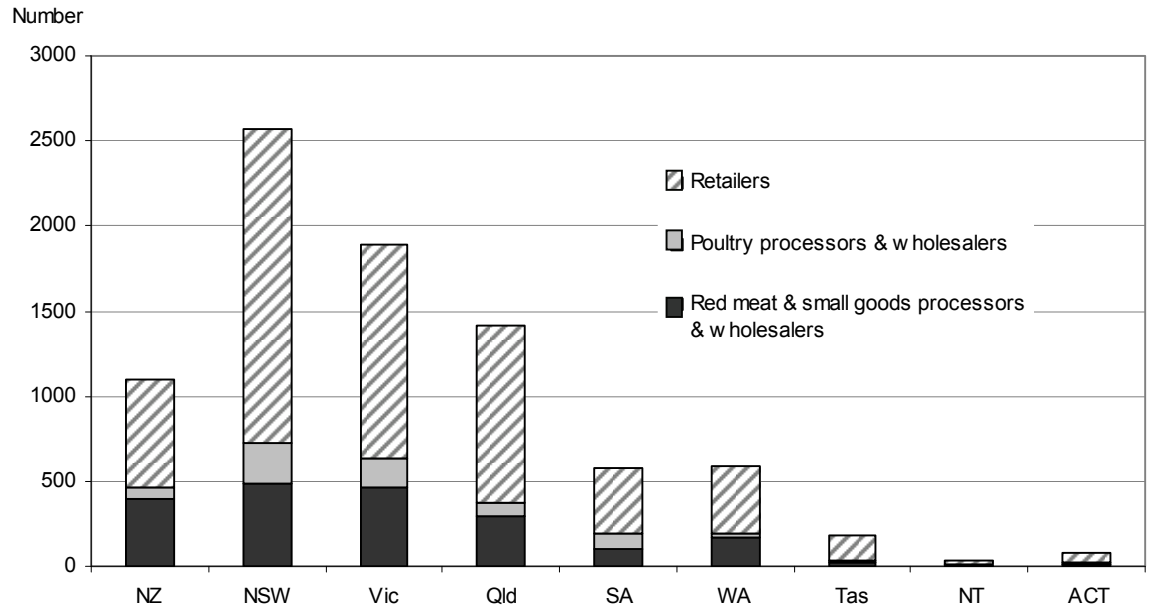
In Australia and New Zealand, the regulation of 'meat' as a food for human consumption begins at the 'farm-gate'. While some jurisdictions (Queensland, for example) do not explicitly rule out the regulation of the farms from which animals for meat are sourced in their food safety legislation, in practice, no jurisdiction imposes any specific meat safety requirements on farms (beyond a general requirement that the product will be safe and suitable for human consumption). The exception to this is the regulation and monitoring of factors such as chemical residues and product sourcing through livestock tagging programs — these are discussed further in chapter 13.

Beyond the farm-gate to the back-door of retail, businesses that are covered by meat safety regulation can include: abattoirs; boners; butchers that do not have a retail function; meat processors and handlers; renderers of lard or tallow; transporters; cold-stores; and meat wholesalers. Model Food Act provisions mean that businesses which 'substantially transform' meat or meat products or sell or serve directly to the public are deemed to be not involved in 'primary food production' but are regulated as a 'food business' under the relevant jurisdiction's food Act.

There are just over 2000 meat businesses in Australia and 460 in New Zealand at the pre-retail stage of the production chain.[1] Within Australia, most meat businesses are located in New South Wales, Queensland or Victoria (figure 9.1). Around 70 per cent of Australia's meat businesses are principally engaged in the handling of red meat, and the remainder handle poultry. In New Zealand, over 90 per cent of meat businesses principally handle red meat. In both countries, the poultry meat industry is highly concentrated. In Australia, three companies produce 80 per cent of Australia's broiler chickens; in New Zealand, four companies supply 99 per cent of that country's market. In each country, these companies own almost all aspects of production from breeding farms and hatcheries to feed mills, broiler farms and processing plants.

Figure 9.1 **Meat businesses by type and jurisdiction[a]**

As at 30 June 2007 for Australia; as at February 2008 for New Zealand.



a Businesses are included as 'meat businesses' based on their main activity. Red meat businesses include: abattoirs, meat packing and freezing, animal oil or fat production, and the manufacture of products such as bacon, hams, hamburgers; sausages and pate. Poultry meat businesses includes poultry abattoir operations, and the manufacture, packing and storage of poultry products. Meat retailers includes retail butchers' shops; fresh fish retailing (which is regulated as seafood rather than meat); meat retailing (except canned meat); retailing of fresh poultry and seafood (the ABS and Statistics NZ do not separate out these different activities in the reported data).

Data sources: ABS (*Counts of Australian Businesses,* Cat. No. 8165.0); ABS (Australian and New Zealand Standard Industrial Classification (ANZSIC), Cat. No. 1292.0); Statistics New Zealand.

1 These meat businesses are supplied by almost 100 000 farms in Australia that produce animals for meat (mostly red meat) and 30 000 such farms in New Zealand.

Regulation of meat safety

FSANZ (2009e) assessed that domestically reared red meat (cattle, sheep and goats) and pigs present only a low risk to public health. At the other end of the scale, the health risks presented by ready to eat manufactured meats and meat products is considered to be higher — albeit, comparable to those in some other food products (Department of Health and Ageing (Commonwealth) 2007). In recent years, the meat industry (and particularly exported meat) has emerged as one of the most intensely monitored parts of the food sector.

At least some of the monitoring effort is in response to high returns available to Australian and New Zealand meat exporters that are able to provide evidence that their meat is free of food safety concerns (such as foot and mouth disease and bovine spongiform encephalopathy or BSE) of some other countries.[2] There have also been some notable meat-related incidents in Australia and New Zealand in recent years that have prompted additional regulation. For example, the incidence of campylobacter infection (associated with chicken meat) in New Zealand is amongst the worst in the world (reaching a peak of around 16 000 reported cases in 2006). In Australia, the outbreak in 1995 associated with e coli contaminated Garibaldi mettwurst was one of the country's worst food poisoning incidents, with the death of a child, several hundred people infected, and permanent kidney damage suffered by many.

Broad regulatory framework

The safety of red meat production in Australia is currently implemented largely through reference to Australian Standards[3] such as: *Hygienic production and transportation of meat and meat products for human consumption (AS4696: 2007)* and *Hygienic Production of Wild Game Meat for Human Consumption (AS4464: 2007)*. These standards were endorsed by state and territory Ministers in the 1990s, through the Primary Industries Ministerial Council, and the standards underpin much of the current meat safety regulation and practices in the jurisdictions (table 9.1). FSANZ (2009e) acknowledged the role that these standards have played in ensuring the safety of meat in Australia, but considered that with the disbandment in 2007 of the Meat Standards Committee (which was responsible for maintaining the

[2] Around 65 per cent of Australia's beef, 45 per cent of lamb and 80 per cent of mutton is exported. In the case of New Zealand, almost 90 per cent of lamb and 80 per cent of beef production is exported (Fletcher, Buetre and Morey (2009); New Zealand Meat Industry Association (2009)).

[3] Standards Australia is a non-government, not-for-profit organisation which develops Australian Standards by committee. It is generally necessary to buy an Australian Standard in order to gain access to it.

standard), there is no longer a mechanism to update or review the current standards in the meat processing sector. Furthermore, the Australian Standards do not offer flexibility for providing a food safety outcome as they are (in contrast to key principles of food regulation) fairly specific in their requirements. Some additional flexibility may be available to meat businesses in those jurisdictions (for example, Queensland) in which the Australian Standards are treated as advisory standards rather than mandatory or minimum requirements.

Table 9.1 **Regulations and regulatory bodies by jurisdiction — meat**

	Documented requirements	*Principal regulators*[a]
NZ	*Food Act 1981* *Animal Products Act 1999* *Animal Products Regulations 2000* *Animal Products (Fees, Charges, and Levies) Regulations 2007*	New Zealand Food Safety Authority (NZFSA)
NSW	*Food Act 2003* *Food Regulations 2004* *NSW Standard for the Construction and Hygienic Operation of Retail Meat Premises*	NSW Food Authority (NSWFA)
Vic	*Food Act 1984* *Meat Industry Act 1993* *Meat Industry Regulations 2005* *Victorian Standard for Hygienic Production of Meat at Retail Premises*	PrimeSafe
Qld	*Food Act 1981* *Food Production (Safety) Act 2000* *Food Production (Safety) Regulation 2002*	Safe Food Production Queensland (SFPQ)
SA	*Food Act 2001* *Primary Produce (Food Safety Schemes) Act 2004* *Primary Produce (Food Safety Schemes) (Meat Industry) Regulations 2006*	Meat Hygiene Unit South Australia of the Department of Primary Industries and Resources (PIRSA)
WA	*Food Act 2008* [b] *Health Act 1911* *Health (Food Hygiene) Regulations 1993* *Health (ANZ Food Standards Code Adoption) Regulations 2001* *Health (Meat Hygiene) Regulations 2001* *Meat Industry Authority Act 1976*	Department of Health – Executive Director, Public Health (WA DoH)
Tas	*Food Act 2003* *Meat Hygiene Act 1985* *Meat Hygiene Regulations 2003*	Chief Inspector of Meat Hygiene, Department of Primary Industries, Parks, Water and the Environment (Tas DPIPWE)
NT	*Food Act 2004* *Meat Industries Act 2007* *Meat Industries Regulations 2002*	Department of Regional Development, Primary Industry, Fisheries and Resources – Chief Inspector of livestock (NT DRDPIFR)
ACT	*Food Act 2001* *Food Regulations 2002*	Chief Health Officer – ACT Health

[a] The core food agencies in the Northern Territory and the ACT absorb food safety functions that would be undertaken by local councils in the Australian states. For all other jurisdictions, the core body responsible for regulation under the jurisdiction's Food Act generally devolves some monitoring responsibilities (for those businesses which provide food directly to the public) to local governments. The extent of devolution, and subsequent coordination between local councils, varies between jurisdictions (chapters 7 and 8). In Victoria, if a business is both a primary producer and retailer, then the predominant activity undertaken by the business determines whether they are registered and inspected by PrimeSafe (predominately primary production) or by the local council (predominately retailer). [b] The WA *Food Act 2008* did not come into effect until late October 2009.

The development of guidelines in the Australia New Zealand Food Standards Code (ANZFS Code) go some way toward providing a mechanism by which meat safety requirements may be reviewed and updated. General provisions for the safety of meat (red meat and poultry) in Australia are provided, in the context of requirements for all food businesses, in chapters 1 to 3 of the ANZFS Code. Broadly, these standards provide nationally consistent requirements for meat (both red meat and poultry) with regard to: labelling; additives; contaminants and residues; microbiological and processing requirements; definitional and composition matters; and the applicability of food safety programs.

In addition, *Standard 4.2.3 Production and Processing Standard for Meat* provides some safety guidelines, but only for the production of 'ready-to-eat meat' such as ham and salami. Guidelines for other forms of red meat, including less processed meat products, are in the very early stages of development and will be included in the red meat standard once developed.[4] The coverage of the standard under development for red meat is meat and meat products from farmed major meat species — that is, farmed cattle, pigs, sheep and goats, including harvested goats. Also included are rendered products for human consumption.[5]

In each jurisdiction, the meat industry is regulated, if not by a separate act or regulation, then at least by specific provisions within the jurisdiction's food or primary production statutes. In some jurisdictions, regulators have developed standards, codes of practice or guides that are requirements of particular operations. For example, Victorian meat businesses are required to comply with the *Victorian Standard for Hygienic Production of Meat at Retail Premises* and those in New South Wales are similarly bound by the *NSW Standard for Construction and Hygienic Operation of Retail Meat Premises*.

In addition, the Australian Quarantine and Inspection Service (AQIS) regulates meat facilities that supply meat and meat products for export (appendix C) and there is a wide range of programs administered by industry which have food safety as an objective (box 9.1). The Victorian Farmers Federation noted that:

> In the red meat industry, schemes such as the National Livestock Identification System (NLIS), vendor declarations (which relate to chemical use and adherence to withholding periods) and EU accreditations have formed the backbone of the food safety in the red meat industry. (VFF 2007, p. 8)

4 A first assessment report for the meat and meat products standard was published by FSANZ in September 2009.

5 The food safety requirements for farmed minor species (including emu and ostrich meat, and meat and meat products from wild game animals) are to be addressed by FSANZ at a later stage.

Box 9.1 Industry self- and co-regulation of red meat safety in Australia

Over the past decade, a number of accreditation and reporting schemes have become established in the red meat production industries to improve the traceability and safety of the final product.

- The National Livestock Identification System (NLIS) commenced across Australia in July 2005. This system is mandatory for cattle and sheep identification and traceability. The database for the system is maintained by an industry body, but the system is enforced by state and territory primary industry departments.
- Livestock Production Assurance (LPA) was introduced in 2005 as an on-farm food safety certification program. The first level of the program — LPA Food Safety (level 1) — provides requirements to guarantee the safety of red meat products. It is voluntary but the majority of producers have signed up. LPA Quality Assurance (level 2) includes additional accreditations such as CattleCare and FlockCare. The Standards that underpin the LPA Quality Assurance program are based on risk management and HACCP (Hazard Analysis Critical Control Points) principles. Any producer accredited for LPA Quality Assurance will have already met the more basic requirements of LPA Food Safety accreditation.
- National Vendor Declarations (NVD) were introduced in 1996 to provide a documented means for producers to declare information about the food safety status (including residue levels) of livestock being sold. LPA includes use of NVD and while LPA is voluntary, most meat processors will not accept livestock without a NVD. NVD is maintained by SafeMeat — a partnership body between the Australian meat and livestock industry and state and federal governments.
- National Feedlot Accreditation Scheme (NFAS) is an industry self-regulatory quality assurance scheme that was initiated by Australian Lot Feeders Association in 1995 and is administered by Aus-Meat. Feedlots accredited under the NFAS have obligatory animal welfare, environment and food safety checks. Under AQIS Meat Orders, the program is mandatory for feedlots producing grainfed beef for export markets.

Sources: AusMeat (2009); Red Meat Industry (2007).

The safety of poultry meat production in Australia is currently achieved largely through reference to the Australian Standard Construction of Premises and Hygienic Production of Poultry Meat for Human Consumption (AS4465: 2006). There is little in the way of FSANZ guidelines for the safety of poultry meat. A standard for poultry meat in Australia — Standard 4.2.2 Primary Production and *Processing Standard for Poultry Meat* — has been under development since February 2004. While a final assessment report for the standard is currently being prepared, a lack of agreement between the jurisdictions on standard details has delayed its release. Currently, the ANZFS Code does not even include a definition of 'poultry' (although the proposal for the new standard defines poultry to include: chicken,

turkey, duck, squab (pigeons), geese, pheasants, quail, guinea fowl and other avian species, except ratites).

Industry self- and co-regulation are also important for the safety of poultry meat, at least in the growing and processing stages (Colmar Brunton Social Research 2005). In the poultry meat industry, the vertical structure of the industry and the sale of the final product under a company label mean that food safety benefits and costs are likely to be largely internalised within the businesses.

However, even where industry regulates itself there remain regulatory costs that differ between jurisdictions. For example, the cost to Australian businesses of purchasing a copy of the main Australian Standards for meat ranges (with the type of meat product or stage in production) from around $80 up to around $160 per standard. This is a compliance cost not incurred by New Zealand businesses.

New Zealand has chosen not to adopt the primary production standards from chapter 4 of the ANZFS Code, the food safety program provisions from chapter 3 of the ANZFS Code, and some of the requirements of chapter 1 of the ANZFS Code. Instead, New Zealand meat businesses (both red meat and poultry) operate under industry agreed HACCP-based standards, and broad principles documented in the *Animal Products Act 1999* and associated regulations. New Zealand also introduced additional technical requirements in December 2008 for the manufacture of uncooked comminuted fermented meats: *Food (Uncooked Comminuted Fermented Meat) Standard 2008.* This standard applies to all manufacturers of uncooked comminuted fermented meats, whether operating under the *Food Act 1981* or the *Animal Products Act 1999*.

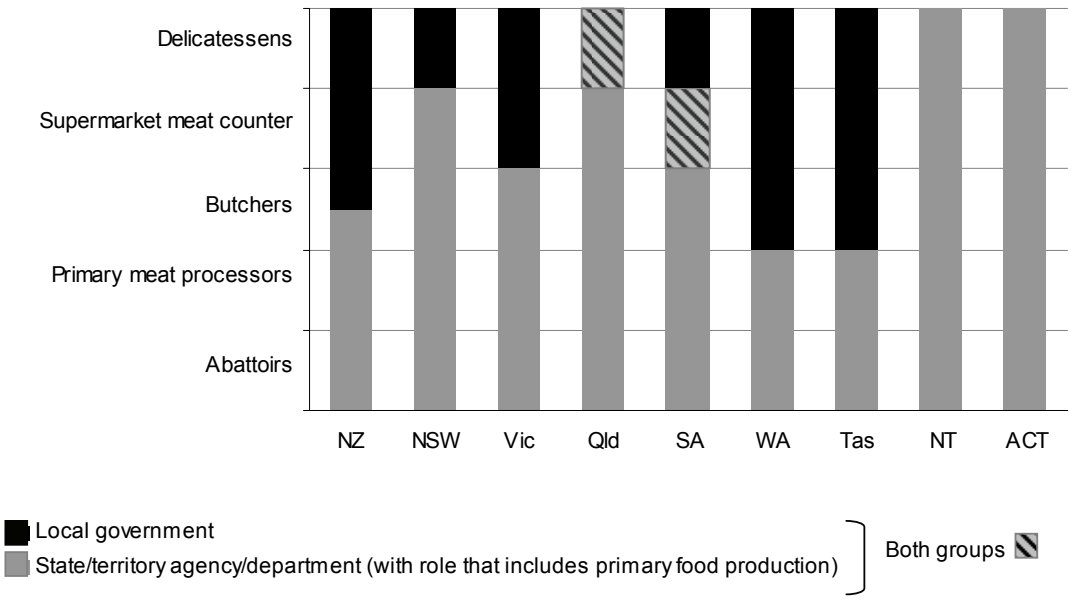
The regulatory regime in practice

The principal meat regulatory authorities differ between jurisdictions in the extent to which they 'regulate' retail and secondary processors of meat and meat products. In New South Wales, Victoria, Queensland, South Australia, Northern Territory and ACT, a state/territory body (with food safety responsibilities that includes primary production and processing) regulates retail operations if the business also receives and processes raw meat (provided the meat is not for consumption on the premises). In practice, this means that, with the exception of the main primary production regulators in Tasmania, Western Australia and New Zealand, food safety regulators

of primary food production in each jurisdiction generally regulate butchers (figure 9.2).[6]

Similarly, only in New South Wales, Queensland, South Australia, Northern Territory and the ACT, do the primary production regulators monitor supermarket meat counters, and only in the Northern Territory and ACT, do they monitor delicatessens. In practice however, Woolworths (2007) indicated that the meat and delicatessen counters in its New South Wales, Queensland and South Australian stores are regulated by both local councils and by a state-level regulator. Furthermore, analysis of Commission regulator survey results also indicated some potential for an overlap in regulator functions in these jurisdictions. In Victoria, even though PrimeSafe does not regulate supermarket meat counters, a memorandum of understanding between the Health and Agriculture Ministers provides that meat preparation areas in supermarkets must meet the same standards as butcher shops. The aim of this is to ensure that the meat operations of supermarkets need only be registered with one regulatory agency and that they are treated consistently with other meat processing businesses.

Figure 9.2 **Scope of regulators by jurisdiction[a]**



a The Northern Territory and ACT undertake the functions of a local government for meat businesses in their jurisdictions. In Queensland, the Department of Health have a role in the monitoring of food service businesses (including delicatessens). In remote parts of some jurisdictions (such as New South Wales and South Australia), the state regulatory agency may undertake inspections on behalf of local councils.

Data sources: Lederman and Kamat (2006); Productivity Commission regulator surveys (2009, unpublished).

6 NZFSA, the main regulator of primary food safety in New Zealand, also regulates dual operator butchers (retail butchers that also provide a homekill and recreational catch service at the same premises or place).

To some extent this scope of the role of primary production regulators is the outcome of historical responsibilities within jurisdictions and extends to differing interpretations between jurisdictions as to what constitutes 'meat' (as opposed to a 'substantially transformed' meat product). For example, in Tasmania, which has the primary production regulator monitoring all meat up to the 'back-door' of a butcher, 'meat' is confined to be that which is unprocessed except by chilling or freezing (*Meat Hygiene Act 1985*); meat that is otherwise processed is considered to be a 'meat product' and is regulated under Tasmania's *Food Act*. In contrast, meat is defined in Queensland to be a raw food, but also includes meat that has been changed in nature (other than by cooking) and/or mixed with other substances. Consequently, meat does not include 'smallgoods', but does include products such as marinated meat, meat rissoles, meat sausages and stir-fry lamb mix (*Food Production (Safety Act) 2000*) and the one agency (SFPQ) monitors meat at all stages in the production chain. Some primary production regulators have attempted to smooth over these distinctions by, for example, regulating those butchers which both receive raw carcasses and have a retail function under both the primary production legislation and the food Act.

9.2 Licensing, accreditation and registration of meat businesses

Licence categories[7]

Each jurisdiction has different licensing (or registration or accreditation) requirements for primary producers and processors of meat products. However, in all jurisdictions, the licensing authorities consider the different types of operations being undertaken by the meat licence applicant in determining the category of licence required and its cost. For some, the different types of operations and associated licence categories are specified in legislation but, for others, the legislation provides more flexibility to the authority when issuing a licence.

For example, the legislation in New South Wales provides for over 20 different classes of licences across nine meat business categories.[8] Victoria similarly has 10 meat business categories with over 20 different licence fee groups. In contrast, legislation in other jurisdictions prescribe fewer licence categories (and therefore

[7] For simplicity, the terms 'licence', 'registration' and 'accreditation' are used synonymously in the remainder of this chapter.

[8] New South Wales is proposing to reduce the number of licence categories in the meat sector from 28 to 13 in late 2010 (New South Wales Government, pers. comm. 7 October 2009).

potentially fewer forms for business to complete) but have licence fee schedules which nevertheless vary by activity and/or business size. A greater number of licence categories within a jurisdiction may mean that licence conditions can be more finely tuned to business processes, size or risk level. Alternatively, to the extent that a business with diverse operations requires additional licences in those jurisdictions with a greater number of licence categories, a greater number of licence categories may be associated with higher costs incurred (in terms of assessing the need for separate licences, time to complete forms, monitoring of requirements and possibly licence fees).

In Western Australia, although the main regulatory authority, the Department of Health, does not require primary meat businesses to be licensed, under the Western Australian *Health Act 1911* meat businesses are one of a range of businesses (not all food) that are classified as 'offensive trades' (trades that are likely to unavoidably be injurious to public health) and must be registered with the relevant local government. In addition to registering with local government, abattoirs in Western Australia are also required, prior to commencement of construction of the abattoir, to have the approval of the Western Australian Meat Industry Authority (under the *Meat Industry Authority Act 1976* (WA)).[9]

New Zealand is the only jurisdiction that does not require primary meat producers to obtain a 'licence'. The regulatory framework in New Zealand is nevertheless similar in practice to that of the Australian jurisdictions, as meat producers and processors in New Zealand are required to register their operations with the NZFSA which in turn makes them subject to various operating conditions.

The number of licences issued to meat businesses in each jurisdiction is detailed in table 9.2. In general, there are more licences on issue than reported meat businesses (figure 9.1) because businesses in some jurisdictions may hold multiple licences to cover their activities (such as for an abattoir with transport facilities), be predominately operating in other industries but nevertheless be licensed to enable the handling of meat, or have multiple premises (each with a separate licence). A small proportion of (mainly larger) businesses are also registered for export and undergo additional regulation from AQIS and AusMeat associated with this (see chapter 14 for more detail).

9 The Western Australia Meat Industry Authority is a government authority tasked with providing a system for the approval of abattoirs, regulating the branding of animal carcases and reviewing facilities for the sale of livestock and the slaughter of animals, and for the processing of carcases for human consumption. The Authority reports to the Minister for Agriculture and Food.

Table 9.2 **Number of primary meat premises regulated by jurisdiction**[a]

End 2008-09

	Abattoirs	*Butchers*	*Smallgood mfg*	*Other meat processing*[b]	*Meat transport*	*Total red meat*	*Poultry processing/ wholesale*
NSW	78	1 840	25	509	4 231	6 683	153
Vic	45	1 043	0	335	0	1 423	28
Qld	88	922	425	0	2 594	4 029	12
SA	47	532	25	94	154	852	17
WA	26	0	53	33	48	160	10
Tas	35	0	0	0	0	35	5
NT	5	23	0	25	20	73	0
ACT[c]	0	0	3	6	0	9	12
Australia	324	4 360	531	1 002	7 047	13 264	237
New Zealand	106	214	189	125	220	854	181

[a] Represents the number of meat businesses regulated by the main regulator with primary meat production/processing responsibility in each jurisdiction. Consequently, for New South Wales, Queensland, South Australia, Northern Territory and ACT (each of which has the primary regulator also monitoring some retail meat businesses), the numbers may include some businesses that are primarily 'meat retail' (in Victoria, Western Australia, Tasmania and New Zealand, these businesses are largely monitored by local councils and total numbers regulated are unknown. [b] Includes meat storage and wholesale, and game meat operations. [c] Numbers for the ACT are total business numbers in each category based on ABS (*Counts of Australian Businesses,* Cat. No. 8165.0), as the ACT is not currently able to provide information on the number of regulated businesses by type.

Sources: ABS (*Counts of Australian Businesses,* Cat. No. 8165.0); Productivity Commission regulator surveys (2009, unpublished).

Licence fees

With the exception of Tasmania, ACT and New Zealand, each jurisdiction attempts to make some distinction in fees either on the basis of the type of meat that the business deals with or the position of the business in the production chain (table 9.3). In some jurisdictions, this distinction is related to a perceived level of risk to food safety, but such a relationship is not consistently achieved across the jurisdictions. In New South Wales, consideration is given to the size of the business in terms of the number of its employees, while in Victoria fees vary depending on the annual throughput of the operations. The annual fee structure in South Australia is the most complex, with fees varying by type and number of activities, number of employees and for some businesses, the number of vehicles, chillers or storage capacity. While such complexity may increase uncertainty or costs for new licence applicants, in practice the Commission understands that the annual calculation of licence fees is undertaken by PIRSA with minimal input required from business.

Table 9.3 **Initial and ongoing fees to maintain licences — meat**
2008-09

Jurisdiction	*Category*	*Initial fee*	*Annual fee*
NZ[a]	Application for registration	$112	
	Assessment fee (varies with employment status of assessor)		$112 to $122 / hr plus $28 to $30 / 15 min in final part-hour
NSW	Application fee (for all types of meat businesses)	$50	
	Licence fee		
	Abattoirs, meat processing plants (class 1 to 3), rendering plants, meat retail premises – three fee levels based on number of employees		$270 to $2 187
	Game meat processing (classes 1 to 5) – three fee levels based on number of employees		$339 to $2 574
	Knackery and some animal meat processing businesses – three fee levels based on number of employees		$657 to $2 898
	Class 4 animal food processing business		$201
	All types of meat food vans/vehicles		$201
	Audit of an FSP required for a licence		$143.08 / hour plus $35.77 travel expenses
Vic	Meat processing facility licence (varies with annual throughput)		
	Abattoirs[b]	$563 to $3 364	$1 126 to $6 727
	Poultry processing (poultry slaughter facility)	$157 to $4 613	$314 to $9 226
	Further meat processing (includes poultry and smallgoods)	$259 to $903	$517 to $1 805
	Retail butcher shop	$111	$221
	Game meats	$341	$682
	Prime tallow processing	$1267	$2533
	Meat transport vehicle licence	$0	$94
Qld	Application fee	$116.60	
	Inspections and/or audit costs for accreditation		$225 per hour
	Accreditation fee		
	Exporter		$5 835.15
	Retailer		$373.35
	Producer		$291.65
	Processor (includes abattoirs)		$1 166.75
	Cold store, transporter or harvester/game box		$210.00
	Other		$198.25
SA	Application fee (varies with number of employees)	$126 to $288	
	Administration fee		$168 plus
	plus the applicable annual fee if producing for domestic market (varies with activity & assessed risk)		
	Store or transport meat ($ per store or per vehicle)		$86.50 to $259.50
	Process or handle kangaroos ($ per rack or chiller)		$86.50 to $259.50
	Retail meat processor		$86.50 to $259.50
	All other meat activities (slaughtering, processing, production) – charge based on activity type		$346 to $3460
	– charge based on no. of employees		$173 to $3460

(continued next page)

Table 9.3 **(continued)**

Jurisdiction	*Category*	*Initial fee*	*Annual fee*
WA[c]	Requirements for WA DoH		No charge
	Registration as offensive trade		
	Abattoirs; piggeries; knackeries; poultry farms; rabbit farms; large fat melting and tallow establishments		$262
	Plants for storing, drying, preserving bones or blood; gut scraping; sausage skin preparation		$150
	Butcher shops		
	Licensing of small good manufacturers		$150
	Approval from WA Meat Industry Association to operate an existing abattoir		$500
	Approval from WA Meat Industry Association to construct a new abattoir		$250
Tas	Domestic meat premises:		
	Application for licence	$448	
	Issue of licence	$64	
	Renewal		$313.60
	Transfer	$384	
NT	Licence fees:		
	domestic abattoir	$150	$100
	export abattoir	$150	$100
	domestic processing	$150	$100
	export processing	$150	$100
	domestic poultry abattoir	$150	$100
	export poultry abattoir	$150	$100
	domestic game meat processing	$100	$50
	export game meat processing	$100	$50
	shooters & harvesters	$100	$50
	cold store		
ACT	Registration of a food business (based on FSANZ priority classifications of food businesses)		
	Low risk (eg: boning room, butcher)	$50	$50
	Medium risk (eg: poultry processor)	$100	$100
	High risk (eg: salami manufacturer)	$150	$150

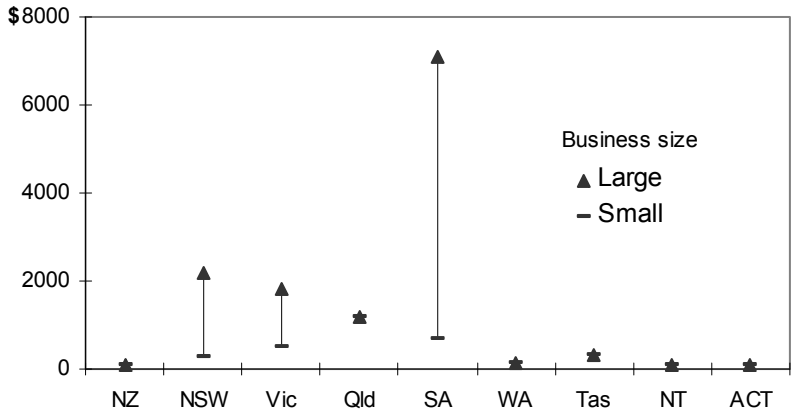
a New Zealand fees are converted to Australian dollars based on an average exchange rate for 2008-09 of 1.23. **b** Fees for abattoir and further meat processing plants may be capped at $1299 where facilities are supervised by AQIS. However, AQIS also imposes charges for its services (chapter 14). **c** Additional fees apply to obtain approval for the construction, registration and/or alteration of a field depot or game processing establishment.

Sources: Baldwins-FoodLegal (2009); pers. comm. DRDPIFR, 2009; pers. comm. NSWFA, 2009; PrimeSafe (2009); RBA (2009); SFPQ (2009b).

Across the jurisdictions, initial licence application fees are highest for (medium to large) meat businesses in Victoria. For small meat businesses, there is not much difference across jurisdictions in licence fees. For larger businesses, differences between jurisdictions may be of more importance as not only is the business potentially operating under different regimes, but in some jurisdictions (New South Wales, Victoria and South Australia), licence fees increase with business size. Given the layered fee structure in South Australia, whereby businesses must pay

additional annual fees for each activity that they undertake, the total amount payable each year by a large meat processor (with multiple activities) in South Australia may exceed the annual fees for meat businesses in other jurisdictions (figure 9.3). It is important to note that in all jurisdictions, the licence charges are only one component of annual regulatory costs incurred by meat businesses and should be considered in conjunction with information on other costs — such as audits (see section 9.3 below). This is particularly the case as most jurisdictions require some sort of compliance check to have been undertaken at least annually in order for a licence to be renewed.

Figure 9.3 **Annual licence costs for a secondary meat processor, by business size and jurisdiction[abc]**
2008-09



a Estimates are for a single activity in secondary meat processing (that is, beyond the abattoir stage) and may be higher in some jurisdictions for a business engaged in multiple activities. Estimates also exclude the cost of audits or inspections that may be necessary to renew a licence. **b** A large meat business in South Australia which produces for export will incur only a minimal annual fee to PIRSA. **c** Estimate for New Zealand is converted to Australian dollars using average exchange rate for 2008-09 of 1.23.

Data sources: Baldwins-FoodLegal (2009); pers. comm. DRDPIFR, 2009; pers. comm. NSWFA, 2009; PrimeSafe (2009); RBA (2009); SFPQ (2009b).

Broad conditions and requirements for licensing

Licence conditions

In all jurisdictions, the granting of a licence is conditional on the business meeting a number of requirements (table 9.4). Requirements to be met in order to obtain/maintain a licence vary between jurisdictions and it is likely that not all requirements impose the same cost burden on businesses. The appearance of having more prescriptive licensing requirements does not necessarily indicate that meat

businesses in these jurisdictions incur greater compliance costs associated with licensing.

In Western Australia, licence conditions are minimal — such as completion of an application form, payment of a fee and/or evidence of local planning permission. In other jurisdictions, a more detailed description of the business scope is required (in some cases to determine the appropriate fee to charge), and the business must have a food safety plan (FSP) in place. In New South Wales, an inspection based on the FSP is necessary before a licence is issued and in New Zealand, the FSP must have been audited. In practice, inspections or audits prior to licensing may occur in other jurisdictions at the discretion of the licensing authority (most jurisdictions that do not explicitly require an inspection prior to granting a licence, nevertheless require that one occur within a short time thereafter).

Table 9.4 **Licensing and quality assurance requirements — meat**

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Basis for licence, etc categories									
Risk based	✓				✓				✓
Activity type	✓	✓	✓	✓	✓	✓		✓	
Business size	✓	✓	✓		✓				
Requirements for licence, etc									
Fit and proper person (or suitably qualified)			✓		✓	✓	✓	✓	
Description of business size/throughput or scope		✓	✓		✓		✓		
Establishment planning permission								✓	✓
Formal quality assurance plan/program [a]	✓	✓	✓	✓	✓		✓	✓	✓
Inspection or audit prior to issue of licence	✓	✓		✓				✓	
FSP required									
Ready to eat meats	✓	✓	✓	✓	✓	✓	✓	✓	✓
Other meats	✓	✓	✓	✓	✓		✓	✓	✓
Regulator approved template available	✓	✓						✓	
Plan approval needed	✓	✓	✓	✓	✓	✓	✓	✓	
Plan audit required	✓	✓	✓	✓	✓		✓		
Plan contents jurisdiction-specific	✓	✓	✓	✓				✓	
Plan contents specified by Australian Standards		✓	✓	✓	✓	✓	✓	✓	✓

[a] In Queensland, an FSP is required for accreditation of exporters, processors (includes abattoirs), retailers and cold store operators under the Meat Scheme. Applicants as a game box operator, transporter or wild game harvester must prepare a 'management statement' under the scheme.

Sources: Baldwins-FoodLegal (2009).

Quality assurance requirements

A level of quality assurance is imposed on meat licence holders in all jurisdictions but there is considerable variability in the way this is implemented. Australian businesses that manufacture ready-to-eat meat (such as pâté or luncheon meats) are required, under *Standard 4.2.3 Production and Processing Standard for Meat,* to comply with a 'food safety management system' that is either based on Australian Standards and a HACCP plan or is otherwise recognised by the relevant jurisdiction regulator. Beyond this requirement, all jurisdictions except Western Australia require primary meat producers or processors to have formal FSPs. This requirement will be in place in Western Australia once its new Food Act is in place (at present, meat businesses in Western Australia are audited for compliance against the relevant Australian Standards).

In five of the eight Australian jurisdictions (excluding Victoria, New South Wales and Queensland) the Australian Standards form the main basis for detailed content requirements of FSPs. Victoria, New South Wales and Queensland, in contrast, each has specific provisions on content that are additional to the relevant Australian Standards. New South Wales provides a template FSP for all food businesses with simplified monitoring requirements for those retail meat businesses that only process raw meat. Jurisdiction-specific requirements may increase the compliance costs of business, particularly for businesses that operate in multiple jurisdictions.

In New Zealand, the *Animal Products Act 1999* requires that all primary meat producers/processors (such as abattoirs) and some secondary meat producers/processors (such as renderers, dual operation butchers and those meat businesses requiring official assurance for export purposes) have a risk management programme (RMP) that is based on HACCP principles and registered with the NZFSA. The NZFSA provides draft generic RMPs for the businesses engaged in the slaughter, dressing, cooling and boning of certain animals and for dual operation butchers.

Other requirements on business inputs and operation

In most jurisdictions, meat businesses are required to comply in various aspects of their operation with jurisdiction-specific legislated requirements and/or regulator codes and manuals (table 9.5). For many businesses, these requirements duplicate obligations under national and/or industry standards. For example, the Victorian Farmers Federation reported that food safety in Australia's poultry meat industry is already covered through the commercial contracts between the farmer and processor. In addition to having a contract, free range chicken meat growers which are members of the industry group, Free Range Egg and Poultry Australia Ltd, are

also required to meet certain requirements on the health and slaughter of poultry (VFF 2007). To the extent that these requirements result in businesses incurring additional costs to achieve the same safety outcomes, the food safety requirements may reduce the efficiency of business production.

Specific areas in which jurisdictions have developed particular requirements for meat businesses are in relation to: the design, construction and maintenance of premises, equipment and transport vehicles; record keeping and staff training requirements; product labelling, sampling and testing.

Table 9.5 **Requirements on business operation — meat**

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Compliance with standards, manuals or procedures (other than the ANZFS Code)	✓	✓	✓	✓	✓	✓	✓	✓	
Requirements on premises									
Initial design	✓	✓		✓		✓		✓	
Changes must be approved or notified		✓	✓		✓			✓	
Maintenance provisions				✓					
Jurisdiction-specific requirements on equipment suitability/maintenance	✓	✓							
Jurisdiction-specific requirements for transport vehicle design/construction/maintenance	✓	✓		✓		✓			
Jurisdiction-specific record keeping requirements	✓			✓		✓	✓	✓	
Jurisdiction-specific training and personnel requirements	✓		✓	✓		✓	✓	✓	

Source: Baldwins-FoodLegal (2009).

The Commission welcomes views on the extent to which jurisdiction-specific requirements for business operations and processes are likely to result in a significant regulatory compliance cost to businesses.

Premises and equipment design and maintenance

In a number of jurisdictions, there are specific requirements on the initial design or construction of the premises in which the meat business operates and stipulations on the manner in which the premises and equipment are subsequently maintained. For example, meat businesses in New South Wales, Victoria, South Australia and the Northern Territory are not permitted to make structural alterations to any building used for meat processing without prior approval from the relevant food safety regulator.

Changes to food safety requirements in recent years as jurisdictions attempt to bring about greater consistency in requirements may have resulted in some meat businesses needing to upgrade their facilities or undergo more frequent testing. Cornish (2009) reports of one Wodonga butcher that '… his upgrade cost him close to $100,000 and testing costs him a further $2000 a year.'

The major supermarkets have also highlighted areas in which some Australian jurisdictions place requirements on the storage and display of meat products on their premises. Woolworths reported that:

> Pre-packaged pet food is sold in supermarkets without risk of contamination, however PrimeSafe in Victoria requires segregation and signage for the sale of pet food. PrimeSafe also requires separate storage areas for pet food which must be appropriately identified with signage. No other Australian jurisdiction has similar requirements. (Woolworths 2007, p. 7)

Coles similarly reported this as an additional cost of operating in Victoria (Coles 2007).

Transport

In addition to meeting national standards for the transport of meat, Australian jurisdictions place additional requirements on transport vehicles and differ in the requirements for licensing. New South Wales, Victoria, Queensland and South Australia each have a special licence category for meat transport vehicles. In addition, legislation in New Zealand, New South Wales, Queensland and Western Australia specifies requirements for the design and construction of vehicles used for meat transportation. In contrast, meat vehicle licensing in Victoria is more narrowly focussed on vehicles in particular uses. For example, a meat transport vehicle does not have to be licensed in Victoria if it is used only to convey meat from butchers to customers; it is refrigerated and carries meat in cartons to cold stores or wharves; it is used to load a shipping container at an export registered establishment; or it is licensed in another jurisdiction, is used to transport meat in cartons to isolated and remote areas and additional licensing in Victoria is not practical.

Record keeping

There is limited legislative prescription on record keeping. In practice, the record-keeping obligations on meat producers and processors stem from obligations to adhere to nominated Australian Standards, the ANZFS Code and the quality assurance programs.

Nevertheless, interpretation of requirements can vary between jurisdictions, particularly with respect to the level of record keeping necessary to demonstrate compliance. For example, Coles reported that:

> There is currently different temperature checking requirements for food businesses in each jurisdiction. In NSW for example, meat production departments are required to check and record the temperature of meat on display three times per day, while most other states only require temperature checking once a day. These variations require us to implement state based temperature checking records and checking processes, which adds to the cost of doing business. (Coles 2007, p.6)

Even for businesses operating in a single jurisdiction, the compliance costs associated with record keeping requirements can be significant. Savill (2005b) reported on the experience of a family smallgoods business in compliance with Victoria's food safety regime:

> … entangled in log books, manuals, food safety plans and audits, documenting every step of what used to be a simple family salami and ham-making exercise. Date, temperatures, product weight, moisture and pH levels must be checked at every stage in the production process … it's a lot of work for a small business … many butchers have simply given up making salami because of the additional cost and hassle.

For some businesses, such costs associated with record keeping are a normal part of business operations for the responsible production of safe food. For other businesses, the requirements represent an additional compliance burden which may or may not be accompanied by safer food.

The Commission was advised that record keeping requirements of red meat businesses generally exceed those of poultry meat businesses in both Australia and New Zealand.

Training

Jurisdictions differ in the extent of training and demonstrated skills required of meat handlers. In Victoria, the quality assurance program (QAP) of a declared facility must include strategies for staff training in food handling. In Tasmania, personnel must demonstrate that they have the knowledge and skills to be exempt from training. FSPs in Queensland are required to detail aspects of training for staff that deal with primary produce. In New Zealand, all risk management program operators are required to provide for the instruction of staff in operations under the program and require the operator and staff to wear appropriate clothing, follow personal hygiene routine and minimise contamination. In contrast, Western Australia has no specific legislated requirement in relation to employee competency, worker health or training (beyond the necessity to comply with the Australian Standards which specify these aspects).

Across the jurisdictions, the need to undertake and demonstrate staff training on an ongoing basis (as opposed to recognition of a skill level) in Victoria, Queensland and New Zealand is likely to mean that training requirements are more of a burden for meat businesses in these jurisdictions.

Labelling

Legislative labelling requirements for meat at the primary production level are generally limited. The main focus of meat labelling at the primary production level is on traceability issues with legislative requirements for the branding of carcasses and the provision of information including the name, location of licence number of facility; or with respect to packaged meat, the name and the business address of the meat packer, the licence number of the facility; and the date of packaging. While the labelling provisions of the ANZFS Code are to be applied in each Australian jurisdiction for meat to be sold, these requirements nevertheless allow non-retail meat suppliers to provide less detailed food labelling.

For retail meat businesses and those with additional labelling requirements, differences in the tolerance of regulators on enforcement of label accuracy (for example, with respect to the amount of 'meat' contained in a meat product) can pose compliance costs on businesses that trade in multiple jurisdictions. (Most businesses would not find it cost-effective to produce separate labels for each jurisdiction in which they operate.) Accuracy of labels can vary for example, when a meat product produced in bulk does not contain an even distribution of meat (such that a sliced portion has more or less than the described content) or when the meat product contains meat on the bone.

Changes to labelling requirements can represent a substantial cost burden for businesses — the Commission was presented with evidence that the cost to some meat businesses in not complying with nutritional panels is substantial in terms of destroyed packaging costs. However, as there are few significant differences in labelling requirements between jurisdictions within Australia or New Zealand, these costs are not likely to vary significantly between jurisdictions (Baldwins-FoodLegal 2009).

Sampling and testing

Compliance with national standards obligates all meat businesses to undertake regular testing of their product. In addition to this, authorities in all jurisdictions can direct that additional testing occur and remove samples of meat products for testing and analysis. Some jurisdictions specify that this can occur regularly — for example, Queensland allows testing as part of its annual compliance audits.

However, more usually, testing is legislated to be permissible at any reasonable time or whenever necessary. In New Zealand, poultry meat businesses have, for a number of years, reported the results from testing of flocks for a range of viruses and infections, including campylobacter, on a weekly basis to NZFSA.

All jurisdictions provide the business with results from testing as either part of a regular audit report or as a separate report. The key area of difference between jurisdictions on sampling and testing relates to reimbursement of costs to businesses. Samples removed for testing in New South Wales and South Australia may be reimbursed at current market value, but the NSWFA limits this to $10 per sample. In contrast, SFPQ may recover from businesses the costs of checking samples.

9.3 Inspections and audits

Purpose and frequency

Inspections are one key area in which there is a significant difference in regulatory burden on primary producers of red meat as opposed to the regulatory burden placed on primary producers of poultry, rabbit, ratite or crocodile meat or on other primary processors.

Under the Australian Standard for the *Hygienic Production and Transportation of Meat and Meat Products for Human Consumption*, the ante-mortem and post-mortem inspections (to ensure that only animals fit for human consumption are slaughtered and processed and that the resulting meat is suitable for human consumption) must be carried out by a qualified meat safety inspector. This can involve both a visual check of the animals and under the prescriptive Australian Standard, particular microbiological tests. There is little scope in the Standards for businesses to ascertain the suitability of meat for human consumption in a manner other than that specified by the Standard.

Jurisdictions differ in the way in which these inspection requirements are implemented for red meat. In New South Wales, for example, qualified meat inspectors recognised by the NSWFA are employed in every abattoir and are checked regularly by the NSWFA. In Western Australia, meat inspectors employed by local governments undertake abattoir inspections on a cost-recovery basis. For meat destined for export, all inspections must be undertaken (that is, not just overseen) by an AQIS employee (or an NZFSA employee in the case of New Zealand meat exports). While this potentially reduces the flexibility of operations

for exporting businesses, it is not clear the extent to which this is an additional regulatory burden or an export market requirement.

While the Australian Standards applicable to the other meat products (such as poultry meat or pork) similarly require health surveillance and disease detection systems to be put in place, the inspections can be conducted by the lot or pen of animals, rather than on individual animals.

Audits of meat businesses can take place for a variety of reasons, including:

- as a part of the registration process; or
- in conjunction with an inspection to verify compliance with legislation, Australian Standards or with an FSP.

While there is generally a difference between an inspection by an authorised authority to verify compliance with the relevant legislation and an audit of a primary meat producer's QAP, in many of the jurisdictions, the audit of the QAP is done by an authorised officer during an inspection. Some jurisdictions which do distinguish between an inspection and an audit of a QAP, accredit private third parties to be auditors (as is the case in New Zealand, Queensland and Victoria). In these circumstances, inspections by the regulator (such as PrimeSafe in Victoria) would only take place in certain events (i.e. if requested by an auditor, if there is a complaint or if there is potential risk to public health and safety). In contrast, the NSWFA conducts audits and inspections of every licensed meat business in its jurisdiction (including during the application process). Overall regulatory compliance costs may be reduced, if for example, the inspection activities of a particular agency are recognised and accepted by both government regulators and commercial interests.

In some jurisdictions there is potential for a duplication and overlap in inspections and audits. Coles reported that

> … in South Australia, Primary Industry and Resources South Australia (PIRSA) audit meat departments within stores while local council EHO's monitor the rest of the store by actioning food assessments. While they don't generally overlap there are some occasions when PIRSA will follow up on items/standards within a deli and some councils assess the meat departments and go into our meatrooms.
>
> In Queensland, there is duplication between SafeFood and Health Department, particularly in terms of the meat and delicatessen. (Coles 2007, p.14).

The frequency with which audits are undertaken is generally not specified in legislation. In practice however, the regulators in most jurisdictions have developed guidelines for business on audit frequency. Audit frequency generally varies with the type of meat operation and perceived risk to food safety and ranges from up to

four per year in New Zealand, New South Wales and Victoria, to minimal annual audits in the ACT and Northern Territory. In some jurisdictions, a business may be found to be generally compliant but nevertheless receive follow-up auditor visits to check progress in implementing recommended changes to business practices.

Jurisdictions reported considerable variation in the length of time taken to perform an audit of a meat business. For example, New South Wales, Victoria, South Australia, Queensland and Tasmania reported that audits of a meat business (such as a secondary meat processor), typically lasted for around 2 to 3 hours. The minimum amount of time reported for an audit by the NZFSA was 2 to 5 hours. Other Australian states and territories reported typical audit duration of around one hour for such a business. In all jurisdictions, audits of abattoir facilities were of a longer duration than other meat businesses — lasting from 2 hours in Tasmania and around 3 hours in most other Australian states and territories to up to 5 hours in New Zealand (Productivity Commission regulator surveys 2009, unpublished). Most jurisdictions also indicated that the length of an audit can increase up to four-fold for a larger more complex business (compared with a small family operation).

Inspection and audit fees

Inspection costs vary substantially with the type of meat business and its stage in the production chain. For red meat abattoirs, the cost of an on-site inspector to examine every carcass is a substantial part of compliance costs and these fees may vary with the type of animal inspected or the local council area in which the abattoir is situated. For example, in Western Australia, such inspections are undertaken by an officer in the employ of the relevant local council and are charged on a cost-recovery basis at a rate that varies from council to council. In other jurisdictions, meat inspectors with recognised qualifications are employees of the abattoir.

The Commission is interested in views on the extent to which meat inspection charges incurred by abattoirs are considered relevant to food safety regulation.

The fees charged to businesses for regulator audits also vary substantially between jurisdictions (table 9.6). To some extent, charges are related to regulator requirements to cost-recover for their services and the number of businesses within their jurisdiction over which they can recoup their costs. In states with lower populations of businesses, such as South Australia and Victoria, inspection/audit costs are comparatively high. Other states with low populations of businesses either do not charge for their inspection services (for example, in Western Australia, the Northern Territory and ACT) or do not fully cost recover (for example, Tasmania).

Table 9.6 **Audits and compliance checks — meat**

Australian dollars, 2008-09

	Principal authority	*Third party auditors possible*	*Frequency*	*Cost*
NZ	Animal Product Officers RMP Verifiers	✓ (6 approved)[c]	Red meat: 4 audits per year Poultry: 4 audits per year (with provision for less or greater frequency according to performance)	NZFSA audit: $112 to $122/hr plus $28 to $30/15 min in final part-hour
NSW	NSWFA		Each 3–12 months depending upon risk rating and last audit rating. Failed audits result in a follow-up audit within 1 month	$147/hour plus $38 travelling expenses
Vic	PrimeSafe[a]	✓ (5 approved)	Retail butchers (fresh meat); boning rooms; poultry processors: twice / year Retail butchers (cook-chill process); abattoirs; game processors: 4 audits / year	Vary with auditor AusMeat: $365 / audit charged for one business SGS: $140 – $180 / hour
Qld	SFPQ	✓ (14 approved)	At least one fee-for-service audit /year. Higher risk businesses may be audited more frequently.	SFPQ audits: $225/hour
SA	SA DPIR through authorised persons		High risk businesses audited twice / year; Medium risk businesses once/year	$167/hour
WA	WA DoH[b]		Twice per year	No charge
Tas	Inspectors appointed by Tas DPIPWE		At least twice per year	Inspection/audit fees: $233.73 for the first hour; plus $76.03 for each additional 1/2-hour
NT	NT DRDPIFR		Once per year; DPI aim to inspect twice a year	No charge for compliant annual inspection/audit
ACT	ACT Health		Once per year (not always met)	No charge for inspections/audits

a The licensee must arrange with an Accredited Certification Body for an auditor to be present at the facility within the first seven days of operation. Weekly quality control audits continue until a QAP is implemented. **b** For example, the WA Meat Industry Authority also do inspections of meat abattoirs and saleyards. While they are not primarily focussed on food safety, they do convey any findings on food safety that result from their inspections and audits of abattoirs, saleyards, boning rooms and processing works to either AQIS or local government for inclusion in their audit reports. **c** There are an additional four approved auditors that may be available for meat transport and storage businesses.

Sources: Baldwins-FoodLegal (2009); Productivity Commission regulator surveys (2009, unpublished); RBA (2009).

Overall, given the per hourly charge rate, frequency and average duration of regulator audits, a secondary meat processing business would be likely to incur the greatest annual cost of audits in New Zealand, Tasmania, Victoria and Queensland (figure 9.4). It is important to note that annual registration/licence charges were relatively low for secondary meat processors in New Zealand and Tasmania, which

could mean that overall annual regulatory compliance costs (which includes licence costs, audit costs and the cost of other compliance activity) to these businesses are comparable with those in other jurisdictions that have lower annual audit costs. Furthermore, as the estimated upper end of the range for annual audit costs is comparable in New South Wales, Queensland and Victoria with that in Tasmania, some meat businesses in these states could experience similar to, or higher annual audit costs than businesses in Tasmania.

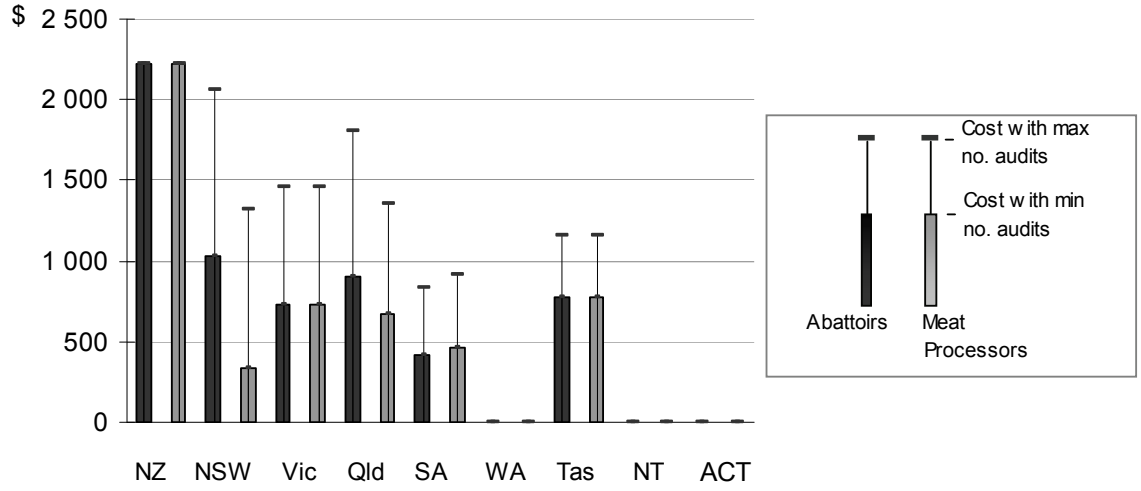
Given the longer duration for audits of abattoirs in most jurisdictions (compared with audits of other meat facilities), the annual cost of auditing is expected to be generally higher for abattoir facilities than for other meat businesses further along the production chain. Abattoirs in New Zealand, New South Wales and Queensland are likely to incur the greatest annual auditing costs. Meat businesses in Western Australia, the Northern Territory and ACT are not currently charged for a compliance audit. It should be noted, however, that average hours per audit will not only be influenced by the audit requirements, but also by the complexity of the businesses being audited. Thus, estimates will be biased if the types of businesses audited in each jurisdiction vary considerably.

Furthermore, the extent to which regulatory authorities recover the costs of food safety monitoring and/or utilise private third party auditors which have a higher charge than the equivalent government provided service differs substantially between jurisdictions (see chapter 8). This means that while *business* compliance costs may be higher in some jurisdictions (such as those which fully cost recover for their food safety services or use third party auditors), costs to the *community* overall of achieving a particular food safety outcome may not be higher (and could even be lower).

Coles reported that the need for separate licences for aspects of their meat business increases the overall cost to them of audits:

> … in Queensland there is a separate licence and audit requirement for meat and the delicatessen. The current risk category for meat schemes in Queensland is low for meat and medium for delicatessens, which means that we have to obtain two separate licence accreditations, which cost us approximately $320 and $190 for meat and the delicatessen respectively. In addition, the audit costs impose a further $225 per hour for meat and delicatessen, plus travelling costs. (Coles 2007, p.8)

Figure 9.4 **Annual audit costs for meat businesses by jurisdiction[a]**
Australian dollars, 2008-09



a Estimates are for an abattoir and a secondary meat processor (that is, beyond the abattoir stage) that is generally compliant and may be higher in some jurisdictions for a business engaged in multiple activities that are separately audited. Minimum (maximum) annual audit cost is derived as: $ cost per hour for an audit x average number of hours per audit x minimum (maximum) number of audits per year. New Zealand estimate is converted to Australian dollars using an average exchange rate of 1.23 for 2008-09.

Data sources: Baldwins-FoodLegal (2009); Productivity Commission regulator surveys (2009, unpublished); RBA (2009).

In addition to the audits and inspections by government regulators, there are a large number of audits and inspections which businesses undergo for key clients or markets. The Australian Chicken Meat Federation (2006) reported that '…it is not unusual for a processor to be audited 15 times in a year by various bodies.' The Commission was advised that some commercial audits are premised on demonstrated compliance with government regulation. This means that when governments introduce new regulations or food standards, businesses may incur a cost to demonstrate compliance in a government audit plus, if the government audit is not recognised by or does not predate a commercial audit, an additional cost in commercial audits to demonstrate compliance with new government requirements.

To the extent that commercial requirements exceed the standards enforced by jurisdictions on businesses, the costs to business of government audits may not impose additional costs of compliance except for the time and fees required during the conduct of the audit itself.

Enforcement and corrective action

The scope for minimising unnecessary business compliance costs associated with enforcement and corrective action is likely to be greater when there are a minimal

number of regulators with which businesses must liaise and when these regulators have available to them a range of corrective actions to deal with different degrees of severity in non-compliance. Also, when agencies use risk-based strategies to focus enforcement efforts on those businesses more likely to be non-compliant and/or which present the highest risks to food safety then compliant and safer food businesses are not inconvenienced unnecessarily.

For those meat businesses licensed by a state government department/agency, this authority is also the enforcement body for food safety regulation. All other meat businesses are subject to enforcement action by the relevant local council (which in most jurisdictions reports on food safety matters to the state department of health). Even where third party organisations are available to undertake regulatory audits, the government department/agency in the jurisdiction maintains regulatory enforcement powers.

Enforcement options

All jurisdictions have the capacity to issue directives for action or compliance notices (table 9.7). While only some have the legislated authority to place conditions on licences, those that do not are able to prohibit use of the business premises, particular equipment or vehicles. For example, NSWFA (2008a, p.9) noted that during 2007-08, it seized almost 15 tonnes of poultry from a processing facility which continued to operate after its licence was cancelled.

The types of corrective measures that are available in the case of a violation of licence conditions or food safety provisions vary between jurisdictions. The Tasmanian DPIPWE reported that an inability to issue infringement notices under the *Meat Hygiene Act 1985* to non-compliant Tasmanian meat businesses is a fundamental limitation of enforcement in that state (DPIPWE (Tasmania) 2009). New South Wales is the only jurisdiction that relies on adverse publicity for non-compliant businesses in the form of a 'name and shame' register (chapter 8), although some New Zealand councils also have this option available to them. All jurisdictions can issue fines as a penalty measure, but only the NSWFA has the legislated authority to issue on-the-spot fines to businesses.

Table 9.7 **Enforcement and corrective action — meat**
2008-09

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Enforcement body									
Authority same as for licensing	✓	✓	✓	✓	✓	✓	✓	✓	✓
Local council officers		✓			✓	✓		✓	
Other authorised officers		✓	✓		✓	✓	✓	✓	
Reasons for cancellation or suspension of licence, etc. – reasons									
Non-compliance with FSP or RMP	✓	✓						✓	
Non-compliance with other specified conditions		✓	✓	✓			✓	✓	
Non-compliance with standard or legislation		✓		✓	✓			✓	
Avoid a threat to food safety		✓						✓	
Committed an offence or otherwise been disqualified					✓	✓	✓	✓	
Not submitted to audit				✓				✓	
Not paid fees		✓	✓	✓	✓				
No longer a fit and proper person		✓	✓			✓		✓	
Premises has been altered or used for non-permitted purpose								✓	
Corrective actions									
Conditions on licence		✓	✓			✓	✓	✓	✓
Suspension or cancellation of licence[a]	✓	✓	✓	✓	✓	✓	✓	✓	✓
Quality assurance program			✓				✓	✓	
Compliance monitoring		✓	✓					✓	
Additional audits/inspections		✓	✓				✓	✓	
On-the-spot fine		✓							
Directives for action / compliance notice	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prohibitions or conditions on use of premise, equipment or vehicle	✓	✓		✓	✓			✓	✓
Prosecution for offence / conviction	✓	✓	✓	✓	✓	✓	✓	✓	✓
Penalties									
Adverse publicity		✓							
Fines	✓	✓	✓	✓	✓	✓	✓	✓	✓
Imprisonment			✓	✓	✓	✓			✓
Review of cancellation/suspension - external[b]	✓	✓	✓	✓	✓	✓	✓	✓	

a In New Zealand, deregistering of an RMP has similar consequences to licence cancellation. **b** External review in WA is to the Minister. In all other jurisdictions, external review is to a local court.

Source: Baldwins-FoodLegal (2009).

Licence suspension or revocation is possible in all jurisdictions (or, in the case of New Zealand, deregister an RMP) in response to non-compliance of the licensee

with conditions specified in legislation, standards or an FSP. For example, since April 2008 (and informally since late 2007), all poultry businesses in New Zealand have been required to demonstrate on a weekly basis, that campylobacter levels in their flocks are below acceptable levels. Businesses are given 12 weeks to meet the standard or be subject to a variety of sanctions depending on the situation. Since this requirement was introduced, several smaller operators have struggled to remain viable and one has closed down.[10]

In only four of the nine jurisdictions is non-payment of fees stipulated as a potential reason for suspension or cancellation of a licence. Licence suspensions in all jurisdictions require written notification to the licensee (except in the case of a serious food safety breach). While ultimately, all jurisdictions can suspend or cancel a licence, and in some severe cases prosecute business operators for offences, only Victoria, Queensland, South Australia and Western Australia have imprisonment in their legislation as a potential outcome.

New South Wales, Victoria and Queensland all noted offences by meat businesses in their jurisdictions during 2007-08 (NSWFA 2008a; PrimeSafe 2008; SFPQ 2008a). For example, PrimeSafe noted four prosecutions completed during 2007-08 related to meat businesses for breaches of the *Meat Industry Act*. Two prosecutions related to the slaughtering animals for human consumption in a place that is not a licensed meat processing facility; one related to supply of meat to a retail premises which was not branded in accordance with the regulations and the fourth related to operation of a meat processing facility without a licence. (PrimeSafe 2008, p.21)

All jurisdictions provide businesses with the right to internal review of decisions on licensing, compliance directives and prohibitions (where relevant), within a specified time frame. All (except Western Australia) also provide for appeal of decision to a local court, and in the case of Western Australia, to the relevant Minister.

There is evidence of businesses changing operations in response to enforcement procedures in some jurisdictions. For example, Cornish (2009) reported on one outcome of differences in enforcement practices between states:

> A fear of PrimeSafe has spawned an extraordinary trend: Victorian butchers are pickling their hams in this state before sending them over the border to be smoked by butchers in New South Wales, where a different meat culture exists. Coming the other way are trucks packed with dry aged beef. Dry aged beef can form a floral bloom … testing this bloom has made dry aged beef largely unprofitable in Victoria.

[10] The operator which closed down had a range of other issues and was meeting the campylobacter target at the time operations ceased.

The extent to which businesses find it cost-effective to operate around these differences between jurisdictions in enforcement practices of regulators (or at least the expectation of enforcement practices) is an indication of the potential impact of the restriction.

Penalties and fines

Penalties and fines are not a regulatory compliance cost for a compliant business, but the severity of repercussions for non-compliance can act as a strong incentive for some businesses to meet regulatory requirements.

Every jurisdiction has a range of offences that incur fines and penalties — some come under the jurisdiction's food Act and apply to a range of businesses; other offences come under industry- or primary-specific legislation. The severity of these fines and penalties varies substantially between jurisdictions and in some cases, between types of meat businesses. As the Food Act in New South Wales covers all meat businesses in that jurisdiction, fines and penalties are uniform across businesses for a given offence. In other jurisdictions, penalties specified in the relevant food Act may apply to meat businesses at the retail end of the production chain, and other legislation targeted at primary food producers and processors specifies penalties for these types of meat businesses. Fines and penalties associated with three basic offences — failure to be licensed (or equivalent), provision of food that is unsafe (either unknowingly or deliberately), and failure to follow a compliance order or directive — are presented in table 9.8.

Across the jurisdictions, a failure to be appropriately licensed (or registered or accredited) as a primary meat business incurs the greatest penalty in Queensland, New South Wales and the Northern Territory — for example, the penalty may be up to $200 000 or 2 years imprisonment in Queensland.[11] In contrast, primary meat businesses in Western Australia and Tasmania may be fined less than $10 000 for a failure to be licensed. For meat businesses involved in activities other than primary production and processing, the maximum penalty for not being licensed is highest in New South Wales, Queensland, South Australia, Tasmania and the Northern Territory. In New South Wales and the Northern Territory for example, a meat business may be fined up to $275 000 for a failure to be appropriately licensed. These fines may be levied even when a business is otherwise compliant in the provision of safe food.

[11] While the maximum fine level is greatest in Queensland, the number of cases which attract the maximum fine is unknown. For example, in a recent case of a Queensland kebab manufacturer operating without accreditation, the operator incurred a fine of just $17 000 plus court costs (SFPQ 2009b).

Provision of food that is unsafe generally incurs greater penalties in those cases where food is sold to the public (rather than to another business for further processing) and when the food is known to be unsafe yet still provided. As for licensing/accreditation, the maximum penalty for the provision of unsafe food by a primary meat producer/processor is highest in New Zealand[12] — a fine of up to (approximately) A$406 000 (or NZ$500 000) — although primary meat businesses in New South Wales, Queensland, Northern Territory and ACT may also incur comparatively large fines for this offence. In all other jurisdictions (Victoria, South Australia, Western Australia and Tasmania), the fine for known provision of unsafe food is less than $12 000 for a primary meat business. For other meat businesses (which retail or substantially transform their product), all jurisdictions except New Zealand and Western Australia, provide for fines in excess of $40 000 (and typically have a maximum over $100 000) for the provision of unsafe food.

Failure to comply with a compliance order or directive of an authorised officer incurs the greatest penalty in New South Wales ($55 000 for an individual or $275 000 for a corporation), followed by New Zealand and Queensland. The offence attracts comparatively little or no financial penalty in Victoria, Western Australia, Tasmania and the Northern Territory.

A comparison of penalties and fines between jurisdictions provides no indication of how often or how vigorously particular offences are pursued by the regulators. Some indication of regulator enforcement approaches is provided (across all regulated businesses within each jurisdiction) in chapters 7 and 8 of this report.

[12] In New Zealand, penalties for the provision of food that is known to be unsafe do not differentiate between sale to the public or another business for further processing and therefore also apply to secondary meat producer/processor businesses.

Table 9.8 **Penalties and fines for selected offences — meat**[a]

Australian dollars, 2008-09

	Operating an unlicensed (or equivalent) food business	*Providing unsafe food*[b]	*Failure to comply with a directive/compliance order*
NZ	Primary: Indiv: $16 260 Corp: $81 300 Other food businesses: $407 plus $41 / day for continued offence	Producers and processors: Indiv: $81 300 & 5 yrs prison Corp: $406 504 Operator of RMP: Indiv: $60 975 & 2 yrs prison Corp: $243 902 Other food business: Indiv: $4065 Corp: $16260	Primary: Indiv: $40 650 plus 1626/day for continued offence Corp: $243 902 plus $1 626/day for continued offence
NSW	Indiv: $55 000 Corp: $275 000	Indiv: $110 000 or 2 yrs prison Corp: $550 000	Indiv: $55 000 Corp: $275 000
Vic	Food business: 1st offence: $5 671 subseq. Offence: $11 342 Meat processor & abattoir: 1st offence: $11 342 subseq. offence: $56 710 or 2 yrs prison or both Transport vehicle: 1st offence $5 671 subseq. offence: $11 342 or 2 yrs prison or both	Butcher: 1st offence: $11 342 subseq. offence: $56 710 or 2 yrs prison Other food businesses: Indiv: $40 000–$100 000 or 2 yrs prison Corp: $200 000–$500 000	Food business 1st offence: $2 268 subseq. offence: $5 671
Qld	Primary: $200 000 or 2 years prison Other food business: $100 000	Primary: $300 000 or 2 yrs prison Food businesses: $100 000 or 2 yrs prison	Primary: $30 000 Food business: $20 000
SA	Primary: $20 000 Food business: Indiv: $25 000 Corp: $120 000	Primary: $5 000 Food business: Indiv: $50 000–$100 000 or 4 yrs prison Corp: $250 000–$500 000	Food business: Indiv: $50 000 Corp: $250 000
WA	Abattoir: Indiv: $5 000; Corp: $25 000 Other food business: 1st offence: $100–$1000 2nd offence: $200–$1000 3rd & subseq. offence: $500–$1000 Plus $50–$100 /day for continued offence	All food businesses: 1st offence: $250–$2 500; 2nd offence: $500–$2 500; 3rd & subseq. offence: $1250–$2500. Plus, $125–$250 /day for continued offence	No equivalent penalty
Tas	Primary: $6000 plus $60 /day for continued offence Other food businesses: Indiv: $60 000; Corp: $144 000	Primary: $3 000 plus $240/ day for continued offence Other food businesses: Indiv: $120 000 or 2 yrs prison or both; Corp: $600 000	Primary: $6000 plus $600/day for continued offence Other food businesses: Indiv: $60 000; Corp: $300 000
NT	Indiv: $55 000; Corp: $275 000	Indiv: $110 000 or 2 yrs prison; Corp: $550 000	$500
ACT	Indiv: $5 000 or 6 mths prison or both; Corp: $25 000	Indiv: $100 000 or 2 yrs prison or both; Corp: $500 000.	$10 000

a All fine amounts are maximums unless otherwise specified. **b** Fines for provision of unsafe food escalate in most jurisdictions for offences that are deliberate.

Sources: Jurisdiction legislation; RBA (2009).

10 Food safety in egg production and processing

Key points

- The majority of Australian jurisdictions do not separately regulate primary egg producers. Egg businesses further along the production chain which produce a substantially transformed product or which retail to the public are generally regulated as 'food businesses' under the relevant jurisdiction's food Act.
- The number of eggs produced or hens kept determines the coverage of food safety requirements in Tasmania and New Zealand, but not in other jurisdictions.
- Notification or licensing requirements are minimal for most egg businesses in Australia. In New South Wales, South Australia and the Northern Territory, egg producers and processors can meet food safety requirements without incurring registration or licence fees. Those in Western Australia and the ACT incur an annual fee while those in other jurisdictions potentially incur both an annual fee and a cost associated with demonstrating compliance against a food safety plan (FSP).
- Only in New Zealand, Queensland and Tasmania are egg producers required to have FSPs — although egg businesses in Victoria that have a retail function are also required as food businesses to have an FSP.
- Queensland has the most prescriptive requirements for egg businesses and is the only jurisdiction which requires eggs to be individually stamped (at ongoing running costs for businesses of between 0.4 cent and 2.7 cents per dozen eggs).
- Differences between jurisdictions in the interpretation and enforcement of particular requirements (such as what constitutes a 'crack' in an egg, or storage temperature and humidity requirements) may add to business compliance costs in some jurisdictions, but the Commission was not able to quantify these costs.

This chapter examines in detail the differences in primary production and processing regulation, and its implementation and enforcement within jurisdictions, in the context of eggs and egg products.

The benchmarking in this chapter draws heavily on a comparison of regulatory differences between jurisdictions, as detailed in a consultancy report prepared for this study (Baldwins-FoodLegal 2009). Where possible, the cost implications for business of these regulatory differences are then explored using jurisdictional fees and charges information and specific examples provided by study participants.

10.1 Scope of regulation of eggs and egg product safety

Egg businesses

The regulation of eggs as a food for human consumption begins with the producing farms. There are just over 400 commercial egg producers in Australia and 150 in New Zealand (table 10.1). Within Australia, most producers are located in Victoria or New South Wales. Approximately 80 per cent of Australia's eggs are produced in cage layer farms, with the balance coming from barn and free-range farms.

Between them, these egg producers supply over 300 million dozen eggs (largely to the domestic market) every year. 85 per cent of eggs are sold in shell form through grocery and retail chains and wholesale to the food service sector, with the balance processed into liquid, frozen and dried egg products for use in the food service and processed food sectors (DAFF 2009c).

Table 10.1 **Commercial egg production by jurisdiction**
As at 30 June 2008 for Australia; as at February 2008 for NZ[a]

	Egg businesses	*Chickens ('000)*	*Eggs (million dozen)*
NSW	154	4772	
Vic	105	5011	
Qld	73	2933	
SA	49	746	
WA	28	869	
Tas	8	209	
NT	0	0	
ACT	1	220	
Australia total	417	14760	240
New Zealand	150	3200	81

[a] Estimates are for the number of businesses rather than the number of licensed business premises.

Sources: ABS (*Agricultural Commodities, Australia* — 2007-08, Cat. No. 7121.0); Statistics NZ website; Egg Producers Federation of New Zealand (2009).

Provisions for the safety of eggs and egg products

Clean, whole shell eggs are rarely associated with food-borne illness in Australia and New Zealand. However, Salmonella in cracked or dirty eggs and unpasteurised egg pulp is a key hazard associated with public health risk (FSANZ 2009c). Contamination mainly occurs at the time of, or shortly after, the egg is laid. General provisions for the safety of eggs and egg products are provided in chapters 1 and 2 of the Australia New Zealand Food Standards Code (ANZFS Code). Specifically:

- *Standard 1.6.1 Microbial limits in food* sets microbial limits for pasteurised egg products in relation to salmonella (this standard applies in both Australia and New Zealand)
- *Standard 1.6.2 Processing requirements* specifies that liquid egg and egg products must not be sold or used in the manufacture of food unless they have been pasteurised (applies only in Australia)
- *Standard 2.2.2 Egg and egg products* prohibits the use and sale of cracked eggs, and also requires that all egg products undergo treatments that will allow compliance with microbial limits (this standard applies in both Australia and New Zealand).

While these standards are considered to adequately control the presence of Salmonella in egg products, they do not specifically address if/how dirty or cracked eggs may be used in further food production.[1] Further, application of the existing standards to egg producers that also undertake some processing is unclear (FSANZ 2009c).

To address these deficiencies, a new through-chain standard for the *Primary Production and Processing of Eggs and Egg Products* in Australia is under development (and has been since April 2006). Development of the standard has taken into account existing food safety requirements in the egg industry, including existing regulations, industry codes of practice and guidelines, and food safety systems already in place. A draft of the proposed new standard was released for public comment in September 2009 (FSANZ 2009c). It is proposed that the new standard will apply to all egg businesses, with the exception of (non-producer) businesses involved in retail sale or catering activities (as these are already adequately covered by other standards in the ANZFS Code).

In conjunction with development of the standard, the proposal includes an implementation strategy with a compliance plan that outlines what a business needs to do to comply with the standard and how jurisdictions should monitor compliance. FSANZ estimate that implementation of the new standard will cost Australian industry around $9 million in the first year and $3.5 million per year thereafter. Parallel development of the proposed standard with its implementation strategy represents a new approach to the standard development process which is being trialed for eggs. At this stage, the new standard is expected by FSANZ to be

[1] FSANZ (2009c, p.9) estimate that under the current regulatory regime, the Australian egg and egg products industry could be incurring costs of $6.75 million per year as a result of egg associated outbreaks. This estimate consists of around $4.3 million in reputation damage, inefficiencies and wastage and $2.4 million in food recalls.

finalised for introduction in 2010, with a twelve month phase-in period (FSANZ 2009c).

Without benefit of the primary production and processing standard, the safety of eggs and egg products in Australia is currently regulated by industry and by state and territory governments (table 10.2). The majority of Australian jurisdictions do not separately regulate primary egg producers. Egg businesses further along the production chain which produce a substantially transformed product or which retail to the public are generally regulated as 'food businesses' under the relevant jurisdiction's food Act. Only Tasmania has a specific Act for egg safety, although Queensland incorporates additional provisions for egg safety within its broader primary production legislation and has produced a guideline for commercial egg production. Coles reported that this guideline is 'extremely prescriptive' for its suppliers and is 'outside the intent of modern "outcome based" Australian legislation and may, by its prescriptive and state-based nature, introduce greater complexity for national retailers' (Coles 2008). New South Wales and South Australia have advised that they are also preparing specific legislation for the regulation of egg safety in their jurisdictions.

The egg industry in Australia was one of the first agricultural industries to establish a food safety code of practice. Producers who are members of the Australian Egg Corporation Limited (AECL), which represents around 80 per cent of the industry, are expected to abide by the following voluntary codes of practice:

- *Code of Practice for the Manufacture of Egg Products* — provides guidance on the hygienic manufacture, storage, packaging and distribution of egg products intended for human consumption and sets the minimum standards of hygiene. The code aims to prevent contamination and deterioration in the quality of egg products and has been designed to cover all the different types of egg product manufacturing.
- *Code of Practice for Shell Egg, Production, Grading, Packing and Distribution* — aims to prevent contamination and deterioration in the quality of shell eggs. The code has been designed to cover different types of egg production systems from small free-range farms to intensive cage systems and recognises that hygiene control may be more difficult in 'non-cage' egg production systems.

These codes are viewed by industry as setting higher standards than the minimum requirements of state and territory legislation. In addition to the codes, the AECL has developed a national egg quality assurance program — Egg Corp Assured — which aims to help commercial egg producers develop a quality assurance program for their business and be recognised for doing so through audit of the program, promotion by AECL and use of the Egg Corp Assured trademark. The major supermarkets also impose quality requirements on their egg suppliers.

In New Zealand, the egg industry is regulated under the *Animal Products Act 1999* and its associated regulations and notices. In addition, NZFSA and the Egg Producers Federation have produced a *Generic Code of Practice for Egg Production* to guide producers in approaches that can be used to comply with legislated requirements.

Table 10.2 **Regulations and regulators by jurisdiction — eggs**
2008-09

	Documented requirements	*Principal regulator*
NZ	Food Act 1981 Animal Products Act 1999 Animal Products Regulations 2000 Animal Products (Fees, Charges, and Levies) Regulations 2007	NZFSA
NSW	Food Act 2003 Food Regulations 2004	NSW Food Authority (NSWFA)
Vic	Food Act 1984	Local government
Qld	Food Act 2006 Food Regulations 2006 Food Production (Safety) Act 2000 Food Production (Safety) Regulation 2002	Safe Food Production Queensland (SFPQ) Queensland Health [a]
SA	Food Act 2001 Food Regulation 2002	Department of Health (SA DoH) Local government
WA	Health Act 1911 Food Act 2008 [b] Health (Food Standards) (Administration) Regulations 1986 Health (Food Hygiene) Regulations 1993 Health (ANZ Food Standards Code Adoption) Regulations 2001	Department of Health (WA DoH) Local government
Tas	Food Act 2003 Food Regulations 2003 Egg Industry Act 2002 Egg Industry Regulations 2004 Manufacturing Controls for Raw Egg Products 2008	Department of Primary Industries, Parks, Water and Environment (Tas DPIPWE)
NT	Food Act 2004	Department of Health (NT DoHF) Local government
ACT	Food Act 2001 Food Regulations 2002	ACT Health

[a] Queensland Health regulate pasteurisation of eggs and egg retailers. [b] The WA *Food Act 2008* did not come into effect until late October 2009.

10.2 Comparison of regulatory requirements across jurisdictions

Differences in the regulatory requirements imposed on business and in the regulatory instruments and powers placed on regulators can give rise to a range of areas in which the compliance actions of businesses and associated costs of meeting food safety requirements differ between jurisdictions. Specifically, differences can emerge between jurisdictions in business licensing requirements and the need for FSPs; stipulations on business inputs or processes for hygiene purposes; product labelling requirements; regimes adopted for enforcement and corrective action.

Registration requirements and the need for a food safety plan

There are broad fundamental differences between the jurisdictions in requirements for egg businesses to be registered (or licensed or accredited)[2] or to have an FSP (table 10.3).

- In New South Wales, egg businesses do not need to be registered but must notify the NSWFA of their activities. In 2008-09, there were 28 egg producers which notified the NSWFA of their activities (although the Authority estimates that the number of egg farm and processing premises in operation is substantially higher than this). The NSWFA has been working for several years with egg industry stakeholders to develop an *Egg Food Safety Scheme* regulation. If adopted, the regulation would require certain egg businesses (those producing more than 20 dozen eggs per week) to hold a NSWFA licence and higher risk businesses (such as those that use unpasteurised egg pulp) to implement a range of food safety risk management controls.
- In Victoria, there are no mandatory registration requirements for producers that do not sell to the public. However, egg processors and retailers are required to be registered as a food business with their local council. As a food business, processors and retailers of eggs need to submit an FSP (a simple template is available) with every registration and re-registration.
- Of the Australian jurisdictions, Queensland has the most prescriptive requirements for egg producers. The *Egg Scheme* under the *Food Production (Safety) Regulation 2002* applies to on-farm practices of all producers, regardless of flock size or production quantities. The scheme provides for accreditation, FSPs and prescriptive requirements for egg production, grading, packing,

2 For simplicity, the terms 'licence', 'registration' and 'accreditation' are used synonymously in the remainder of this chapter, although where relevant, the appropriate terminology for a given jurisdiction is used when referring only to that jurisdiction.

traceability, processing (such as heat treatment), storage and transport. In 2008-09, 66 of Queensland's egg businesses had approved FSPs (most of these were producers). The Egg Scheme also recognises 'preferred supplier arrangements' (for example, of egg producers supplying to a supermarket) and provides that those under a preferred supplier arrangement cannot also sell eggs directly to the public. Food businesses manufacturing or retailing egg products are administered by Queensland Health, and are licensed by local government under the *Food Act 2006*, but are not required to have an FSP.

- Egg businesses in South Australia are not required to be licensed, but must notify their local council of their existence. Those which retail eggs are regulated as a food business under South Australia's *Food Act 2001*.
- In Western Australia, egg production is an 'offensive trade' under the *Health Act 1911*, so egg producers are required to register their premises with their local council within one week of establishment and then again every July. Apart from this broad requirement, egg businesses are currently not regulated for food safety purposes in Western Australia and there are no specific requirements for eggs or egg products under the proposed food Act (FSANZ 2009).
- Legislation in Tasmania does not impose licensing requirements but does require a quality assurance program ('Egg Production Program') to be approved and audited for producers with more than 20 hens (does not apply to other birds) and for off-farm grading. For approval, an Egg Production Program must address: (a) food safety; (b) animal welfare; (c) biosecurity; (d) environmental impact; and (e) labelling standards. In 2008-09, there were 13 egg producers in Tasmania with Egg Production Programs approved by the Tasmanian DPIPWE (Tasmanian Audit Office 2008). Activities such as off-farm pulping, egg product processing, transport, distribution and retail sales are covered by the *Food Act 2003* and are regulated by local councils. In addition, all food businesses which make raw egg products (such as mayonnaise, aioli or béarnaise sauce) are required to comply, as a condition of business registration, with the *Manufacturing Controls for Raw Egg Products 2008*.
- The only egg producers in the Northern Territory and ACT are small operations (non-commercial in the Northern Territory) which also sell to the public and so are regulated under the Food Acts of the territories. (The ACT operator, and other producers selling in the ACT, are also required to comply with the ACT's specific legislation on egg labelling — *Eggs (Labelling and Sale) Act 2001*.)
- In New Zealand, all large producers (those with more than 100 female birds) and those who supply to others for resale are required to register a risk management program (RMP) before trading any eggs. There is some scope for a secondary processor of eggs (for example, those that pulp, pasteurise or otherwise process egg products) to elect to be regulated in New Zealand with an approved food

safety program under the *Food Act 1981* or under the *Food Hygiene Regulations 1974*, rather than with a RMP under the *Animal Products Act*. However, those who require official assurances for export, must have a RMP.

The new standard for *Primary Production and Processing of Eggs and Egg Products* is proposed to require activities which undertake pasteurisation (or equivalent treatment) of egg products and post-pasteurisation (or equivalent treatment) storage and transport, to implement an FSP. All other egg businesses covered by the standard will be required to have a 'food safety management statement'.

Table 10.3 **Differences in registration requirements — eggs**

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Registration or notification required [a]									
Producer with no retail function	✓	✓		✓	✓	✓	✓		
Producer with retail function	✓	✓	✓	✓	✓	✓	✓	✓	✓
Depends on business size	✓						✓		
Registration conditions									
FSP or RMP required	✓		✓	✓			✓		
FSP or RMP to be audited	✓			✓					
Planning permission required									✓

[a] Notification (rather than registration) is required of producers in New South Wales, South Australia and Western Australia.

Sources: Baldwins FoodLegal (2009).

In terms of the content of an FSP/RMP, legislation in Victoria and Queensland include a number of specific requirements (such as the need for an FSP to systematically identify potential hazards and provide for monitoring, control and regular review). Tasmania does not have legislative requirements for the content of an FSP, but the regulator advises producers that their required egg production programs may be assessed against a number of codes of practice (including those of the AECL) and standards for egg labelling. New Zealand has established specific guidelines for the content of a RMP, which are similar to those required by Victoria and Queensland. Specifically, a RMP is designed to identify, control, manage and eliminate or minimise hazards and other risk factors so that the resulting egg product is fit for the intended purpose, under Part 2 of the *Animal Products Act 1999*.

In a Regulatory Impact Statement for its proposed *Egg Food Safety Scheme* (NSWFA 2005), the NSWFA estimated that the cost to egg businesses to establish an FSP in New South Wales would be in the order of $2500 (consisting of $2000 for the time of one employee for a two week period plus $500 in external

assistance). In addition, it was estimated that an average of $300 to $500 in capital improvements could be necessary for businesses to meet the requirements of FSPs. Ongoing costs associated with the management of an FSP (record keeping and program review requirements by one employee over a four week period) were estimated at $4000 per year.[3] For those jurisdictions which currently require an FSP or equivalent (Queensland and Tasmania), these costs are already a part of ongoing regulatory compliance costs for egg producers.

Compliance monitoring

Each of the jurisdictions that requires an FSP/RMP also has provisions for the audit of these plans:

- Victoria's FSPs can be audited by an approved auditor or, if the business has elected to use a template FSP, compliance can be verified by an authorised officer during its annual inspection.
- Egg producers in Tasmania are required to be audited within three months after the approval of their egg production program. Producers may use DPIPWE to perform audits or approved third party auditors. In the latter case, the business has 21 days to deliver a copy of the audit report and audit certificate to DPIPWE. The initial audit by DPIPWE required for approval of the egg production plan is free. Subsequent compliance audits are at the expense of the producer and are annual.

In reviewing the food safety practices of egg producers in Tasmania, the Tasmanian Audit Office (2008) found that:

> … egg production plans for approved producers are in place and annual inspection programs are maintained. Our testing confirmed that food safety audits were comprehensive, thorough and up-to-date.

In reviewing council inspection processes for the retail of eggs, the Audit Office reported inconsistencies in risk ratings, use of checklists and feedback to business operators.

- In Queensland, an audit is required for accreditation. For low risk egg businesses (egg producers and transporters), SFPQ must conduct a compliance audit within six months of accreditation and within one year of first compliance. Thereafter, audits are annual if the business is found to be compliant, or six monthly otherwise. For high risk egg businesses (those that process or pasteurise eggs or egg products), SFPQ must conduct a compliance audit within three months of accreditation and within six months of first compliance. Thereafter, audits are

[3] All estimates are in 2005 dollars.

six monthly if the business is found to be compliant, or three monthly otherwise. There is provision for third party auditing and also for businesses to elect to have multiple inspections as an alternative to audits.

- New Zealand – NZFSA's verification agency audits RMPs of egg businesses to verify compliance. Egg businesses which need a RMP can use the approved Egg Risk Management Program template (available online), and if they do so, will be exempt from the need to have an on-site assessment as part of the evaluation of the RMP, provided certain conditions are met.

In the other jurisdictions (which do not require egg businesses to have an FSP), inspections under the jurisdiction's food Act may nevertheless occur. The frequency of such inspections tends to depend on the priorities and resources of the relevant authority.

The Commission welcomes additional feedback on the operation of food safety schemes for egg producers in those jurisdictions in which such schemes currently exist.

Fees and charges

With the wide variation in licensing requirements, there is considerable disparity in licensing and registration fees incurred by egg businesses (table 10.4). In New South Wales, South Australia and the Northern Territory, businesses can generally meet licensing or notification requirements without incurring a fee. Egg businesses in Tasmania incur an initial application fee but no ongoing licence fees. Those in Western Australia and ACT incur an annual fee for registration. Egg businesses in Victoria, Queensland and New Zealand are required to pay an annual fee in addition to incurring a cost to have their compliance against their FSP/RMP verified.

Across all the jurisdictions, registration as an egg processor in Queensland represents the greatest annual regulatory expense, with a flat fee of $1167 for accreditation, plus $225 per hour, at least twice per year, for assessment/auditing of an FSP by SFPQ.

Table 10.4 **Initial and ongoing fees to maintain registration — eggs**

Australian dollars, 2008-09

	Category	*Initial fee*	*Annual fees*
NZ [a]	Application for registration	$112	
	Assessment fee (fee varies with employment status of assessor)		$112 to $122/hr plus $28 to $30/15 min in final part-hour
NSW	Notification		
	– online	Free	na
	– paper submission	$55	
Vic	Producers with no retail role – no licensing requirements		Local council annual registration fee
	Producers who also retail (registration with local council)		
Qld	Application	$116.60	
	Accreditation		
	Egg producer		$291.65
	Egg processor		$1 166.75
	Egg transporter		$210.00
	Assessment of FSP, inspections and/or audit costs for application		$225 per hour
	Egg retailer only		Local council fees
SA	Notification to local council		Free
	Inspection fee: small business		Max $80
	other business		Max $200
WA	Registration with local council as an offensive trade		$262
Tas	Producer with <20 hens – no licensing requirements	na	na
	Producer with >20 hens		
	– application to approve an egg production program	$448.00	
	– application to adopt an already approved egg production program	$128.00	
	– application for exemption from Egg Industry Act	$64.00	
	Off-farm egg processors, transporters, storage facilities, distributors and retailers		Local council fees
NT	Registration as a food business if a producer with retail role – online registration	Free	No charge
ACT	Registration of a food business (based on FSANZ priority classifications of food businesses)		$50 to $150

na not applicable. [a] New Zealand fees are converted to Australian dollars at an average exchange rate for 2008-09 of 1.23.

Sources: Baldwins FoodLegal (2009); RBA (2009); regulator websites.

Requirements on business inputs and operation

Requirements on egg premises, equipment and staff

In practice, all egg businesses will need equipment that allows them to comply with processing requirements such as pasteurisation and microbial testing. Some

jurisdictions have requirements on business inputs and processes that are additional to the ANZFS Code (table 10.5):

- In Victoria, the *Food Act 1984* requires that a food safety supervisor be nominated with the skills and authority to ensure that all staff have sufficient skills and knowledge to provide safe food. The Victorian Government has advised the Commission that these requirements will be changed as part of the 2009-10 amendments to Victoria's Food Act (pers. comm. 2009).
- Egg businesses in Queensland must ensure that the premises are designed to provide adequate space, light and ventilation and the premises and equipment can be effectively sanitised to ensure a high level of hygiene. Vehicles used to transport eggs and egg products must be maintained, cleaned and temperature controlled to prevent/reduce pathogenic growth. An FSP for a Queensland egg business must contain certain details on staff training and the accreditation holder has responsibilities for ensuring appropriate skills and knowledge of all persons involved in food processing.
- In Western Australia, the *Heath (Food Hygiene) Regulations 1993* set out requirements for the design and construction of food premises and vehicles which could (although not explicitly mentioned) apply to egg businesses.
- In Tasmania, for producers with more than 20 hens, an egg production program may impose processing and training requirements which would need to be complied with as a condition for approval of the plan.
- New Zealand's *Animal Products Regulations 2000* require that premises and equipment be designed, constructed, located and operated to minimise risks to the product and ensure effective sanitation. Eggs that are to be sold in shell must be visibly clean, have no evidence of embryo development, putrefaction, no significant blood clots, not have been incubated and be handled and stored so as to minimise condensation on the egg surface. Eggs that are not pasteurised (or equivalent) must be candled prior to retail such that the interior and exterior of each egg is examined. For those businesses with a RMP, all persons whose presence or actions may contaminate the product are required to wear appropriate clothing and behave in a manner that minimises contamination.

The Commission welcomes views on the extent to which jurisdiction-specific requirements for business operations and processes are likely to result in a significant regulatory compliance cost to businesses.

Record keeping requirements

Only four of the nine jurisdictions under study have record keeping requirements specific to their jurisdiction. In Victoria, Queensland and New Zealand, these

requirements are broad and applicable to FSPs/RMPs generally, rather than specific to egg businesses. In Queensland for example, records must provide explanation of the holder's activities and transactions and be kept so as to enable them to be properly and conveniently audited. In Tasmania, while there are no specific legislative requirements, documents may be seized under the *Egg Industry Act*. Additional recordkeeping requirements may also be imposed through an egg production program.

Table 10.5 **Requirements on business operation — eggs**[a]
2008-09

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Compliance with standards, manuals or procedures (other than the ANZFS Code)	✓					✓			
Requirements on premises									
Initial design	✓			✓		✓			
Maintenance and cleanliness	✓			✓		✓			
Requirements on equipment and processes									
Suitability	✓			✓					
Maintenance and cleanliness	✓			✓		✓			
Other jurisdiction specific requirements									
Transport provisions	✓			✓		✓			
Record keeping provisions	✓			✓			✓		
Training and personnel provisions	✓			✓			✓		

a These are jurisdiction requirements beyond the basic requirement of the Food Acts to comply with the ANZFS Code.

Source: Baldwins FoodLegal (2009).

Egg stamping

Most labelling requirements for eggs relate more to accuracy of product description and facilitation of consumer choice than to food safety, but product labelling is nevertheless included within the scope of food safety regulation, mainly due to the need for product traceability. Chapter 1 of the ANZFS Code requires traceability of eggs back to the manufacturer or supplier by printing name of food, lot/batch identification, and name and address of the supplier on the carton.

Unique among the jurisdictions, Queensland has required (since 2005) that either all eggs be stamped with a unique producer identification or alternatively, that cartons be sealed and the unique producer identification be on the carton. SFPQ report that egg stamping is 'the final step in Queensland's quality assurance and traceability program for eggs' (SFPQ 2008a). The individual stamping of every egg is considered to overcome a number of concerns regarding the traceability of the

product and expedition of food-borne illness investigations. It also has a number of cost implications for egg businesses (box 10.1). Apart from the initial capital costs of equipment and ongoing costs of ink and other resources, producers may not combine into a pack eggs from different egg production farms. To date, these are costs that egg producers in other jurisdictions have not had to incur (although some may have chosen to individually stamp their eggs).

In a review of food safety for eggs in Tasmania, the Tasmanian Audit Office (2008) recommended the introduction of egg stamping in that state, to facilitate tracing of the final product back to producers. They further reported that at least two egg producers in Tasmania had already adopted egg stamping. In development of its (yet to be implemented) Egg Food Safety Scheme, New South Wales did not propose extending egg labelling beyond the lot identification requirements of the ANZFS Code. The proposed new standard for *Primary Production and Processing of Eggs and Egg Products* in Australia includes a requirement that each individual egg be marked with the producer's unique identification (FSANZ 2009c). Furthermore, an egg producer who supplies egg pulp must mark each container with the producer's unique identification.

Box 10.1 **Egg stamping costs**

There are around 56 000 million dozen eggs produced in Queensland each year and a further 4 million dozen brought into Queensland from New South Wales. Around 87 per cent of these eggs come from the largest producers, 8.7 per cent from medium producers and 4.3 per cent from small farms. SFPQ undertook an analysis of egg stamping costs in Queensland for its producers in 2007. At that time, an estimated 95 per cent of Queensland egg production was individually stamped, and the remainder was sold in sealed cartons/containers that were required to be stamped. The Commission has updated the SFPQ estimates to reflect current prices.

The cost of individually stamping every egg with a unique producer identification is estimated to be in the order of 0.4 cents to 2.7 cents per dozen eggs for those businesses using a stamping machine, and around 1 cent per dozen eggs for businesses that hand stamp their product. Costs were estimated to be higher in the initial year (due to purchase and installation of equipment) and also higher for businesses with a lower throughput that nevertheless chose to undertake the stamping via a machine rather than by hand stamping.

Across all egg producers, the ongoing costs of individual egg stamping in Queensland are estimated to be $350 000 per year, or $640 to $16 000 per producer (depending on production levels and stamping technique).

Estimated costs by business size[a]

	Initial year	*Subsequent years*
Large farm (~4 million dozen eggs pa with stamping machine)		
Equipment cost & installation	$37 300	
Running costs	$16 000	$16 000
Cost per dozen eggs	1.33c	0.40c
Medium farm (~300,000 dozen eggs pa with stamping machine)		
Equipment cost & installation	$19 200-$21 300	
Running costs	$8 000	$8 000
Cost per dozen eggs	9.8c	2.7c
Small farm (~60,000 dozen eggs pa with hand stamping)		
Equipment cost & installation	$640	
Running costs	$640	$640
Cost per dozen eggs	2.1c	1.1c

a Based on equipment and running costs estimated by SFPQ in March 2007 and updated to 2008-09 prices using consumer price inflation of 6.6 per cent over for the two years from 2006-07 to 2008-09. The cost of capital equipment may have declined marginally in recent years with a greater uptake of egg stamping, but the Commission has not included alternative capital equipment costs at this stage.

Sources: SFPQ (2007); FSANZ (2009c); ABS (2009).

Other requirements arising from differences in interpretation

The Commission was advised during this study of other potential differences between jurisdictions in the interpretation of food safety standards for eggs (with respect to both the ANZFS Code and other recommendations of 'best practice'). For example:

- Differences in interpretation of a 'cracked' egg — in developing their proposed Egg Food Safety Scheme, New South Wales distinguished, in its guidelines for the suitable use of eggs, between a crack in the shell of an egg and a break in the inner membrane.
- Differences in the interpretation of storage requirements, particularly in regard to shelf life, temperature, humidity. For example, The Victorian Farmers Federation (VFF) reported that '… regulations in Queensland stipulate that it is necessary to keep eggs at a different level of humidity from what is required in Victoria.' (VFF 2007) With regard to storage temperatures, Victoria recommend to their retailers that eggs are delivered at or below 20ºC (Victorian Government 2008); Queensland recommend storing and transporting eggs between 12ºC and 20ºC and a relative humidity of 70 to 80 per cent (SFPQ 2009a); and South Australia recommend that eggs be cooled to 15ºC immediately after collection (PIRSA 2009). Some retailers such as bakeries purchase unpasteurised egg pulp for further processing and use a heat process that should be equivalent to pasteurisation. The NSWFA (2005) reports that there may be a problem with foodborne illness when the temperature of this heat process is not correct.
- The major supermarkets require suppliers to comply with the supermarkets' risk management strategy, as embodied in their FSPs. The risks to public health and safety for a large supplier of food directly to consumers are generally considered to be greater than the risks associated with smaller businesses (with fewer people handling the product) and businesses at earlier stages in the production chain (ANZFA 2001). For example, the VFF (2007) report that at the point of delivery to a supermarket (in any Australian jurisdiction), the temperature of eggs is checked to ensure compliance with both regulatory and industry requirements (for example, the *Victorian Shell Egg Code for the Production, Grading, Packing and Distribution of Eggs* requires that eggs are kept under 20ºC; supermarkets require 14ºC on delivery). The eggs are then stored at ambient temperature in the supermarket storeroom and then on the shelf. The VFF report that 'it is not unknown for the eggs to be stored in the storeroom under a skylight, which raises the temperature of the eggs'.

The development of a national standard for safety in the production and processing of eggs should go some way toward reducing these types of differences in interpretation between jurisdictions.

The Commission welcomes views on the extent to which there are differences in interpretation or implementation of standards or 'best-practice' for egg food safety between jurisdictions.

Enforcement and corrective action

The scope for minimising unnecessary business compliance costs associated with enforcement and corrective action is likely to be greater when regulators have available to them a range of corrective actions to deal with different degrees of severity in non-compliance. In the regulation of egg safety, even those jurisdictions which do not specifically 'regulate' egg businesses are able to require corrective action from businesses if they find violations against their general food Act and referenced ANZFS Code.

All jurisdictions have the capacity to issue directives for action or compliance notices (table 10.7). SFPQ noted that in 2007-08 they issued 20 corrective notices against 15 businesses related to egg stamping (SFPQ 2008a).

While cancellation of a licence/registration is only possible in those jurisdictions which require a licence/registration, other jurisdictions can nevertheless issue prohibition orders (New South Wales and South Australia), disciplinary notices (Northern Territory and ACT) or refuse registration renewal (Western Australia) if the business is found to be non-compliant with any relevant legislation or with the ANZFS Code. For example, SFPQ reported prosecution in 2007-08 against an operator for the production and supply of duck eggs without being accredited. The operator was fined $7500 plus court costs and a conviction recorded (SFPQ 2008a). NSWFA reported investigating and requiring corrective action following several outbreaks of salmonella during 2007-08 that were attributed to products containing raw or undercooked eggs (NSWFA 2008a, p.42).

The Tasmanian DPIPWE reported that that state's *Egg Industry Act 2002* provides '…an extremely limited range of regulatory responses, with exclusion from the industry being the only option where a producer is not consistently complying with their program (even though non-compliances may be of a minor nature)' (DPIPWE (Tasmania) 2009). While the Act also provides for fines, it offers no enforcement options (other than closure of the business) for more serious or repeated offences.

Table 10.6 **Enforcement and corrective action — eggs**

2008-09

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Reasons for suspension/cancellation of registration									
Non-compliance with FSP or RMP	✓		✓	✓					
Non-compliance with other specified conditions			✓				✓	✓	
Non-compliance with standard or legislation				✓				✓	✓
Serious failure of operations	✓								
Committed an offence or otherwise been disqualified			✓	✓					
Not submitted to audit				✓			✓		
Not paid fees				✓					
Premises has been not constructed or maintained in accordance with requirements						✓			
Corrective actions									
Conditions on licence, etc				✓		✓		✓	✓
Suspension or cancellation of licence, etc	✓			✓		✓		✓	✓
Compliance monitoring		✓							
Additional audits/inspections		✓			✓		✓		
On-the-spot fine		✓			✓				
Directives for action/improvement notice	✓	✓	✓		✓	✓		✓	✓
Compliance notice/enforcement order		✓	✓	✓					
Prohibitions or conditions on use of premise, equipment or vehicle	✓	✓	✓	✓	✓			✓	✓
Close business down							✓		✓
Deregistration of RMP	✓								
Prosecution/conviction		✓			✓	✓	✓		
Penalties									
Adverse publicity		✓							
Fines	✓	✓	✓	✓	✓	✓	✓	✓	✓
Imprisonment	✓	✓	✓	✓	✓	✓			✓

Sources: Baldwins FoodLegal (2009); Productivity Commission regulator surveys (2009, unpublished); pers. comm. with regulators.

Penalties and fines

Penalties and fines are not a regulatory compliance cost for a compliant business, but the severity of repercussions for non-compliance can act as a strong incentive for some businesses to meet regulatory requirements.

Every jurisdiction has a range of offences that incur fines and penalties and the severity of these varies substantially between jurisdictions. Fines and penalties associated with three basic offences — failure to be licensed (or equivalent), provision of food that is unsafe (either unknowingly or deliberately), and failure to follow a compliance order or directive — are presented in table 10.8. As Queensland, Tasmania and New Zealand have legislation specific to egg producers, these jurisdictions also have two sets of penalties — one set that applies to egg producers and primary processors under its primary production legislation, and one set under the food Act that applies to egg retailers.

Although registration requirements are minimal for egg producers/processors in most jurisdictions, all jurisdictions can impose penalties for failing to meet the requirements. A failure to be appropriately registered as an egg producer incurs the greatest potential penalties in Queensland (up to $200 000 or 2 years imprisonment for a failure to be accredited), New South Wales and the Northern Territory (up to $275 000 in each). In a 2008 Queensland case (*Crown vs Kingston*), a business which failed to be appropriately registered for the production and sale of eggs was prosecuted and the business operator received a conviction and $7500 fine.

Failure of an egg retailer to register as a food business incurs a penalty of at least $100 000 in New South Wales, Queensland, South Australia, Tasmania and the Northern Territory. Penalties for egg retailers in the remaining jurisdictions are generally no more than $25 000. This fine may be levied even when a business is otherwise compliant in the provision of safe food.

Provision of food that is unsafe generally attracts comparatively high penalties in all jurisdictions — particularly in those cases where food is sold to the public (rather than to another business for further processing) and when the food is known to be unsafe yet still provided. For egg producers and primary processors, the maximum penalty for provision of food known to be unsafe is at least $40 000 in all jurisdictions except Western Australia. However, in a 2007 Queensland case (*Safe Food Queensland vs Game Farm Enterprises*), a producer was fined only $750 for the production and delivery of eggs with dirty shells to a retail outlet. The eggs were not known to be either dirty or unsafe prior to delivery, but the business was found to have inadequate procedures in place to ensure the production of safe food.

Failure to comply with a compliance order or directive of an authorised officer attracts the greatest penalty in New South Wales, Queensland, South Australia, New Zealand and for egg retailers in Tasmania. The remaining jurisdictions either have no or minimal provision for financial penalties in response to breech of compliance orders.

A comparison of penalties and fines between jurisdictions provides no indication of how often or how vigorously particular offences are pursued by the regulators. Some indication of regulator enforcement approaches is provided (across all regulated businesses within each jurisdiction) in chapters 7 and 8 of this report.

Table 10.7 **Penalties and fines for selected offences — eggs**[a]

Australian dollars, 2008-09

	Operating an unlicensed (or equivalent) food business	*Providing unsafe food*[b]	*Failure to comply with a directive/compliance order*
NZ[c]	Primary: Indiv: $16 260 Corp: $81 300 Food business: Max: $407, plus $41 per day for a continuing offence	Producers and processors: Indiv: $81 300 & 5 yrs prison Corp: $406 504 Operator of RMP: Indiv: $60 975 & 2 yrs prison Corp: $243 902 Food business: Indiv: $4 065 Corp: $16 260	Indiv: $40 650 plus $1 626/day for continued offence Corp: $243 902 plus $1 626/day for continued offence
NSW	Indiv: $55 000 Corp: $275 000	Indiv: $110 000 or 2 yrs prison Corp: $550 000	Indiv: $55 000 Corp: $275 000
Vic	1st offence $5 671 2nd & subseq. offence $11 342	Indiv: $40 000–$100 000 or 2 yrs prison Corp: $200 000-$500 000	1st offence $2 836 2nd & subsequent offence $5 671
Qld	Primary: $200 000 or 2 years prison Food businesses: $100 000	Primary: $300 000 or 2 years imprisonment Food businesses: $100 000 or 2 years prison	Primary: $30 000 Food business: $20 000
SA	Indiv: $25 000 Corp: $120 000	Indiv: $50 000–$100 000 or 4 years prison Corp: $250 000–$500 000	Indiv: $50 000 Corp: $250 000
WA	1st offence: $100–$1 000 2nd offence: $200–$1 000 3rd & subseq. offence: $500–$1 000. Plus, $50–$100 per day for continued offence	1st offence: $250–$2 500 2nd offence: $500–$2 500 3rd & subseq. offence: $1 250–$2 500. Plus, $125–$250 /day for continued offence	No equivalent penalty
Tas	Primary: Indiv: $2 400 Corp: $6 000 Food business: Indiv: $60 000 Corp: $144 000	Food businesses Indiv: $120 000 or 2 years prison Corp: $600 000	Primary: Indiv: $1 200 Corp: $3 000 Food businesses: Indiv: $60 000 Corp: $300 000
NT	Indiv: $55 000; Corp: $275 000	Indiv: $110 000 or 2 years prison; Corp: $550 000	No equivalent penalty
ACT	Indiv: $5 000 or 6 mths prison or both Corp*:*$25 000	Indiv: $100 000 or 2 yrs prison or both; Corp: $500 000.	No equivalent penalty

a All fine amounts are maximums unless otherwise specified. **b** Fines for provision of unsafe food escalate in most jurisdictions for offences that are deliberate. **c** New Zealand fees are converted to Australian dollars based on an average exchange rate for 2008-09 of 1.23.

Sources: Jurisdiction legislation; RBA (2009).

11 Food safety in dairy production and processing

Key points

- All dairy businesses in Australia are required, since October 2008, to comply with the primary production and processing standard for dairy, contained in the Australia New Zealand Food Standards Code (ANZFS Code). Rather than adopting this standard, New Zealand regulates its dairy businesses with separate regulations and its own food standards.
- Licensing or registration of dairy producers and processors is required in all jurisdictions. For a medium-size milk processor, licence fees are estimated to be highest in New South Wales, Victoria and New Zealand.
- New South Wales, Victoria, South Australia and Tasmania have manuals and/or codes containing requirements on dairy premises, equipment and processes that are additional to requirements in the ANZFS Code. In general, New South Wales is the most prescriptive in its requirements of dairy businesses.
- In most jurisdictions, the temperature at which milk is stored on dairy farms is guided by the ANZFS Code and related guidance material. However, requirements in New South Wales are more stringent and those in New Zealand are more relaxed than the Code, which may impact differentially on dairy farm compliance costs in these jurisdictions.
- Compliance audits are required in all jurisdictions. While New South Wales and New Zealand's audit regimes have potential for the most frequent audits on compliant businesses, the longest duration for audits was reported for Western Australia (8 hours), South Australia and Tasmania (5 hours), and the highest per hourly charges were reported for Queensland and Victoria. Overall, the annual cost of meeting licensing and compliance audit requirements for a milk processor is estimated to be highest in New Zealand, Victoria (particularly large businesses) and Queensland.
- In all Australian states and territories, the key dairy regulators also undertake audits and inspections on behalf of (Australian Quarantine and Inspection Service) AQIS, which potentially reduces the regulatory compliance costs for dairy exporters.

This chapter examines in detail the differences in primary production and processing regulation, and its implementation and enforcement within jurisdictions for dairy and dairy products.

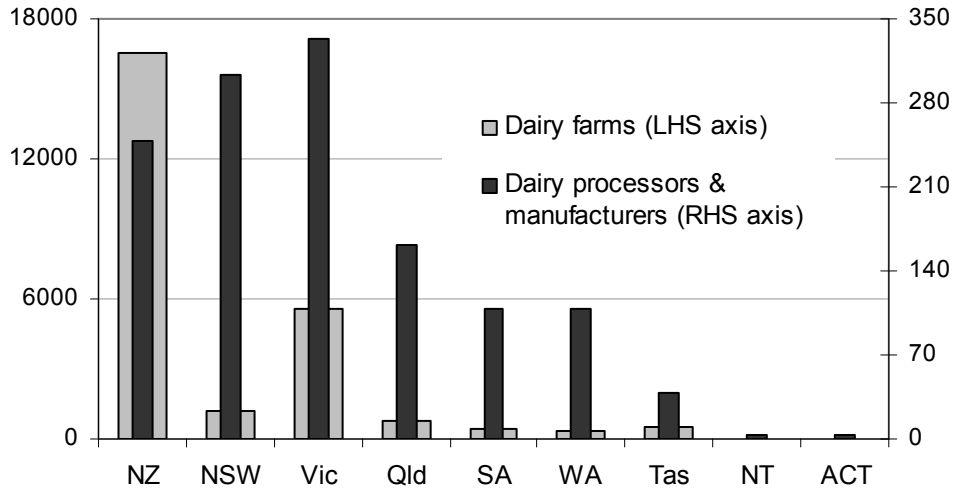
The benchmarking in this chapter draws heavily on a comparison of regulatory differences between jurisdictions, as detailed in a consultancy report prepared for this study (Baldwins-FoodLegal 2009). Where possible, the cost implications for business of these regulatory differences are then explored using jurisdictional fees and charges information and specific examples provided by study participants.

11.1 Scope of dairy and dairy product safety regulation

As is the case for egg regulation, the regulation of dairy products for human consumption begins at the farm with milking sheds on producing dairy farms. There are almost 9000 primary dairy producers and just over 1000 secondary dairy producers and wholesalers in Australia, mostly located in Victoria or New South Wales (figure 11.1). In New Zealand, there are over 16 000 primary dairy producers and around 250 secondary producers. In both countries, most dairy manufacturers produce food products such as butter, cheese and milk powders.

Figure 11.1 **Number of dairy businesses by jurisdiction**

As at 30 June 2008 for primary producers in Australia and 30 June 2007 for all other dairy businesses in Australia; as at February 2008 for New Zealand [a]



[a] Dairy processors and manufacturers includes: milk and cream processing; icecream manufacture; manufacture of butter, cheese, condensed, evaporated or powder milk; and dairy wholesalers.

Data sources: ABS (*Counts of Australian Businesses,* Cat. No. 8165.0); ABS (*Agricultural Commodities,* Cat. No. 7121.0); Dairy Australia (2009); Statistics New Zealand; Tasmanian Dairy Industry Authority (TDIA) pers. comm. 2009.

The majority of dairy businesses (including a dairy/milk factory with pasteurised products, the dairy section of supermarkets and icecream manufacturers) are classified as medium risk operations (ANZFA 2001).

The primary production standards for dairy are contained in *Standard 4.2.4 Primary Production and Processing Standard for Dairy Products* of the Australia New Zealand Food Standards Code (ANZFS Code). These standards have been enforceable in all jurisdictions in Australia since October 2008, but have not been adopted in New Zealand.

Standard 4.2.4 sets out a number of food safety requirements for dairy primary production businesses (covering on-farm milk and colostrum production activities), dairy transport businesses (covering the collection and bulk transport of milk and dairy products) and dairy processing businesses (covering activities up to, but not including, retail). Under Standard 4.2.4, all dairy businesses are required to control the potential food safety hazards associated with their business by implementing a documented food safety program (FSP). Particular measures that should be covered by the FSP are also specified.

The Australian Dairy Industry reported that '… the gazetted Dairy PPPS [primary production and processing standard] is compact … The Dairy PPP Standard is structured to achieve outcomes. It allows for innovation and a degree of operational variation among plants. The PPPS builds on Australia's highly safe dairy food preparation which is based on modern State regulation.' (Australian Dairy Industry 2008, pp. 17, 18).

In addition to the standard for dairy products, the ANZFS Code contains provision for food safety requirements for a number of other dairy-derived activities:

- *Standard 4.2.4A Primary Production and Processing Standard for Specific Cheeses* provides some requirements for Gruyere, Sbrinz, Emmental and Roquefort cheese and cheese products, to ensure these cheeses are produced under equivalent safety standards to other cheeses (as specified in Standard 4.2.4)
- distribution of dairy products and retail sale activities are covered by the requirements of Chapter 3 of the ANZFS Code (Standard 3.2.2 and Standard 3.2.3)
- FSANZ is also currently developing standards for the sale of raw milk products (products that have not been pasteurised or undergone a heat treatment or equivalent process) in Australia through *Proposal P1007 Primary Production and Processing Requirements for Raw Milk Products*. The development of requirements for raw milk products aims to facilitate use of raw milk products within acceptable food safety outcomes. FSANZ released a discussion paper on the proposal in August 2008, but work on the standard remains in the preliminary stages.

These Australian food standards for dairy and dairy products are generally incorporated in each jurisdiction into industry-specific legislation (table 11.2). In those states for which dairy is a significant proportion of total agricultural production — Victoria, South Australia and Tasmania — there are separate authorities regulating dairy and dairy products. In these jurisdictions and in New South Wales, the regulation of the dairy industry is covered by specific codes of practice and guidance manuals.[1] For example, in Victoria, a person cannot sell, deliver or provide for human consumption a dairy food that has not been treated, packed or sealed as required under the *Code of Practice for Dairy Food Safety* (except where delivering to a licensed dairy manufacturing premises).

In comparing the regulatory approach in different jurisdictions, the Australian Dairy Industry reported that:

> The approach taken by DFSV [Dairy Food Safety Victoria] is far more open and flexible than the prescriptive approach used historically in Victoria, in other States, and as set out in the Export Orders administered by the Australian Quarantine and Inspection Service (AQIS), and in a number of our overseas dairy trading partner countries. It allows for innovation and acceptance of new processes and technologies, while the integrity of the Food Safety System is not compromised and the targeted outcomes are still achieved. In general [companies] see Dairy Food Safety Victoria (DFSV) as very progressive in its management of food safety risk. (Australian Dairy Industry 2008, p.17)

In the Northern Territory and ACT, there is very little dairy production and any dairy businesses operating in these jurisdictions are required to be registered (and regulated) as food businesses under the relevant food Act.

In New Zealand, dairy production and processing are regulated under the *Animal Products Act 1999*, the *Animal Products (Dairy) Regulations 2000*, subordinate notices and approved criteria, and are also bound by the New Zealand standard — *Food (Milk and Milk Products Processing) Standard 2007*. Although some primary producers engaged in secondary processing may fall within the scope of the *Food Act 1981*, the NZFSA regulates both sets of legislation, which reduces the potential for any duplication or inconsistency for businesses.

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1 New South Wales, Victoria, South Australia and Tasmania additionally refer to the *Australian Manual for the Control of Listeria in the Dairy Industry* (ADASC 1999) and the *Australian Manual for the Control of Salmonella in the Dairy Industry* (ADASC 1999). From 1 July 2009, the South Australian code of practice has been replaced by ANZFS Code provisions under the *Primary Produce (Food Safety Schemes)(Dairy Industry) Regulations 2005*. While not having separate manuals, in its legislation Queensland refers to the *Australian Standard for Equipment for the pasteurisation of milk and other liquid dairy products – continuous flow systems*; and the *Australian Standard for Farm milk cooling and storage systems*.

Table 11.1 **Food safety legislation and regulators — dairy**

2008-09

	Documented requirements	*Principal regulator*
NZ	*Food Act 1981* *Food (Safety) Regulations 2002* *Animal Products Act 1999* *Animal Products (Dairy) Regulations 2005* *Animal Products (Dairy Processing Specifications) Notice 2006* *Animal Products (Dairy Industry Fees and Charges) Regulations 2007* *Animal Products (Risk Management Programme Specifications) Notice 2008* *Animal Products (Regulated control scheme – Dairy export quota products) Regulations 2008*	New Zealand Food Safety Authority (NZFSA)
NSW	*Food Act 2003* *Food Regulations 2004* *NSW Dairy Manual* *Code of Practice for Dairy Buildings* *Code of Practice for Collection of Milk from Dairy Farms 2004*	NSW Food Authority (NSWFA)
Vic	*Food Act 1984* *Dairy Act 2000* *Code of Practice for Dairy Food Safety*	Dairy Food Safety Victoria (DFSV)
Qld	*Food Production (Safety) Act 2000* *Food Production (Safety) Regulation 2002*	Safe Food Production Queensland (SFPQ)
SA	*Food Act 2001* *Primary Produce (Food Safety Schemes) Act 2004* *Primary Produce (Food Safety Schemes)(Dairy Industry) Regulations 2005* *Code of Practice for Dairy Food Safety (June 2005)*[a]	Dairy Authority of South Australia (DASA)
WA	*Health Act 1911* *Food Act 2008*[b] *Health (Food Hygiene) Regulations 1993* *Health (ANZ Food Standards Code Adoption) Regulations 2001*	Department of Health (WA DoH)
Tas	*Dairy Industry Act 1994* *Dairy Industry Regulations 2004* *Tasmanian Code of Practice for Dairy Food Safety (November 2002)* *Tasmanian Code of Practice for Farm Dairy Premises (1998)*	Tasmania Dairy Industry Authority (TDIA)
NT	*Food Act 2004*	Chief Health Officer — Department of Health & Families (NT DoHF)
ACT	*Food Act 2001* *Food Regulations 2002*	Chief Health Officer — ACT Health

a The South Australian code has been repealed and does not apply from 1 July 2009. **b** The *Food Act 2008* (WA) did not come into effect until late October 2009.

To the extent that the provisions contained in the dairy manuals and codes in some jurisdictions (in addition to formal legislation) come to be treated as mandatory requirements, there is potential for regulatory creep to emerge in the regulation of dairy food safety.

11.2 Comparison of regulation across jurisdictions

Differences in the regulatory requirements imposed on business and in the regulatory instruments and powers given to regulators can give rise to a range of areas in which the compliance activities of businesses and associated costs of meeting food safety requirements differ between jurisdictions. Differences between jurisdictions can include: business licensing requirements; stipulations on business inputs, processes or employees for hygiene purposes; product sampling and testing requirements; regimes for inspections and audits; and associated options adopted as corrective action.

Licensing and accreditation

Every jurisdiction requires its dairy businesses to be licensed or, in the case of New Zealand, registered. The more licence categories in place in a jurisdiction, the more finely tuned licence conditions can be to business processes. Conversely, however, more licence categories increases the potential for additional regulatory burden (in terms of time to complete forms, monitoring of requirements and possibly licence fees) for those businesses with operations spanning the production chain.

Australian jurisdictions generally issue licences for dairy production, dairy processing and at least some stages of dairy transport and storage. Consistent with the distribution of dairy production and processing across Australia, Victoria has the greatest number of licensed dairy businesses (table 11.2). Most jurisdictions have three to five licence categories; Queensland legislation provides for seven different classes of licences which may be applicable to a dairy business. There are also some minor differences in coverage between jurisdictions. For example, Tasmania does not currently licence milk tankers or milk storage facilities for food safety purposes. From 1 July 2009, dairy distributors in South Australia were no longer covered by DASA but instead are regulated by local government. Furthermore, potentially some dairy farms may not be licensed if they do not have an on-site milking shed.

Table 11.2 **Number of licences on issue by jurisdiction**
End 2008-09

	Dairy farms	*Dairy processors*	*Dairy distributors*	*Dairy transport*	*Total*
NZ	na	308		na	308
NSW	860	118		650	1 628
Vic	5 476	154	132	38	5 800
Qld	648	50		na	698
SA	340	43	147	76	606
WA	198	40		na	238
Tas[a]	451	29		64	544
NT	1	1		na	2
ACT	na	na		na	na

na not available. [a] The number of dairy processors licences for Tasmania includes licences for 13 premises which export.

Source: Productivity Commission regulator surveys (2009, unpublished).

In each jurisdiction, the licensing authority generally requires detailed information from the applicant on its operations in order to set appropriate licensing conditions. Most jurisdictions license dairy businesses according to where in the production chain they operate (table 11.3). However, New South Wales and the ACT also require information on business size (as determined by the number of employees), and New Zealand, Victoria and South Australia require an estimate of annual throughput.

One participant in the Commission's review, a dairy business from Queensland, provided evidence that in Queensland the licensing of businesses according to their stage in the production chain is not always straightforward (Emerald Creek Foods, sub. no. 15). As a gelato manufacturer that uses processed milk in its operations, the business was nevertheless assessed and licensed by SFPQ as a dairy processor (at a considerably higher accreditation fee than would otherwise have been the case).

Most jurisdictions undertake an inspection of the dairy business prior to, or shortly after licensing/accreditation in order to determine compliance with legislative requirements, including (in Australia) the PPPS for dairy, and where relevant, the suitability of the business's FSP.

Table 11.3 **Differences in licensing and registration requirements for dairy businesses**
2008-2009

	NZ	NSW	Vic	Qld	SA	WA	Tas	NT	ACT
Licence costs within categories vary with									
Stage in production chain	✓	✓	✓	✓	✓	✓	✓		
Number of employees[a]		✓							✓
Volume of throughput	✓		✓		✓				
Licence etc conditions									
Establishment building compliance / planning permission		✓			✓	✓	✓		✓
FSP/RMP	✓	✓	✓	✓	✓	✓	✓	✓	✓
Inspection or review of FSP/RMP	✓	✓	✓	✓	✓		✓	✓	

[a] In the ACT, a food business must simply specify if they have fewer than 10 employees if in the service sector, or fewer than 50 employees if in the manufacturing sector.

Sources: Baldwins-FoodLegal (2009); regulator websites.

Licence fees

The fee structure for licensing varies substantially between jurisdictions (table 11.4). Baldwins-FoodLegal (2009) report that 'while the majority of jurisdictions charge nominal amounts with respect to licensing, Victoria and South Australia have adopted a more commercial approach'. In general, fees are set on the basis of the type of operation (for example: producer, processor or transporter) and the perceived risk level associated with that operation. In Victoria, Tasmania and South Australia, fees can vary for a given business from year to year with changes in annual throughput. Fees in New South Wales and New Zealand also vary for different size businesses, and in the latter case, five particular dairy operators are charged business-specific, higher annual fees.[2]

2 New Zealand's cost recovery principles provide for a different charging regime for sectors where there are large variations in business sizes (as exists for dairy). The principal aim is to improve the equity and efficient of the cost recovery charges. As such the following co-operative dairy groups and companies face different charges based on their market share for raw milk processed: Fonterra; Westland; Tatua; Dairy Goat; and Open Country Cheese.

Table 11.4 **Initial and ongoing fees to maintain licences — dairy**

Australian dollars, 2008-09

	Category	*Initial fee*	*Annual fees*[a]
NZ[b]	Application for registration	$112	$112/hr
	plus		
	Annual fee for development & maintenance of standards:		
	for each registered manufacturing premises receiving < 316,000kg of raw milk solids		$350
	Specified amounts for larger companies (eg Fonterra)		$790 – $1 286 000
	Annual performance monitoring fees:		
	for each registered manufacturing premises receiving < 316,000kg of raw milk solids (specified amounts in		$97
	Specified amounts for larger companies (eg Fonterra)		$380 – $330 000
	Market access fees in relation to development and maintenance of standards & program payable by exporters as well as dairy residue monitoring programs		$280
	Specified amount for Fonterra		$420 000
	Application for product disposition		$150/application plus $150/hour after first hour
	Residue monitoring fees (payable by dairy exporters)		$331
	Specified amount for Fonterra		$1 050 900
NSW	Application	$50	
	Dairy Farm licence		$323
	Dairy Produce Store licence		$286
	Dairy (milk) Produce Factory licences (fee increases with employees)		$816 to $224 211
	Dairy (dairy product) Produce Factory licences (fee increases with employees)		$816 to $87 496
	Dairy Vehicle Vendor		$196
	Farm Milk Collector		$511
	Dairy Farmer (Goat Milk)		$109
	Bottling (Unpasteurised Goat Milk Producer) &/or Dairy Farm (Goat Milk)		$328
	Dairy Goat Produce Factory &/or Unpasteurised Goat Milk Producer &/or Dairy Farm (Goat Milk)		$546
Vic[c]	Dairy farms		
	Dairy farmer	$161.00	0.014 c/litre (approx)
	Dairy farmer Goat/Sheep (fee increases with throughput)	$161.00	$53.66 to $107.33
	Dairy manufacturer (fee increases with throughput)		
	Dairy Manufacturer	$161.00 to $2 146.52	$536.63 plus 0.129 cents per litre
	Milk Broker	$161.00	0.030 cents per litre
	Dairy Distributor (fee varies with throughput)	$161.00	$103 to $203
	Dairy food carrier (fee varies with number of tankers)	$161.00	
	2 tankers or less		$53.66
	each additional tanker		$21.47

(continued next page)

Table 11.4 **(continued)**

	Category	*Initial fee*	*Annual fees*[a]
Qld	Application fee	$116.60	
	Inspections and/or audit costs for application/accreditation		$225 per hour
	Accreditation fee		
	Exporter		$5 835.15
	Retailer		$373.35
	Delicatessen		$210.00
	Producer		$291.65
	Processor		$1 166.75
	Cold store or transporter		$210.00
	Other		$198.25
SA	Administration fee:	$100	
	Dairy farmers supplying large-scale dairy manufacturers (over one million litres)		
	- accreditation fee (paid by mfg on behalf of farmers)		0.0246 cents per litre
	- audit fee (if Authority conducts the audit)		0.0201 cents per litre
	Large scale dairy manufacturers		
	- accreditation fee		0.0246 cents per litre
	- audit fee		0.0178 cents per litre
	Small-scale manufacturers & small-scale farmers – accreditation fee		$250
	Dairy distributors & dairy produce carriers – accreditation fee		$100
WA	Local govt fees	No charge	
Tas	Dairy farmer		
	– licence application		$128.00
	– licence fee		0.02625 cents per litre
	Dairy processor/manufacturer		
	– licence application		$128.00
	– licence issue/renewal (where milk is purchased directly from farmer)		0.02625 cents per litre
	– licence issue /renewal (where milk is not purchased directly from farmer)		
	Receiving ≤ 2000 tonnes per year		$525
	Receiving >2000 tonnes per year		$3 150
	Vendor (dairy distributor)		
	– licence application		$128.00
	– licence renewal/transfer		$76.80
NT	Online registration	No charge	
ACT	Registration of a food business (based on FSANZ priority classifications of food businesses)		
	Low risk (eg milk vendor)		$50
	Medium risk (eg dairy/milk factory; dairy section of supermarket; ice cream mfg)		$100
	High risk		$150

a Annual licensing fees in NSW and Tasmania include the cost of one compliance audit per year. **b** New Zealand fees are converted to Australian dollars based on average exchange rate for 2008-09 of 1.23. **c** The initial fee includes an initial inspection to assess the suitability of facilities before they commence their operation and an assessment of their FSP, including advice on compliance.

Sources: Baldwins–FoodLegal (2009); RBA (2009); regulator websites.

For dairy farmers, licensing fees for food safety purposes are possibly higher in Tasmania than in other jurisdictions, due to the slightly higher charges per litre of milk produced. However, for dairy manufacturers and processors (depending on the business size), annual licensing/accreditation fees may be comparatively higher in New South Wales, Victoria and New Zealand than in other jurisdictions. For example, for a medium-size milk processor (about 3 million litres of market milk per annum), the Commission estimated that licence fees could be about $55 000 in New South Wales,[3] $4500 to $8000 in Victoria and New Zealand,[4] and less in other jurisdictions.

The Commission would appreciate some insights on the extent to which these differences in charging regimes reflect different cost-recovery objectives, industry structure and/or volumes of throughput in different jurisdictions.

Food safety plans

All dairy businesses in Australia are required under the PPPS for dairy to have a 'documented food safety program', however, Western Australia and the ACT do not specifically require there to be an FSP for licence approval.

While FSPs for dairy businesses are generally required to be Hazards Analysis and Critical Control Points (HACCP) based, jurisdictions differ in the prescriptiveness of additional requirements on plan content. Victoria, New South Wales and Queensland have provisions in their legislation and/or codes of practice on the content of FSPs which vary for different types of dairy businesses (Victoria's provisions, however, do not require anything additional to the national standard). Emerald Creek Foods estimated that it cost their business at least $6000 to convert an existing FSP to meet SFPQ requirements (sub. 15, p.6). South Australia, Western Australia and Tasmania include prescriptive provisions in their respective dairy industry codes of practice. The ACT and the Northern Territory (perhaps due to the small size of their dairy industry) defer to the ANZFS Code for the content of FSPs. Template FSPs are provided by regulators in New Zealand and New South Wales (albeit a generic template for all types of businesses), which may reduce regulatory compliance costs for businesses in these jurisdictions.

3 The NSW licence fee is an 'all-inclusive' charge which covers, for example, the audit costs for the milk processor's cold stores, farms and vendors. New South Wales is moving to a new flat structure fee system in 2010 (NSWFA 2009e).

4 New Zealand fees are converted to Australian dollars based on an average exchange rate for 2008-09 of 1.23 (RBA 2009).

Dairy producers and processors in New Zealand are required to register a risk management plan (RMP) with the NZFSA prior to starting operation. At the end of 2008-09, there were around 300 RMPs registered with NZFSA for dairy businesses. Over half of these were RMPs for businesses that transport and/or store dairy products. Some of these RMPs may apply to multiple businesses as NZFSA allows more than one business to operate under a registered plan. To some extent, this may reduce the costs to business of operating under an RMP. Some secondary processors are able to choose whether they register and operate under an RMP, or alternatively, register an FSP under New Zealand's *Food Act 1981*.

New Zealand also requires the application of HACCP principles and has specific requirements detailed in the *Animal Products (Dairy Processing Specifications) Notice 2006* for dairy processing, farm dairies, raw milk acceptance and manufacturing.

Other requirements on business inputs and operation

All jurisdictions (except ACT, the Northern Territory and South Australia from July 2009) have detailed requirements for the premises, equipment and processes used by dairy businesses that are additional to requirements under the ANZFS Code (table 11.5). For example:

Storage temperature requirements — Requirements for the temperature at which stored milk is maintained vary between jurisdictions with New Zealand the least restrictive and New South Wales the most stringent:

- Under the Dairy PPPS, all Australian jurisdictions are required to ensure that milk is cooled and stored at a temperature that prevents or reduces growth of microbiological hazards. FSANZ claim that the recognised industry standard is to cool milk to 5°C or less within 3.5 hours of the commencement of milking.
- Victoria, South Australia and Tasmania each repeat this requirement in their codes of practice for dairy and specify that if milk is collected at a higher temperature it is 'the dairy manufacturer's responsibility to ensure that temperature control procedures are validated and equivalence demonstrated to ensure the minimisation of pathogenic microbiological growth'.
- New South Wales on the other hand, requires that within 3.5 hours of the commencement of milking, the milk is either packaged and processed or cooled to 4°C or less (and milk is not to be collected from any farm vat unless the temperature has been reduced to 4°C or less, unless specifically authorised by the Food Authority).

- New Zealand, which is not bound by the ANZFS Code, allows a higher storage temperature than Australian jurisdictions and applies this from the completion of milking rather than commencement. Specifically, the RMPs of dairy operators are to describe procedures to ensure raw milk is cooled to 7°C or below within 3 hours of completion of milking and kept at this temperature until collected or until the addition of milk at the next milking, or is processed without delay.

Table 11.5 **Requirements on business operation — dairy**
2008-09

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Jurisdiction-specific legislative requirements on premises, equipment and/or processes	✓	✓	✓	✓	✓	✓	✓		
Additional codes, standards, manuals or procedures (other than the ANZFS Code)		✓	✓		✓		✓		
Detailed requirements on building design or construction		✓				✓	✓		
Prescriptive requirements on cleaning		✓					✓		
Storage temperature requirements different from ANZFS Code	✓	✓							
Requirements on record keeping additional to ANZFS Code	✓		✓	✓	✓	✓	✓		
Requirements on sampling and testing additional to ANZFS Code	✓	✓							

Source: Baldwins-FoodLegal (2009).

Cleaning requirements — There is a vast range of requirements around the cleaning of dairy premises and equipment and while these vary in content and extensiveness between jurisdictions, in general, New South Wales appears to be the most prescriptive in its requirements (at least for on-farm practices).

- Victoria, South Australia and Tasmania require there to be an adequate supply of 'potable' water to clean the manufacturing premises, equipment and transport vehicles and for incorporation as an ingredient where required. In contrast, New South Wales require dairies to have a supply of 'unpolluted water' sufficient for operating needs and specify a requirement for '… an adequate supply of good quality water under pressure in the milk room or in close proximity to the milk room, so the bulk milk tank when emptied can be hosed by the tanker driver.' New Zealand requires that all water that may come into contact with raw milk during milking, including water used to clean the milking plant, is of 'suitable quality'.
- Tasmania specifies that only cleaning products approved by the National Registration Authority for agricultural and veterinary chemicals can be used to clean on dairy farms.

- As part of its cleaning requirements for dairy premises, New South Wales requires that dairy buildings have a water heater capable of supplying adequate hot water at above 94 ^{o}C.
- New South Wales and to a lesser extent, Tasmania, provide detailed requirements for the design, layout and construction materials used for dairy premises and proximity to other facilities such as animal holding pens, feed storage and roads.

Record keeping requirements — While all dairy businesses are required under the Dairy PPPS to maintain certain records of operating procedures, Victoria, Queensland, South Australia, Western Australia and Tasmania also have additional requirements either in their legislation or code of practice. These requirements tend to focus on the producer's ability to trace products, lot identification and production dates. Baldwins-FoodLegal (2009 p. 65) report that '… the record keeping requirements for the dairy industry are more prescriptive in the legislation, regulation and codes of practice than for other primary food industries.'

Product sampling and testing requirements — There are several issues with sampling and testing of products that may result in higher business compliance costs in some jurisdictions.

- In relation to product testing requirements for the dairy industry, most jurisdictions rely on requirements in the ANZFS Code and simply specify that testing is required to verify the effectiveness of the on-farm food safety program. Testing requirements in New South Wales are considerably more prescriptive and relate to specific contaminants in particular products or food-borne illnesses. For example, the NSWFA requires dairy produce factories to conduct some tests (such as for salmonella) on some dairy products at least fortnightly. Baldwins FoodLegal (2009, p.65) note that '… the majority of prescriptive testing requirements with respect to the dairy industry are generally contained in the Codes of Practice and not in statute or legislation.'
- One issue that can arise with demonstrating compliance of tested dairy product samples is that the nutritional composition of products can change considerably with the age of the product. Requirements on product testing generally do not allow different standards at different stages in the life of a product. The extent to which this is an issue for dairy businesses will depend on the way in which requirements are enforced in the different jurisdictions.

The Commission welcomes views on the extent to which these requirements for business operations and processes are likely to result in a significant regulatory compliance cost to businesses.

Compliance monitoring

While there is generally a difference between an inspection to verify compliance against legislation or standards and an audit of an FSP, in practice, most routine inspections of dairy premises by authorised officers include a check of the compliance against the business's FSP.

Legislation in New Zealand, New South Wales, Victoria, Queensland and South Australia requires FSPs/RMPs of dairy businesses to be audited, but in practice, regulators in Tasmania and the Northern Territory also undertake regular audits or compliance checks (table 11.6).

Audit frequency is generally based on perception of risk of different types of businesses, but risk categories for different operations vary between jurisdictions. For example, ACT adopts FSANZ priority classifications while New Zealand, NSW and Queensland have developed jurisdiction specific risk categories (chapter 8). Of all the jurisdictions, New South Wales and New Zealand have audit regimes with potential for the most frequent inspections on compliant businesses and Western Australia (8 hours) and Victoria (6 hours for large businesses) reported the longest average duration for audits. Key differences in audit regimes between jurisdictions include:

- In New South Wales, dairy farms and transporters are audited once per year if they are found to be compliant with requirements or every six months if there are food safety issues. Milk produce factories and milk processors are audited more frequently — every six months if they are found to be compliant, otherwise audits may be three monthly. The NSWFA reported that, on average, an audit of a dairy processor takes around 2.5 hours (although NSWFA also noted that some of this time is spent educating the business operator on requirements).
- Victoria provides for compliance audits to occur twice a year for manufacturers and once every two years for farms. Audits can be undertaken by private auditors. DFSV reported that 70 per cent of domestic audits of dairy manufacturers are conducted by SAI Global (DFSV 2008), and cost around $215 per hour — DFSV also charges the same rate. Enforcement (penalties and corrective actions) is the responsibility of DSFV and not the private auditors.

Table 11.6 **Audits and compliance checks — dairy**

Australian dollars, 2008-09

	Principal authority	*Third party auditors possible*	*Frequency*	*Cost*
NZ	NZFSA	✓	Dairy farm: twice per year Dairy processor: up to 4 times per year	NZFSA audit: $112 to $122/hr plus $28 to $30/15 min in final hour
NSW[a]	NSWFA		Farms, collectors, transporters & stores - once per year if compliant, otherwise every 6 months Factories & processors – twice per year if compliant, otherwise 4 times per year	$147/hour plus $38 travelling expenses (costs increase with the consumer price index)
Vic	DFSV	✓	2 times/year for manufacturers and once every 2 years for farms. Average audit duration is 3 hours for small businesses and 6 hours for large.	$215/hour
Qld	SFPQ	✓	Dairy farms, processors of butter & fat spreads, transporters – once per year after the first year, if compliant Other dairy processors, processors and packers of unpasteurised goat milk – every 6 months after the first 6 months, if compliant. Average audit duration 4 hours.	SFPQ audits: $225/hour
SA	DASA	✓	Farmers, manufacturers & carriers – at least once per year. Average audit duration 5 hours. Large scale manufacturers – report to DASA monthly	$167/hour
WA	WA DoH		Twice per year; average duration 8 hours.	No charge
Tas[a]	TDIA		Once per year; average duration 5 hours.	No charge
NT	NT DoHF		Once per year	No charge
ACT	ACT Health		Once per year	No charge

a Annual licence fees in New South Wales and Tasmania include the cost of one compliance check per year.

Sources: Baldwins-FoodLegal (2009); Productivity Commission regulator surveys (2009, unpublished); pers. communication with regulators; RBA (2009).

- Dairy businesses in Queensland are audited within six months after accreditation and within one year after the first compliance audit. Subsequent audits depend on risk and category of accreditation. For low risk dairy businesses (dairy farms, processors of butter and fat spreads, and transporters), SFPQ must conduct a compliance audit within six months of accreditation and within one year of first compliance. Thereafter, audits are annual if the business is found to be compliant. For high risk dairy businesses (those that process dairy products other than butter or process and package unpasteurised goat milk), SFPQ must conduct

a compliance audit within three months of accreditation and within six months of first compliance. Thereafter, audits are six monthly if the business is found to be compliant. SFPQ reported that, on average, an audit of a dairy processor takes around 4 hours.

- South Australia has, as a condition of accreditation, a provision that periodic audits may be conducted without notice, as often as required by the approved FSP. In practice, most dairy businesses are audited at least annually with audits taking around 2 hours for a dairy farm and 5 hours for a dairy processor.
- Domestic dairy processors are audited every six months in Western Australia and the WA Department of Health reports that the average time taken to complete an audit is just over 1 hour for a dairy farm but around 8 hours for a dairy processor.
- In Tasmania, dairy businesses are audited, on average, once per year. The TDIA reported that, on average, an audit of a dairy processor takes around 5 hours.
- There are two agencies in New Zealand that provide verification of RMPs for dairy businesses — the NZFSA Verification Agency and AsureQuality. Unless they export (in which case they must use the NZFSA Verification Agency), a dairy business is able to choose which agency it uses for audits. Approved RMPs are audited at least annually, with provision for greater frequency based on performance. A dairy processor may be audited up to four times per year.

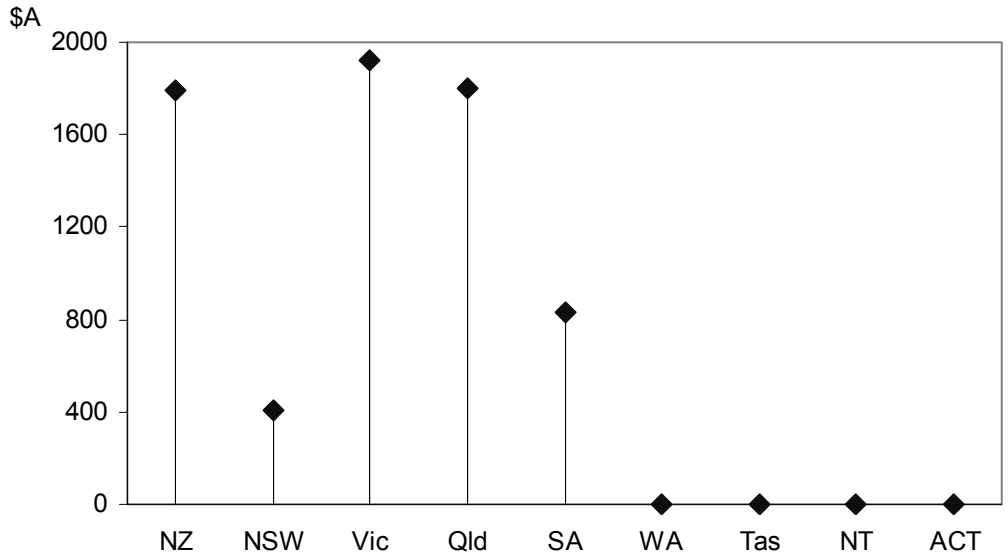
In several jurisdictions (for example, Queensland and South Australia), the larger dairy processors and manufacturers report on a monthly basis to the food safety regulator to demonstrate the quality of product test results and their compliance with the required standards. This information is already generated by the business in the course of its operations and can be provided electronically to the regulator. The information is reviewed by the regulator throughout the year in conjunction with compliance audits, and may facilitate a reduction in the number of audits of businesses. SFPQ (pers. comm. 2009) indicates that this approach is a more cost effective system for verifying food safety performance and provides a more objective indicator of food safety performance than audits, as the effectiveness of audits relies on auditor competence, experience and only provides a snapshot of overall performance. For those businesses covered by this approach, audits may not be a major compliance burden.

In most jurisdictions, audits are charged on an hourly basis. Per hour audit fees are highest in Queensland and Victoria. In New South Wales and Tasmania, annual licence fees include the cost of one annual compliance audit. While compliant businesses in New South Wales incur the cost of one additional audit per year to meet regulatory requirements, those in Tasmania only incur additional audit fees if they are found to be non-compliant and require a follow up audit. Western

Australia, ACT and the Northern Territory do not currently charge for audits of dairy premises.

Total annual audit costs were estimated by the Commission, as an example, for a dairy milk processor business in each jurisdiction. Overall, given the frequency of audits and the fees charged, dairy milk processor businesses in Victoria, Queensland and New Zealand are likely to incur the greatest annual costs associated with audits and compliance checks for food safety purposes (figure 11.2).

Figure 11.2 **Annual audit costs for a milk processor by jurisdiction**
Australian dollars, 2008-09 [a, b]



[a] Estimates are for a compliant dairy milk processor and may be higher in some jurisdictions for a business engaged in export and/or multiple activities that are separately audited. Annual audit cost is derived as: $ cost per hour for an audit x average number of hours per audit x minimum number of audits per year. [b] The NZ estimate is based on the maximum number of audits per year for a compliant business and an audit cost per hour which is a minimum cost, and is converted to Australian dollars using an average exchange rate of 1.23 for 2008-09.

Data source: Productivity Commission regulator surveys (2009, unpublished); RBA (2009).

The dairy authorities in each Australian state also undertake audits on behalf of AQIS for those dairy businesses which export. In practice, audits for domestic purposes may be undertaken in conjunction with the audit for export purposes. The TDIA advised the Commission that they attempt to line up audits for their own purposes with those for export purposes to minimise the compliance burden on dairy businesses (pers. comm. August 2009) — a similar arrangement also exists in Victoria. These arrangements potentially reduce the regulatory compliance burden for dairy exporters through reduced overlap in paperwork and fewer audits per year to verify compliance. To the extent that a marginally longer audit to satisfy two

separate regulatory requirements is less costly for businesses than multiple audits (of a shorter duration), business compliance costs may be lower.[5]

The capacity to choose between approved auditors in New Zealand, South Australia and Queensland may also provide businesses with more options to reduce audit costs. In Victoria, while there is only one approved auditor, DFSV reported to the Commission that use of third party auditors has helped reduce the costs of regulation in Victoria as the regulatory audit can be conducted as part of a commercial quality assurance audit.

Enforcement and corrective action

Generally as a first step, the enforcement agencies seek to work with the dairy producers and processors to alleviate any food safety concerns. However, as a next step, each jurisdiction has a variety of disciplinary actions available to its regulators to enforce food safety requirements (table 11.7). In particular, most authorities have the power to suspend, withdraw or cancel a licence/accreditation/RMP, issue directives, impose penalties and prosecute offenders. In cases where the offender has committed a serious offence (for example, where they have knowingly put the public in danger), penalties can include fines of up to $500,000 or five years imprisonment in New Zealand, or two years imprisonment in some Australian jurisdictions (New South Wales, Queensland, South Australia, the Northern Territory and the ACT). In all jurisdictions, there are avenues for external appeal by a business on a decision taken by the relevant enforcement agency.

[5] The dairy industry in Australia has, in earlier regulatory reviews, raised the issue of overlap between export regulatory requirements and the dairy PPPS in the ANZFS Code (Dairy Australia 2008). While the export orders reference the ANZFS Code and Australian testing standards, the *Export Order (Milk and Milk Products) 2005* in particular, duplicates substantial aspects of processing hygiene systems regulated under the Australian Dairy PPPS. This issue is discussed further in chapter 14.

Table 11.7 **Enforcement and corrective action — dairy**

2008-09

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Enforcement body									
Primary authority same as for licensing	✓	✓	✓	✓	✓	✓	✓	✓	✓
Local council officers for retail end of chain	✓	✓	✓	✓	✓	✓	✓		
Other authorised officers		✓		✓	✓		✓	✓	
Possible reasons for cancellation or suspension of licence etc									
Non-compliance with FSP or RMP	✓	✓	✓	✓					
Non-compliance with other specified conditions	✓	✓	✓				✓	✓	
Non-compliance with standard or legislation	✓	✓	✓		✓		✓	✓	✓
Avoid a threat to food safety / in interest of public health		✓					✓		
Committed an offence or otherwise been disqualified			✓	✓	✓	✓	✓	✓	
Not submitted to an audit				✓	✓				
Not paid fees		✓	✓	✓	✓				
No longer have the capacity, experience or qualifications to ensure safe product		✓							
Premises no longer used for licensed purpose							✓		
External review of cancellation/suspension possible		✓	✓		✓		✓	✓	✓
Corrective actions									
Conditions on licence			✓			✓	✓	✓	
Suspension or cancellation of licence or registration	✓		✓	✓	✓	✓	✓	✓	
Suspend business operation	✓							✓	✓
Quality assurance program			✓				✓	✓	
Compliance monitoring		✓	✓						
Additional audits/inspections			✓				✓	✓	
On-the-spot fine		✓							
Directives for action / compliance notice	✓	✓	✓	✓	✓	✓	✓		✓
Prohibitions or conditions on use of premise, equipment or vehicle / restraining orders	✓	✓	✓	✓	✓				✓
Prosecution / conviction	✓	✓	✓	✓	✓	✓	✓	✓	
Penalties									
Adverse publicity		✓							
Fines		✓	✓	✓	✓	✓	✓	✓	✓
Imprisonment		✓	✓	✓	✓	✓		✓	✓

Source: Baldwins-FoodLegal 2009.

Penalties and fines

Penalties and fines are not a regulatory compliance cost for a compliant business, but the severity of repercussions for non-compliance can act as a strong incentive for some businesses to meet regulatory requirements.

Every jurisdiction has a range of offences that incur fines and penalties and the severity of these varies substantially between jurisdictions. Fines and penalties associated with three basic offences — failure to be licensed (or equivalent), provision of food that is unsafe (either unknowingly or deliberately), and failure to follow a compliance order or directive — are presented in table 11.8.

Across the jurisdictions, a failure to be appropriately registered as a primary dairy producer/processor incurs the greatest penalties in New South Wales, Queensland and New Zealand — for example, up to $275 000 for dairy businesses in New South Wales. This fine may be levied even when a business is otherwise compliant in the provision of safe food. For a dairy business that substantially transforms the product and/or sells to the public, failure to register under the relevant food Act can incur the greatest penalties in New South Wales, Queensland, South Australia, Tasmania and Northern Territory (with a maximum potential fine of at least $100 000 in each of these jurisdictions).

Provision of food that is unsafe generally incurs greater penalties in those cases where food is sold to the public (rather than to another business for further processing) and when the food is known to be unsafe yet still provided. Penalties are comparatively high in all jurisdictions except for dairy businesses in Western Australia and those dairy businesses that come under the Food Act in New Zealand.

Failure to comply with a compliance order or directive of an authorised officer incurs the greatest penalties in New South Wales (up to $55 000 for an individual or $275 000 for a corporation), followed by South Australia and New Zealand.

A comparison of penalties and fines between jurisdictions provides no indication of how often or how vigorously particular offences are pursued by the regulators. Some indication of regulator enforcement approaches is provided (across all regulated businesses within each jurisdiction) in chapters 7 and 8 of this report.

Table 11.8 **Penalties and fines for selected offences**[a]

Australian dollars, 2008-09

	Operating an unlicensed (or equivalent) food business	*Providing unsafe food*[b]	*Failure to comply with a directive/compliance order*
NZ[c]	Primary: Indiv: $16 260 Corp: $81 300 Food business: Max: $407, plus $41 per day for a continuing offence	Producers and processors: Indiv: $81 300 & 5 yrs prison; Corp: $406 504 Operator of RMP: Indiv: $60 975 & 2 yrs prison; Corp: $243 902 Food business: Indiv: $4 065; Corp: $16 260	Indiv: $40 650 plus $1 626/day for continued offence Corp: $243 902 plus $1 626/day for continued offence
NSW	Indiv: $55 000 Corp: $275 000	Indiv: $110 000 or 2 yrs prison; Corp: $550 000	Indiv: $55 000 Corp: $275 000
Vic	Primary: $13 610 Dairy retail: 1st offence $5 671; 2nd & subsequent offence $11 342	Indiv: $40 000-$100 000 or 2 yrs prison; Corp: $200 000-$500 000	Primary: $13 610 Food business: 1st offence $2 836 2nd & subsequent offence $5 671
Qld	Primary: $200 000 or 2 years prison Food businesses: $100 000	Primary: $300 000 or 2 years prison Food businesses: $100 000 or 2 years prison	Primary: $30 000 Food business: $20 000
SA	Primary: $20 000 Food businesses: Indiv: $25 000 Corp: $120 000	Indiv: $50 000 - $100 000 or 4 years prison; Corp: $250 000 - $500 000	Food business: Indiv: $50 000 Corp: $250 000
WA	1st offence: $100–$1 000 2nd offence: $200–$1 000 and 3rd and subs. offence: $500–$1 000. Plus, $50–$100 per day for continued offence	1st offence: $250–$2 500 2nd offence: $500–$2 500 3rd and subs. offence: $1 250–$2 500. Plus, $125–$250 /day for continued offence	No equivalent penalty
Tas	Dairy farmer, mfg, vendor: $6 000 Milk processor: Indiv: $6 000 Corp: $12 000 Food business: Indiv: $60 000 Corp: $144 000	Indiv: $120 000 or 2 years prison; Corp: $600 000	Primary: $6 000 plus $600/day for continued offence Food businesses: Indiv: $60 000 Corp: $300 000
NT	Food business: Indiv: $55 000 Corp: $275 000	Indiv: $110 000 or 2 years prison; Corp: $550 000	No equivalent penalty
ACT	Food business: Indiv: $5 000 or 6 mths prison or both Corp:$25 000	Indiv: $100 000 or 2 yrs prison or both Corp: $500 000.	No equivalent penalty

a All fine amounts are maximums unless otherwise specified. **b** Fines for provision of unsafe food escalate in most jurisdictions for offences that are deliberate. **c** New Zealand fees are converted to Australian dollars based on an average exchange rate for 2008-09 of 1.23.

Sources: Jurisdiction legislation; RBA (2009)

12 Food safety in seafood production and processing

Key points

- A primary production standard for seafood is contained in *Standard 4.2.1 Primary Production and Processing Standard for Seafood* (PPPS for seafood) of the Australia New Zealand Food Standards Code (ANZFS Code). For the most part, the Australian states and territories have relied on the coverage of their existing seafood schemes, rules and legislation and/or their food Acts to execute the requirements of the standard.
- New Zealand does not require its seafood businesses to meet the seafood standards in the ANZFS Code but instead, has an extensive risk management program (RMP) for most seafood operators and regulated control schemes for particular sectors.
- All jurisdictions currently require licensing/accreditation of shellfish operators for food safety purposes. The only primary producers of seafood (other than shellfish) that are regulated for food safety purposes, are those in New Zealand, New South Wales and Victoria. Food Standards Australia New Zealand (FSANZ) has assessed the additional regulatory cost of this requirement for seafood businesses in New South Wales and Victoria to be small.
- All bivalve mollusc seafood businesses are required to have a food safety plan (FSP). In Australia, only New South Wales and Victoria require other seafood harvesters and processors to have an FSP, although plans are used in other jurisdictions on a voluntary basis.
- Some seafood businesses in Australia hold a number of FSPs to meet requirements for export, state regulations and customer demands. The initial development costs for these FSPs have been estimated to be, on average, around $20 000, with annual plan maintenance costs for the program of approximately $8000 and annual audit costs of up to $2500 per business.
- The cost to shellfish producers/processors of compliance checks varies substantially between jurisdictions. Generally compliant businesses in New Zealand, New South Wales, Victoria, South Australia and Tasmania incur annual fees of up to $1100, businesses in Queensland and Western Australia incur (variable) local government charges for inspections and those in the Northern Territory and ACT are not charged for a compliance check.

This chapter examines in detail the differences in primary production and processing regulation, and its implementation and enforcement within jurisdictions, in the context of seafood. Included in 'seafood' are marine species of fin fish and shell fish and also the products of aquaculture activities.

The benchmarking in this chapter draws heavily on a comparison of regulatory differences between jurisdictions, as detailed in a consultancy report prepared for this study (Baldwin-FoodLegal 2009). To the extent that information on business compliance costs is available, the implications of these regulatory differences for seafood businesses are then explored.

12.1 Scope of seafood regulation

Seafood businesses

The regulation of most seafood for human consumption begins once the product is landed on the fishing vessel. With aquaculture, the conditions under which the product is farmed (such as water quality) are also monitored. Seafood businesses covered by food safety regulation therefore include fishers, transporters, seafood processors, handlers, wholesalers and retailers.

There are just under 10 000 seafood businesses in Australia and 2000 in New Zealand (table 12.1). Within Australia, most seafood businesses are based in Queensland, Western Australia or New South Wales. In each country, around 90 per cent of these businesses are producers or harvesters of seafood and the remainder are seafood processors and/or wholesalers.

Table 12.1 **Number of seafood businesses by jurisdiction[a]**

As at 30 June 2007 for Australia; as at February 2008 for New Zealand

	Marine fishing	*Aquaculture*	*Seafood processing*	*Fish wholesalers*
NSW	876	567	30	315
Vic	450	180	33	201
Qld	1554	531	51	240
SA	798	366	33	81
WA	1569	345	48	78
Tas	627	198	6	39
NT[b]	264	16	40	0
ACT	0	6	3	3
Australia total	5976	2229	204	960
New Zealand	1333	345	113	165

[a] Seafood retailers are reported in the broader grouping 'Fresh Meat Fish & Poultry Retailing' in table 9.1. The number of businesses is separate to the number of licensed business premises. [b] Seafood processing and wholesaling are combined for the Northern Territory.

Sources: ABS (*Counts of Australian Businesses,* Cat. No. 8165.0); Statistics New Zealand.

Regulation of seafood safety

Primary production standards for seafood are contained in *Standard 4.2.1 Primary Production and Processing Standard for Seafood* (PPPS for seafood) of the ANZFS Code. This standard was one of the first national standards developed for primary production and processing of a food product and has been mandatory for seafood businesses in Australia (but not in New Zealand) since May 2007.

An Australian seafood business is required, under the standard, to identify potential seafood safety hazards and implement controls that are commensurate with the risk. In addition, the standard sets out food safety and suitability requirements for seafood (that is intended for sale) from pre-harvesting production of the seafood up to, but not including, manufacturing operations. Chapter 3 of the ANZFS Code applies to seafood manufacturing and retail sale activities. These standards are required of seafood businesses and seafood handlers in Australia but not in New Zealand.

At the time Standard 4.2.1 was developed, FSANZ assessed that 10 per cent of all food-borne illness in Australia may be attributable to seafood (FSANZ 2005, p.40). They estimated that the cost of this to the Australia community was in the order of $150 million per year. In general, the risks of food-borne illnesses are considered to be greater in association with cold smoked fin fish and bivalve molluscs (such as

mussels, cockles, oysters, pipi and scallops) than for other fin fish or shellfish (FSANZ 2005).

Bivalve molluscs filter large volumes of water and trap particulate matter and dissolved substances suspended in the water as a source of food. Consequently, if the water in which they are grown is polluted, then the shellfish may concentrate microbes or chemicals which may be injurious to the consumer. Because shellfish are often consumed raw (or slightly cooked) and whole (including their gastrointestinal tract), they are generally classified as a high-risk food group by health authorities worldwide. For this reason, there are additional regulatory requirements in both Australia and New Zealand that cover harvesters and processors of bivalve molluscs.

Implementation of seafood safety standards in Australia

For the most part, the Australian states and territories have relied on the coverage of their existing seafood schemes, rules and legislation and/or their food Acts to execute the requirements of Standard 4.2.1 (table 12.2). The exception to this is Queensland, which, in response to the standard, added to its generic legislation — *Food Production (Safety) Regulation 2002* — to also cover seafood safety (in force from 1 July 2009). Those Australian states for which seafood is a dominant primary industry (Tasmania and South Australia) have continued to largely regulate the safety of their seafood through their primary industry department.

The NSW *Seafood Safety Scheme* (prescribed in New South Wales' *Food Regulations 2004*) does not provide for the application of Standard 4.2.1, but nevertheless makes similar food safety requirements of New South Wales seafood businesses. Similarly, Tasmania has extensive seafood process and handling guidelines for some species in Rules under its *Living Marine Resources Management Act 1995* and has developed systems to enable a range of seafood businesses to demonstrate compliance with standard 4.2.1. Tasmania has been progressing the development of new food safety legislation that will cover seafood as well as other primary production (DPIPWE (Tasmania) 2009). Western Australia's new food Act is expected to cover, at a minimum, the ANZFS Code requirements for bivalve mollusc production.

All Australian states with commercial shellfish operations have, for a number of years prior to the introduction of the additional requirements in the ANZFS Code, adhered under agreement to the *Australian Shellfish Quality Assurance Program* (ASQAP, box 12.1). To implement this agreement, each jurisdiction with a shellfish industry refers to a national operations manual and has undertaken routine testing and sampling for quality assurance purposes (although New South Wales and

Western Australia have developed their own versions of the national manual). For example, in Tasmania, the Department of Health and Human Services administers the *Tasmanian Shellfish Quality Assurance Program* for shellfish aquaculture operations. The program carries out continual and extensive monitoring of water quality in all commercial shellfish growing areas in the state, based on the level of public health risk.

In its final assessment report for the development of Standard 4.2.1, FSANZ noted that even prior to the introduction of the Australia New Zealand standard:

> … the effectiveness of ASQAP requirements in addressing the health and safety risks in the pre-harvest shellfish sector (including biotoxin testing) is recognised in all jurisdictions, although only recently in NSW. The cost of mandating compliance in the Code with specific pre-harvest requirements (stated in ASQAP) and food safety programs for the post-harvest activities is expected to be very small, as compliance is mostly in place. (FSANZ 2005, p.43)

Given the long history of compliance with legislated requirements on water quality, voluntary codes of practice and guidelines in the higher risk shellfish segment of the seafood industry, the compliance costs of meeting requirements under Standard 4.2.1 may be comparatively small for many operators.

However, for those operators which have not previously adopted measures to ensure compliance with voluntary requirements of the industry and/or some jurisdictions, changes in the implementation of regulations in recent years as jurisdictions ensure that the requirements of the national standard are adequately enforced, may result in additional compliance costs.

Table 12.2 **Regulations and regulators by jurisdiction — seafood**

	Documented requirements	*Principal regulator*
NZ	*Food Act 1981* *Animal Products Act 1999* *Animal Products Regulations 2000* *Animal Products (Fees, Charges, and Levies) Regulations 2007* *Animal Products (Branding and Associated Requirements) Notice 2005* *Animal Products (Regulated Control Scheme Bivalve Molluscan Shellfish) Regulations 2006* *Animal Products (Regulated Control Scheme — Limited Processing Fishing Vessels) Regulations 2001*	New Zealand Food Safety Authority (NZFSA)
NSW	*Food Act 2003* *Food Regulations 2004* NSW Shellfish Program Operations Manual 2001 *Code of Practice for Oyster Depuration in NSW 2005* *Code of Practice for Seafood Handling Premises 2005* *Code of Practice for Commercial Fishers* *Code of Practice for the Transport of Primary Produce & Seafood*	NSW Food Authority (NSWFA)
Vic	*Food Act 1984* *Seafood Safety Act 2003*	PrimeSafe
Qld	*Food Act 2006* *Food Regulations 2006* *Food Production (Safety) Act 2000* *Food Production (Safety) Regulation 2002 (from 1 July 2009)*	Safe Food Production Queensland (SFPQ) Queensland Health
SA	*Food Act 2001* *Food Regulation 2002* *Primary Produce (Food Safety Schemes) Act 2004* *Primary Produce (Food Safety Schemes) (Seafood) Regulations 2006*	Primary Industries & Resources SA (PIRSA)
WA	*Health Act 1911* *Food Act 2008* [a] *Health (Food Standards) (Administration) Regulations 1986* *Health (Food Hygiene) Regulations 1993* *Health (ANZ Food Standards Code Adoption) Regulations 2001* *Fish Resources Management Act 1994* *Fish Resources Management Regulations 1995*	WA Department of Health – Executive Director, Public Health (WA DoH)
Tas	*Food Act 2003* *Food Regulations 2003* *Living Marine Resources Management Act 1995*	Department of Primary Industries, Parks, Water & Environment (Tas DPIPWE)
NT	*Food Act 2004* *Fisheries Act 1988* *Fisheries Regulations 1993*	Department of Health and Families (NT DoHF)[b]
ACT	*Food Act 2001* *Food Regulations 2002*	ACT Health

[a] The *Food Act 2008* (WA) was not in effect for food or primary production until late October 2009. [b] While responsibility for food safety in the Northern Territory rests with DoHF, NT Department of Regional Development, Primary Industry, Fisheries and Resources is the principle regulator of the Fisheries Act and Regulations, and NT Police, Fire and Emergency Services is responsible for fisheries compliance and enforcement provisions (including compliance by fish retailers and traders/processors).
Sources: Baldwins-FoodLegal (2009); regulator websites.

Box 12.1 **Australian Shellfish Quality Assurance Program (ASQAP)**

ASQAP is a government–industry cooperative FSP adopted by each shellfish producing state and territory of Australia. It is overseen by the Australian Shellfish Quality Assurance Advisory Committee, which consists of representatives from FSANZ, Australian Quarantine and Inspection Service (AQIS), state government departments responsible for shellfish safety and industry representatives from each state.

The ASQAP is modelled on the internationally accepted United States National Shellfish Sanitation Program. The fundamental premise is that harvesting should only occur from growing areas shown to be free from harmful contaminants and pathogenic micro-organisms. Each growing area must undergo a full and comprehensive sanitary survey, with appropriate classifications and management strategies determined before harvesting is permitted.

All the requirements for completing and maintaining sanitary surveys, and the ongoing management of growing areas are laid out in the ASQAP Manual of Operations (2002). This manual is a reference document for federal and state government agencies involved in the implementation of the ASQAP for bivalve molluscs commercially harvested from Australian waters. The manual is also referenced in the FSANZ *Standard 4.2.1 Primary Production and Processing Standard for Seafood*.

Source: DAFF (2009).

Implementation of seafood safety in New Zealand

In New Zealand, seafood businesses operate in the context of industry agreed, Hazards Analysis and Critical Control Points (HACCP) based standards (*Industry Agreed Implementation Standards*). These standards are issued as circulars under the *Animal Products Regulations 2000* and have legal backing.

All primary processors of seafood and secondary processors (such as transporters) of seafood products which require official assurances for export are required to implement a risk management program (RMP). An individually tailored RMP is viewed as impractical or inappropriate for bivalve molluscan shellfish and for limited processing fishing vessels (vessels which undertake a limited range of processing of fish prior to its export for human consumption, without further processing within New Zealand). For these two groups, New Zealand has also introduced regulated control schemes (box 12.2). Operators of limited processing fishing vessels may chose whether they operate under an RMP, or a regulated control scheme, and may switch between the two options.

New Zealand seafood industry is also in the process of developing a seafood code of practice and generic RMP models for processing of seafood product. These documents '… will assist seafood operators to meet the requirements of the *Animal*

Products Act 1999 and produce seafood product that is safe and suitable for its intended purpose. In particular, they provide guidance for meeting the requirements for the development, registration and implementation of risk management programmes.' The code of practice will replace the current *Industry Agreed Implementation Standards* as the base requirement for the new standardised verification processes being implemented from late 2009.

Box 12.2 **New Zealand's regulated control schemes for seafood**

Regulated Control Scheme—Bivalve Molluscan Shellfish (BMS)

The main purpose of this scheme is to identify, monitor, evaluate, and manage the risks associated with the commercial growing, harvesting, sorting, and transporting of BMS intended for human consumption; and other related activities or conditions affecting the suitability for processing or fitness for intended purpose of BMS. As such, this regulated control scheme applies to:

- all activities involved in growing, harvesting, sorting, and transporting BMS for commercial purposes up until the time when the BMS undergo primary processing or, in the case of BMS that does not undergo primary processing, up until the time when the BMS are received by a wholesaler or retailer or sold direct to the consumer. This includes the transport, temporary storage and wet storage occurring in a coastal marine area or a land-based aquaculture facility but does not include wet storage or other forms of primary processing that are covered by an RMP; and
- the collection and analysis of samples of BMS and associated things for monitoring under this scheme.

Regulated Control Scheme—Limited Processing Fishing Vessels

The prime purpose of this scheme is to control, manage, and eliminate or minimise risk factors associated with certain processing operations carried out on fishing vessels where any of the catch of the fishing vessel is intended to be exported for human consumption without being further processed within New Zealand (other than solely by way of storage or transport or both), to ensure that the resulting fish product is fit for its intended purpose.

Sources: *Animal Products (Regulated Control Scheme—Bivalve Molluscan Shellfish) Regulations 2006; Animal Products (Regulated Control Scheme—Limited Processing Fishing Vessels) Regulations 2001.*

12.2 Licensing and accreditation

Licence and accreditation categories

All commercial primary seafood producers in Australia and New Zealand are required (for fishery stock management purposes) to obtain an access licence for harvesting or product processing. While these licence arrangements are generally separate to food safety licensing/accreditation, in some jurisdictions (such as in Victoria), it is necessary to have a fish harvesting licence in order to then obtain a licence under seafood safety legislation. In other jurisdictions, such as the Northern Territory, seafood retailers need to hold a separate licence in addition to being a registered food business.

In each jurisdiction, the licensing authority requires detailed information from the applicant on its operation, in order to set appropriate licensing conditions. As for other primary products, seafood businesses are generally licensed according to where they operate in the production chain (table 12.3).

Table 12.3 **Licensing for food safety purposes and quality assurance requirements — seafood businesses**

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Businesses requiring licence for food safety									
Seafood retailer	✓	✓	✓	✓	✓	✓	✓	✓	✓
Seafood (other than shellfish) processor	✓	✓	✓			✓	✓	✓	✓
Seafood (other than shellfish) harvester	✓	✓	✓						
Shellfish processor	✓	✓	✓	✓	✓	✓	✓	✓	✓
Shellfish harvester	✓	✓	✓		✓				
Seafood wholesaler	✓	✓	✓						
Seafood transport	✓	✓	✓						
Basis for categories and fees									
Risk based	✓	✓							
Activity/species type	✓	✓	✓		✓	✓	✓		✓
Premises based			✓			✓			
Business size		✓			✓				✓

Sources: Baldwins FoodLegal 2009; regulator websites.

While all jurisdictions licence seafood harvesters and processors for fishery stock management purposes, they vary in the extent to which these businesses and other secondary processors (such as wholesalers and transporters) are required to be additionally licensed for food safety purposes. For example, the Commission understands that Tasmania, South Australia, Western Australia and Northern

Territory generally do not licence marine fishing operators (other than those of bivalve molluscs) for food safety purposes, unless the operator is also a fish processor.

In its final assessment report for the development of Standard 4.2.1, FSANZ noted that at that time (and it is still the case in 2008-09), apart from the bivalve mollusc sector, the only primary producers of seafood that are regulated for food safety purposes, are those in New South Wales and Victoria. It further surmised that the costs to businesses of this regulation in these two states is very small.

In contrast, all jurisdictions currently have separate licence/accreditation categories for shellfish operators (although in Queensland, this has only been the case since 1 July 2009). In addition, businesses in Tasmania that are not otherwise licensed to process fish but intend to process abalone, rock lobster, giant crabs or scallops, or in excess of 10 tonnes in a year of any combination of other species, must also obtain a Fish Processing Licence under the *Living Marine Resources Management Act 1995*. While the fish processor licence in Tasmania is issued for purposes other than food safety, maintenance of the licence requires compliance with certain food safety provisions. In Western Australia, the issue of a fish processor licence is conditional on the issue being 'in the interests of the industry'.

Most jurisdictions require seafood retailers to be registered as a food business under the relevant food Act. As a consequence, seafood retailers tend to be regulated for food safety purposes by an authority other than a primary industry department (such as a department of health) in the relevant jurisdiction.

In New Zealand, all processing steps, product handling and transport are regulated for food safety purposes from the fishing boat to the export container or retailer. NZFSA is the registration authority for food safety purposes for all seafood businesses except those with a retail function (these come within the jurisdiction of local councils).

Licence fees

The costs of licensing for food safety purposes vary between jurisdictions and between types of operators (table 12.4). As for other primary products, New South Wales licence fees increase with the number of employees that a business has. In Victoria, fees vary with annual throughput for each type of operator. In Tasmania and South Australia, the types and quantities of seafood that the business handles are taken into account in licensing. The other jurisdictions (Queensland, Western Australia, Northern Territory, ACT and New Zealand) in general have less differentiation in their licence fee structure between types and sizes of operators.

Table 12.4 **Initial and ongoing fees to maintain licences — seafood**

Australian dollars, 2008-09

	Category	*Initial fees*	*Ongoing fees*
NZ[a]	Application for registration	$112	
	Assessment fee (varies with employment status of assessor)		$112 to $122 / hr plus $28 to $30 / 15 min in final part-hour
NSW	Seafood business licence		
	Single fisher (with or without vessel)	$50	$310
	Finfish or crustacean aquaculture; seafood processors and storers	$50	$250 to $2000
	(fees increase with number of employees)	$50	$174 per vehicle
	Transportation of seafood [b]		
	Shellfish harvester licence	$50	$1042 plus $31 x number hectares under aquaculture
	Per area fee		
	Local levy (varies by estuary) [c]		$200 to $1000
Vic	Seafood harvesting facilities		
	(fees vary with throughput)		
	Wildcatch licences	$111 to $331	$221 to $661
	Aquaculture licences	$111 to $331	$221 to $661
	Seafood processing facilities		
	Wholesalers, processors and further processors	$341 to $3402	$681 to $6804
	Retailers	$256	$511
	Seafood transport vehicles	$94	$94
Qld	Food business registration		Local council fees
SA	Seafood (other than shellfish) harvester	$393	No charge
	Fish processor		No charge
	Bivalve mollusc producers		$169; plus $115/$230 per hectare of licensed area (subtidal/intertidal); or
			$169 plus $207-$1677 if fishery licence for specific seafood (scallops, cockles, pipi).
WA	Fish processor licence		$410
	Fish processing establishment permit		$262
Tas	Food business registration		Local council fees
	Fish processing licence (fees vary with number & combinations of fish species included under licence)		Local council fees
NT	Food business registration		Free
	Fish retailer licence		Free
	Fish trader/processor licence		$525.00
ACT	Food business registration		$50 to $150

a New Zealand fees apply for registration of either an RMP or a regulated control scheme (RCS). New Zealand fees are converted to Australian dollars based on an average exchange rate for 2008-09 of 1.23. **b** Applications in NSW under multiple licence categories that are made at the same time incur only one initial application fee. **c** Local levy covers (amongst other things) testing of water quality.

Sources: Baldwins-FoodLegal (2009); Productivity Commission regulator surveys (2009, unpublished); regulator websites.

For seafood harvesters, annual fees for food safety purposes vary from zero in South Australia to around $2000 for a large operator in New South Wales. For a seafood processor, annual fees for food safety licensing range from $0 in South Australia up to $6800 per year for a large seafood processing facility in Victoria.

The fee structure for shellfish operators varies with the area and location under harvest in New South Wales and South Australia. In New South Wales, a portion of the fee charged to shellfish operators is collected by the NSWFA but returned to local operator groups to cover payment of required functions such as water testing within the relevant estuary. In other jurisdictions, food safety licensing fees for shellfish operators are less variable. While they also potentially present a lower annual burden to businesses in these jurisdictions, it is possible that the range of services covered by the fees is also reduced.

Food safety plans

All seafood businesses in Australia are required under the PPPS for seafood to have a 'documented food safety program', and those which are producers or processors of bivalve molluscs are required to have a formal FSP (table 12.5). The food safety management system for producers and processors of bivalve molluscs incorporates conditions on the areas from which the product may be harvested, along with conditions on the water used for wet storage. However, the bivalve mollusc operator has a wide choice in plans that are acceptable under the standard — an FSP as set out in chapter 3 of the ANZFS Code; a food safety management system as set out in the *Export Control (Fish and Fish Products) Order 2005*; or a HACCP system for food safety management.

New South Wales and Victoria (and Queensland from 1 July 2009) also require seafood harvesters and processors (of fish other than bivalve molluscs) to have an FSP in order to approve a licence application, although plans can be used on a voluntary basis in other jurisdictions.

- New South Wales classifies commercial shellfish harvesting, oyster opening and seafood smoking as high priority activities; seafood processors engaged in cooking, gutting, gilling or slicing of seafood as medium priority activities; all other seafood business activities as a lower priority. The highest priority ranking activity undertaken by a business determines the FSP requirements for that business. All seafood businesses with activities that are medium to high priority are required to implement an FSP.
- Victoria requires all seafood businesses, regardless of their activities in the production chain, to have an FSP. In an attempt to reduce the regulatory burden of these provisions for seafood harvesters, the Victorian Department of Primary

Industries has developed a training program and assistance to develop FSPs, available through the industry association.

- In 2008-09, seafood businesses in Queensland were only required to have an FSP if they were a processor of bivalve molluscs or were a food business that handled food that was 'reasonably likely to pose a risk to public health'. From 1 July 2009, all activities carried out in relation to bivalve molluscs by an accredited business in Queensland are deemed to be of a high risk and require an FSP. All activities carried out under accreditation by a seafood producer or processor (other than in relation to bivalve molluscs) are of medium risk. All activities of an accredited wild seafood harvester (other than bivalve molluscs) are of low risk. Seafood processors require an FSP; seafood producers and harvesters require a 'management statement'.
- In addition to FSPs for farmed bivalve molluscs, Tasmania has developed FSPs for the scallop fishery and for the scalefish fishery, to more readily enable businesses to demonstrate compliance with Standard 4.2.1. Use of an FSP is voluntary for businesses in the scalefish fishery.

Table 12.5 **Jurisdiction-specific requirements on quality assurance and business operation — seafood**
2008-09

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Quality assurance requirements – seafood other than bivalve molluscs									
FSP, RMP or ODS[a]	✓	✓	✓						
Template provided by regulator	✓	✓	✓				✓		
Inspection, review or audit	✓	✓	✓						
Quality assurance requirements – bivalve molluscs									
FSP, RMP or ODS[a]	✓	✓	✓	✓	✓	✓	✓	✓	✓
Template provided by regulator		✓			✓		✓		
Inspection, review or audit	✓	✓	✓	✓	✓	✓	✓	✓	✓
Jurisdiction-specific legislative requirements on premises, equipment and/or processes									
- shellfish	✓		✓		✓		✓		
- other seafood	✓		✓		✓		✓		
Additional codes, standards, manuals or procedures in jurisdiction									
- shellfish	✓	✓					✓		
- other seafood	✓	✓							

[a] Food safety plan (FSP), risk management program (RMP) or operated document system (ODS).

Source: Baldwins-FoodLegal (2009).

From a survey of seafood producers and processors across Australian states and territories,[1] Seafood Services Australia (SSA 2009b) reported that most respondent seafood businesses held three FSPs in 2008-09 — one FSP for AQIS, one state based, and one customer driven. The largest number of FSPs held by a business was six (held by a large business with more than one seafood processing premises). Businesses further indicated that initial development costs for their FSPs, on average, totalled around $20 000, and annual maintenance costs for these programs (not including audit costs) were approximately $8000 per year. Most businesses believed that both the number and cost of FSPs that their business was subjected to had increased over the past ten years. Tasmanian Government (pers. comm., 7 October 2009) indicated to the Commission that with template FSPs and voluntary programs in place, the implementation and maintenance costs faced by Tasmanian bivalve mollusc harvesters and growers are possibly substantially less than the Seafood Services Australia survey estimates.

New Zealand seafood businesses are required to have a registered RMP under the *Animal Products Act*, unless they are subject to a regulated control scheme (RCS, box 12.2). AN RMP may contain, as a component part, an appropriate FSP, provided the FSP is registered as an RMP under New Zealand's *Food Act 1981*.

Those New Zealand businesses subject to a RCS (specifically: bivalve mollusc businesses and limited processing fishing vessels) are required to have an 'operator documented system' (ODS) instead of an RMP. The ODS requires similar information to an RMP, but recognises that it may not be feasible for relevant risk factors to be managed by individual business operators via an individual RMP. There is no cost differential between registration of an RMP and ODS, and NZFSA has provided templates and/or extensive guidelines to businesses under both programs, but there may be differences in the implementation costs.

FSP templates are also provided in Tasmania for use by operators in the shellfish, scallop and scalefish fisheries. These templates may reduce the compliance burden of regulatory requirements in that state to some extent. The NSWFA provides a template FSP for commercial fishers and a generic FSP for use by businesses in New South Wales. The Victorian Department of Health provides two template FSPs — one for food service and retail businesses and another for one-off events and stalls. Other states and territories in Australia do not provide template FSPs —

[1] While Seafood Services Australia consider the overall response rate of 10 per cent to their survey to be acceptable, less than 4 per cent of seafood businesses provided information in response to the survey questions on food safety regulation.

relying instead on available HACCP guidelines and commercially provided food safety documentation systems.[2]

Requirements on business inputs and operation

In its final assessment report on the development of Standard 4.2.1, FSANZ stated that 'good hygiene practice is basic and easily achievable by the seafood industry' (FSANZ 2005, p.46). In practice, all seafood businesses will need premises and equipment that enables them to comply with requirements of the ANZFS Code. However, some jurisdictions have requirements on business inputs and processes that are additional to these in particular fisheries (usually shellfish):

- The NSW *Code of Practice for Seafood Handling Premises* is generally outcome based and FSANZ (2005) noted that the little prescription that may result in a small additional cost to businesses is the requirement to use a chemical sanitiser. The NSW *Code of Practice for Oyster Depuration* is a little more prescriptive in its guidelines for oyster depuration (for example, all depuration plant operators must be accredited with the NSWFA by completing an approved course). To the extent that the code is simply requiring what is already standard industry practice, it would not represent a regulatory burden for business.[3]

  NSW also has a range of guidelines for other seafood businesses that are enforceable. For example, the NSWFA (2007) has developed guidelines (that expand on existing requirements in chapter 3 of the ANZFS Code) for businesses selling sushi such that food businesses are now permitted to display their sushi products unrefrigerated for up to four hours as long as they document the process and ensure the product is kept under 25ºC (*Food safety guidelines for the preparation and display of sushi*)

- Accredited producers of bivalve molluscs in South Australia must ensure that the shellfish are not kept in wet storage unless in accordance with a written authorisation (a 'wet storage authorisation') granted by the Minister. Molluscs that have been kept in wet storage must not be sold or supplied for human consumption unless the water in which they have been stored has been tested under the requirements of the wet storage authorisation. In contrast, shellfish

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2 A number of commercial organisations provide FSPs free of charge in conjunction with the purchase of industry-specific advice on regulatory compliance approaches.

3 Oyster depuration is the process by which harvested shellfish are placed in clean estuarine water to permit the purging of their gastrointestinal contents in order to reduce the likelihood of transmitting injurious substances to consumers). For example, the code requires that oysters are placed in baskets to a maximum depth of 8cm for 36 hours, with the depuration tank only filled with water from a monitored area, on the high tide; and that temperature and salinity are monitored throughout the depuration process.

operators in NSW are allowed to use wet storage, provided they adhere to specific guidelines (enunciated in PIRSA 2005).

- In the Northern Territory, the holder of a fish processor licence must comply with the Fisheries Regulations in relation to equipment used for processing surfaces, packaging, freezing, labelling and transporting. For example, a freezer used for storing fish in a registered vessel must be maintained at -18ºC or below and monitored with a thermometer marked in 1ºC graduations.
- In New Zealand, all primary processors of fish are deemed to have storage on site and must advise NZFSA if they do not.

Some of these specific requirements are in place for reasons other than food safety, but nevertheless have implications for the final quality and 'shelf-life' of the seafood product.

The Commission welcomes views on the extent to which these requirements for business operations and processes are likely to result in a significant regulatory compliance cost to businesses.

12.3 Compliance monitoring and enforcement

Inspections and audits

Inspection of primary seafood processing facilities by authorised officers generally includes a check of compliance against the business's FSP. For retail seafood businesses, an FSP audit may be a part of an inspection or may occur as a separate exercise to a routine inspection (depending on the jurisdiction and the business).

For those seafood producers/processors which are audited, the frequency of inspection and compliance audits in most jurisdictions is based on performance (table 12.6). For example, under the performance based verification system in New Zealand, seafood businesses that perform in a satisfactory way, receive progressively fewer verification visits by NZFSA VA until a ceiling of 1 visit every 6 months.

Table 12.6 **Audits and compliance checks — seafood**

Australian dollars, 2008-09

	Principal authority	*Third party auditors possible*	*Frequency*	*Cost*
NZ [a]	NZFSA Local government	✓	Maximum 6 months between audit reports (applies to both RMPs and ODSs); duration of up to 5 hours on-site	NZFSA audit: $112 to $122 / hr plus $28 to $30 / 15 min in final part-hour
NSW	NSWFA Local government		Commercial shellfish harvesting, oyster opening and seafood smoking – 3 to 6 months; Seafood processors engaged in cooking, gutting, gilling or slicing of seafood – 6 to 12 months; All other seafood business activities — not available Audit duration of 45-90 mins for shellfish; 1 hour for other seafood.	NSWFA: $147/hour plus $38 travelling expenses (costs increase with the consumer price index)
Vic	PrimeSafe Local government	✓ (5 approved)	Seafood processors & retailers – annual audit of average duration 3 hours	$140 - $180 / hour [c]
Qld [b]	Local government		Shellfish and seafood sales to public: once per year	Local government fees
SA	PIRSA Local government		Shellfish: at least every 6 months with average duration of 1 hour	PIRSA inspection fee for shellfish: $167 / hour
WA	WA DoH through fisheries officers Local government		Not available	Local government fees for inspections of retail premise; No charge for other seafood businesses
Tas	Tas DPIPWE Local government	✓ (4 approved)	Shellfish: twice in the first year & annual thereafter; average duration of 2 hours	Local government fees for inspections under Food Act; Third party auditor fees: approximately $224 / hour.
NT	NT DoHF		Not available	No charge
ACT	ACT Health		Once per year (not always met)	No charge

[a] New Zealand fees are converted to Australian dollars based on an average exchange rate for 2008-09 of 1.23. [b] Prior to July 2009, only seafood businesses dealing with bivalve molluscs, potentially hazardous food or seafood sales to the public were required to have an FSP and be audited. [c] Estimate provided by third party auditor, SGS.

Sources: Baldwins-FoodLegal (2009); Productivity Commission regulator surveys (2009, unpublished); RBA (2009).

Amongst shellfish processors (one of the few seafood production/processing operations which are monitored in every jurisdiction), the duration of an audit varies from up to 5 hours on-site in New Zealand, 3 hours in Victoria and 2 hours in Tasmania to around 1 hour in most other Australian states and territories. The per hour cost of audits varies substantially between jurisdictions. Amongst those

jurisdictions which charge for audits (all except Western Australia, Northern Territory and ACT), per hourly audit fees are highest for seafood businesses in Tasmania. However, in those jurisdictions for which seafood business inspections were largely or wholly undertaken by local councils in 2008-09 (such as Queensland), fees faced by businesses could be even higher (chapter 7). NSWFA reported in 2008 that its audit fees at that time (only marginally lower than those reported in table 12.6 for 2008-09) were below cost recovery and would present a barrier to the establishment of third party audits in the future (NSWFA 2008b). The use of alternative third-party auditors in Victoria, Tasmania and New Zealand may provide businesses with options to reduce audit costs in these jurisdictions.

Overall, shellfish businesses in New Zealand are likely to incur the greatest annual regulatory cost associated with compliance monitoring (figure 12.1). This mainly reflects the potentially longer duration of audits for shellfish processors, compared with audits in the Australian states and territories. Amongst the Australian states and territories, the annual cost of audits for a (generally compliant) shellfish processor in New South Wales, Victoria, South Australia and Tasmania is estimated to have been at least $300 to $500 in 2008-09. This compares with variable local government charges in Queensland and Western Australia (chapter 7), and no annual compliance-check charges for shellfish businesses in the Northern Territory and ACT.

From its survey of seafood producers and processors across Australian states and territories, Seafood Services Australia (SSA 2009b) reported that most respondent seafood businesses incurred, on average, around $2500 per business in 2008-09 associated with 1.4 audits per FSP for regulatory requirements and 1.2 audits per FSP for non-regulatory purposes. This represents a somewhat higher annual audit cost that the estimates in figure 12.1 for shellfish processors and may reflect the broader scope of seafood businesses included in the Seafood Services Australia estimate and/or the inclusion of audits for non-regulatory purposes.

Figure 12.1 **Annual audit costs for shellfish processors by jurisdiction**
Australian dollars, 2008-09 [abc]

[a] Estimates are for a compliant shellfish processor. Annual audit cost is derived as: $ cost per hour for an audit x average number of hours per audit x minimum number of audits per year. [b] During 2008-09, shellfish processors in Queensland and Western Australia were monitored by the jurisdictions' Department of Health and by local governments (at a cost which varies between councils). [c] The NZ estimate is based on the maximum number of audits per year for a compliant business and an audit cost per hour which is a minimum cost, and is converted to Australian dollars using an average exchange rate of 1.23 for 2008-09.

Data source: Productivity Commission regulator surveys (2009, unpublished).

Options for corrective action and enforcement

The capacity of the regulator to suspend or cancel licences issued for food safety purposes may be of more importance in those jurisdictions which require a broader scope of seafood businesses to be licensed — that is, New Zealand, New South Wales and Victoria. Of these jurisdictions, New South Wales provides for the greatest number of grounds for licence suspension or cancellation (but this does not necessarily mean seafood businesses in New South Wales are more likely to have a licence suspended/cancelled — see chapter 8).

The scope for minimising unnecessary business compliance costs associated with enforcement and corrective action is likely to be greater when regulators have available to them a range of corrective actions to deal with different degrees of severity in non-compliance. Also, when agencies use risk based strategies to focus enforcement efforts on those businesses more likely to be non-compliant and/or

which present the highest risks to food safety then compliant and safer food businesses are not inconvenienced unnecessarily.

Most regulators have the power to suspend, withdraw or cancel a licence or accreditation, issue directives, impose penalties and prosecute offenders (table 12.7). Licence suspensions in all jurisdictions require written notification to the licensee (except in the case of a serious food safety breach). New South Wales is the only jurisdiction that relies on adverse publicity for non-compliant businesses in the form of a 'name and shame' register (chapter 8), although some New Zealand councils have this option available to them but have not as yet exercised it.

All jurisdictions can issue fines as a penalty measure, but only the NSWFA has the legislated authority to issue on-the-spot fines to businesses. The Authority indicated to the Commission that it rarely used this option (Productivity Commission regulator surveys 2009, unpublished), but tended to focus on use of improvement notices. For example, in early 2008, the NSWFAreported that its enforcement unit:

> … coordinated an intensive audit and investigation of oyster harvesters and openers to verify their compliance with harvesting, record keeping and labelling requirements. The investigation included 28 oyster leases along the east cost of New South Wales. Appropriate enforcement action was taken and included Warning letters (1), Improvement Notices (6) and Penalty Notices (4). (NSWFA 2008a, p.42)

In all jurisdictions there are avenues for external appeal by a business, within a specified time frame, on a decision taken by the relevant enforcement agency.

Table 12.7 **Enforcement and corrective action — seafood**
2008-09

	NZ	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Reasons for cancellation or suspension of licence									
Non-compliance with FSP or RMP	✓	✓	✓	✓					
Non-compliance with other specified conditions	✓	✓	✓			✓	✓		
Non-compliance with standard or legislation	✓	✓	✓	✓	✓	✓	✓	✓	✓
Avoid a threat to food safety		✓							
Committed an offence or otherwise become disqualified or unauthorised		✓		✓	✓		✓		
Not submitted to audit				✓					
Not paid fees	✓	✓		✓	✓		✓		
No longer a fit and proper person		✓							
Premises has been altered, not maintained or used for non-permitted purpose					✓	✓			
External review of cancellation/suspension possible	✓	✓	✓	✓	✓	✓	✓	✓	✓
Corrective actions									
Conditions on licence		✓	✓			✓	✓	✓	✓
Suspension or cancellation of licence	✓	✓	✓	✓	✓	✓	✓	✓	✓
Additional audits/inspections		✓	✓		✓		✓		
On-the-spot fine		✓							
Directives for action / compliance notice	✓	✓	✓	✓	✓	✓	✓	✓	✓
Prohibitions or conditions on use of premise, equipment or vehicle	✓	✓	✓	✓	✓		✓	✓	✓
Prosecution for offence / conviction	✓	✓	✓	✓	✓	✓	✓	✓	✓
Deregistration of food plan and/or business	✓						✓		✓
Penalties									
Adverse publicity		✓							
Fines	✓	✓	✓	✓	✓	✓	✓	✓	✓
Imprisonment	✓	✓	✓	✓	✓	✓	✓	✓	✓

Source: Baldwins-FoodLegal (2009).

Penalties and fines

Penalties and fines are not a regulatory compliance cost for a compliant business, but the severity of repercussions for non-compliance can act as a strong incentive for some businesses to meet regulatory requirements.

Every jurisdiction has a range of offences that incur fines and penalties and the severity of these varies substantially between jurisdictions. Fines and penalties associated with three basic offences — failure to be licensed (or equivalent), provision of food that is unsafe (either unknowingly or deliberately), and failure to follow a compliance order or directive — are presented in table 12.8.

Across the jurisdictions, a failure to be appropriately registered as a seafood producer/processor (or, in the case of a retail business, as a food business) incurs the greatest penalties in New South Wales and Queensland — up to $275 000 for a primary seafood business in New South Wales and up to $200 000 or 2 years imprisonment for a primary food business in Queensland. This fine may be levied even when a business is otherwise compliant in the provision of safe food.

Provision of food that is unsafe generally incurs greater penalties in those cases where food is sold to the public (rather than to another business for further processing) and when the food is known to be unsafe yet still provided. Fines for this offence are comparatively high in all jurisdictions, except for seafood businesses in Western Australia and those seafood businesses that come under the *Food Act* in New Zealand. Imprisonment is also an option for deliberate provision of unsafe food in all jurisdictions except Western Australia. One Melbourne seafood retailer reported that in Victoria, provision of food considered to be unsafe includes fish that is not covered for display purposes. In the instance described, the regulator (Primesafe)[4] made a public display of destroying stock considered to be unsafe:

> They tipped dye all over the fish in the bins, just like that, right in front of the customers … people's stock was just ruined. (Savill 2005a)

Failure to comply with a compliance order or directive of an authorised officer incurs the greatest penalties in New South Wales, South Australia, Tasmania and New Zealand — up to $275 000 for a seafood business in New South Wales.

A comparison of penalties and fines between jurisdictions provides no indication of how often or how vigorously particular offences are pursued by the regulators. Some indication of regulator enforcement approaches is provided (across all regulated businesses within each jurisdiction) in chapters 7 and 8 of this report.

[4] Primesafe does not permit retailers to display whole or gutted fish on ice for customer inspection and self service. While Primesafe do not regulate fish retailers, they provide this interpretation of the ANZFS Code to local government for enforcement and may also make unannounced inspections of food premises that are otherwise subject to third party audits. Woolworths (2007) note that apart from a couple of councils in New South Wales, no other Australian jurisdiction has the same interpretation for the display and sale of seafood.

Table 12.8 **Penalties and fines for selected offences**[a]

Australian dollars, 2008-09

	Operating an unlicensed (or equivalent) food business	*Providing unsafe food*[b]	*Breach of directive /compliance order*
NZ[c]	Primary: Indiv: $16260 Corp: $81 300) Food business: Max: $407, plus $41 per day for a continuing offence	Producers and processors: Indiv: $81 300 & 5 yrs prison; Corp: $406 504 Operator of RMP: Indiv: $60 975 & 2 yrs prison Corp: $243 902 Food business: Indiv: $4 065 Corp: $16 260	Indiv: $40 650 plus $1 626/day for continued offence Corp: $243 902 plus $1 626/day for continued offence
NSW	Indiv: $55 000; Corp: $275 000	Indiv: $110 000 or 2 yrs prison; Corp: $550 000	Indiv: $55 000; Corp: $275 000
Vic	Primary: 1st offence $11 342; 2nd & subsequent offence $56 710 or 2 yrs prison or both Food business: 1st offence $5 671; 2nd & subsequent offence $11 342	Indiv: $40 000-$100 000 or 2 yrs prison; Corp: $200 000-$500 000	Primary: $6805 Food business: 1st offence $2 836 2nd & subsequent offence $5 671
Qld	Primary: $200 000 or 2 years prison Food businesses: $100 000	Primary: $300 000 or 2 years imprisonment Food businesses: $100 000 or 2 years imprisonment	Primary: $30 000 Food business: $20 000
SA	Primary: $20 000 Food businesses: Indiv: $25 000; Corp: $120 000	Food businesses: Indiv: $50 000 - $100 000 or 4 years prison Corp: $250 000 - $500 000	Food business: Indiv: $50 000; Corp: $250 000
WA	Fish processor: Indiv: $20 000 plus $750 per day for continued offence Corp: $40 000 plus $1500 per day for continued offence An additional penalty of 10 times the prescribed value of any fish subject to the offence may also apply. Other seafood businesses: 1st offence: $100–$1 000; 2nd offence: $200–$1 000; 3rd & subs. offence: $500–$1 000. Plus, $50–$100 per day for continued offence	1st offence: $250–$2 500 2nd offence: $500–$2 500 3rd and subs. offence: $1 250–$2 500. Plus, $125–$250 /day for continued offence	Indiv: $10 000 Corp: $20 000
Tas	Fish processor or handler: $60 000 plus $1200 per day for continued offence Food business: Indiv: $60 000; Corp: $144 000	Indiv: $120 000 or 2 years prison Corp: $600 000	Primary: $120 000 or 1 year prison Food businesses: Indiv: $60 000; Corp: $300 000
NT	Indiv: $55 000; Corp: $275 000	Indiv: $110 000 or 2 years prison Corp: $550 000	No equivalent penalty
ACT	Indiv: $5 000 or 6 mths prison or both; Corp*:*$25 000	Indiv: $100 000 or 2 yrs prison or both; Corp: $500 000.	No equivalent penalty

a All fine amounts are maximums unless otherwise specified. **b** Fines for provision of unsafe food escalate in most jurisdictions for offences that are deliberate. **c** New Zealand fees are converted to Australian dollars based on an average exchange rate for 2008-09 of 1.23.

Source: Jurisdiction legislation; RBA (2009).

13 Maximum residue limits

Key points

- The Joint Food Standards Setting Treaty between Australia and New Zealand excludes Maximum Residue Limits (MRLs) from the food standards to be harmonised between the countries. As a result, there are a number of differences between Australia and New Zealand in their regulation of MRLs.
- For new chemicals, the overall process for registering the chemical and specifying the appropriate MRLs is more streamlined in New Zealand compared to Australia. In New Zealand the processes are undertaken by one body (the New Zealand Food Safety Authority (NZFSA)) whereas, in Australia, the processes are the responsibility of the Australian Pesticides and Veterinary Medicines Authority (APVMA) and Food Standards Australia New Zealand (FSANZ).
- In 2008-09, the time taken for FSANZ to decide an Australian MRL application/proposal was 8–10 months, compared to 4–12 months in 2007-08. In contrast, the time taken in New Zealand was 4–8 months in 2008-09 and 4–9 months in 2007-08.
  - In Australia, the average time from FSANZ's decision to gazettal was around 3 months. In New Zealand, the comparable period was around 2 weeks.
- While the decision process may take longer in Australia, the Australian process has some features that may contribute to a better outcome for business, including:
  - the Australian process includes a direct consideration of the compliance costs of business as part of the assessment, New Zealand's does not
  - the Australian process includes an appeals process, New Zealand's does not.
- The administration and enforcement of MRLs in New Zealand is primarily the responsibility of the NZFSA. As the enforcement of MRLs is drawn into the broader regulation of agricultural and veterinary chemicals in Australia, up to 22 state and territory departments/agencies and one Commonwealth agency (the Australian Quarantine and Inspection Service (AQIS)) have responsibility for some aspect of the administration and enforcement of MRLs once they have been established. Further, a number of the 22 state and territory departments/agencies administering MRLs are administering those prescribed by the APVMA rather than those contained in the Australia New Zealand Food Standards Code (ANZFS Code).
- On the whole, the rate of compliance with MRLs in Australia and New Zealand is generally 94 per cent or higher. In Australia, the rate of compliance for AQIS testing (both for imports and exports) is typically higher than the results from the state authorities' testing of domestically produced food.

13.1 Introduction

Food can contain the residues of the agricultural or veterinary chemicals that were used in its production or that were absorbed from the environment during its production. MRLs are a regulatory measure intended to cap the concentration of these chemical residues in food[1] in order to protect the health of consumers (among other things).

The specification, administration and enforcement of MRLs[2] for food are only one part of the overall regulation of the agricultural and veterinary chemicals used in food production in Australia and New Zealand. Both countries have broadly similar structures for the regulation of agricultural and veterinary chemicals (figure 13.1), in that:

- a chemical must be registered before it can legally be used. Among other things, this process involves the specifying of MRLs (for food, agricultural commodities and animal feed, where relevant), formalising of instructions for the use of the chemical and, lastly, the registration of the chemical
- there are regulatory limitations on the use of the chemical — for example, constraints on the aerial application of pesticides and withholding periods for stock treated with veterinary chemicals
- raw foods are tested for compliance with MRLs.

As referred to in chapter 2 (section 2.1), the Joint Food Standards Setting Treaty between Australia and New Zealand excludes MRLs from the food standards to be harmonised between the countries. As a result, there are a number of differences in the MRLs in effect in Australia and New Zealand. Further, Australia and New Zealand continue to act independently in specifying the chemicals (and foods) to which MRLs will apply and the level of the MRLs that will apply for given foods and chemicals. Box 13.1 outlines some of the reasons why MRLs vary across countries.

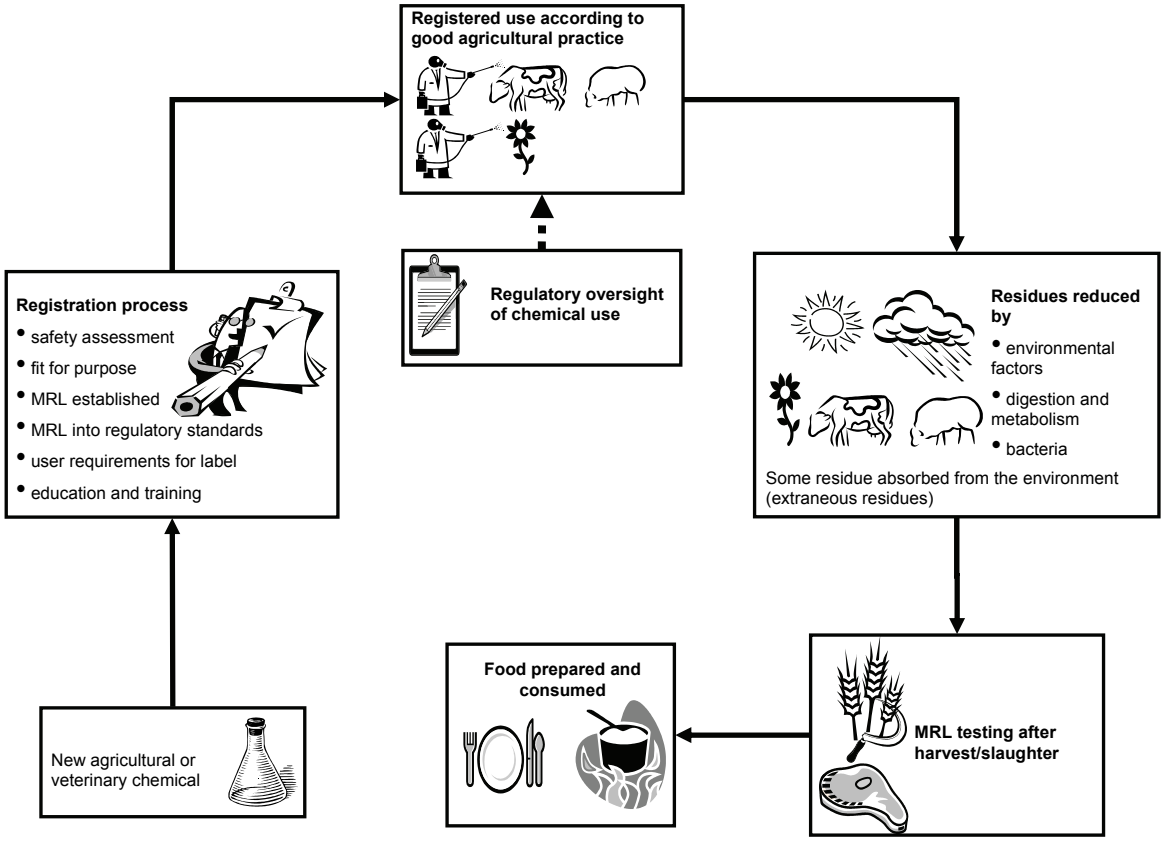
Despite the similarities in their overarching approaches to the regulation of agricultural and veterinary chemicals, there are distinct differences between Australia and New Zealand in how they specify, administer and enforce MRLs. The most striking of these differences is that, in New Zealand, these functions are largely the responsibility of one body, the NZFSA, while these same responsibilities

1 MRLs can also be applied to agricultural commodities and animal feed.

2 For the purpose of this study, MRLs also include those limits, known as Extraneous Residue Limits, which apply to chemicals that are no longer in use but that remain in the environment as a result of previous use.

are shared across a number of Commonwealth and state/territory agencies in Australia.

Figure 13.1 **The use and regulation of chemicals used in food production**



Source: Based on NZFSA (2009d), p. 10.

In light of the differences between Australia and New Zealand, the primary focus of this chapter is the specification, administration and enforcement of the MRLs contained within food regulations. However, it is not meaningful to discuss these MRLs without the context of the overall regulation of agricultural and veterinary chemicals. Accordingly, sections 13.2 (specifying and varying MRLs) and 13.3 (business compliance with MRLs) include discussions on MRLs in the context of the overall regulation of agricultural and veterinary chemicals.

Box 13.1 **Why MRLs vary across countries**

Many countries have established MRLs within their food regulation frameworks. However, there is a large degree of variation in the MRLs set by these countries — ranging from the chemicals (and foods) for which MRLs are set to the level of the MRLs set for given food/chemical combinations. This variation persists despite the existence of the Codex MRLs which are intended to inform the MRL setting processes of individual countries and to serve as the standard for international trade in food (see chapter 2 (section 2.1) for details of the Codex Alimentarius (Codex)).

One of the main reasons MRLs vary between countries is that they are, in part, directed at ensuring agricultural and veterinary chemicals are used according to good practice. Accordingly, MRLs will vary depending upon the circumstances of each country and, in light of those circumstances, what constitutes 'good agricultural (or veterinary) practice'. Some hypothetical examples of such situations are:

Hypothetical example 1 — A particular pest ('pest P') is controlled by a pesticide containing a certain chemical ('chemical C'). Pest P is very prominent in 'country A' and has only a minor presence in 'country B'. As a result, it would be expected that producers in country A would use more of the pesticide compared to those in country B. In these circumstances, and assuming the application of the pesticide in country A does not result in a threat to public health, country A would be expected to set a higher MRL for chemical C in the foods requiring protection from pest P when compared to country B.

Hypothetical example 2 — Country A produces a certain food ('food F') which is not produced by country B. Food F is susceptible to a disease which can only be treated with a certain veterinary chemical ('chemical V'). As country B does not produce this food it is unlikely it will have an MRL for chemical V in food F. Country A, on the other hand, will have an MRL (or MRLs) that reflects good veterinary practice for the production of food F in country A.

13.2 Specifying and varying the MRLs in food regulation

Responsibility for specifying the MRLs in food regulation

FSANZ is responsible for specifying the MRLs that apply in Australia. These are contained in Standard 1.4.2 (Maximum Residue Limits)[3] of the ANZFS Code. In New Zealand, the Agricultural Compounds and Veterinary Medicines (ACVM) Group within the NZFSA is responsible for specifying the MRLs outlined in the

[3] In Australia, Standard 1.4.2 is given the effect of law in the Australian states and territories via their Food Acts (see chapter 2). Accordingly, the MRLs listed in Standard 1.4.2 apply uniformly across Australia.

New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008.[4]

In both Australia and New Zealand, the registration of a new chemical (see below and figure 13.1) is typically the prompt for the establishment of a new MRL (or set of MRLs). However, the creation of, or amendments to, MRLs may be sought for a number of reasons including changes in what is considered to be good agricultural (or veterinary) practice, the deregistration of a chemical or the identification of a new, alternative use for an existing chemical.

Registering a new chemical and specifying MRLs for food regulations

Registering a new chemical in Australia

Before FSANZ can set any MRLs for an agricultural or veterinary chemical, that chemical must be registered with the APVMA under the National Registration Scheme. No agricultural or veterinary chemical can be legally sold or used in Australia prior to registration. However, the APVMA can issue a permit that allows a person to use an agricultural or veterinary chemical in a situation that would otherwise be illegal, if it were not for the issue of the permit (box 13.2).

Box 13.2 **APVMA permits**

Situations can arise where a chemical needs to be used in a manner other than that specified on its label ('off-label' use). The APVMA can issue permits that allow for the legal use of chemicals in such situations. Permits can be issued for emergency uses and research purposes. They can also be issued for a 'minor use' of the chemical, for example:

- for use on a speciality crop or animal grown on a small scale
- limited use on a small percentage of a major crop for the control of a minor pest
- unusual seasonal conditions requiring a changed method or rate of application.

Source: APVMA (2008b).

The APVMA must consider a number of matters when assessing an application to register a chemical (table 13.1). An important part of satisfying the criterion that a chemical does not present 'an undue hazard to the safety of people' (table 13.1) is

[4] The *New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008* is given the effect of law in New Zealand via the *Food Act 1981* (NZ).

establishing that any potential residues in food produced using that chemical are within safe limits. To achieve this, the APVMA undertakes a toxicological evaluation, a dietary exposure evaluation and an MRL evaluation. In doing so, the APVMA establishes MRLs for the chemical which it publishes in its MRL Standard. The MRL Standard is made up of five tables (table 13.2). These tables are separate to the MRLs prescribed in Standard 1.4.2 of the ANZFS Code and have no effect in respect to food regulation. However, it is the MRLs listed in table 1 of the APVMA MRL Standard (table 13.2) that the APVMA recommends to FSANZ for inclusion in Standard 1.4.2.

Table 13.1 Considerations for the registration of a chemical — Australia and New Zealand

Australia (APVMA)	*New Zealand (NZFSA)*
Before registering a chemical, the APVMA must be satisfied that: • the instructions for its use will be 'effective' according to the criteria determined by the APVMA • when the chemical is used according to the label directions it will not result in: - an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues - an effect that is harmful to humans - an unintended effect that is harmful to animals, plants or the environment - undue prejudice to Australia's international trade interests • the chemical works effectively against the pest(s), disease(s) or condition(s) claimed on the label.	Before registering a chemical, the NZFSA must consider the: • risks to public health • risks to trade and market access for primary produce • exclusion, eradication and effective management of pests and unwanted organisms • risks to the welfare of animals • risks to domestic food residue standards • benefits of the chemical and the likely consequences of the public not having access, or having restricted access, to that chemical.

Sources: Agricultural and Veterinary Chemicals Code Act 1994 – Schedule Agricultural and Veterinary Chemicals Code (Cwlth); *Agricultural Compounds and Veterinary Medicines Act 1997*(NZ).

Table 13.2 The MRL Standard

Table	*Subject matter*
Table 1	Maximum Residue Limits of agricultural and veterinary chemicals and associated substances in food commodities
Table 2	Portion of the commodity to which the maximum residue limit applies (and which is analysed)
Table 3	Residue definition
Table 4	Maximum residue limits for pesticides in animal feed commodities
Table 5	Uses of substances where maximum residue limits are not necessary

Source: APVMA (2009).

Registering a new chemical in New Zealand

An agricultural or veterinary chemical must be registered, or exempted from registration, before it can be used in New Zealand.[5] The ACVM Group within the NZFSA is responsible for registering such chemicals.[6] The NZFSA can refuse to register a chemical where the application fails to meet the criteria set out in table 13.1. The NZFSA will, in certain circumstances, consider APVMA assessments in its evaluation of an application (box 13.3).

Box 13.3 NZFSA registration by reference to APVMA registration

The NZFSA has committed to using APVMA reports as part of its assessment process for certain applications to register a veterinary medicine. In undertaking the initiative, the NZFSA hopes to reduce the costs associated with registering veterinary medicines.

Although the APVMA assessments will be used by the NZFSA as the baseline for its consideration of applications, the conditions of registration and labelling requirements will still be determined by the NZFSA in light of what is appropriate for New Zealand.

Any changes to the APVMA's registration of a medicine will not necessarily affect the New Zealand registration. However, if the change or withdrawal is prompted by an issue with the product, NZFSA may require the product to be reassessed.

Source: NZFSA (2008a).

As part of assessing an application for registration, the NZFSA considers the chemical residues that may be present in the foods produced using the chemical according to good agricultural (or veterinary) practice. Like the APVMA, the NZFSA also undertakes a toxicology evaluation and considers dietary risks as part of the registration assessment processes and for the purposes of determining the appropriate MRLs (which is part of the registration assessment process).

Specifying the MRLs in food regulation — Australia and New Zealand

In Australia, FSANZ can consider requests to amend an MRL in two ways, as a:

- *proposal* — raised by FSANZ itself. For example, FSANZ may raise a proposal in response to a review of an existing MRL or upon the notification of the registration of a new chemical by the APVMA (figure 13.2)

[5] Also, a new chemical cannot be registered until it is approved by the Environment Risk Management Agency under *Hazardous Substances and New Organisms Act 1996*. This is, however, a separate (non-food related) process to the matters under study in this report.

[6] The ACVM Group is also responsible for regulating the importation, manufacture, sale and use of these chemicals in New Zealand.

- *application* — a specific request made by an individual or company (the assessment process is illustrated in figure 13.3).

Once FSANZ has made its decision on an proposal/application, the proposal/application passes to the Australian and New Zealand Food Regulation Ministerial Council (ANZFRMC) for its consideration (figure 13.4). In contrast, New Zealand's comparatively more compact and more timely process is illustrated in figure 13.5.

Assessing MRL applications — statutory timeframes and application processes

The binding statutory time limits within the Australian regime (table 13.3) can benefit Australian businesses by providing them with a degree of certainty in respect to the application process (PC 2008d). The absence of statutory time limits in New Zealand could create burdens for New Zealand businesses as result of uncertainty over the time it will take to get decisions on their applications.

Table 13.3 **MRL applications — timeframes and application process**
As at June 2009

	Australia (FSANZ)	*New Zealand (NZFSA)*
Statutory time limit (from lodgement of application to the final decision)		No statutory time limits
Administrative assessment	15 business days	
Application assessment	9 months[a]	
Regulator has the ability to 'stop the clock' in respect to statutory time limits during the assessment process	Yes	na — no statutory time limits
Regulator has the ability to amend the information/assessment requirements during the assessment process	No	No

na not applicable. [a] Relates to FSANZ's general procedure. Time is from the commencement of assessment (or receipt of fees payable) to the date of approval of the draft food regulatory measure).

Source: Productivity Commission survey of FSANZ and NZFSA (unpublished).

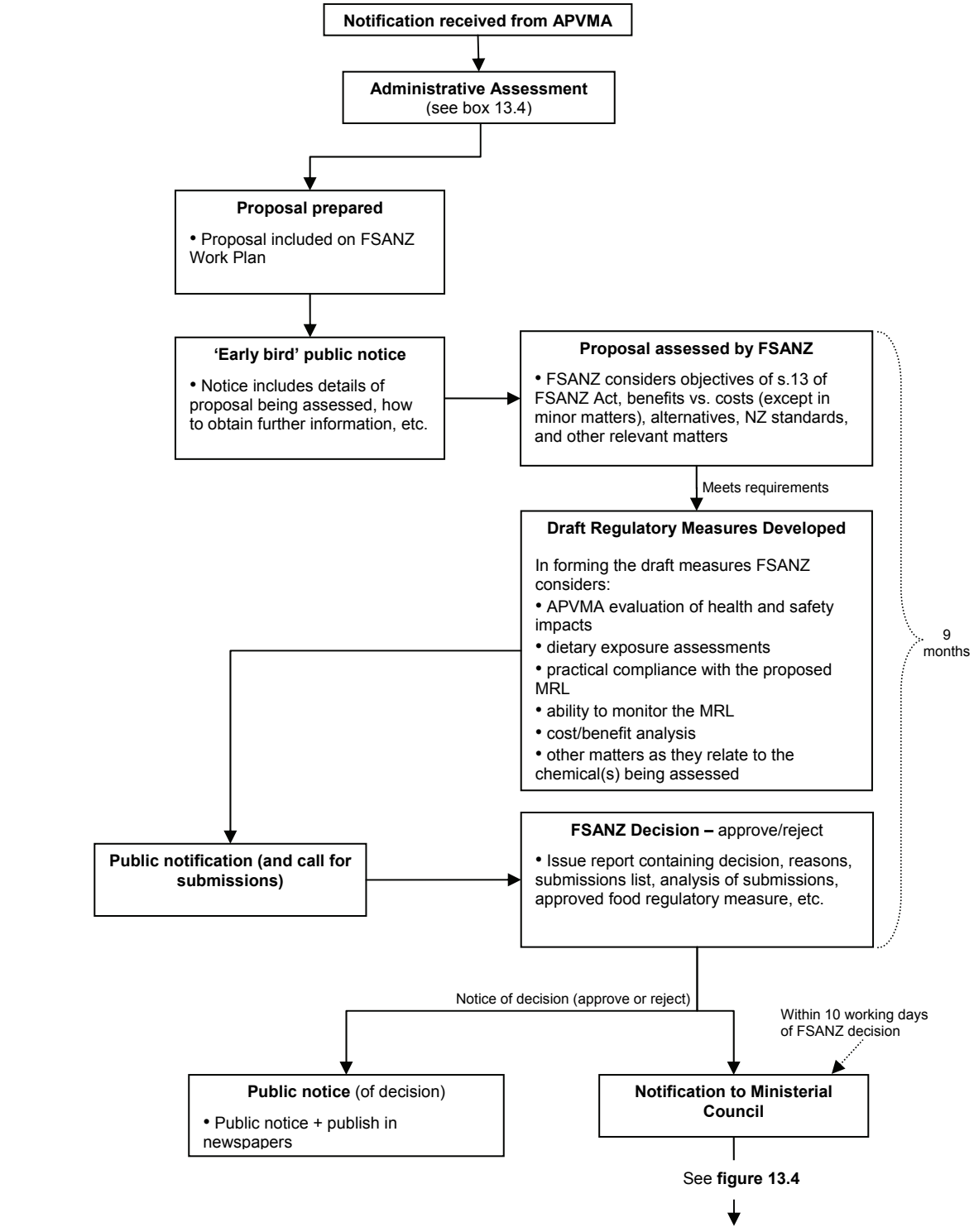
While the Australian regime includes statutory time limits, the degree of certainty afforded to business is reduced somewhat by the ability of FSANZ to 'stop the clock' during the assessment process. FSANZ can stop the clock:

- if FSANZ requests the applicant provide additional information to facilitate the assessment of the application
- if a charge due to FSANZ under the application process remains unpaid
- while ever the application is the subject of review by the Administrative Appeal Tribunal

- if the ANZFRMC advises it is formulating a policy relevant to the application.

Figure 13.2 **FSANZ process for a *proposal* to amend an MRL (notification by the APVMA)**

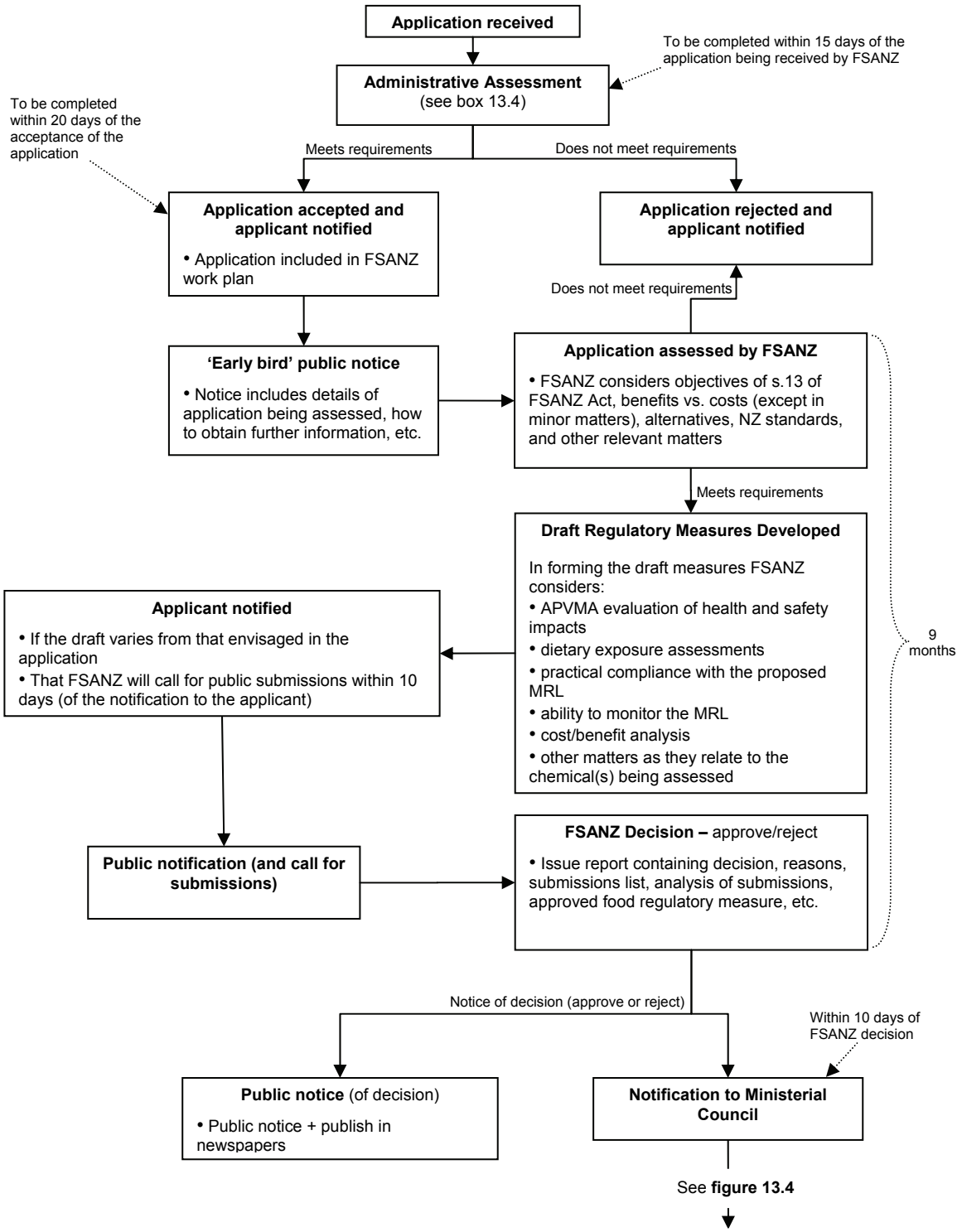
Assessed under the 'general procedure'



Source: Based on FSANZ (2008b).

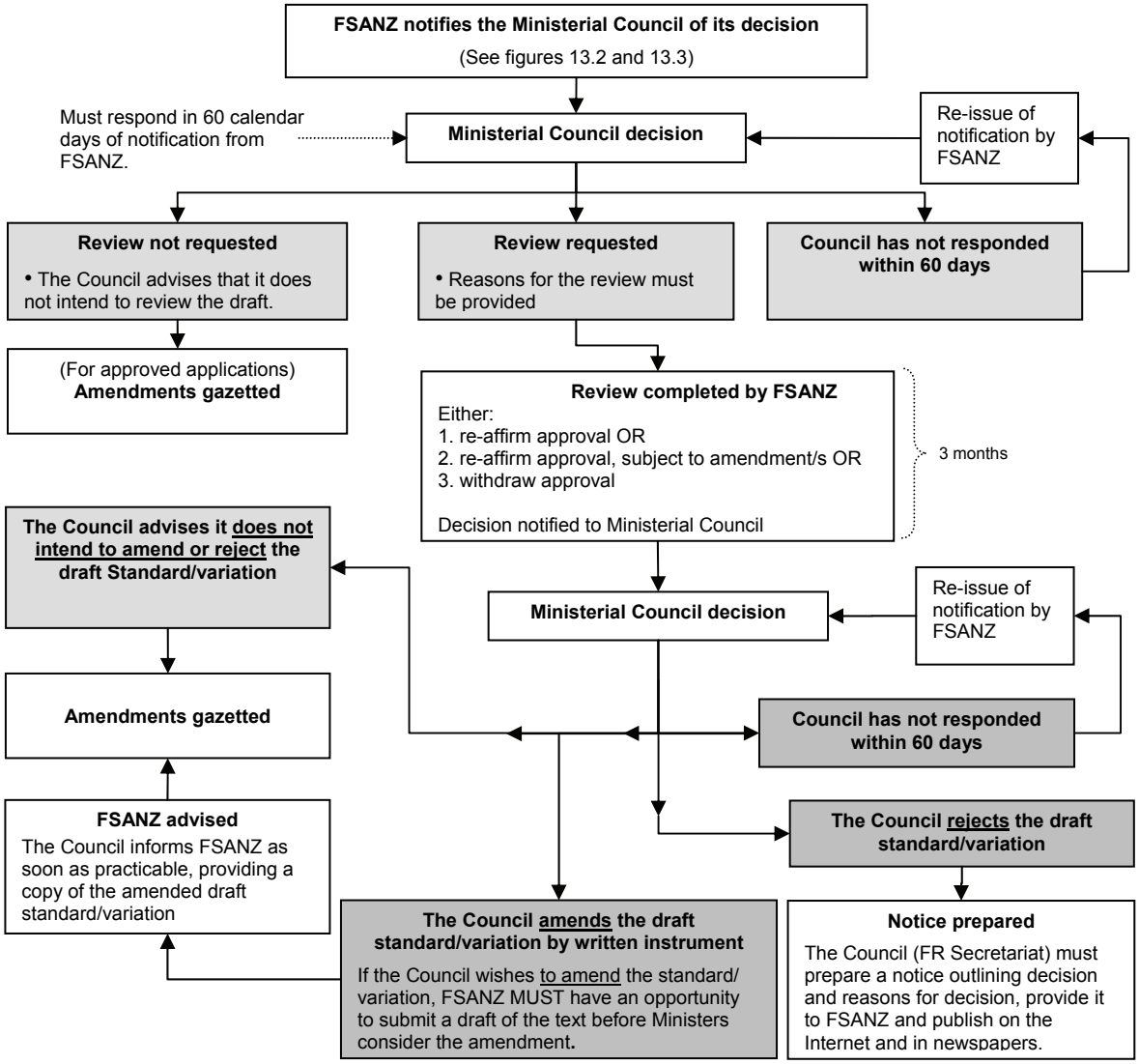
Figure 13.3 **FSANZ process for an *application* to amend an MRL**

Assessment under the 'general procedure'



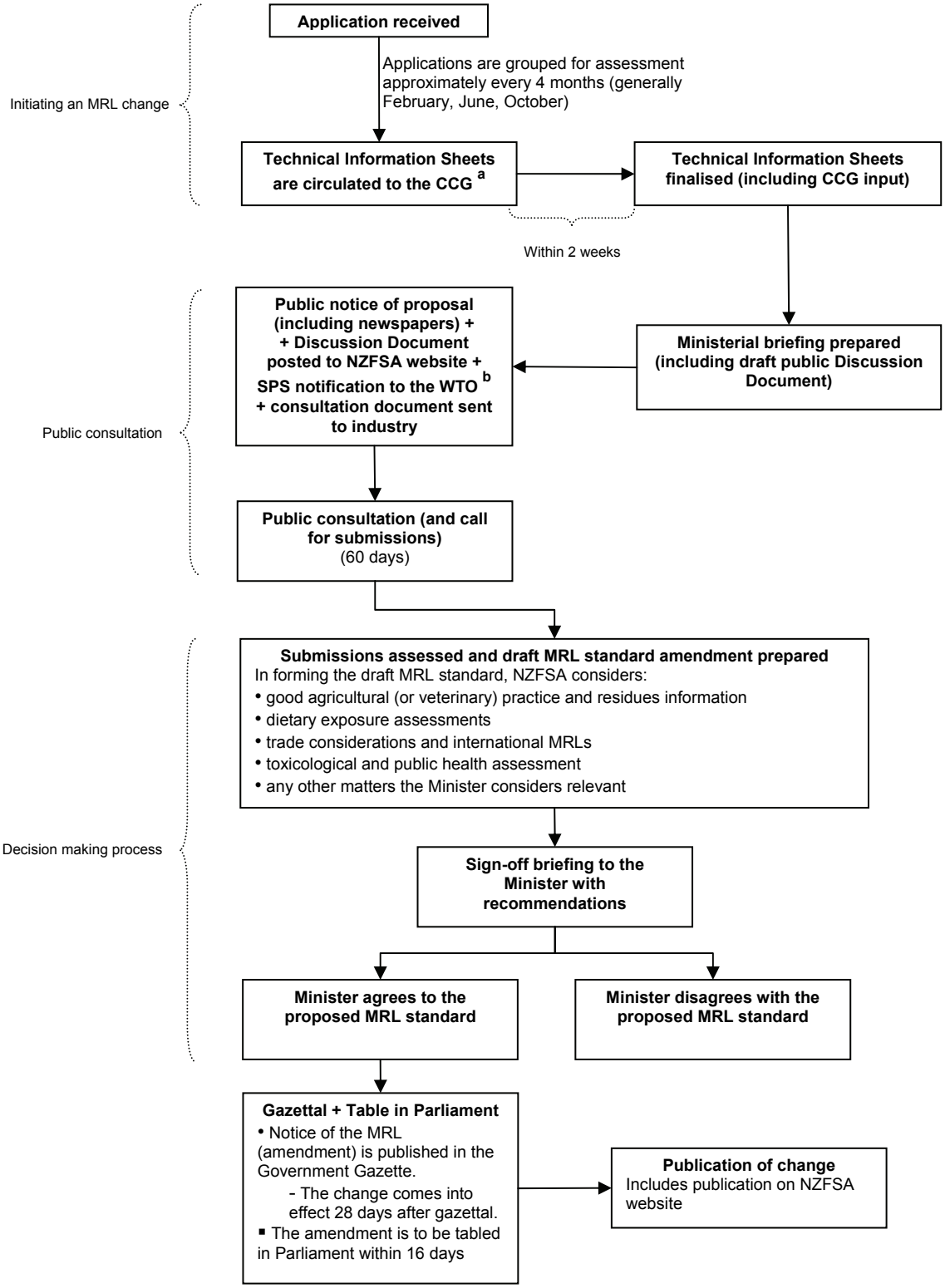
Source: Based on FSANZ (2008b).

Figure 13.4 **FSANZ process for an application/proposal to amend an MRL — Ministerial Council decision**



Source: Based on FSANZ (2008b).

Figure 13.5 **NZFSA process for specifying MRL**



a **CCG** Chemicals Coordination Group. **b** **SPS** World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures.

Source: Based on NZFSA (2008b).

Box 13.4 **FSANZ Administrative Assessment**

The Administrative Assessment determines whether an application will be accepted or rejected by FSANZ based on:

- whether the application meets the minimum application requirements
- whether the application relates to a matter that may be developed as a food regulatory measure, or that warrants the variation of a food regulatory measure
- whether the application is so similar to a previous application or proposal that it ought to be rejected
- any other relevant matter.

Australia and New Zealand also differ in their treatment of food containing a chemical residue for which an MRL has *not* been specified. In Australia, if Standard 1.4.2 does not list an MRL for a chemical in a specific food, then there must be no detectable residues of that chemical in that food — the same approach is adopted in the Codex MRLs. In contrast, New Zealand has a 'default' MRL of 0.1mg/kg for any chemicals not listed in the *New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008* and, for imported foods, the Codex MRLs can be applied.

Duplication in Australia's processes for registering chemicals and specifying MRLs

FSANZ frequently accepts the MRL(s) recommended to it by the APVMA following the registration of a chemical (PC 2008b), but the process to do so can take many months. During this time, even though the chemical is registered for use and an MRL set by the APVMA (and recommended to FSANZ), a food containing any residue at all from that chemical cannot be legally sold as the MRL for that food/chemical combination has not been listed in Standard 1.4.2.

The burdens on Australian businesses caused by the duplication in the processes of the APVMA and FSANZ, and associated time delays, have been canvassed in a number of previous Commission reports (see PC 2007a, PC 2008a and PC 2008b) and have been raised again by participants in this study (subs. 9 and 13). The findings of previous Commission reports are not revisited here as the Council of Australian Governments (COAG) has agreed to have the MRLs set by the APVMA promptly recognised by FSANZ in Standard 1.4.2 (COAG 2008). This reform was to have come into effect by December 2008, but is still pending as at October 2009. Also, these issues relate to national processes and so the associated burden on Australian businesses will be consistent across all Australian jurisdictions. While these issues may constitute an unnecessary regulatory burden, the extent of the

burden cannot be illustrated by benchmarking across the Australian jurisdictions, but rather by making comparisons with New Zealand's system.

In contrast to Australia, the regulatory responsibility for the registration of a new chemical and the specifying of MRLs for food regulation in New Zealand rests with one body — the NZFSA. This arrangement removes from New Zealand businesses many of the burdens faced by Australian business because of the duplicated and overlapping processes of the APVMA and FSANZ. Further, in New Zealand, the establishment of the MRLs applying to food is a prerequisite to the registration of a chemical. Where a new chemical requires an MRL in excess of the default MRL (0.1mg/kg), the registration of that chemical is placed 'on hold' until the MRL has been gazetted. For chemicals with undetectable residues or residues below the default MRL (0.1mg/kg), there is no delay in the registration of the chemical as the use of the product will supported by the default MRL until the specific MRL can be promulgated. Accordingly, New Zealand businesses, when compared to Australian businesses, have greater certainty as to how and when they can use a chemical once it is registered.

Indicators for Australian and New Zealand processes

A comparison of indicators for the Australian and New Zealand regimes should provide insights for both countries on their processes for specifying the MRLs in food regulation (as distinct from the combination of the processes of approving chemicals and specifying MRLs which was the subject of PC 2007a, PC 2008a and PC 2008b).

FSANZ can assess an application or proposal to amend an MRL under three 'procedures': 'minor'; 'general'; and 'major'. MRLs are typically assessed under the general procedure and, between 1 July 2007 and 30 June 2009, all MRL applications and proposals were assessed under the general procedure.[7] As a consequence, the observations that follow are based on the general procedure with appropriate caveats raised where the application of the 'major procedure' (the more rigorous approach used for complex matters) would produce materially different observations.

[7] s. 81 of the *Food Standards Australia New Zealand Act 1991* (Cwlth) requires that MRL proposals initiated by a notification from the APVMA are to be considered under the general procedure.

Fees and charges

No fees or charges were payable to either FSANZ or NZFSA for the MRLs specified between 1 July 2007 and 30 June 2009. More generally, the NZFSA does not charge a fee to create or amend an MRL, while FSANZ does not charge fees for proposals. FSANZ may, however, charge a fee for an application to amend an MRL.

FSANZ may only charge a fee where an 'exclusive capturable commercial benefit' (ECCB — box 13.5) arises for the applicant or the applicant wishes to expedite consideration of the application (rather than have the application proceed according to the anticipated timeframes established as part of the Administrative Assessment). The fee payable is determined as part of the Administrative Assessment process and after considering the likely complexity of assessment. The fee established under the Administrative Assessment process (table 13.4) cannot be increased, even if the assessment takes longer than anticipated and exceeds the threshold on which the fee is based. The applicant may, however, be eligible for a partial reimbursement of the fee where the assessment takes less time than anticipated and falls into a different fee category as a result.

Box 13.5 **Exclusive Capturable Commercial Benefit**

Where an application is likely to result in an amendment to the ANZFS Code that provides exclusive benefits to the applicant, the application is considered to confer an ECCB and the applicant is required to pay the full cost of processing their application.

The *Food Standards Australia New Zealand Act 1991* (Cwlth) considers an ECCB is conferred upon a person (the 'applicant') who applies for the development or variation of a food standard where:

- the applicant can be identified as a person that may derive a financial gain from the standard or variation resulting from the application; and
- any other unrelated persons would require the agreement of the applicant in order to benefit financially from the approval of the application.

Source: FSANZ (2008b).

Table 13.4 **FSANZ fees**
As at June 2009

	Hours[a]	*Fee*
General procedure	Up to 500 hours	$53 500
	Up to 850 hours	$90 950
Major procedure	Up to 1 050 hours	$112 350
	Over 1 050 hours	$112 350 + $107 per hour

[a] Determined as part of the Administrative Assessment.

Source: FSANZ (2008b).

As MRL applications normally proceed under the general procedure, they would attract a fee of either $53 500 or $90 950 (table 13.4). Under the general procedure, the fee becomes payable within 20 business days of FSANZ notifying the applicant that the application has been accepted and the procedure (general or major) that will be followed in assessing the application.

Assessing MRL applications — public consultation and transparency

The FSANZ assessment process should contribute to reduced regulatory burdens for Australian businesses in the longer term as, unlike the NZFSA process, it includes the consideration of business compliance costs (table 13.5). While both FSANZ and NZFSA engage in public consultation, their different approaches have different benefits. The FSANZ approach of consulting on the proposed MRL standard allows it to get feedback on its draft approach and allows those making submissions to do so in light of the evidence FSANZ has compiled. In contrast, the NZFSA approach allows it to become familiar with the issues raised by submissions earlier in the assessment process, but without those submissions necessarily being informed by the same evidence as is available under FSANZ's consultation process. FSANZ's publication of final assessment documentation also makes for a more transparent process compared to that of the NZFSA.

Table 13.5 **MRL applications — consultation, considerations and transparency**

As at June 2009

	Australia (FSANZ)	*New Zealand (NZFSA)*
Applications notified to the public	Yes	Yes
Public consultation period (pre-draft MRL standard)	na[a]	60 days
Public consultation period (post-draft MRL standard)	4-6 weeks	na
Assessment process includes an assessment of the compliance costs for business	Yes	No
Final analysis of application(s) made public	Yes[b]	No

na not applicable. [a] For the general procedure. Pre-draft consultation may occur for applications assessed under the major procedure. [b] Any reports resulting from review requests by the Ministerial Council are also made public.

Source: Productivity Commission survey of FSANZ and NZFSA (unpublished).

Assessing MRL applications — appeals and review process

Mechanisms for businesses to appeal regulator decisions should lead to improved 'final decisions' for business (PC 2008d). Accordingly, FSANZ's approach (table 13.6) should produce better outcomes for business and, in turn, lower regulatory burdens. Public appeals processes, while serving the broader community interest, may frustrate business by creating uncertainty around the regulatory environment.

Both FSANZ and NZFSA review existing MRLs for their ongoing suitability in light of factors such as established usage patterns (table 13.6). In addition, the NZFSA also systematically removes MRLs five years after the cancellation or withdrawal of supply of the last product containing the relevant chemical. Such an approach assists in keeping the stock of regulation in check and relevant — more compact and relevant regulation should contribute to a lower burden on the New Zealand businesses needing to comply with it.

Table 13.6 **Appeals and review process**

July 2007– June 2009

	Australia (FSANZ)	New Zealand (NZFSA)
Mechanism available to applicant to appeal the decision	AAT[a] within 28 days of notification of the rejection	No mechanism[b]
Mechanism available to the public to appeal the decision	AAT[a] within 28 days of notification of abandonment (proposals only)	No mechanism[b]
Number of decisions appealed	Nil (2007-08)	na (2007-08)
	Nil (2008-09)	na (2008-09)
Number of decisions amended on appeal (2007-09)	na — no appeals	na
Periodic review of MRLs for their ongoing suitability	Yes	Yes

na not applicable. [a] Administrative Appeals Tribunal (AAT). [b] Once the Minister's decision has been made, a member of the public (or the applicant) could lodge a new application to amend the MRL in question.

Source: Productivity Commission survey of FSANZ and NZFSA (unpublished).

MRL assessments completed

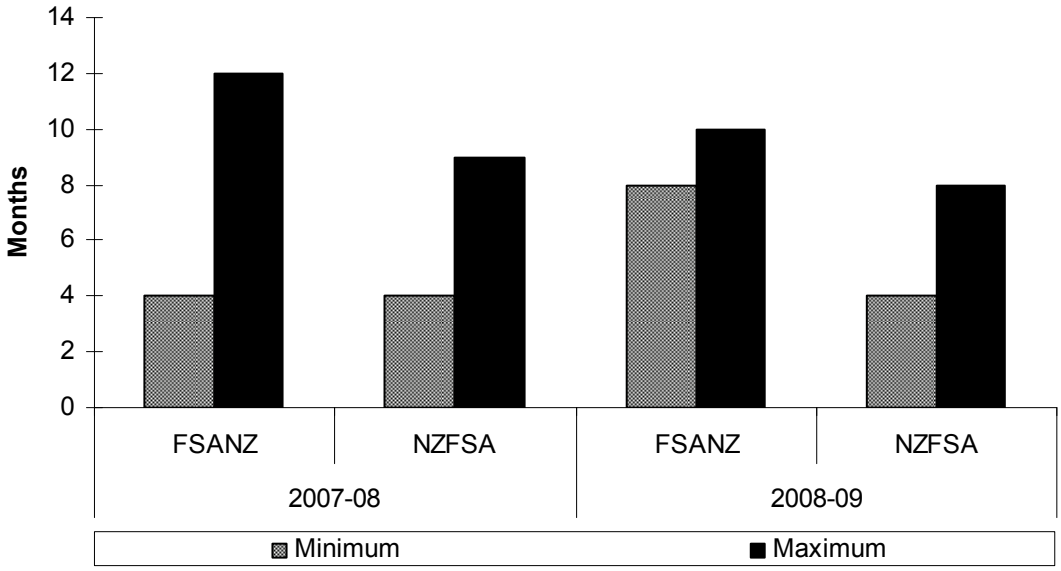
Between 1 July 2007 and 30 June 2009, all MRLs assessments completed by FSANZ were the result of notifications from the APVMA, while those completed by the NZFSA were the result of either chemical product registrations or NZFSA initiated reviews.

Both countries assess MRLs in 'batches' meaning there may be some time between when an application/proposal is received and the consideration of that application/proposal commences. The time taken by FSANZ to decide an Australian MRL application/proposal in 2008-09 was 8–10 months, compared to 4–12 months in 2007-08 (table 13.7 and figure 13.6). In contrast, the time taken by the NZFSA for New Zealand applications was 4–8 months in 2008-09 and 4–9 months in 2007-08 (table 13.8 and figure 13.6).

Based on the time taken from the lodgement of the MRL proposal to decision, FSANZ complied with the nine month statutory time limit (table 13.3) for the majority of MRLs decided in the period 1 July 2007 to 30 June 2009 (figure 13.7). The 'stop-the-clock' provisions (table 13.3) mean that, although the time from lodgement to decision took over nine months for certain proposals, FSANZ may still have been within the nine month statutory time limit.

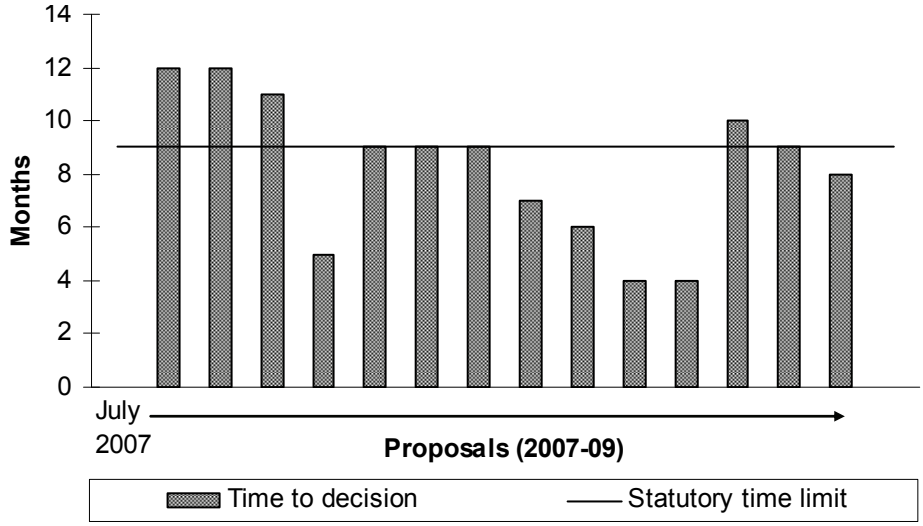
Figure 13.6 **Time taken to decide MRL applications/proposals**

Regulator processes from figures 13.2 (FSANZ) and 13.5 (NZFSA)



Sources: FSANZ (2008c); FSANZ (2008d); FSANZ (2008e); FSANZ (2008f); FSANZ (2008g); FSANZ (2008h); FSANZ (2008j); NZFSA (2007a); NZFSA (2007b); NZFSA (2008e); NZFSA (2008f); Productivity Commission surveys of FSANZ and NZFSA (unpublished).

Figure 13.7 **FSANZ — compliance with statutory time limit**



Sources: FSANZ (2008c); FSANZ (2008d); FSANZ (2008e); FSANZ (2008f); FSANZ (2008g); FSANZ (2008h); FSANZ (2008j); NZFSA (2007a); NZFSA (2007b); NZFSA (2008e); NZFSA (2008f); Productivity Commission surveys of FSANZ and NZFSA (unpublished).

Table 13.7 **FSANZ assessments of MRLs**

MRLs decided (by FSANZ) between 1 July 2007 to 30 June 2009

	1 July 2007 to 30 June 2008						*1 July 2008 to 30 June 2009*
Residue	*Paradichloro-benzene in honey*[a]	*Various*	*Oxytetracycline fish*	*Various*	*Dimetridazole (antibiotic)*	*Various*	*Various*
Application or Proposal No.	A602	A607	A608	A610	A612	M1001	M1002
Application type	Add an MRL	Add, modify and delete MRLs	Modify an MRL	Add, modify and delete MRLs	Modify MRL	Add, modify and delete MRLs	Add, modify and delete MRLs
Date application(s) received[b]	21/3/2007	15/5/2007 and 7/6/2007	16/7/2007	8/8/2007 and 20/8/2007	20/08/2007	17/10/2007, 22/11/2007, 18/1/2008 and 5/2/2008	1/1/2008, 19/2/2008 and 6/3/2008
Draft assessment[c]	12/12/2007	12/12/2007	26/7/2007	12/12/2007	12/12/2007	6/3/2008	1/8/2008
Period for public consultation (pre-draft)	na	na	na	na	na	na	na
Period for public consultation (post-draft)	56 days	56 days	42 days	56 days	56 days	28 days	35 days
Board Approval	6/3/2008	22/5/2008	20/12/2007	22/5/2008	22/05/2008	22/05/2008	5/11/2008
Final Assessment Report[d] released	19/3/2008	4/6/2008	12/2/2008	4/6/2008	4/06/2008	4/06/2008	11/11/2008
Ministerial Council decision	No review requested	No review requested	No review requested	No review requested	No review requested	No review requested	No review requested
Decision gazetted	15/5/2008	14/8/2008	13/3/2008	14/8/2008	14/08/2008	14/08/2008	5/1/2009
Number of chemicals assessed	1	30	1	14	1	29	27
Number of MRLs amended	1	51	2	49	5	83	123

na not applicable. [a] Application for an Extraneous Residue Limits. [b] Notifications were received from the APVMA on these dates. [c] Referred to as an 'Assessment Report' since October 2007. [d] Referred to as an 'Approval Report' since October 2007.

Sources: FSANZ (2008c); FSANZ (2008d); FSANZ (2008e); FSANZ (2008f); FSANZ (2008g); FSANZ (2008h); FSANZ (2008j); Productivity Commission surveys of FSANZ and NZFSA (unpublished).

Table 13.8 **NZFSA assessments of MRLs**

MRLs decided (by the Minister) between 1 July 2007 to 30 June 2009

	1 July 2007 to 30 June 2008			*1 July 2008 to 30 June 2009*		
MRL Amendment No.	*1/2007*	*2/2007*	*2008 consolidation*	*1/2008*	*2/2008*	*2009 consolidation*
Chemical compounds	Various	Various	Various	Various	Various	Various
Type of application(s)	Add and modify MRLs	Add and modify MRLs. Provide exemptions	Add, modify and delete MRLs. Provide and remove exemptions	Add and modify MRLs. Provide exemptions.	Add, modify and delete MRLs.	Add, modify and delete MRLs. Provide exemptions.
Number of applications	11	11	22	11	10	19
Date application(s) received	4th quarter 2006 and 1st quarter 2007	2nd and 3rd quarter 2007	3rd and 4th quarter 2007	1st and 2nd quarter 2008	2nd and 3rd quarter 2008	4th quarter 2008 and 1st quarter 2009
Date Discussion Paper on application(s) publicly released	10/4/2007	10/8/2007	20/12/2007	30/5/2008	14/8/2008	10/3/2009
Period for public consultation (pre-draft)	63 days	61 days	71 days[a]	62 days	62 days	63 days
Period for public consultation (post-draft)	na	na	na	na	na	na
Date recommendation provided to the Minister	22/6/2007	17/10/2007	19/3/2008	1/9/2008	30/10/2008	29/5/2009
Date of Minister's decision	6/7/2007	27/10/2007	25/3/2008	8/9/2008	5/11/2008	2/6/2009
Minister's decision	Approved without change	Approved without change	Approved without change	Approved without change	Approved with amendments[b]	Approved without change
Date decision gazetted	07/07/2007	01/11/2007	03/04/2007	11/9/2008	13/11/2008	11/6/2009
Number of chemical compounds assessed	11	11	22	11	10	19
Number of MRLs amended	60 inserted or amended	29 inserted or amended	18 inserted or amended. 11 deleted	13 inserted or amended	22 inserted or amended. 7 deleted	17 inserted or amended. 8 deleted
Number of chemicals exempted		2	6	1		5

na not applicable. [a] 61 days with an extension to consider holiday period of 24 December 2007 to 2 January 2008. [b] Residue for Pyraclostrobin in grapes set at 3mg/kg (2mg/kg was recommended), residue for Boscalid in grapes set at 5mg/kg (3mg/kg was recommended).

Sources: NZFSA (2007a); NZFSA (2007b); NZFSA (2008e); NZFSA (2008f); Productivity Commission surveys of FSANZ and NZFSA (unpublished).

In the 2008-09 period, FSANZ decided MRLs for 27 chemicals, amending 123 MRLs in the process (76 chemicals and 191 MRLs in 2007-08). Over the same period, the NZFSA decided MRLs for 40 chemicals, amending 57 MRLs in the process (44 chemicals and 118 MRLs in 2007-08). The greater number of MRLs considered by FSANZ may have contributed to its longer timeframes for completing assessments when compared to the NZFSA.

Following the regulator's decision/recommendation, the proposal/application is still subject to review by the ANZFRMC in Australia and the relevant Minister in New Zealand. Including these processes, the average time from the regulator's decision to gazettal was around 2–3 months in Australia and two weeks in New Zealand.

As alluded to in section 13.1, it is not unexpected that FSANZ and the NZFSA would set different MRLs. However, an examination of the MRLs set in between 1 July 2007 and 30 June 2009 shows that they also apply MRLs to differing descriptions of food. For example:

- Australia has set MRLs for Methabenzthiazuron in leeks, shallots and spring onions, while the most comparable New Zealand MRL for Methabenzthiazuron applies to 'bulb vegetables'
- Australia has set an MRL for Iprodione in 'brassica leafy vegetables' (15mg/kg), while the most comparable New Zealand MRL for Iprodione applies to 'leafy vegetables' (5mg/kg)
- Australia has set an MRL for Maldison in shallots, while the most comparable New Zealand MRL for Maldison applies to vegetables
- New Zealand has set MRLs for Pyriproxyfen in cucumbers and tomatoes, while the most comparable Australian MRLs for Pyriproxyfen apply to cucurbits and fruiting vegetables
- New Zealand has set MRLs for Spinosad in sheep fat, kidney and liver, while the most comparable Australian MRLs for Spinosad apply to edible offal and meat.

Under the Trans-Tasman Mutual Recognition Arrangement (TTMRA) most food imported into Australia from New Zealand is not inspected, and vice versa (chapter 14). Only food from New Zealand that is regarded as 'risk food' is subject to inspection at the border by the AQIS and, similarly, NZFSA only inspects food from Australia if it is a 'prescribed food' (appendix C). As such, the differences in food classifications used in the MRL standards only present an issue for those trading risk foods/prescribed foods between Australia and New Zealand. For these businesses, the different food classifications of Australia and New Zealand (for

MRLs) may create difficulties in determining whether food produced in compliance with Australian requirements is compliant in New Zealand (and vice versa).

13.3 Business compliance with MRLs

In its submission, Choice highlights the absence of a consistent MRL enforcement program across Australia, noting:

> There is no consistent enforcement program across the states and territories that assesses the level of compliance with the MRLs in both imported and locally produced foods. The level of monitoring varies from state to state. At the time of publication of the CHOICE article (April 2006):
>
> - ACT and Tasmania did no testing at all
> - The NSW Department of Primary Industry was funding a new program to test local produce but not at retail outlets
> - The NT Department of Primary Industry tested locally grown produce only
> - The Queensland Department of Primary Industry tested samples from suppliers and occasionally farmers markets, but not at retail outlets
> - South Australia tested locally produced fruit and vegetables in 2003 but hadn't done any subsequent testing
> - Victoria regularly tests locally produced fruit and vegetables but does not sample retail outlets
> - The WA Department of Health had an ongoing testing program, surveying fruit and vegetables every two to five years, including samples from retail outlets. (sub. 7, p. 6)

Concern for the burden on business due to this inconsistent and, at times, duplicative regime was raised by a number of other stakeholders to this study. As there is only one regulator (the NZFSA) responsible for MRL enforcement activities in New Zealand, no such concerns were raised regarding the New Zealand regime.[8]

Much of the debate on 'MRL enforcement' has focused on whether there is sufficient testing of food for chemical residues — both in general and, specifically, at the point of retail sale. However, as outlined in box 13.6, such testing may not necessarily be the most effective enforcement strategy. Also, such a focus on testing does not take into account the regulatory measures, aside from testing, that

[8] Some minor issues of internal consistency within NZFSA were, however, raised with the Commission during the initial rounds of consultation.

contribute toward compliance with MRLs. These broader measures are raised, as applicable, in the following analysis of MRL enforcement.

Box 13.6 **The effectiveness of testing for chemical residues**

Testing at the point of retail sale may not be the most effective enforcement approach as the further the testing occurs from the point of production the greater the impediments to tracing the food to its point of production and the likely cause of the MRL being breached. Where the food tested can be traced back to the point of production and, more importantly, the actions causing the breach of the MRL, all affected food can be recalled. Where the food cannot be traced, only that food tested can be removed from sale, leaving a potentially large supply of non-compliant food available for sale.

The absence of testing in a jurisdiction such as the ACT, which produces little of its own food, may be justified on the grounds that to do so may well duplicate the actions of those jurisdictions where the food was produced — thereby increasing the regulatory burden on business. Testing in such circumstances may also be inefficient if the regulator is unable to trace the food breaching an MRL back to its point of production.

Duplication and inconsistencies in enforcement — Australia

Duplication and inconsistencies within Australia

While local councils are responsible for enforcing the ANZFS Code in most jurisdictions and many local councils undertake food sampling for microbiological testing, few (if any) local councils undertake proactive food sampling to test for MRL compliance. This leaves those state and territory food safety regulators with responsibility for their respective Food Acts to be responsible for enforcing compliance with MRLs (table 13.9). The primary production regulators (table 13.9) can also undertake some enforcement activities in relation to MRLs and agricultural and veterinary chemicals. For example, Safe Food Production Queensland requires egg growers to maintain records to demonstrate their chicken feed is free from chemical contamination and to test annually for organochlorine and organophosphorous pesticides.

Although food safety regulators enforcing a Food Act are responsible for the enforcement of the MRLs contained in the ANZFS Code, testing for compliance with MRLs is usually undertaken by the Department of Primary Industries of the

states and territories (or equivalent — see table 13.9)[9] or AQIS. In doing so, many of the primary industry departments are enforcing a 'chemical control' act that references the MRLs specified by the APVMA rather than those contained in Standard 1.4.2 of the ANZFS Code.[10] Queensland, Western Australia, New South Wales (veterinary chemicals) and the Northern Territory (agricultural chemicals) are among those that reference the APVMA's MRL Standard (table 13.2) for the monitoring of the use of agricultural and veterinary chemicals (APVMA 2008a).

Table 13.9 **Regulators responsible for some aspect of enforcing MRLs**

As at June 2009

	Area of regulation		
	Food safety regulation — Food Act	*Food safety regulation — Primary production and processing*	*Chemical control act*
NSW	NSW Food Authority[a]		Department of Primary Industries Department of Environment, Climate Change and Water
Vic	Department of Health[b]	PrimeSafe Dairy Food Safety Victoria	Department of Primary Industries
Qld	Queensland Health	Safe Food Production Queensland	Queensland Primary Industries and Fisheries[c]
SA	Department of Health	Primary Industries and Resources South Australia[a] Dairy Authority of South Australia	
WA	Department of Health	Department of Agriculture and Food[a]	
Tas	Department of Health and Human Services	Department of Primary Industries and Water[a] Tasmanian Dairy Industry Authority	
NT	Department of Health and Families	Department of Regional Development, Primary Industry, Fisheries and Resources[a]	
ACT	ACT Health		Department of the Environment, Climate Change, Energy and Water Territory and Municipal Services

a Different parts of the department/agency may be responsible for the different areas of regulation. **b** Responsibility for food safety regulation passed to the newly created Department of Health from the Department of Human Services (Food Safety Unit) in August 2009. **c** Part of the Department of Employment, Economic Development and Innovation.

The primary industry departments of the states and territories, and the Department of Environment and Climate Change in New South Wales, also enforce a number of regulatory requirements in relation to the use of agricultural and veterinary

9 The New South Wales Department of Environment and Climate Change also undertakes some testing for MRL compliance.

10 These MRLs are largely consistent and will generally only differ where the APVMA has registered a chemical for which FSANZ is yet to establish an MRL in Standard 1.4.2.

chemicals. Depending on the jurisdiction, these requirements can include matters such as:

- licensing of commercial pest control operators and ground and aerial spray operators
- keeping records of chemical use
- safe use of chemicals, including training for chemical users, the use of codes of practice, spraydrift guidelines and other user awareness raising initiatives
- notifying neighbours of the application of chemicals.

Under the regulatory framework outlined above, it is possible that the food produced in any jurisdiction may be subject to regulatory oversight from local government, state/territory and Commonwealth departments and agencies. For example, in New South Wales:

- the local councils or NSW Food Authority can sample food for testing in order to determine compliance with the MRLs contained in the ANZFS Code
- the Department of Environment and Climate Change regulates the use of agricultural chemicals (pesticides) and, potentially, could undertake testing to determine compliance with MRLs (albeit for the purpose of *Pesticides Act 1999* (NSW))
- the Department of Primary Industries regulates the use of veterinary chemicals and, potentially, can undertake testing to determine compliance with MRLs set by the APVMA for the purpose of determining compliance with the *Stock Medicines Act 1989* (NSW)
- for certain producers, AQIS may conduct testing under the *Export Control Act 1982* (Cwlth) (this testing is discussed below)
- AQIS also inspects imported food at the border. However, as there is little testing of food for MRL compliance at the point of retail sale, there is little scope for the testing of AQIS to be duplicated by state/territory authorities.

In addition to the testing completed by the primary industry departments of the states and territories and AQIS, there are a number of private sector initiatives to ensure compliance with MRLs and/or the proper use of agricultural and veterinary chemicals (box 13.7).

Box 13.7 National initiatives for chemicals and MRLs (including private sector initiatives)

The **FreshTest** Program was established by the Australian Chamber of Fruit and Vegetable Industries. It was developed to reduce costs and co-ordinate the thousands of tests being conducted annually by the wholesalers for verification of their own food safety and quality assurance systems. In each residue test, the produce is tested for 110 different substances and for compliance against the ANZFS Code MRLs.

Chemcert Australia was established by the National Farmers' Federation and the Rural Training Council of Australia as a national training and accreditation program. Chemcert Australia trains chemical users to meet all regulations and laws requiring the safe use of agricultural and veterinary chemicals, as well as their obligations under industry quality assurance programs.

The **Australian Total Diet Survey** is coordinated by FSANZ for the purpose of estimating the dietary exposure of Australians to a range of pesticide residues, contaminants and other substances that can be found in the food supply. It is one of the few surveys that consider food in a 'table ready' form. It is completed approximately every two years.

The **Australian Milk Residue Analysis (AMRA) Survey** is a program monitoring agricultural and veterinary residues (and environmental contaminants) in raw cow's milk. Dairy Food Safety Victoria coordinates the AMRA Survey on behalf of the Australian Dairy Authorities Standards Committee and the Australian dairy industry. The AMRA Survey is an integral part of the Australian dairy industry's efforts to secure access to major export markets.

The **Targeted Antibacterial Residue Testing (TART) Program** is an antibacterial residue testing program applying to all animals slaughtered at export abattoirs. It targets livestock suspected by on-plant veterinarians of violative levels of antibacterial residues.

The **National Organochlorine Residue Management (NORM) program** was established to manage the risks of persistent organochlorine contaminants being detected in beef products. The program is supported jointly by the Cattle Council of Australia, the Australian Lot Feeders Association and the Department of Primary Industries (or equivalent) in Queensland, New South Wales, Western Australia, Victoria and South Australia.

The **National Antibacterial Residue Minimisation (NARM) Program** is a joint industry/state/Commonwealth initiative aimed at increasing the awareness of producers, processors and other industry groups of the risk to trade associated with the detection of antibacterial residues above the MRLs for meat. The NARM program focuses on the testing of a variety of cattle from high risk categories including bobby calves, cull cattle, especially dairy cows, hospital penned feedlot cattle, bulls and, in particular 'suspect cattle'.

Sources: CFVIWA (2009); DAFF (2008b); Dagg et al. (2006).

In light of the above, attempting to attribute a burden to MRL testing alone is not informative. Such an approach does not consider the difference in the 'preventative' regulatory intervention(s) of the jurisdictions, such as the control of aerial spraying, that may justify their different approaches to MRL testing and the efforts of business to comply with testing arising from commercial obligations. It is the overall burden of enforcing this regulation that is important to business, not simply the MRL monitoring component. Unfortunately, the breadth of such an investigation is beyond the scope of this study, but this study does point to a number of issues and inconsistencies that warrant further consideration by regulatory authorities.

AQIS — duplicated testing in food produced for domestic consumption and export

Many countries require imported food commodities to be certified as complying with agreed chemical residues limits, while a number of countries will not allow the importation of certain food products unless they have complied with a Government residue monitoring program in their country of origin. AQIS facilitates these certification processes for Australian exporters through the National Residue Survey (NRS) and other programs (box 13.8 and 13.7, respectively).

Box 13.8 **National Residue Survey**

The National Residue Survey (NRS) is undertaken by the Commonwealth Department of Agriculture, Fisheries and Forestry. It is funded by a mix of industry levies and government funding. While participation in the NRS is voluntary, many businesses/industries participate in order to meet access requirements for domestic and/or export markets.

In the first instance residues are assessed against the MRLs set out in Standard 1.4.2 of the ANZFS Code. However, where an MRL has been proposed to FSANZ by the APVMA, but is not yet included in the ANZFS Code, the NRS will assess compliance against the MRL specified by the APVMA in its assessment.

In 2007-2008, the NRS covered 25 animal-derived products (such as meat, honey, eggs and fish) and 25 plant commodities (including five horticultural products). The chemical-commodity combinations for analysis are determined with industry and on the basis of risk evaluations.

Sources: DAFF (2008b); Dagg et al. (2006).

As AQIS's actions are primarily directed at establishing compliance with the requirements of the country to which the food will be exported and protecting Australia's access to export markets, the extent of the duplicated burden depends, among other factors, on the commodity being produced and the country to which it

is being exported. AQIS does, however, have Memoranda of Understanding with a number of food safety regulators for the primary production sector which reduces the instances of duplication by facilitating AQIS's reliance on the testing undertaken by those regulators (chapter 14).

Inconsistencies in enforcement — domestically-produced food compared to imported food

In Australia, imported food is subject to inspection under Imported Food Inspection Service (IFIS — see appendix C) and the operation of IFIS has been raised as a concern by business. These concerns received some attention in the Commission's *Annual Review of Regulatory Burdens on Business: Primary Sector* (PC 2007a). In particular, one of the issues considered was the application of different food safety standards by AQIS when compared to the food and primary production regulators of the states and territories. In investigating these claims, the Commission found:

> There are misconceptions as to the standards applied to imported food. The Department of Agriculture, Fisheries and Forestry and the Department of Health and Ageing should take steps to ensure that the industry is fully aware that imported food and food manufactured in Australia are subject to the same standards. (PC 2007a, p. XXXIII)

MRL enforcement — New Zealand

In contrast to the fragmented Australian approach, regulating the use of agricultural and veterinary chemicals in food production (including enforcing business compliance with MRLs) in New Zealand is largely the responsibility of the NZFSA. In this regard, the NZFSA is responsible for managing the risks to animal welfare, agricultural security, public health and trade from use of agricultural and veterinary chemicals. It is also responsible for assuring the safety and suitability of food for both the domestic and export markets.

The requirement to register agricultural and veterinary chemicals, and the conditions it can impose upon the registration, is the primary tool used by the NZFSA to fulfil its responsibilities. The NZFSA also employs a number of controls and practices to ensure that chemical residues in food do not breach the regulatory thresholds including:

- effective border controls on imported chemicals[11]
- restricted distribution, through the veterinary profession, of certain categories of veterinary medicines

[11] In Australia, this is the responsibility of AQIS.

- industry codes of practice and training
- the use of movement control on farms as a management tool where non-compliant residue levels have been detected (NZFSA 2009d).

The NZFSA also undertakes a number of programs to monitor MRLs (box 13.9).

Box 13.9 **NZFSA MRL monitoring programs**

National Chemical Residue Programme (NCRP) — tests animal products (for example: red meat; salmon; and honey) for agricultural and veterinary chemicals. The NCRP is designed to:

- assess the effectiveness of the controls and practices of the NZFSA and industry
- identify instances of noncompliance and remove any affected product from the human food chain
- implement investigative procedures to identify the cause of any non-conforming residues and eliminate future residue noncompliance from that cause
- allow the NZFSA to provide credible assurances on the residue status of New Zealand food to domestic and export markets.

National Chemical Contaminants Programme — tests raw cow's milk at the farm of production. It tests for a wide range of agricultural chemicals, including those that may be of interest to importing countries (regardless of whether the relevant chemical is used in New Zealand). The programme is used to verify of the broader control systems rather than as a control measure in its own right.

Food Residue Surveillance Programme — tests both domestically produced and imported food for compliance with MRLs. However its primary focus is on those foods not covered in other programmes (such as the NCRP and the National Chemical Contaminants Programme).

Source: NZFSA (2009a).

Rates of compliance — Australia and New Zealand

Choice and others have raised concerns regarding non-compliance with the MRLs contained in Standard 1.4.2 (ABC 2009, Burke 2008, Burke 2009 and Milne 2008). Where a business does not comply with a regulation, it does not face a burden from that regulation. However, complying businesses may be at a cost disadvantage to their non-compliant peers. On the whole, the rate of compliance with MRLs in Australia and New Zealand is generally 94 per cent or higher (table 13.10), suggesting few businesses are deliberately obtaining a cost advantage through non-compliance.

Table 13.10 **MRL compliance**

	Testing program	*Year*	*Government or Private*	*Commodity*	*Sample size*	*Rate of compliance*
					Number	%
Aus	NRS[a]	2008	Government	Aquaculture	15	100
Aus	NRS[a]	2008	Government	Eggs	75	92
Aus	NRS[a]	2008	Government	Honey	226	100
Aus	NRS[a]	2008	Government	Meat	14 184	99
Aus	NRS[a]	2008	Government	Plant products (incl. grain)	4 280	99
Aus	NRS[a]	2008	Government	Wild fish	109	100
Aus	IFIS[b]	2008	Government	Farmed fish and prawns	2 569	99
Aus	IFIS[b]	2008	Government	Fruit, meat and vegetables	6 158	99
Aus	IFIS[b]	2008	Government	Herbs and spices	637	98
Aus	IFIS[b]	2008	Government	Honey	62	100
Aus	FreshTest	2002–present	Private	Various produce	>30 000	approx. 97
Aus	Choice	2008	Private	Strawberries	27	89
NZ	FRSP[c]	2007-08	Government	Capsicum	48	94
NZ	FRSP[c]	2007-08	Government	Courgettes	48	100
NZ	FRSP[c]	2007-08	Government	Lettuce	48	94
NZ	FRSP[c]	2007-08	Government	Mushrooms	48	94
NZ	FRSP[c]	2007-08	Government	Strawberries	48	92
NZ	FRSP[c]	2009	Government	Celery	24	96
NZ	FRSP[c]	2009	Government	Spinach	24	79
NZ	NCRP[d]	2007-08	Government	Farmed mammals	5 119	100
NZ	NCRP[d]	2007-08	Government	Ostrich and emu	79	100
NZ	NCRP[d]	2007-08	Government	Honey	69	100
NZ	NCRP[d]	2007-08	Government	Farmed salmon	51	100
NZ	NCRP[d]	2007-08	Government	Broilers	166	100
NZ	NCRP[d]	2007-08	Government	Raw milk and colostrum	418	100
NSW	SMRS[e]	1989–2005	Government	Fruit and vegetables	> 6 900	97
Vic	TVPMP[f]	2006	Government	Fruit	153	93
Vic	TVPMP[f]	2006	Government	Herbs	50	80
Vic	TVPMP[f]	2006	Government	Nuts	5	100
Vic	TVPMP[f]	2006	Government	Vegetables	212	91
Vic	TVPMP[f]	2007/08	Government	Berries (and table grapes)	125	84
Vic	TVPMP[f]	2007/08	Government	Pome fruit	90	96
Vic	TVPMP[f]	2007/08	Government	Stone fruit	81	99
Vic	TVPMP[f]	2007/08	Government	Leafy vegetables	80	88
Vic	TVPMP[f]	2007/08	Government	Root and tuber vegetables	81	98

[a] National Residue Survey. [b] Imported Food Inspection Scheme — selected chemicals only. [c] Food Residue Surveillance Programme. [d] National Chemical Residue Program. [e] Sydney Markets Residue Survey. [f] Targeted Victorian Produce Monitoring Program.

Sources: Burke (2008); Burke (2009); CFVIWA (2009); DAFF (2008b); DAFF (2009a); DAFF (2009b); NZFSA (2008c); NZFSA (2009e); NZFSA (2009h); NSW DPI (2006); DPI (Victoria) (2007); DPI (Victoria) (2009).

For tests comprising over 100 samples, such as AQIS tests of meat, the compliance rates are generally recorded at 97 per cent or higher. Compliance rates recorded at less than 90 per cent typically relate to smaller scale samples, such as tests of spinach in New Zealand under the FRSP. Tests based on larger samples for these 'lower compliance' commodities may produce different compliance rates to those listed in table 13.10.

In Australia, the rate of compliance for AQIS testing (both for imports and exports) for most commodities is 98 per cent or higher. In comparison, the results for testing completed by state authorities show compliance rates between 80 and 100 per cent. The test results for herbs are an example of the difference in compliance rates, with 99 per cent of imported herbs testing as compliant, compared to a 80 per cent rate of compliance for domestically produced herbs (based on Victorian testing).[12]

[12] The Commission understands the Victorian testing was targeted at high risk areas (for example, targeting newly registered chemicals and recently withdrawn chemicals). As such, it may not be strictly comparable with the broader approach and larger sample of the IFIS testing.

14 Compliance with food import and export regulations

Key points

- The charging structure for food imports into Australia is considerably more complex than that faced by New Zealand importers and, in general, fees for importing into Australia are higher.
- Despite charging businesses for import clearance for food safety on an hourly basis, the time taken for the process is not monitored in either Australia or New Zealand.
- A lack of consistency in the interpretation of food safety regulations across Australian jurisdictions increases the costs to businesses in ascertaining import requirements and managing imported product recalls.
- Application of food safety requirements throughout the production chain for domestic businesses, but not for imported businesses, may unduly raise the opportunity costs of domestic businesses (unless similar requirements are made in the importer's home country) and has contributed to some products that are banned from production nevertheless being imported.
- Charges faced by Australian exporters of food are generally higher than those for similar activities in New Zealand, even after an Australian Government subsidy. The costs to business of AQIS services are also higher than some comparable domestic services provided by other agencies.
- Duplication in export and domestic regulation puts an undue compliance burden on some Australian primary product exporters, while the integrated regulatory structure in New Zealand means this is less of an issue there. Both countries sometimes impose stricter requirements than necessary on exports going to countries with less demanding requirements than their own.
- The extent to which multiple and overlapping audits impose additional costs on businesses varies more between industries than jurisdictions.
  - All Australian jurisdictions have memoranda of understanding between regulators to facilitate the recognition of audits and reduce business compliance costs.
  - In both Australia and New Zealand, meat exporters incur greater costs and more regulatory intervention than other businesses. In Australia, about $80 million per year or 80 per cent of export certification costs relate to red meat.
- Businesses in both Australia and New Zealand noted areas in which a lack of skills or knowledge in regulator staff result in additional regulation compliance costs.
- New Zealand's greater use of electronic processing than Australia is likely to reduce business compliance costs associated with registering and processing of exports.

14.1 Introduction

Across Australia and New Zealand, there are just two authorities with responsibility for the regulation of food imports and exports — in Australia, the Australian Quarantine and Inspection Service (AQIS) has this role; in New Zealand, the New Zealand Food Safety Authority (NZFSA) regulates all food imports and exports. Each authority enforces a set of legislation that is applicable to all jurisdictions (and businesses) within their respective country.[1]

One consequence of this regulatory framework is that, for the purposes of this study, benchmarking of the regulation of food imports and exports is relatively straightforward as it requires a comparison of just two regimes (refer to benchmarking criteria 1 in chapter 4). On the other hand, stakeholders have raised concerns about the consistency with which this regulation is enforced across jurisdictions within Australia and between industries, and at a broader level, the costs imposed on business with differential application of food safety principles to domestic versus traded food production (see benchmarking criteria 3 in chapter 4).

This chapter examines differences between jurisdictions and industries in some of the fees and charges levied on importing and exporting food businesses and the broader costs incurred by these businesses as a result of the way in which food safety is enforced. As a basis for the analysis, the chapter draws on appendix C, which contains a description of the framework in place in Australia and New Zealand to regulate food imports and exports.

14.2 Compliance issues with the administration of food import regulations

The safety of food products for human consumption is one of the main objectives for the regulation of food imports into Australia and New Zealand. Over the course of a number of regulatory reviews, industry organisations and businesses have noted several areas in which the implementation of food safety regulation on imported products causes excessive costs for businesses. Some of these costs are the direct costs incurred by domestic importers of food through interaction with regulatory

[1] In some areas, execution of this responsibility requires interaction with other authorities including FSANZ or delegated inspection agencies such as the Auckland Central Clearing House in New Zealand, and state dairy authorities in Australia.

authorities, including fees and charges to import and additional costs due to implementation of the import inspection process. Other costs are indirect (opportunity) costs incurred by other domestic food producers associated with differential application of food safety standards between jurisdictions and product sources.

Import fees and charges

There is a range of fees that importing food businesses incur in both Australia and New Zealand in relation to product safety. These can include fees for the application, lodgement and assessment of import declarations; inspection of the imported product; lab testing; and transport and storage associated with the inspection and testing process.[2] Fees for these activities are detailed in appendix C and summarised in table 14.1 below.

AQIS and NZFSA both charge for their border services on a cost recovery basis and for some services they are the sole provider in their respective country. The AQIS charging structure is considerably more complex than that faced by New Zealand importers and, in general, fees for importing into Australia are higher. The extent to which this may be due to differences between the two countries in services offered under each category is unclear.

Table 14.1 **Key food safety related fees to import food into Australia and New Zealand**

Australian dollars, 2008-09 [a]

Requirement	*Charging unit*	*Australia*	*New Zealand*
Import declaration (incl. manual lodgement)	per item	22	
Inspection	per ½ hour	80	39

[a] Estimates for New Zealand are based on an average $A/$NZ exchange rate of 1.23 in 2008-09.

Sources: AQIS and NZFSA websites; RBA (2009).

In a submission to the Commission's 2003 *Review of Mutual Recognition* (PC 2003), AQIS provided evidence that costs to importing businesses could be even higher but for absorption of some costs by Australian taxpayers associated with government to government import arrangements:

2 Some food importers into Australia may incur fees associated with the approval, maintenance and audit of a Quarantine Approved Premises. These fees are not detailed separately here as they relate more to bio-security than to food safety.

> …where AQIS has a government to government certification with the exporting country, certification is accepted and there is only minimal inspection of the product upon entry to Australia — in these circumstances AQIS pays for the inspection and analysis that is conducted. (AQIS 2003, p. 2)[3]

These arrangements — formalised through agreements such as the *Trans Tasman Mutual Recognition Agreement* (TTMRA) and the *Australia New Zealand Closer Economic Relations Trade Agreement* — are particularly important for trade between Australia and New Zealand. Australia and New Zealand are the major source of food imports to each other. The combination of this and TTMRA, means that most food imported into Australia and New Zealand is not inspected, and therefore involves minimal regulatory costs to importing businesses. Only food from New Zealand that is regarded as 'risk food' is subject to inspection at the border by AQIS and similarly, NZFSA only inspects food from Australia if it is a 'prescribed food' (appendix C).

However, AQIS notes more generally that '… while Australia and NZ continue to inspect risk foods, there is little, if any added health outcomes from this costly exercise.' (AQIS 2003, p. 1)

Costs due to import inspection delays

For businesses that import fresh food, the speed with which the imported product clears customs and quarantine processes can be critical to the shelf life of the product and sales revenue. Food safety inspection processes undertaken by AQIS or NZFSA that are not timely will therefore result in additional costs to importing businesses.

Despite charging for import clearance for food safety purposes by the hour, neither AQIS nor NZFSA were able to provide information on the range of time typically taken to clear imports at the border. NZFSA advised that the target is to clear perishable goods within one working day and non-perishables within two working days. If sampling is required, then this is to occur within three days of notification that goods are available, with time for results dependent on the method of analysis. The extent to which the clearance of imports into New Zealand meets these targets is unknown, as is the time taken to clear imports into Australia for food safety purposes. Some sectors of New Zealand industry advised the Commission that the speed of clearing particular products into Australia through AQIS appears to depend on which shipping company is used.

3 Since July 2009, importers to Australia pay inspection fees for certified shipments.

In reporting to past reviews of regulation, the seafood industry in Australia has detailed some costs that importers of fresh seafood incur because of a lack of timely inspection and clearance of products (box 14.1).

Box 14.1 Interaction with regulators: importing fresh seafood into Australia

Imported fresh seafood typically needs to reach its market destination within hours of its arrival into the country in order to ensure premium prices for the importer and minimal product spoilage.

Seafood Services Australia reported to the *Quarantine and Biosecurity Review* (2008) that imported fresh seafood needs to be traded within 12 hours of its arrival into the country to ensure premium prices and product spoilage is minimised but that '…under the current 9 to 5 operations of the IFIP [Imported Food Inspection Program] fresh seafood product arriving in the country often cannot meet the desired turnaround timeframe.'

In its submission to the same Review, the Sydney Fish Market (SFM) indicated that their product auctions commence at 5:30am and normally conclude by 8:30am on Monday to Friday each week. To meet this timetable, any imported product needs to arrive in Sydney either very early in the morning for auction that day, or late in the day for auction on the following day. The SFM adopt a number of strategies to speed up the import clearance process including pre-clearance of the product and prior arrangements for IFIP inspections outside of ordinary hours.

For pre-clearance, all shipping documents must be presented to AQIS before 4:00pm on weekdays. When this is not possible (for example, when the product arrives late into Australia), a day of product shelf life is lost. SFM also indicated that they make prior arrangements for an IFIP officer to be present early to conduct inspections and enable the sale of the product on the same morning. However, they reported that:

> …rarely is the inspection commenced on time, thus resulting in product being held over to the next auction day. When this occurs on the last trading day of the week sale of the product may be delayed by three days, or even longer if there is a public holiday before the next auction day.

SFM also reported in their submission that occasionally an overseas supplier includes product not listed on the SFM Import Permit in shipments for the SFM. They argue that AQIS's approach of delaying clearance of the entire shipment until an application for inclusion of these products is completed, is unnecessarily costly for importers. Amendments to import permits are subject to a ten day approval period – such a delay is '…almost always detrimental to the saleability of fresh chilled seafood.'

Sources: SSA (2009); Sydney Fish Market (2008).

Lack of consistency between jurisdictions

A lack of consistency between jurisdictions in implementation of domestic food standards (as discussed in chapters 5–12) has ramifications for the application of standards to imported food.

Australia and New Zealand's World Trade Organisation (WTO) obligations under the Sanitary and Phytosanitary Agreement and Technical Barriers to Trade Agreement mean that safety requirements for imported food should not be more stringent than the requirements imposed on domestically produced food.[4]

This requirement is potentially relatively straightforward in New Zealand as there is national coordination on the setting, implementation and enforcement of standards. The situation is more complicated in Australia's federal system. Although standards for domestically produced food are uniformly adopted across Australia's states and territories under the Food Agreement, there is no such requirement to ensure consistent implementation and enforcement of these standards in the jurisdictions (see chapter 5 for further discussion on this). Consequently, for the most part, each jurisdiction implements and enforces the food safety standards according to its own interpretation and situation. The Implementation Sub Committee of the Food Regulation Standing Committee (FRSC) has striven to improve national consistency and coordination in the implementation of standards, although there remains much discrepancy. However, in the presence of any inconsistency within Australia, the requirements placed on imported food can be no more onerous than the *least stringent* domestic requirement.

This has had implications in Australia for:

- the clarity of information provided on Australia's requirements to overseas trading partners
- the coordination and consistency of recalls of imported food across the country
- the potential for products banned for manufacture in parts of Australia (or New Zealand) to nevertheless be imported into the country.

In practice, these outcomes are not so much a source of inconsistency in the clearance of imports at the border, but rather, with the subsequent 'acceptability' and treatment of the food product by businesses within each jurisdiction.

4 The WTO Sanitary and Phytosanitary agreement details how governments can apply food safety and animal and plant health measures. The Technical Barriers to Trade agreement ensures that regulations, standards, testing, and certification procedures do not create unnecessary obstacles to trade.

Clarity of information on import requirements

It is the responsibility of the business which is importing food into Australia or New Zealand to determine food safety requirements and ensure compliance of imports with these requirements. In order to meet these obligations, businesses wishing to import food products to Australia are potentially faced with eight different approaches (one for each state or territory) to implementing a food safety standard for a given product. For food importing businesses, these differing requirements have the potential to create confusion, necessitate contact with multiple jurisdictions/agencies and lead to additional costs in demonstrating compliance with food standards, both at border inspections and post-border. Some primary production industries in New Zealand reported to the Commission during consultations for this review that they have had difficulties importing to Australia with different information on requirements provided by AQIS staff in different states.

Cost of product recalls

The lack of consistency in implementing and enforcing domestic standards can be particularly evident when an imported product is recalled from sale.

Inspection of imported food at the border is risk-based in both Australia and New Zealand and most food enters the domestic market place without being inspected (appendix C).

- In Australia, the only group of imported food that is withheld from distribution to the market is the sample of risk food product lines that undergo inspection. All other food products — both risk foods that are not inspected and surveillance foods that may or may not be inspected — are released for sale before test results from any inspections are received.
- In New Zealand, only a proportion of a defined list of foods (prescribed foods) are inspected at the border and withheld from sale in the market place until their safety has been verified — most imported foods enter New Zealand without restriction.

Once imported food is released by AQIS or NZFSA, responsibility for enforcement of food safety requirements shifts to other regulatory bodies (chapter 2). One issue for businesses that can arise with recalls is when differential application of food safety standards results in jurisdictions making different decisions on whether or not to instigate a recall. An example in recent years of inconsistent action by state governments on recalls of imported food occurred with the importation in late 2003 and early 2004 of oyster meat from South Korea and parts of Japan that was

implicated in food poisoning outbreaks in both Australia and New Zealand (the product was eventually banned for import by FSANZ in late 2004).

In a more recent case, FSANZ advised AQIS in early 2009 that cassava chips pose a medium to high risk to health based on hydrocyanic acid levels contained in the product. While AQIS tests cassava chips at the border on this basis, the Commission was advised by AQIS that the Australian states and territories continue to test the product on the basis of lower risk levels (further details on this example are provided in chapter 8).

The NSW Food Authority (NSWFA) reported that:

> Products are being released into the NSW marketplace not in compliance with the Food Standards Code … This presents a potential risk to public health where agencies are attempting to identify importers or distributors of imported product which may have been required to be withdrawn from sale. This was evidenced earlier this year with a public health issue concerning imported cassava chips. Foods tested by AQIS upon entry are often released into the NSW marketplace before results are available. When testing results reveal non-compliance the recall of these products is then left to the NSW enforcement agency with little or no AQIS field involvement in tracing and recall. Strengthening border and pre-border monitoring and surveillance of imported product is a preferred approach to post-border activities. The recall of non-compliant product in the market is costly for both government and business. (NSWFA 2008e, p. 1–2)

While allowing a high proportion of food to enter the country unchecked may impose additional enforcement obligations on state and territory regulators, it is not clear that the alternative (increased inspections at the border by AQIS) would necessarily provide either higher food safety standards or equivalent standards at a lower cost to businesses or the community.

Unapproved products may still be imported

There are several factors that make it possible for food products banned or not approved for production in Australia or New Zealand to nevertheless, be imported into that country (often via the other):

- a ban on food products from entering Australia is not legally enforceable by AQIS under the *Imported Food Control Act 1992* (Cwlth). Department of Agriculture, Fisheries and Forestry (DAFF) noted that AQIS '…have no legal power to prevent banned products from entering Australia from New Zealand or anywhere else. To implement a ban at the border, options other than relying on the Imported Food Control Act may need to be in place.' (DAFF 2008d, p. 3)

- food production and safety standards, provisions on dietary supplements and maximum residue levels differ in the two countries (see chapters 5 and 13)
- Australia and New Zealand have different food products on their lists of high risk or prescribed foods that are inspected at the border (see appendix C)
- New Zealand's inspection of food imports from all countries is limited to their list of high risk foods. This means that Australia's import controls for low risk food can be bypassed by a third country which imports into New Zealand first, and then under the TTMRA, into Australia.

One case where this situation has arisen was noted in submissions to the Commission's study on mutual recognition schemes. DAFF (2008d) noted that the 'Red Bull' beverage (deemed illegal under Australian standards) could be imported into Australia from New Zealand as it is legal under New Zealand's Dietary Supplements Regulation. As the product was not considered high risk in Australia, it was subject to the TTMRA and able to be imported from New Zealand without any valid regulatory action by Australian jurisdictions, but could not be made in, or directly imported into, Australia.

In response to this case, the Australia New Zealand Food Standards Code (ANZFS Code) was modified to specifically incorporate energy drinks. However, there remains scope for such products to be imported into Australia if they are labelled as 'food' when exported from New Zealand. For example, 'energy shots' imported into New Zealand can be sold in that country under dietary supplements standards. These products contain around 10 times the maximum amount of caffeine allowed in a product under the ANZFS Code. In recent months this product has been imported into Australia via New Zealand as a 'food', and under TTMRA, has bypassed the Australian border inspection processes (even though such products cannot be legally manufactured in Australia).[5]

The New Zealand Retailers Association expressed similar concerns for those New Zealand businesses that are owned or controlled by an Australian company. In particular, they noted a potential for imports to Australia being passed on to the New Zealand arm of a business under the TTMRA (New Zealand Retailers Association 2008).

Bypassing the domestic food safety standards by whatever means reduces the integrity of the food safety regulatory regime. Those food businesses in Australia which compete with the 'banned' imported product may evidence lower sales

5 In September 2009, the NSW government announced that it was taking action to ensure that the high caffeine energy drinks could no longer be legally sold in New South Wales (Macdonald 2009).

revenue than would otherwise be the case if food standards were consistently applied. If the imported product is an input or ingredient in further processed food, then domestic businesses unable to source the input directly would either have higher costs associated with sourcing the input via a preferential trading partner, or be required to substitute a more costly input for the banned input.

Consistency between imports and domestic products

Industry in Australia has noted a number of areas in which domestic food safety standards are being implemented more stringently on domestic businesses than on competing import businesses. In some areas this may be due to the impact that differences in implementation of food safety requirements across jurisdictions has on the standards imposed on imports (as discussed above). However, at a broader level, there are some requirements (such as the need for auditing and quality systems at all points in the food production chain) which apply at a minimal level to all food *within* the borders of Australia and New Zealand.

The Australian Meat Industry Council reported inconsistencies in the treatment of imported meat post-border, compared with domestically produced meat:

> The import protocols clearly define the standards required for transport and processing of this product however there is much anecdotal evidence that the monitoring and verification of procedures once the product has entered Australia is not undertaken either due to adequate resourcing or inadequate management. (Australian Meat Industry Council 2008, p.6)

In a submission to the *Quarantine and Biosecurity Review 2008*, seafood exporters argued that the registration, auditing and quality systems with which they have to comply (albeit, at least in part, to meet commercial requirements of overseas markets) are not similarly required of competing food importers to Australia, with '… assurances from trading partners virtually taken at face value …' (Austral Fisheries Pty Ltd, WA Seafood Exporters Pty Ltd, Vee Jay Fisheries, Austfish Pty Ltd 2008). The NSWFA similarly reported that:

> The Authority is concerned that there is limited resources and minimal activity by AQIS to audit and verify businesses importing food into Australia. Many international food businesses are importing food into domestic markets with or without any quality systems in place and no verification of this system by AQIS in those countries as the appropriate agency. Whilst Australian exporters are subject to ever increasing importing country reviews of their systems there appears to be a substantial imbalance in the level of scrutiny applied to importers to Australia with many examples of product imported which has been poorly processed or not meeting standards (arsenic in seaweed, illegal additives in soya sauce, histamine in imported fish, hepatitis A in

cooked prawns, norovirus in imported oyster meat, listeria in imported ham). (NSWFA 2008e, p.1)

To the extent that domestic food safety standards are being implemented more stringently on domestic businesses than on competing import businesses, the additional costs incurred by domestic businesses could be considered a compliance cost of domestic food safety regulation.

14.3 Compliance issues with the administration of food export regulation

Safety for human consumption is just one of a number of reasons why food exports are regulated. Food export regulations are also aimed at maintaining the marketability of products from the exporting country, enhancing the reputation of the country's regulatory authorities as assurers of the quality of food products, satisfying biosecurity and cultural requirements, and meeting conditions of international obligations and agreements. As such, it can be difficult to separate out the cost to businesses associated with the regulation of food exports for food safety reasons, from costs incurred for other purposes.

Most businesses that incur costs associated with regulation of exports for food safety purposes are exporting businesses. However, over the course of a number of regulatory reviews, industry organisations and businesses have noted instances when export standards are imposed inconsistently across Australia (in particular), or applied to food products destined for the domestic market, and so the potential impact of food safety provisions in export regulation can be widespread.

Export fees and charges

There is a range of fees that businesses incur to export from Australia or New Zealand. These fees include fees for services, documentation and registration of premises, and vary substantially in both amount and complexity between industries. Some export requirements that incur fees are not directly related to food safety and may be required of some non-food exporters — for example, export declarations, export permits, export licensing of premises. However, depending on the product and its destination market, a food exporter may also incur food safety related export costs associated with the following requirements:

- an approved arrangement — an arrangement between AQIS and the exporter that details, for each stage of production, controls that should be used to ensure

that food safety and other legislative and importing country requirements are met. For food processors, this includes a HACCP plan

- registration of premises for export — required for export under the meat, dairy and fish export programs in order to obtain an export permit. Registration requirements govern the need for approved arrangements, keeping of records, and the construction and operation of establishments
- inspection of prescribed goods to ensure that the goods are 'safe, wholesome, accurately described and meet international market conditions and obligations' (AQIS). For example, AQIS is required to inspect all meat carcasses (under the *Export Control (Meat and Meat Products) Orders 2005*)
- export certification — government to government assurance by AQIS to the importing country, that the exported food is wholesome, prepared under hygienic conditions and meets all health and safety standards of Australia and the importing country.[6]

A detailed listing of AQIS and NZFSA fees and charges for exports is in appendix C with a summary presented in table 14.2.

6 Under the *Australian Meat and Live-Stock Industry Act 1997*, all export abattoirs, boning rooms and other businesses exporting meat must hold an Export Meat Licence, which in turn, requires Aus-Meat Accreditation. Businesses wishing to be accredited by Aus-Meat must implement an Aus-Meat approved quality management system designed to ensure consistency of quality and accurate product description. AQIS and Aus-Meat have a Memorandum of Understanding which allows Aus-Meat to manage industry standards for trade description and national accreditation standards for Aus-Meat Accredited Enterprises.

Table 14.2 **Fees to export selected key food products from Australia and New Zealand**

Australian dollars, 2008-09 [a]

		Australia	*New Zealand*
Export licence[b]	per year	500	
Registration application/transfer	per application	300 to 334	
Registration as exporter			
Meat [c]	per year	0	112
Seafood (fee varies with size of operation)	per year	1 281 to 1 481	112
Dairy (fee varies with size of operation)	per year	1 468 to 2 654	112
Registration of risk management plan	per year		112
Official assurance/certification[d]			
Meat (electronic)	per application	12	29
Seafood (electronic)	per application	6 to 15	29
Dairy (electronic)	per application	16 to 42	29
Inspections/audits			
Meat	per hour	182	112
Seafood	per hour	172	112
Dairy	per hour	268	112

[a] Estimates for New Zealand are based on an average $A/$NZ exchange rate of 1.23 in 2008-09. Estimates for Australia include a 40% government subsidy that does not apply from 1 July 2009. [b] The export licence fee is only applicable to exporters of livestock, meat and products of these. The fee is waived for those meat and livestock exporters that are registered as a meat export establishment and listed by AusMeat as a packer/exporter. [c] Given Australian Government subsidy of export fees, there was no charge for registration of meat export facilities with AQIS in 2008-09. [d] Rates apply to issue of original documentation. In both Australia and New Zealand, replacement documentation costs substantially more than original documentation.

Sources: AQIS and NZFSA websites; RBA (2009); AQIS pers. comm. (October 2009).

For the most part, AQIS fees and charges to export businesses are higher than those for similar activities in New Zealand — although it may be the case that the higher AQIS charges cover additional services over those provided by NZFSA to New Zealand exporters. Furthermore, while AQIS indicated that its export audits typically take 1.5 to 2 hours, verification by NZFSA can be more in the order of 3 to 4 hours (PC Regulator Surveys). This may mean that total export audit costs for Australian businesses are lower than those faced by New Zealand exporters.

The Commission was also provided with evidence that the costs of AQIS registration services are higher than domestic accreditation costs provided by some other agencies. For example, Safe Food Production Queensland (SFPQ) detail several cases in which their fees differ substantially from AQIS fees for similar services (SFPQ 2008b):

- Australian Country Choice exports less than 28 per cent of its production. Most of the exported product is a single line of offal to the European Union, the remainder is organic beef to South Korea. AQIS costs to this business are

reported to be in excess of $1 million per annum to cover approved arrangements (registration), online inspection costs and audits. SFPQ costs to this business are $5568 per annum for equivalent access to the domestic market

- SFPQ estimates that dairy export establishments would be paying AQIS at least $20 000-$35 000 per annum, depending on their size. Accreditation of the same establishment by an Australian state or territory authority would in most cases, be considerably less than this — for example, an exporter pays $5568 per annum for accreditation with SFPQ and registration by smaller dairy exporting businesses in other jurisdictions may be less than $1000. However, at $225 per hour plus GST, SFPQ fees for the audits that it conducts on behalf of AQIS appear to exceed the audit fees of AQIS (table 14.2).

The compliance burden of export regulation is potentially a more significant part of business costs for smaller than for larger exporting firms. Export documentation requirements and fees charged by AQIS and NZFSA are the same for all businesses in an industry, regardless of the size of the exporting business. The duration of an export verification may, however, be shorter for smaller businesses.

Export inspection and certification charges faced by Australian businesses have been subsidised by the Australian Government since November 2001. The 40 per cent subsidy was made on the basis that there were seen to be legitimate public benefits in the establishment of export market access and export overhead costs. Export certification costs around $100 million in Australia each year — about 80 per cent of this is associated with red meat certification (Condon 2009). The subsidy has been estimated to benefit Australian exporters (and cost Australian taxpayers) around $40 million per year (Senate Standing Committee on Rural and Regional Affairs and Transport 2009). A return to full cost recovery of AQIS export services was recommended by the *Quarantine and Biosecurity Review 2008* (Beale, et al 2008) but legislation to implement this was rejected by the Australian Senate in September 2009. Consequently, all export fees remain subject to a 40 per cent subsidy.

Duplication in requirements for primary production

All food exports from Australia are regulated under the *Export Control Act 1982* (appendix C). In addition, there are eight commodity-specific orders created under the Act that impact only on primary producers who export (for businesses in the meat industry, there are also a number of other relevant Acts that regulate their export activity). The export orders are prescriptive and require exporters: to comply with specified food standards; to ensure that the exported product is fit for human

consumption; and to make sure that statements made in relation to the condition and preparation of the product are accurate.

These export orders were, in addition to various state codes of practice, the main regulation on dairy and seafood exports prior to the development in Australia of the *Primary Production and Processing Standard (PPPS) for Dairy* and the *Primary Production and Processing Standard for Seafood* (see chapters 11 and 12). The Dairy PPPS is based on both international codes and the state and industry regulated food safety systems. While the export orders reference the ANZFS Code and Australian testing standards, the *Export Order (Milk and Milk Products) 2005* in particular, duplicates substantial aspects of processing hygiene systems now regulated under the Australian Dairy PPPS. Having achieved the Dairy PPP Standard through FSANZ, the Dairy Industry claims that it '…now reasonably anticipates removal of detailed Export Orders and streamlined systems for export certification and trade.' (Dairy Australia 2008, p. 15) Some progress toward this has been made through the Food Export Regulators Steering Committee (Dornom 2009, pers. comm.), but three years after the gazettal of the PPPS, areas of duplication with the export order remain.

Such duplication has not been raised as an issue by industry in New Zealand. The relationship between New Zealand's industry-agreed standards and requirements for primary production and their implementation through either a risk management program or a regulated control scheme (depending on the industry), are described in New Zealand's *Animal Products Act 1999* for both domestic producers and exporters.

Multiple and overlapping inspections and audits

The audit and inspection process can be one of the most costly aspects to business associated with proving compliance to food safety regulations. As discussed in chapter 8, some food businesses undergo audit or inspection by a state regulator in addition to audits for key clients and markets. For those that export food, there may be additional audits undertaken by a national regulator — NZFSA in New Zealand or AQIS in Australia. The 2000 National Competition Policy Review of Australia's Export Control Act (Frawley et al. 2000) concluded that:

> Australian exports of food and agricultural products have been disadvantaged by working under a combination of two systems – domestic and export – and legislation that is unnecessarily prescriptive.

Since that report, a number of regulators in Australia and New Zealand have created memoranda of understanding (MOUs) and other agreements to facilitate the

recognition of audits by other agencies, remove duplication in implementation of food safety standards and thereby reduce the compliance costs of business. For example:

- In Victoria, state regulators, local governments and AQIS have MOUs that allow recognition of each others audits. This reduces the need for several audits for differing purposes (such as an audit for domestic safety and an audit for export purposes). PrimeSafe auditors (covering meat and seafood) can also undertake audits that encompass AQIS specific regulations. Use of private auditors in Victoria for compliance checks and audits of dairy businesses may have helped to reduce regulator overlap and the costs of regulation to businesses in that sector.
- In South Australia, AQIS accepts Primary Industry and Resources South Australia (PIRSA) audits of primary producers but audits PIRSA on PIRSA's approach to these audits. The European Union also conducts similar audits on PIRSA and PIRSA's audit processes. The SA Dairy Authority undertakes audits twice a year on manufacturers supplying the domestic market and also audits those dairy businesses that export, both for itself and on behalf of AQIS (that is, the one audit serves the purposes of both bodies).
- SFPQ has inspectors 'in the field' completing audits of high risk areas to verify compliance and also undertake some work under contract for AQIS.
- Similar coordination arrangements exist with AQIS in other states/territories of Australia. For example, to assist AQIS with the issue of Official Certificates with respect to Edible Meat for Export, the NSWFA will issue a standard letter of assurance to AQIS as to the performance at last audit of any meat establishments licensed and audited by the NSWFA.
- In New Zealand, the agency responsible for verifying compliance with regulation differs by industry and/or the compliance tool in use and overlap in government audits has not been raised as an issue. Exporters of primary products have their risk management program audited either by NZFSA's Verification Agency (meat, seafood and poultry sectors) or by NZFSA-approved third party auditors (wine, dairy and other primary products not required by export markets to provide verification by government). For non-primary food production, Food Safety Programs are audited either by approved third party auditors or by NZFSA-approved local government environmental health officers. Several of the primary production industries in New Zealand advised the Commission during consultations that there is a perception in that country that Australian producers have to undergo fewer audits than their New Zealand counterparts.

Despite the progress in reducing duplication in audits and inspections in Australia, there remains a number of areas where this is a burden for business. The Australian

Meat Industry Council (2008) reported that to achieve adherence to overseas requirements, AQIS places inspection and verification staff in every export facility and subjects these facilities to multi level verification audits to ensure compliance. Some of the matters considered by AQIS in their audits is comparable to the matters state and territory regulators consider in fulfilling their food safety oversight obligations. Reflecting the level of direct involvement by AQIS, the Australian National Audit Office (ANAO) reported that Australia's meat export program has the 'most robust audit regime' (ANAO 2007).

SFPQ also reported that:

> AQIS continues to operate in a manner that: …
>
> - limits recognition of company based quality systems for export assurance
> - relies on direct input of AQIS inspection for market access at cost to the company.
>
> There is no effective contestability for these arrangements and so the company is a price taker in this arrangement. (SFPQ 2008b, p. 4)

The Commission was advised by a number of industry organisations and businesses of considerable overlap between AQIS/NZFSA audits and inspections (particularly assessments for export certification) and commercial audits of the key supermarket chains and overseas buyers. For example, some poultry processing plants in Australia have around 25 full-day audits per year. While two of these include the state health department (or equivalent) and another one or two per year are from AQIS, the remainder are private commercial audits. Some of the private commercial audits for poultry (and other foods) are premised on ensuring compliance with government regulation. That said, many of the commercial audit requirements are directed at food quality rather than food safety.

To the extent that commercial requirements exceed the domestic and export standards enforced on businesses, the costs to business of separate audits by government agencies may be reduced.

Table 14.3 **Frequency of audits for export purposes**
2008-09

Industry sector	*AQIS*[a]	*NZFSA*[a]
Meat and meat products		
Abbatoirs & boning rooms	1 month	1-3 months
Food processors	3-6 months	1-3 months
Cold stores & container stores	12 months	1-6 months
US approved cold stores	3 months	
Dairy products [b]		
Primary producers	6 months	3-12 months
Secondary & other processors of milk & milk products	6 months	1-3 months
Handlers, transporters & storers of milk & milk products	12 months	6-12 months
Fish and fish products	1-12 months	1-6 months
Eggs and egg products	1-12 months	1-3 months

[a] Range in audit frequencies reflect maximum and minimum frequencies – actual frequency within these ranges depends on the type of product and the business's performance. [b] In addition to these inspections for dairy, 'load out inspections' are carried out on each exporter at least once per year.

Sources: DAFF (2008a); ANAO (2007); NZFSA (2009f).

Intensity of export regulatory activity

The existence of additional inspections and audits for export purposes imposes added costs on business if the manner in which regulatory and enforcement activities are undertaken is considered by business to be unduly intense, compared with the risks involved. Regulatory activity that is unduly intense or onerous could be determined, for example, by a comparison with other businesses, by comparison with requirements for other markets (such as the domestic market), or by comparison with benefits derived from the activity.

Meat is the most intensely monitored industry

As guidance in the regulation of food industries, the Australia New Zealand Food Authority (now FSANZ) prioritised, on the basis of the risks to public health and safety, a large range of food activities (ANZFA 2001). Apart from the production of salami, no meat business is classified as 'high risk' and some (such as boning rooms and butchers) are 'low risk' activities. Despite this, meat is more intensely monitored than many food activities that were considered to be of a higher risk to public health and safety.

The Australian Meat Industry Council reported that:

> …the red meat processing industry is subject to a level of scrutiny no other commodity has to endure…' and that the AQIS presence at every export facility is '… not simply an oversight but an active controlling input that is not risk based, does not ensure food safety outcomes are achieved, and does not add value to the processors output in any way. (Australian Meat Industry Council 2008, p. 8)

SFPQ similarly reported that although the number of export markets supplied by Australian meat has expanded over recent years, rejections of the product at foreign borders have declined. Given these trends, they noted that:

> While the advances that have been made are welcome, many members of the meat industry are still at a loss to identify the value that AQIS adds to their business (apart from processing requests for export permits). (SFPQ 2008b, p.4)

Parallel concerns were expressed in the New Zealand meat industry. While not disputing the role of the NZFSA Verification Agency (NZFSA VA) recognised verifiers on site in export meat facilities, the NZ meat industry advised that the productivity of the NZFSA VA staff when on site was questionable at some facilities, given a lack of continuity in activity requiring NZFSA VA attention. This can be particularly an issue in smaller premises or in those that operate with multiple shifts (and may have an overlap of vets on-site at slower times of the year). The cost of having NZFSA VA on site is borne by the business but is a cost that business chooses to incur in order to supply (or be ready to supply) to overseas markets. NZFSA advised the Commission that 97 per cent of NZFSA VA staff time is spent on verification-related activities (including both auditing and inspection tasks), with the remainder related to the provision of official assurances. Furthermore, NZFSA advised that they attempt to utilise their staff resources in other areas (and transfer costs accordingly) during meat premises shut-down periods (NZFSA pers. comm. 2009).

Maintenance of reputation and a 'safety factor'

Other industry groups advised the Commission that they considered intervention by AQIS to be more related to the overall protection of Australia's 'food brand' (which has broader public benefits) than to specific export-destination requirements. The Australian Horticultural Exporters Association (AHEA), for example, considered the rigorous implementation of export requirements to be an inadvertent consequence of attempts to maintain Australia's reputation as a producer (and consumer) of high quality produce:

> AQIS in the past has attempted to interpret import protocols in a heavy handed way, and foreign trading partners have in turn expected rigorous export inspections, which unnecessarily increases the costs of doing business … sometimes inspection regimes

> for imports are imposed on exports because Australia wants to be seen as even handed. (AHEA 2008, p. 4)

Further, there is a perception in some jurisdictions and industries that foreign country requirements are amplified by AQIS to create a 'safety factor'. For example, an AQIS certificate is required for all exports out of Australia if the words 'organic' or 'biodynamic' appear on the accompanying paper — irrespective of whether the importing country requires an 'organic export certificate' or not (NASAA Certified Organic 2009).

SFPQ similarly reported that in clearing food products for export, AQIS operates in a manner that:

> … relies on the highest common denominator being applied as the standard for all export markets. An example of this is the current arrangements proposed for the Australian dairy industry that are based on access to the EU market when less than 4 percent of our production is actually sent to this market. (SFPQ 2008b, p. 4)

These concerns were also expressed to the Commission by some industry groups in New Zealand, with the European Union requirements being applied to all food exports irrespective of the destination country. Since the European Union audit requirements are some of the most demanding (appendix C), this potentially imposes unnecessary costs on some exporters.

Specificity of documentation increases the regulatory interaction

Some groups in Australia's seafood industry advised the Commission that the distinctiveness of AQIS export certification can unduly increase business compliance costs. In particular, AQIS certification is undertaken by species and product and so being certified to export frozen spanner crabs for example, does not enable that business to also export cooked and chilled spanner crabs. A separate AQIS certification for each species and product combination is required. As noted earlier, each certification document provided under the Fish Exports Program was a cost to the exporter of up to $60 in 2008-09 (excluding any associated inspection or audit fees).

Consistency of treatment across jurisdictions

Inconsistent regulation of exports for food safety means that those businesses subject to more stringent requirements incur additional costs (and are potentially at a competitive disadvantage), compared with businesses that are not obliged to comply with such requirements.

The Tasmanian Freight Logistics Council reported a lack of uniformity in the enforcement of export orders, compliance and audits by AQIS:

> Some companies have more stringent controls required of them by AQIS than other companies who seem to get away without such controls. (Tasmanian Freight Logistics Council 2008, p.2)

The AHEA similarly contended that the consistency of export inspection and certification varies across Australia and is not accountable:

> … there can be as much as 100% variation in inspection costs, depending on the inspector, the market, the product and the day. A lack of bench marking hides inefficiencies and accountability. (AHEA 2008, p.5)

On this basis, the AHEA endorsed the need for a benchmarking of AQIS export inspection operations against those of other countries such as New Zealand, Chile and South African (AHEA 2008).

Widespread use of the most stringent export standards

Breadth in enforcement of export standards

The Frawley report (Frawley et al. 2000) recommended adoption of a tiered approach to export standards whereby the domestic food safety standards would represent a starting point for export certification (rather than have a separate 'export standard'). The NSWFA considers that there has been a general reluctance by AQIS and the Commonwealth to fully implement these recommendations. They contend that this lack of recognition of the domestic system has resulted in Australian food businesses having to comply with stringent export requirements (which are generally the EU or US importing standards) — even when exporting to countries that have food safety standards below the Australian domestic system (NSWFA 2008). Similarly, the Victorian Department of Primary Industries reported that:

> Audits against the current Approved Arrangements, under instruction from AQIS, must meet all the requirements of EU directives even though the export-registered establishment does not export product to the EU. Cases can be cited where high value specialty dairy products can be imported into Asian markets where SRA approval would be acceptable rather than the specific requirements of the EU. AQIS has stated it cannot allow flexibility for market access requirements as this introduces complexity for its administration. Industry is seriously disadvantaged because of this lack of flexibility. (Victorian Government 2008b, p.3)

The Commission was advised by New Zealand businesses that a similar lack of distinction (or at least, a perceived lack of distinction) exists between domestic and

export requirements in that country — to the extent that in some industries, it is difficult to obtain information from NZFSA on what the domestic standards actually are. To some extent, this reflects the dominance of export markets as a destination for most of New Zealand's primary production.

It can be also be burdensome to business if the standards of different export markets are not differentially applied by the domestic regulator such that exporting businesses consequently bear the costs associated with maintaining their country's reputation as a producer of top quality food (rather than just the costs associated with meeting the requirements a particular export market). For example:

- The Commission was advised that EU and US standards are routinely required for all production of certain products (such as meat, seafood, and increasingly, dairy) even where only a proportion of a business' production is exported to these countries. This situation partly arises if, as the Commission understands it, EU and US standards require that even if only a part of an animal is exported to those countries, processing of the entire animal body has to be audited to those standards.
- Controls on the use of hormonal growth promotants (HGPs) is an export requirement imposed on the entire NZ beef herd, even though only a small proportion of NZ beef goes to markets which have this requirement. Similarly, bans on the use of oestradiol in certain food producing animals is a prohibition which applies to all NZ farmers, but is only necessary to meet requirements of some overseas countries. The Commission was advised that it is neither cost effective nor acceptable to the market to apply controls on HGPs and oestradiol other than via a complete prohibition (pers. comm. New Zealand Government, 5 October 2009).

For businesses which export to markets with these requirements, any costs associated with meeting the overseas requirements are a commercial burden rather than a burden of food safety regulations in Australia or New Zealand – indeed, the business may receive some benefit from its export market associated with the increased certainty derived from having the particular requirement so broadly applied in the country. For businesses which do not export to such markets, widespread application of these requirements across all businesses is part of the broad regulatory framework in which they operate (of which food safety is only a part).

Breadth of application of export standards is potentially less of an issue for Australian businesses exporting food only to New Zealand. Under TTMRA, Australian suppliers to New Zealand do not require export registration or AQIS inspection of premises. In contrast, foods exported to Australia from New Zealand

must be sourced from New Zealand business premises that are approved for export (DAFF 2008d). However, given the high proportion of New Zealand's food that is exported, this may not be an issue for many New Zealand businesses.

The Commission would welcome further information on the extent to which overly broad application of an export standard increases business regulatory compliance costs in New Zealand and Australia and to what extent these apply to domestically sold product as well as exported product.

Voluntary use of export standards

In some industries and jurisdictions, there are businesses which maintain export standards voluntarily either to enable ready access to overseas markets as desired or because it is less costly than separating out the export product from the domestic product.

For example, Queensland food businesses are encouraged to export or achieve export ready status as part of their business planning – and state government programs promote and assist businesses to reach this objective. SFPQ reported that of the 7500 businesses in Queensland that it accredits, 42 of these are also export registered with AQIS. However, none of these 42 businesses deal exclusively with exports — rather, all rely on the majority of their product being sold on the domestic market (SFPQ 2008b). They further noted that the cost implications of this 'export readiness' vary with business size:

> While the large businesses cope reasonably well with both the complexity and cost of current requirements set by AQIS, they employ quality assurance managers for this purpose, small and medium size enterprises and those who do not employ specialist staff are finding it hard to manage these requirements. (SFPQ 2008b, p. 1).

Aquaculture in Tasmania is similarly all produced at export standard and monitored by AQIS. The Commission was advised that a small quantity of seafood not destined for export markets is processed in export registered premises. AQIS currently do not inspect these products, except to ensure that they do not contaminate the exported product. On the one hand, this reduces the regulatory burden that would exist if the business needed to demonstrate that the domestic product also met export standards. However, this benefit may be lessened if the lack of AQIS involvement with the non-export product in the export certified shed means that the business must undergo an additional inspection to demonstrate compliance with food safety requirements for another regulator (such as a local council).

14.4 General organisational and procedural issues

Skills and knowledge of enforcement staff

A key determinant of the costs that businesses incur associated with the enforcement of food safety regulation for imports and exports is the skill level and breadth of knowledge of enforcement staff in AQIS and NZFSA.

The consistent view of industry organisations and businesses in both Australia and New Zealand is that skills and knowledge of enforcement staff vary substantially across jurisdictions and products. Specifically, businesses reported additional costs incurred to demonstrate compliance because some AQIS and NZFSA staff were:

- skilled in one product but not in the range of products necessary to undertake verifications adequately — for example, ability to recognise different fish species
- not sufficiently knowledgeable about production systems in the industry that they were assessing — this can mean that business effectively incurs additional costs to 'educate' the AQIS and NZFSA inspection staff
- attempting unsuccessfully to draw parallels between different industries — for example attempting to enforce food safety practices and documentation requirements of the red meat industry on poultry meat industry
- unable to understand and interpret their own requirements in a consistent manner resulting in different AQIS inspectors requiring different modifications to a particular business's food safety plan.

The Tasmanian Freight Logistics Council reported that:

> … a major frustration expressed by many of our members was not being able to speak to a single person in Tasmania who has responsibility and authority to talk to them on AQIS … the separation of duties amongst AQIS staff further frustrates our members – AQIS staff dealing with fish can only do fish, those that do dairy can only do dairy and the same applies to meat and vegetables. Why do companies need to deal with a different AQIS representative for fish, dairy, meat and vegetables? In some instances our members need certification from four different areas of AQIS and consequently have to deal with four different people from AQIS. (Tasmanian Freight Logistics Council 2008*,* p.2)

While a number of industry organisations have commented on inconsistent application of food safety requirements for domestic production, imports and exports, SFPQ attributed this, in Australia, to be partly due to coordination and

communication within AQIS: '… there is no harmonisation within AQIS between the export division and importing division.' (SFPQ 2008b, p.7)

Technology and information of the regulators

AQIS and NZFSA have taken steps in recent years to greater use of electronic formats for export and import documentation and approval processes. Replacement of paper based systems with electronic is seen to be a significant source of compliance and enforcement cost savings for businesses both directly and indirectly (as many of the regulator services are cost recovered from industry). For example, NZFSA has, since 1998, relied on electronic certification of all exports of animal products, dairy products and plant products (see appendix C for further detail). During 2008-09, over 150 000 such certificates were issued (NZFSA pers. comm. 2009). AQIS adopted the system into Australia in 2001 and although ANAO (2007) reported that adoption of the system varies substantially between industrie, most export certification of meat, dairy and seafood is done electronically.[7] but use of the system for other products, such as horticulture and grains, remains low.

In discussing reforms to the export certification process in Australia, the Minister for Agriculture described the current system as 'in desperate need of modernisation, with an outdated IT system and heavy reliance on time-consuming paperwork rather than electronic processing.' (The Land 2009)

Industry organisations have similarly advised that AQIS has some way to go in the use of technology in its enforcement processes. The AHEA contended that:

> The imposition of ExDoc's by AQIS on industry has been a commercial disaster, very costly and today is technically a dinosaur… (AHEA 2008*,* p.6)

Tradegate (a not-for-profit provider of trade and e-commerce services) reported that:

> AQIS still relies heavily on various pieces of paper and manual interpretation of documentation … the current heavy reliance on paper acts as a significant barrier to trade by imposing unnecessary costs on importers and exporters … the provision of information in electronic data format would assist Australia's exporters to more efficiently have their goods imported into the country of destination. (Tradegate 2008, p.2)

[7] Use of electronic certification for other products such as grains and horticulture remains low, but these are not regulated by AQIS for food safety purposes.

More generally, industry groups have reported that AQIS requirements of exporters are based on outdated concepts and approaches. In particular, the Australian Meat Industry Council reported that:

> … many (if not all) of the requirements of the regulators are outmoded procedures based on early 1900s knowledge and technology. (Australian Meat Industry Council 2008, p. 8)

The NSWFA similarly reported that additional regulatory burden is incurred by some prescribed food exporters because 'AQIS has not recognised advancements in the Australian food safety system particularly with the move by domestic regulators to outcome based standards underpinned by science based analysis of hazards.' (NSWFA 2008d, p.3)

NSWFA reported that 'database issues' and the self categorisation of food types by importers means that AQIS is unable to adequately identify different categories/types of foods coming into Australia NSWFA 2008d). Another consequence of a lack of adequate information technology identified by the Food and Beverage Importers Association, is that there is limited capacity for reviewing whether import conditions remain necessary or are too restrictive (FBIA 2008).

On the export side, the Tasmanian Freight Logistics Council noted that when there are changes in regulations in Australia or in other countries that impact on AQIS responsibilities, AQIS is not pro-active in advising local exporters of such changes (Tasmanian Freight Logistics Council 2008, p.3). These situations can result in businesses incurring additional costs to comply with irrelevant, redundant or superseded requirements.

Availability of regulator and testing facilities

The availability and timeliness of AQIS and NZFSA staff in assessing compliance of imports and exports with food safety requirements impacts on a range of business costs including transport and storage of products and product shelf life. As discussed in box 14.1, this may be particularly an issue for businesses with fresh food products (such as fresh seafood).

The AHEA claimed that exporters have difficulty booking export inspections between Christmas and New Year and inspection charges at this time 'prevent exporters from shipping viably between Christmas and New Year, while all Asian markets are open for business. Similarly, exporters have to book a week in advance to ensure AQIS inspections are available over the Easter break, or alternatively produce is inspected by AQIS days ahead of export, which is not ideal for perishable products.' They further contend that as an alternative during peak times,

use of third party bodies to deliver inspection services has been opposed by AQIS. (AHEA 2008, p.3) NZFSA similarly restrict use of approved third party auditors to some products and a number of export markets (EU and US for example) require audits by a government (rather than third party) authority.

As part of the verification/auditing process, AQIS and NZFSA require a proportion of high risk imported products and prescribed exported products to undergo analytical testing. Each authority provides a listing on their website of laboratories that have been approved to undertake particular tests. For example, for meat exports approved testing laboratories are located in all states of Australia (but not in the Northern Territory or ACT). The Commission was advised that in remote parts of Australia and in the Northern Territory, a lack of accredited laboratories can mean that samples are sent interstate for testing. This adds to the time and cost of the process to the business seeking to demonstrate compliance with food safety regulation.

Need for skills/consultant to meet food safety requirements

Industry organisations and businesses across Australia and New Zealand advised the Commission that it is not unusual for larger businesses — which may already employ staff to implement food safety provisions — to employ additional staff to handle the external inspectors and auditors that come on site and to demonstrate the business's compliance with food safety regulation.

In the Northern Territory seafood industry, for example, the Commission was advised that many operators rely on consultants to prepare food safety plans under the export control requirements. The cost for these consultants is typically $5000 to $6000 and the plans are often based on a template and extend to several hundred pages. In many cases, these plans are not used on a day to day basis and not all staff involved in seafood handling or processing are aware of the contents of the food safety plan for their business. AQIS can, but does not typically, inspect fishing vessels at sea. As an alternative, AQIS audits paperwork and periodically inspects vessels in port. The Commission was advised that a company with five or six boats would usually require a full time staff member on shore for ongoing management of its food safety plan and other related paperwork. Seafood businesses may also require staff to be trained in testing of their product and the water used in product storage and processing, in order to be able to demonstrate compliance with food safety regulations.

Appeals process for AQIS and NZFSA decisions

NZFSA has a formal internal appeal process in place to handle complaints on its operations, including those of NZFSA VA. The manner and timeframe in which complaints will be handled and considered is clearly spelt out.

In contrast, AQIS has an informal process for registering complaints through regional investigations managers or ultimately, via the Commonwealth Ombudsman, but it does not appear to specify the way in which such complaints will be dealt with. This means that for most imported and exported food products in Australia, there is little formal recourse for businesses that dispute decisions made on the compliance of their products. Industry organisations in the Northern Territory advised the Commission that debate with AQIS typically stops within the Darwin office, while SFPQ note that perceived repercussions for business limit the likelihood of direct complaints to AQIS:

> AQIS is not held accountable because companies prefer to pay up and have a whinge on the side rather than argue too directly with AQIS and risk disruption or market access. (SFPQ 2008b*,* p.5)

A formal legal challenge through the court system on a ruling by AQIS or NZFSA VA is a possibility for all businesses, but as this could prove more costly than the derived benefits, it is unlikely to be a viable option for a small to medium business.

15 Comments from jurisdictions

In conducting this study, the Commission was assisted by an Advisory Panel comprised of representatives from each of the Australian, New Zealand and Australian state and territory governments, and from the Australian Local Government Association. In addition to providing advice to the Commission and coordinating the provision of data, government representatives examined the draft report prior to publication and provided detailed comments and suggestions to address factual matters and improve the analysis and presentation of the data.

The Commission also invited each jurisdiction, through its panel members, to provide a general commentary for inclusion in the report. These commentaries are included in this chapter, and presented in the same order as the data in the report.

New Zealand

“ New Zealand appreciates the breadth of the Benchmarking Report prepared by the Australian Productivity Commission and the opportunity to have contributed.

The benchmarking exercise will be useful to New Zealand is many respects. There are, however, some key differences that affect comparability. For example, New Zealand operates an integrated regulatory system: ‘from the farm to the fork’ and New Zealand’s economic reliance on food commodity exports, with over 80 percent of food produced being exported, ensures economic impact of actions is a key focus.

Given New Zealand’s export driven agricultural industry, in reality very little primary product in terms of volume and value, is processed exclusively for the domestic market. Maintenance of international market access is vital for the vast majority of New Zealand’s primary producers and compliance with requirements to assure continued access paramount. Different standards apply for export and domestic product but businesses make a commercial choice about the predominant market for their products and, for market flexibility, process to the relevant standard. With food, this is more often the applicable export standard. This in turn positively assists NZFSA’s market-access negotiation strategy.

NZFSA invests in educating businesses on their legal requirements and options for meeting requirements. Some of the comments in this Report from New Zealand producers and processors, reflecting their concerns, indicate there is more to do. We have duly noted these responses and will be reviewing ways to improve the level of stakeholder understanding.

The Report suggests a number of deficiencies in the New Zealand food safety environment by way of comparison with other jurisdictions. A number of such suggestions are drawn from survey responses received by the Commission from New Zealand’s Territorial Authorities (councils). It is important to note that while comparisons are always interesting, the utility of those comparisons is limited by the small sample size. Information was reflective of responses to requests for information from 19 of the 73 New Zealand Territorial Authorities.

A number of deficiencies in the New Zealand system identified in the report have been similarly identified in the course of New Zealand’s conduct of a Domestic Food Review over the past five years. These include: overly prescriptive food hygiene standards; a higher compliance burden (in terms of the number of inspections) on low and medium risk food businesses; a lack of enforcement powers for local councils; and inconsistent training requirements imposed by local councils.

These issues are to be addressed by the New Zealand Government in the development of new food legislation. A Food Bill is being drafted that will:

- mandate risk based tools (both regulatory and educative) and shift the onus of

responsibility from the Government to the food business operator;

- replace the outdated Food Hygiene Regulations 1974 with regulations that are outcome based and enabling;
- ensure that inspection ('verification') frequencies for low and medium risk food businesses (largely performed by Territorial Authorities) are based on both risk and performance - aiming to reduce compliance burdens over time;
- improve penalty provisions and provide a better range of compliance tools such as penalty infringement notices and improvement notices;
- regulate for any food industry training requirements at the national level, removing the need for Territorial Authority by-laws that create inconsistencies; and
- allow for the introduction of a national grading scheme for restaurants.

The new Food Bill is planned to be enacted in 2010 and to be implemented over a subsequent five-year transition period. ”

New South Wales

“ The NSW Government supports the Productivity Commission’s draft report on benchmarking food safety regulation across Australian jurisdictions. By comparing different approaches, jurisdictions can gain further insight into the mechanisms that deliver good practice and good regulatory outcomes. NSW is also committed to improving food safety regulation through involvement in the Council of Australian Government’s initiatives to achieve a Seamless National Economy.

As NSW has previously stated, one of the main benefits of the benchmarking study is the ability to compare over time whether improvements are being made. The NSW Government supports the ongoing review of this area of business regulation.

NSW Food Authority

The NSW Food Authority is the only “through-chain” regulatory agency in Australia. This approach allows for a consistent, integrated approach to all aspects of implementation and enforcement of the Food Standards Code (not limited to food safety). It is also beneficial for businesses because it provides a single interface for all stakeholders, including consistent management of key stakeholder relationships.

Food regulation initiatives in NSW

The NSW Government’s ongoing commitment to reducing regulatory burden has led to the development of a number of measures that will be incorporated into the remake of the Food Regulation in 2010. These include:

- a consistent licence and audit fee regime across all regulated industry sectors, on a revenue-neutral basis;
- rationalisation of licence categories and associated fees within the meat industry;
- consolidation of numerous food safety scheme manuals into a single, consistent document across all schemes; and
- simplification of administrative processes in relation to licence fee waivers.

The NSW Food Authority is working on several initiatives that will reduce food borne illness and improved consumer access to information across the food chain. These include:

- refining the operation of the Name & Shame website, including scoping of complementary measures such as rating systems;
- implementing mandatory food handler training for high-risk retail and food service sectors; and

- developing standardised inspection templates to be utilised across all enforcement agencies (including the Authority and local government partners).

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Victoria

“ The efficient regulation of the food industry in Victoria is a key objective for the Victorian Government. Over the past decade, Victoria has implemented initiatives to improve food safety outcomes and lower the burden of regulation in order to enhance outcomes for food consumers and businesses alike. Moreover, significant reforms are currently being implemented by the Government that will come into operation from 2010.

The Victorian reforms implement best practice and are informed by a detailed review of the pre-existing framework. In September 2006, the then Victorian Treasurer, John Brumby MP, sent terms of reference to the Victorian Competition and Efficiency Commission (VCEC) to identify opportunities for reducing and streamlining food regulation (including harmonisation of national and state regulations). This inquiry was the first of its kind by a state or territory government in Australia.

The year-long VCEC inquiry resulted in 37 recommendations designed to reduce regulatory burden and enhance the effectiveness of the regulatory framework. The Government supported 35 of these recommendations in full, part or principle. Progress in the reforms emerging from this inquiry are set out in the Progress Report: Victorian Government Response to VCEC’s Final Report, released in August 2009. Central to these reforms is the Food Amendment (Regulatory Reform) Act 2009 which received Royal Assent on 5 August 2009, with phase one reforms commencing operation from 1 July 2010.

The reforms reduce the regulatory burden on food businesses by, among other things, amending the requirements on businesses and not-for-profit organisations to prepare a Food Safety Program and to have a Food Safety Supervisor. Obligations on businesses will be imposed in a more graduated manner based on the degree of risk associated with the food-handling activities undertaken. The amendments also increase the consistency by which the Act is applied across the State.

Due to the timing of the Productivity Commission’s report into Performance Benchmarking, in that it looks at the food regulatory environment as at 30 June 2008, the Commission’s analysis does not reflect the impact these reforms will have on Victorian businesses when they come into operation over 2010 and 2011.

The Victorian Government recognises the importance of the Productivity Commission’s inquiries into regulatory performance benchmarking as a catalyst for reform and continuous improvement. While the Commission’s benchmarking exercise on food regulation does not reflect quantitatively the significance of the reforms currently underway in Victoria, future benchmarking studies in this area should enable the gains from the current reforms to be identified and measured.

Across the broader regulatory environment, the Victorian Government has made a commitment to reduce the administrative burden of regulation through the Reducing the Regulatory Burden initiative introduced in 2006. Based on initiatives that have been completed or are underway, the estimated reduction in

the administrative burden of regulation was estimated to be $246 million at 1 July 2009. In September 2009, the Government announced an increased target of a $500 million reduction by July 2012, which includes reductions to substantive compliance and delay costs.

In addition to the inquiry into food regulation, the Government has commissioned the VCEC to identify ways to improve the regulatory environment and to reduce the burden of regulation in areas such as environmental regulation, the development of regional Victoria and the housing construction industry. The Government has also recently directed VCEC to undertake inquiries into the financial services sector and local government regulation, with a view of identifying ways in which government can better regulate these sectors. ”

Queensland

“ The Queensland Government is committed to promoting opportunities for economic development by lifting productivity and competitiveness through implementing state and national reform agendas focused at reducing unnecessary regulatory burdens on business, community and government.

Regulation is necessary to protect the community and environment, and is an essential part of running a well-functioning economy and society. However, the Queensland Government agrees that it is important to find an appropriate balance between the benefits and costs of regulation to deliver the best possible outcomes for business, community and government.

Queensland supports this initiative by the Commission to inform the Council of Australian Governments of differences in the compliance burden between jurisdictions in food safety regulation and highlight areas which may benefit from further reform. Queensland notes that the Commission acknowledged it was unable to establish if higher regulatory burdens are linked to better food safety outcomes. However, in the context of identifying possible future reform directions, these regulatory differences must be evaluated in terms of their effectiveness in delivering food safety outcomes.

Queensland contends that in several cases jurisdictional differences are the result of innovative approaches to achieving food safety outcomes that reduce the regulatory burden, simplify the regulatory environment or formalise existing commercial best practice. For example, the early involvement of Queensland Health in cases of suspected intentional contamination of food, minimises the costs to business by preventing unnecessary product recalls and delivers best public safety outcomes by facilitating prompt investigation by authorities which is coordinated by Queensland Health, not the affected business.

Queensland is pleased that the Commission has recognised the innovative work undertaken by Safe Food Production Queensland (SFPQ) to minimise the regulatory and compliance burden on business and industry. Since its establishment in 2002, SFPQ has continued to partner with industry, peak bodies and individual businesses to achieve the minimum effective regulation within Queensland’s primary production and processing sectors. As noted by the Commission, this co-regulatory approach has seen the development of alternative compliance arrangements such as the Dairy Monitoring Scheme and preferred supplier arrangements for egg producers. These arrangements build upon and formalise existing commercial best practice. These outcome-focused approaches ensure targeted compliance, thereby preventing unnecessary monitoring at inappropriate stages in the food production process.

Queensland has taken a proactive approach to the early implementation of reforms to high risk areas identified by the Australian and New Zealand Food Regulation Ministerial Council in 2002. Queensland’s requirements for caterers

to have a Food Safety Program (FSP) is consistent with the principles of the Ministerial Policy Guidelines on Food Safety Management in Australia: Food Safety Programs. Queensland's requirements for FSPs in the catering sector affect fewer food businesses than what is currently proposed by Food Standards Australia New Zealand. The advance work undertaken by Queensland is positively influencing the national Standard setting process and will help ensure that the desired food safety outcomes are developed in an efficient and cost effective way that minimises the regulatory burden on industry.

With the exception of the requirements relating to caterers and suspected contamination of food, the Food Act 2006 does not impose additional regulatory requirements, despite the Commission's findings that the Act contains nearly twice as many provisions as the Model Act. Queensland regulation has a distinctive plain English style which incorporates the generous use of white space, footnotes and separation of provisions to support improved interpretation and understanding and ensure clarity of intent.

The report indicated that Queensland had the greatest variation in fees and charges imposed by Local Government. The Local Government Act 1993 provides local government with the ability to autonomously establish cost-recovery fees for regulatory activity. As indicated by the Commission, the degree of variation is likely to reflect differing policy decisions regarding the extent to which costs are recovered. The debate regarding the appropriate division of costs associated with food safety regulatory activity between industry and government is beyond the scope of the report.

The Queensland Government has a long standing commitment to improve Queensland's regulatory environment. The Government is strengthening this reform agenda by taking action on two fronts to put in place a regulatory environment that delivers better economic, social and environmental outcomes.

At the national level, this Government is working with other Australian jurisdictions to deliver a seamless national economy by implementing regulatory and competition reforms in 36 key areas to improve the efficiency and inter-jurisdictional harmonisation of the regulatory environment. At the state level, the Queensland Government is implementing the Smart Regulation Reform Agenda to reduce and prevent unnecessary regulatory burden on business, community and government by tackling the quantity of existing regulatory stock and the quality of future regulation simultaneously.

Key actions under the Smart Regulation Reform Agenda include:

1. The Queensland Regulatory Simplification Plan 2009-13 which targets an initial reduction of $150 million per annum in the compliance burden to business and the administrative burden to government by 30 June 2013; and

2. An enhanced regulatory development system which will introduce a streamlined, more rigorous and harmonised regulatory development and review system that will be fully implemented as early as possible in 2010.

South Australia

“ The South Australian Government remains committed to meeting its public health objective of ensuring food is safe for the community whilst using minimum effective regulation.

The Food Industry in Australia is diverse in nature, size and risk profile. Different sectors require different regulatory approaches.

The South Australian food industry is predominately made up of small to medium sized enterprises (SMEs). For this reason South Australia supports a regulatory framework that provides greater certainty and information for food businesses. It is recognised that outcome based standards provide flexibility and innovation for large industry but can create uncertainty for SMEs. “Deemed to comply” guidelines or codes of practice can co exist with outcome based standards to provide greater guidance and support for business in meeting their food safety requirements.

The South Australian Government recognises the need to coordinate regulatory resources and has MOUs in place between key agencies. SA Health has recently revised its Memorandum of Understanding (MOU) with Local Government in relation to activities under the SA Food Act. The MOU clarifies responsibilities and commits the two levels of governments to work together to improve food safety and the application of the Food Act. A work program is being established under an agreed model which recognises the need for accountability, consistency and transparency for food regulators. Key areas of work identified for the program include:

- Improving consistency in the application of the legislation,
- Implementation of a risk based approach to inspections,
- Professional development and support to food inspectors, and
- Improving data collection and management to enable targets to be set for resources and consistency.

The activities of the program aim to provide food businesses with greater clarity and consistency from food regulators. South Australia welcomes the Productivity Commission report in identifying any further areas that may be included in the work program.

South Australia also welcomes the report’s recognition of good governance practices by the Department of Primary Industry and Resources South Australia (PIRSA) leading to lower business compliance burdens for primary industry businesses. ”

Western Australia

“The Western Australian Government is committed to improving the quality of food safety regulation in Western Australia. The Government has passed the new Food Act 2008 in July 2008 as part of its commitment to implement the agreed regulatory changes. It is anticipated that the Food Act 2008 will be proclaimed by the end of October 2009.

It is noted that Western Australia has separate hygiene regulations which are in addition to those contained in the ANZFS Code. With the introduction of the Western Australian Food Act 2008, the food hygiene regulations will be repealed and most of the food safety provisions will be contained within the Act and reflect ANZFS Code.

The new food law will be consistent with best practice principles of regulation as endorsed by the Council of Australian Governments (COAG) and an important milestone for Western Australia in meeting its COAG commitments for regulation reform.”

ACT

“The ACT Government welcomes and supports the Productivity Commission’s efforts in gathering and analysing the substantial amount of information provided in the Report. The Government recognises the significant contribution food businesses provide to the economy and the community.

The ACT is committed to undertaking further reform in the area of food regulation, through COAG, to reduce the regulatory costs on the food industry. The ACT notes the importance of working cooperatively with the other states and territories, especially given its relative size.

Finally, the ACT notes the quality of the data in the Report which is crucial to the development of sound policy.”

A Conduct of the benchmarking study

This appendix details:

- the progress of the study (below)
- how the study was initiated (the Terms of Reference — A.1)
- the organisations and individuals that have participated so far (A.2–A.5).

The Commission advertised the study in national and metropolitan newspapers following receipt of the terms of reference on 23 December 2008, and an initial circular advertising the study was distributed to interested parties. The Commission released an Issues Paper in April 2009 to assist participants in preparing their submissions. The 15 submissions received by the Commission prior to the release of this discussion draft are listed in table A.1.

In addition, the Commission met with a number of industry stakeholders, including unions, business groups, individual businesses and government departments. A list of those meetings is in table A.2.

Participants are invited to send any additional submissions in response to this discussion draft to the Commission by 20 November 2009. The Commission will send the final report to the Australian Government in December 2009.

The Commission would like to thank all those who have contributed to the study so far.

A.1 Terms of reference for the benchmarking program

A1.1 Text of the overarching terms of reference (11 August 2006)

The Productivity Commission is requested to undertake a study on performance indicators and reporting frameworks across all levels of government to assist the Council of Australian Governments (COAG) to implement its in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden on business.

Stage 1: Develop a range of feasible quantitative and qualitative performance indicators and reporting framework options
In undertaking this study, the Commission is to:

1. develop a range of feasible quantitative and qualitative performance indicators and reporting framework options for an ongoing assessment and comparison of regulatory regimes across all levels of government.

   In developing options, the Commission is to:

   - consider international approaches taken to measuring and comparing regulatory regimes across jurisdictions; and
   - report on any caveats that should apply to the use and interpretation of performance indicators and reporting frameworks, including the indicative benefits of the jurisdictions' regulatory regimes;

2. provide information on the availability of data and approximate costs of data collection, collation, indicator estimation and assessment;

3. present these options for the consideration of COAG. Stage 2 would commence, if considered feasible, following COAG considering a preferred set of indicators.

The Stage 1 report is to be completed within six months of commencing the study. The Commission is to provide a discussion paper for public scrutiny prior to the completion of its report and within four months of commencing the study. The Commission's report will be published.

Stage 2: Application of the preferred indicators, review of their operation and assessment of the results
It is expected that if Stage 2 proceeds, the Commission will:

4. use the preferred set of indicators to compare jurisdictions' performance;

5. comment on areas where indicators need to be refined and recommend methods for doing this.

The Commission would:

- provide a draft report on Stage 2 for public scrutiny; and
- provide a final report within 12 months of commencing the study and which incorporates the comments of the jurisdictions on their own performance. Prior to finalisation of the final report, the Commission is to provide a copy to all jurisdictions for comment on performance comparability and relevant issues. Responses to this request are to be included in the final report.

In undertaking both stages of the study, the Commission should:

- have appropriate regard to the objectives of Commonwealth, state and territory and local government regulatory systems to identify similarities and differences in outcomes sought;
- consult with business, the community and relevant government departments and regulatory agencies to determine the appropriate indicators.

A review of the merits of the comparative assessments and of the performance indicators and reporting framework, including, where appropriate, suggestions for refinement and improvement, may be proposed for consideration by COAG following three years of assessments.

The Commission's reports would be published.

PETER COSTELLO

11 August 2006

A.1.2 COAG's response to stage 1 report (13 April 2007)

In its communiqué of 13 April 2007 (COAG 2007, Regulatory Reform Plan, p. 10), COAG responded to the Commission's stage one report as follows:

- COAG has agreed to proceed to the second stage of a study to benchmark the compliance costs of regulation, to be undertaken by the Productivity Commission. Benchmarking the compliance costs of regulation will assist all governments to identify further areas for possible regulation reform. The benchmarking study will examine the regulatory compliance costs associated with becoming and being a business, the delays and uncertainties of gaining approvals in doing business, and the regulatory duplication and inconsistencies in doing business interstate. COAG has asked Senior Officials to finalise by the end of May 2007 any variations to the areas of regulation to be benchmarked in the three-year program outlined in the Commission's feasibility study '*Performance Benchmarking of Australian Business Regulation'*. COAG noted the Commonwealth will fully fund the benchmarking exercise.

A.1.3 Letter from the Treasurer requesting the Commission to commence the second stage of the benchmarking program

TREASURER

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

Telephone: 02 6277 7340
Facsimile: 02 6273 3420

www.treasurer.gov.au

- 3 SEP 2007

Mr Gary Banks AO
Chairman
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Banks

On 11 August 2006 I requested that the Productivity Commission conduct a two stage study on performance benchmarking of Australian business regulation. The Commission's stage one report, released on 6 March 2007, concluded that benchmarking of regulatory burdens across jurisdictions is feasible and would complement other initiatives to monitor and reform regulation.

Accordingly, and consistent with the decision of 13 April 2007 by the Council of Australian Governments, I request that the Commission commence stage two of the study extending over the next three years. In keeping with the terms of reference, stage two of the study is to examine the regulatory compliance costs associated with becoming and being a business, the delays and uncertainties of gaining approvals in doing business, and the regulatory duplication and inconsistencies in doing business interstate.

The Commission is requested to begin stage two of the study by providing a draft and final report on the quantity and quality of regulation, and results of benchmarking the administrative compliance costs for business registrations within 12 months.

In undertaking stage two of the study, the Commission is requested to convene an advisory panel, comprising representatives from all governments, to be consulted on the approach taken in the first year. The panel should be reconvened at strategic points, providing advice on the scope of the benchmarking exercise and facilitating and coordinating data provision. It must also be given the opportunity to scrutinise and comment on the preliminary results.

The Commission is requested to review the benchmarking exercise at the conclusion of year three and report on options for the forward programme of the benchmarking exercise.

Yours sincerely

PETER COSTELLO

A.1.4 Letter from the Assistant Treasurer requesting the Commission to commence this study

The Hon Chris Bowen MP
Assistant Treasurer
Minister for Competition Policy and Consumer Affairs

16 DEC 2008

Mr Gary Banks AO
Chairman
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Mr Gary Banks

I am writing to you regarding the 2009 work plan of the Productivity Commission's Performance Benchmarking of Australian Business Regulation study.

In response to your request of 12 September 2008, this matter was raised at the 24 October 2008 Council of Australian Governments' Business Regulation and Competition Working Group meeting.

The BRCWG:

- noted the merit in continuing the benchmarking work program;
- agreed that occupational health and safety and food safety regulation should be considered by the Commission in year 2;
- requested that the Commission complete the OH&S and food safety benchmarking reports by December 2009; and
- agreed to revisit the Commission's future work plan in relation to the benchmarking study in 12 months time.

I would be grateful if you could undertake whatever action is necessary to fulfil the BRCWG's direction. The Commission may structure its work as it sees fit within the timeframe indicated above.

I have copied this letter to the Minister for Finance and Deregulation and the Minister Assisting the Finance Minister on Deregulation.

Yours sincerely

CHRIS BOWEN

RECEIVED
23 DEC 2008
CHAIRMAN'S OFFICE

PO Box 6022
Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7360
Facsimile: 02 6273 4125
http://assistant.treasurer.gov.au

A.2 Submissions

Table A.1

Participant	*Submission number*
Australian Hydroponic and Greenhouse Association	13
Australian Meals on Wheels Association	11
Biocontrol Solutions	14
Choice	7
Clubs Australia	5
CSR Limited	3
Dairy Australia	8
Department of Agriculture, Fisheries and Forestry (Commonwealth)	6
Emerald Creek Food Pty Limited	15
Implementation Sub Committee	12
NSW Food Authority	4
New Zealand Food Safety Authority	2
Northern Territory Horticultural Association	9
Obesity Policy Coalition	1
Woolworths Limited	10

A.3 Advisory committee meetings

Government Advisory Panel Roundtable (5 February 2009, Melbourne)

Commonwealth
Department of Finance and Deregulation
Victoria
Department of Premier and Cabinet
Department of Treasury and Finance
South Australia
Department of Premier and Cabinet
Department of Treasury and Finance
Northern Territory
Department of the Chief Minister
Northern Territory Treasury
New South Wales
Department of Premier and Cabinet
Queensland
Department of Treasury (Office for Regulatory Efficiency)
Western Australia
Department of Treasury and Finance
Tasmania
Department of Treasury
ACT
ACT Treasury

Government Advisory Panel Roundtable (1 October 2009, Canberra)

Commonwealth
Department of Finance and Deregulation
Victoria
Department of Treasury and Finance
South Australia
Department of the Premier and Cabinet
Northern Territory
Northern Territory Treasury
New Zealand
Ministry of Economic Development
New South Wales
Department of Premier & Cabinet
Queensland
Department of Treasury (Office for Regulatory Efficiency)
Western Australia
Department of Treasury and Finance
Tasmania
Department of Treasury
ACT
ACT Treasury

A.4 Visits and consultations

Table A.2

Commonwealth Government
Australian Quarantine and Inspection Service (AQIS)
Australian Safety and Compensation Council
Department of Health and Aging
Department of Innovation, Industry, Science and Research — Industry and Small Business Policy
Food Standards Australia New Zealand
New Zealand
Biosecurity NZ
Egg Producers Association of New Zealand
Fonterra Enterprises (New Zealand)
Hospitality Association of New Zealand (HANZ)
Meat Industry Association of New Zealand
New Zealand Cold Storage Association
New Zealand Food and Grocery Council
New Zealand Food Safety Authority (NZFSA)
New Zealand Ministry of Economic Development
New Zealand Retailers Association
New Zealand Seafood Industry Council
Poultry Industry Association of New Zealand
Restaurant Association of New Zealand
Wellington City Council
New South Wales
Australian Egg Corporation
Australian Industry Group
Choice
Department of Premier and Cabinet
Fisher Kidd Food Safety Consultants
Implementation Sub Committee

(continued next page)

Table A.2 continued

New South Wales (continued)
McDonalds Australia/New Zealand
NSW Food Authority (NSWFA)
Nutricia Australia
Restaurant and Catering Australia (RCA)
Woolworths
Victoria
Australian Chamber of Commerce and Industry
Australian Industry Group
Business Council of Australia
Coles
Dairy Food Safe Victoria
Department of Human Services
Department of Premier and Cabinet
Victorian Department of Primary Industries
Victorian Department of Treasury and Finance
PrimeSafe
Queensland
Brisbane City Council
Department of Employment, Economic Development and Innovation (Industry Development and Trade)
Department of Employment, Economic Development and Innovation (Primary Industry and Fisheries)
Department of Premier and Cabinet
Department of Treasury (Queensland Office for Regulatory Efficiency)
Inghams Enterprises Pty Limited
Queensland Chamber of Commerce and Industry
SafeFood Production Queensland
Seafood Services Australia
South Australia
Dairy Authority of South Australia
Department of Health
Department of Premier and Cabinet
Department of Treasury
Department of Primary Industry and Resources (PIRSA)
Local Government Association (of South Australia)
Meals on Wheels
South Australian Farmers Federation (SAFF)
Western Australia
Chamber of Commerce and Industry
Department of Agriculture and Food
Department of Health
Department of Treasury and Finance
Small Business Development Corporation
Western Australia Local Government Association (WALGA)

(continued next page)

Table A.2 continued

Tasmania
Cadbury Schweppes
Local Government Association of Tasmania (including representatives from Clarence City Council, Hobart City Council, Kentish Council and Latrobe Council)
Mundy & Sons Fine Foods
Restaurants and Catering Tasmania
Tasmanian Department of Health and Human Services
Tasmanian Department of Primary Industries and Water
Tasmanian Department of Treasury and Finance
Northern Territory
Department of Health and Families
Department of Regional Development, Primary Industry, Fisheries and Resources
Department of the Chief Minister (Northern Territory)
Fresha Products
Northern Territory Horticultural Association (NTHA)
Northern Territory Seafood Council
Northern Territory Treasury
ACT
ACT Department of Health
Australian Food and Grocery Council
National Farmers Federation

A.5 Surveys and providers of information

As part of this study, the Commission surveyed a number of Australian local councils and New Zealand territorial authorities. Details on those surveys are contained in chapter 7 and appendix B.

The Commission also surveyed a number of national, state and territory regulators and government agencies. Details on those surveys are contained in chapter 7 and appendix B.

In addition to submissions and consultations, data and information were also provided to the Commission by:

- the state branches of Meals on Wheels
- a leading Australian retailer
- Seafood Services Australia.

Table A.3 **Australian, New Zealand and state and territory government food safety regulators**

Australia	Australian Quarantine and Inspection Service
New Zealand	New Zealand Food Safe Authority
NSW	NSW Food Authority
Vic	Department of Human Services
	PrimeSafe
	Dairy Food Safety Victoria
Qld	Queensland Health
	Safe Food Production Queensland
SA	Department of Health
	Primary Industries and Resources South Australia
	Dairy Authority of South Australia
WA	Department of Health
Tas	Department of Health and Human Services
	Department of Primary Industries and Water
	Tasmanian Dairy Industry Authority (TDIA)
NT	Department of Health and Families
	Department of Regional Development, Primary Industry, Fisheries and Resources
ACT	ACT Health

B Approach to gathering information

As outlined in chapter 4, the Commission drew on submissions, as well as consultation with business, regulators and other stakeholders, to identify those differences in food safety regulation that warranted benchmarking. This appendix details the approach the Commission took to obtaining the data to facilitate that benchmarking.

Gathering information for benchmarking

The Commission sought to minimise the burdens placed on government departments/agencies and businesses through requests for information by using existing data sources wherever possible. In particular, the Commission made use of:

- data from the Australian Bureau of Statistics, OzFoodNet[1] and Seafood Services Australia[2]
- studies and reviews completed by Food Standards Australia New Zealand (FSANZ), the New Zealand Food Safety Authority (NZFSA) and the Victorian Competition and Efficiency Commission (VCEC)
- other studies into food safety regulation and submissions to the Bethwaite Review (where they are publicly available)
- annual reports, regulatory impact statements and regulation assessment reports prepared by the food safety regulators listed in table B.1 and FSANZ
- the *Comparison of Food Acts in Australia with the Model Food Bill* paper prepared by Cormorant Technical Services Pty Ltd (Theobold 2007).

1 The Australian Government's Department of Health and Ageing established OzFoodNet in 2000 as a collaborative initiative with Australia's State and Territory health authorities to provide a better understanding of the causes and incidence of foodborne disease in the community and to provide an evidence base for policy formulation (OzFoodNet 2008).

2 In November 2008, Seafood Services Australia undertook a survey of its members in relation to the costs of food regulation. Further details of the survey are provided below.

While these sources provided valuable information for the study, the specific areas of food safety regulation selected for benchmarking (chapter 4) required additional and, in some cases, more current information. As a result, the Commission sought additional information via:

- a survey of food safety regulators across Australia and New Zealand (including local councils and territorial authorities)
- the engagement of a consultant to provide detailed information on the key areas of difference and similarity in the regulation of primary production and processing activities
- information provided by a leading Australian retailer
- a questionnaire for completion by the Meals on Wheels branches in each Australian state and territory.

Table B.1 **Regulators survey — national and state/territory regulators**

NZ	New Zealand Food Safety Authority
NSW	NSW Food Authority
Vic[a]	Department of Health PrimeSafe Dairy Food Safety Victoria
Qld	Queensland Health Safe Food Production Queensland
SA	Department of Health Primary Industries and Resources South Australia Dairy Authority of South Australia
WA	Department of Health Department of Agriculture and Food
Tas	Department of Health and Human Services Department of Primary Industries, Parks, Water and Environment Tasmanian Dairy Industry Authority
NT	Department of Health and Families Department of Regional Development, Primary Industry, Fisheries and Resources
ACT	ACT Health

[a] Responsibility for food safety regulation passed to the newly created Department of Health from the Department of Human Services (Food Safety Unit) in August 2009.

Information from regulators

As regulators are the primary interface between businesses and the regulations, the way in which regulators approach their administration and enforcement responsibilities can significantly affect the compliance costs of business. As such, food safety regulators are an obvious source of data on the regulatory frameworks they administer and enforce. They should have a detailed knowledge of the regulatory requirements, how those requirements are enforced and how the

regulation is administered. To access this data the Commission developed two surveys — one to be completed by national and state/territory regulators (table B.1) and the other by local councils in Australia and territorial authorities in New Zealand (collectively, 'local councils').

Survey development

The surveys were based on those used in the Commission's previous benchmarking reports (PC 2008c and PC 2008d), but were refined to better target specific aspects of food safety regulation (as applicable to the different classes of regulator). The surveys were further refined following four pilot surveys completed during June and July 2009. The feedback from these pilot surveys alerted the Commission to aspects of the surveys where it could better target the questions and where the questions were ambiguous. Having addressed the issues raised in the pilot surveys, the amended surveys were distributed to all relevant regulators for completion during July and August 2009.

The distribution and return of surveys

The surveys of the national and state/territory regulators were distributed directly to the Chief Executive (or equivalent) of the respective regulators. Once completed, the surveys were returned directly to the Commission.

The local council surveys were distributed to the individual Australian local councils through the local government associations in each of the Australian states, except New South Wales. In New South Wales and New Zealand, the surveys were distributed through the NSW Food Authority (NSWFA) and NZFSA, respectively (given the relationship these two regulators have with the local councils/territorial authorities in their respective jurisdictions in relation to food safety regulation). The majority of the completed surveys were returned directly to the Commission.

The Commission followed up all national and state/territory regulators to ensure a response was received from each regulator. The Commission also followed up on local council/territorial authority surveys for those jurisdictions with relatively low response rates or where the returned surveys did not represent a good mix of rural and urban councils. The final response rates for the local council surveys are shown in table 7.1 (chapter 7).

Data from the surveys

Data for both 2007-08 and 2008-09 was sought in the surveys. Tables B.2 (national and state/territory regulators) and B.3 (local councils) detail the questions asked in the surveys. The data collected from the surveys is reported in chapters 7–14, along with any caveats applicable to the data and its interpretation. In particular, the tables and figures indicated in tables B.2 and B.3 show where the survey responses have been used to compare regulators in chapters 8 and 7, respectively.

Table B.2 Food safety regulation survey (2008-09) — national and state/territory regulators

Survey question	*Table / figure number*
PART 1 — Regulator characteristics	
1. Regulator name	
2. State/Territory	
3a. How many of the following regulatory instruments was your agency responsible for administering in 2007-08 and 2008-09? • Acts • Regulations • Standards • Codes of practice • Guidance notes • Other	
3b. During 2007-08 and 2008-09, were there any acts/regulations administered jointly with another agency? If yes, please provide details.	
4. As at 30 June 2008 and 2009, how many food businesses were licensed or registered by your agency?	Table 8.2
5a. As at 30 June 2008 and 2009, how many food businesses in each of the following categories were licensed or registered by your agency? • Butchers • Food retail & service • Smallgoods manufacturers • Egg producers • Poultry processors • Seafood • Shellfish processors • Other food processors • Abattoirs • Beef cattle farms • Meat transport • Dairy farms • Dairy processors • Dairy transport • Export • Import • Other (please specify)	

(continued next page)

Table B.2 **(continued)**

Survey question	*Table / figure number*
5b. Was regulatory responsibility for any of the activities listed in Question 5a delegated to local governments during 2007-08 and 2008-09? If yes, please list the delegated activities ?	
6. What was your agency's total income (appropriation and other income) for food related activities in 2007-08 and 2008-09?	Tables 8.4 and 8.17
7. What was the total value of each category of fees collected from food businesses by your agency in 2007-08 and 2008-09? • Licence • Registration • Administration • Inspection • Audit • Accreditation • Other (specify)	Tables 8.2, 8.4 and 8.17
8a. What was the total value of fines imposed on food businesses (for regulatory compliance breaches) by your agency in 2007-08 and 2008-09?	Tables 8.4 and 8.17
8b. How many food businesses were fined (for regulatory compliance breaches) by your agency in 2007-08 and 2008-09?	Table 8.15
9a. What was the agency's total expenditure on food safety activities in 2007-08 and 2008-09?	Table 8.2
9b. What was the agency's total expenditure in 2007-08 and 2008-09?	
10. How many full-time equivalent staff (including permanent and casual staff) with food safety related responsibilities were directly employed by your agency as at 30 June?	Table 8.2
11. What minimum qualifications are required of staff employed as food safety inspectors/auditors/accreditors? • Bachelor of Science (Environmental Health) • Bachelor of Science (Food Science) • Bachelor of Science (Veterinary Science) • General degree • Graduate Diploma • Other (specify)	Tables 8.11 and 8.12
12. What is the average annual salary (including allowances and overtime) of staff employed as food inspectors/auditors/accreditors?	Tables 8.11 and 8.12
13. What is the average annual starting salary (including allowances and overtime) of food inspectors/auditors/accreditors?	Tables 8.11 and 8.12
14. What was the staff turnover rate for food safety inspection/audit/accreditation staff in 2007-2008 and 2008-09?	Tables 8.11 and 8.12
15. As at 30 June 2008 and 2009, how many food safety inspection/audit/accreditation staff had: i) less than 3 years of relevant regulatory or food industry experience ii) more than 3 years, but less than 10 years of relevant regulatory or food industry experience iii) more than 10 years relevant regulatory or food industry experience	Tables 8.11 and 8.12
16. On average, how many hours of specific food safety professional development (internal or external) was provided to food safety inspection/audit/accreditation staff in 2007-08 and 2008-09?	Section 8.4 (text)

(continued next page)

Table B.2 **(continued)**

Survey question	*Table / figure number*
17a. Were any food safety related activities contracted out (eg. audits) during 2007-2008 and 2008-09?	Table 8.14
17b. If so, what was the value of contracted expenditure for food safety related activities in 2007-2008 and 2008-09?	
17c. Did your agency recognise private or third-party inspection/audit/testing systems in 2007-2008 and 2008-09?	
18. For those staff with food safety responsibilities, what percentage of their time was devoted to the following activities? • Licensing • Registration • Accreditation • Audits (exports) • Audits (other) • Inspections • Education/Advice • Sampling/Testing • Recalls • Complaints • Investigations • Labelling requirements • Other	Table 8.6
PART 2 — Regulatory agency activity	
19a. In practice, does your agency consider that it is currently able to fully enforce all food safety regulation it is responsible for?	Table 8.3
19b. Please indicate with an X the importance [low/ medium/ high] of the following constraints on your agency's current ability to enforce food safety legislation? • Budgetary limits • Insufficient availability of food safety staff • Regulations difficult to interpret/enforce • Regulatory responsibilities unclear • Limited enforcement powers • Other reasons (please specify)	Table 8.3

(continued next page)

Table B.2 **(continued)**

Survey question	*Table / figure number*
19c. Please indicate with an X the priority [low/ medium/ high] given to the following activities when resources for food safety regulation are allocated? • Licensing • Registration • Accreditation • Audits • Inspections • Education/Advice • Sampling/Testing • Recalls • Complaints • Investigations (outbreaks) • Labelling requirements • Other (please specify)	Table 8.5
19d. If additional food safety resources were made available to your agency, how would those resources be used/deployed?	
19e. Please indicate with an X the priority [low/ medium/ high] given to the following FSANZ food safety standards when resources are allocated to food safety enforcement? • Food Safety Programs (3.2.1) • Food Safety Practices (3.2.2) • Food Premises and Equipment (3.2.3) • Maximum Residue Limits (1.4.2) • Labelling (1.2) • Dairy products (4.2.4) • Seafood products (4.2.1) • Other (please specify)	
20. Is business compliance with food safety regulations assessed by way of inspections, accreditations, audits or a mixture of approaches? If so, please rank the assessment method by order of priority. • Inspections • Accreditations • Audits • Mixture • Other (specify)	
21. Are private food safety systems (eg. those used by supermarket operators) recognised in assessing compliance with food regulations and used in place of standard regulatory systems where possible? If yes, please provide details.	Table 8.14

(continued next page)

Table B.2 **(continued)**

Survey question	*Table / figure number*
22. What type of actions are available to your agency to use in response to food safety compliance breaches and how frequently were those actions used in 2007-08 and 2008-09? i. Educate/advise the business ii. Verbal warning iii. Written warning iv. Improvement notice v. Prohibition order vi. Licence cancellation vii. Penalty notice viii. Fine ix. Infringement notice x. Enforceable undertaking xi. Prosecution xii. Adverse publicity xiii. Other	Table 8.8
23a. Please indicate with an X the importance [not used/ used rarely/ used regularly] of the following measures to promote a culture of compliance among food businesses? i. Education/training ii. Informative media strategies (including newsletters, pamphlets, use of own website) iii. Annual (or occasional) industry awards iv. Incentives (eg. licence fee reductions, positive advertising) v. Free food safety training for businesses vi. Fee-based food safety training for businesses vii. Other	Table 8.9
23b. Do you provide special assistance to: a. Small businesses b. Employers from non-English speaking backgrounds c. Non-metropolitan businesses	Table 8.14
23c. Do you have mechanisms in place to seek feedback from businesses about their satisfaction with enforcement/regulatory practices (e.g. through surveys)?	Table 8.14
23d. Which of your regulatory responsibilities do you receive the most queries about from businesses (e.g. licensing requirements, enforcement policy, inspections etc.)? Please provide details.	
24. Which of the following processes are used to facilitate the uniform interpretation of food safety regulations among food safety staff? Please indicate with an X. • Supervisory oversight • Structured training • Staff rotation • Secondment • Peer review • Other (specify)	Table 8.10

(continued next page)

Table B.2 **(continued)**

Survey question	*Table / figure number*
25. On which issues relevant to food safety does your agency liaise with local councils, other State/Territory and/or National food safety agencies? Please indicate with an X. • Regulatory overlap • Regulatory gaps • Enforcement consistency • Policy Interpretations • Food recalls • Other matters (please specify)	Table 8.13
26. In your view, are there any innovative enforcement approaches or practices used by your agency that could be of benefit to other agencies in your jurisdiction or in other jurisdictions? If so, please provide information.	
27a. Does your agency publish food safety enforcement strategies affecting business on its website and/or by circulating printed material?	Table 8.14
27b. Does your agency publish outcomes for food safety enforcement activities on its website and/or by circulating printed material?	Table 8.14
28a. Were food businesses classified according to the different risks posed to consumers in 2007-08 and 2008-09?	Table 8.7
28b. If yes, how many food businesses in each food category were classified in the following risk groups (low/ medium/ high] in 2007-08 and 2008-09? • Butchers • Food retail & service • Smallgoods manufacturers • Egg producers • Poultry processors • Seafood • Shellfish processors • Other food processors • Abattoirs • Beef cattle farms • Meat transport • Dairy farms • Dairy processors • Dairy transport • Export • Import • Other (please specify)	Section 8.4 (text)
28c. Were those risk classifications used to determine: i. fees and charges for different businesses ii. inspection frequency for different businesses	Table 8.7
28d. Were the frequency of food safety inspections/audits related to the compliance history of individual food businesses/premises in 2007-08 and 2008-09?	Table 8.7
29a. How many food safety inspections and audits were undertaken in 2007-08 and 2008-09?	Table 8.15

(continued next page)

Table B.2 **(continued)**

Survey question	*Table / figure number*
29b. Of these inspections/audits, how many were: i. Routine inspections ii. Initiated by a complaint iii. Reinspections following a compliance breach	Table 8.15
29c. How many complaints were received from the public regarding food businesses in 2007-08 and 2008-09?	
30. How many food recalls was your agency involved with in 2007-08 and 2008-09?	Table 8.15
31a. What is the basis on which food safety inspection/audit fees are levied? Please indicate basis/bases with an X. • Type of business • Type of activity • Business turnover • Risk category • Number of employees • Other (please specify)	Table 8.18
31b. What was the standard fee per hour charged for food safety inspections/audits/ accreditation for each business food risk category (low/medium/high)?	Table 8.19
31c. What was the standard fee per hour charged for laboratory testing of food samples in 2007-08 and 2008-09?	
31d. Do food safety inspection/audit/laboratory testing fees fully cover the direct cost (not including corporate overheads) of those inspections?	
31e. If no, what proportion of the direct cost (not including corporate overheads) of food safety inspections/audits/laboratory testing is recovered? Please indicate proportion with an X • Zero - no fee charged • 1%- 50% direct cost recovery • 51%-99% direct cost recovery • More than 100% direct cost recovery • Other	

(continued next page)

Table B.2 **(continued)**

Survey question	*Table / figure number*
31f. On average, how long did it take (in minutes) to conduct (on-site) a routine food safety inspection/audit for each activity relevant to your agency in 2007-2008 and 2008-09?	Table 8.16
• Butchers	
• Food retail & service	
• Smallgoods manufacturers	
• Egg producers	
• Poultry processors	
• Seafood	
• Shellfish processors	
• Other food processors	
• Abattoirs	
• Beef cattle farms	
• Meat transport	
• Dairy farms	
• Dairy processors	
• Dairy transport	
• Export	
• Import	
• Other (please specify)	
32a. What percentage of primary food safety inspections/audits of food businesses complied with all key food safety regulations in 2007-08 and 2008-09?	
32b. Of those food businesses not complying with all key food safety regulations, what percentage subsequently complied after follow-up?	
32c. How many prosecutions were initiated during 2007-08 and 2008-09?	Table 8.15
32d. How many prosecutions initiated during 2007-08 and 2008-09 were successful?	
33a. Were businesses able to appeal food safety enforcement actions in 2007-2008 and 2008-09 and if so, how? Please indicate review type with an X.	Table 8.14
• Internal review	
• External review	
• Internal and external	
• No review available	
33b. What fee, if any, is charged for the appeal processes?	
33c. How many food safety enforcement actions were appealed?	
33d. How many appeals were successful?	
PART 3 — Regulatory Burden	
34. In your view, what are the biggest compliance costs imposed on food businesses by food safety regulation?	Section 8.4 (text)
35. In your view, are there any regulatory compliance burdens on food businesses that could be reduced without affecting food safety outcomes. If so, please provide information.	
PART 4 — General Comments	
36. Do you have any general comments or observations about this survey?	

Table B.3 **Food safety regulation survey (2008-09) — local councils**

Survey question	*Table / figure number*
Part 1 — Council Information	
1. Council name	
2. State	
3. What is the land area covered by your local government area (LGA)?	Table 7.2
4. What is the resident population in your local government area (LGA)?	Table 7.2
5. As at June 30 2008 and 2009, how many food businesses/premises were operating in your jurisdiction?	Tables 7.2 and 7.13
PART 2 — Regulatory Resources	
6a. Did council share food safety related resources with another council/enforcement agency during 2007-2008 and 2008-09?	
6b. What proportion of food safety related activities were performed by staff shared from another council/enforcement agency during 2007-2008 and 2008-09?	
7. How many full-time equivalent staff (including permanent and casual staff) with food safety related responsibilities did council directly employ as at 30 June?	Table 7.2
8. For those staff directly employed by council with food safety responsibilities, what percentage of their time was devoted to the following activities? • Food Safety • Immunisation • Other Public Health • Local laws • Other	
9a. Did council contract-out any/all food safety related activities during 2007-08 and 2008-09?	
9b. If so, what was the value of contracted expenditure for food safety activities in 2007-08 and 2008-09?	
10. What was the staff turnover rate for staff directly employed by council with food safety responsibilities in 2007-08 and 2008-09?	
11. As at 30 June, how many council staff with food safety responsibilities had: i) Less than 3 years of relevant regulatory or food industry experience ii) More than 3 years, but less than 10 years of relevant regulatory or food industry experience iii) More than 10 years relevant regulatory or food industry experience	
12. On average, how many hours of specific food safety professional development (internal or external) was provided to staff with food safety responsibilities in 2007-08 and 2008-09?	Section 7.5 (text)
13a. What minimum qualifications are required before council employs staff as Environmental Health/Food Technical/Authorised Officers?(Please indicate with an X.) • Bachelor of Science (Environmental Health) • Bachelor of Science (Other) • General degree • Diploma in Environmental Health • Certificate IV • Year 12 • Other (specify)	
13b. Are these qualification requirements relaxed in certain circumstances (eg. during periods where attracting food safety officers is difficult)?	

(continued next page)

Table B.3 **(continued)**

Survey question	*Table / figure number*
14. What was council's total direct expenditure specifically for food safety related activities in 2007-2008 and 2008-09?	Table 7.2
15. What was council's total direct business regulation expenditure (i.e. the expenditure for all administration and enforcement of planning, licensing, registration, local laws, public health activities etc) in 2007-2008 and 2008-09?	
16. What was council's total expenditure on all activities in 2007-2008 and 2008-09?	
PART 3 - Enforcement Approach	
17a. In addition to enforcing national and state food legislation requirements, how many local laws related to food safety were administered by council in 2007-2008 and 2008-09?	
17b. Which type of food premises/activities are regulated by the relevant state authority and not by the local council? (Please indicate type of premise/activity with an X.) • Butchers • Smallgoods manufacturers • Poultry processing • Shellfish processing • Other food processing • Abattoirs • Farms • Dairy • Other (please specify)	Table 7.16
18a. In practice, does council consider that it is currently able to fully enforce all food safety regulation for which it is responsible?	
18b. Please indicate with an X the importance [low/ medium/ high] of the following constraints on council's current ability to enforce national and state food safety regulation? • Budgetary limits • Insufficient availability of food safety staff • Regulations difficult to interpret/enforce • Regulatory responsibilities unclear • Limited enforcement powers • Directed not to enforce by State agency • Other reasons (please specify)	Table 7.3
18c. Please indicate with an X the priority [low/ medium/ high] that council gives to the following activities when it allocates resources to food safety regulation? • Routine inspections - food retail - other food (eg hospitals) • Food licensing/registration • Sampling and testing • Complaints • Education • Other (please specify)	Table 7.4

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Table B.3 **(continued)**

Survey question	*Table / figure number*
18d. Please indicate with an X the priority [low/ medium/ high] that council gives to the following food safety standards/regulations when it allocates resources to food safety regulation? • Food handling practices • Cleanliness of food premises • Food labelling • Food composition • Maximum Residue Limits • Licensing • Other (please specify)	Table 7.4
19. What type of enforcement actions were used by council in response to food safety compliance breaches in 2007-2008 and 2008-09 and how frequently were those actions used? i. Educate/advise the business ii. Verbal warning iii. Written warning iv. Improvement notice v. Prohibition order vi. Fine vii. Infringement notice viii. Prosecute ix. Adverse publicity x. Other	Table 7.6
20. Please indicate with an X the importance [not used/ used rarely/ used regularly] of the following measures used by council to promote a culture of compliance among the food businesses it regulates? i. Education ii. Informative media strategies (including newsletters, pamphlets, use of own website) iii. Annual (or occasional) industry awards iv. Incentives (eg. licence fee reductions, positive advertising) v. Free food safety training for businesses vi. Fee-based food safety training for businesses vii. Other	Table 7.7
21a. Which of the following processes does council use to facilitate the uniform interpretation of food safety regulations among its food safety staff? Please indicate with an X. • Supervisory oversight • Structured training • Staff rotation • Secondment • Peer review • Other	Table 7.8

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Table B.3 **(continued)**

Survey question	*Table / figure number*
21b. On which issues relevant to food safety does council liaise with State Government food safety agencies? Please indicate with an X. • Training • Enforcement consistency • Policy Interpretations • Fee setting • Other matters	Table 7.15
22a. Does council publish food safety enforcement strategies affecting business on its website and/or by circulating printed material?	Table 7.14
22b. Does council publish outcomes for food safety enforcement activities on its website and/or by circulating printed material?	Table 7.14
23a. Did council classify food businesses according to the different risks posed to the public in 2007-08 and 2008-09?	Table 7.5
23b. If yes, how many food businesses were classified in the following risk groups in 2007-08 and 2008-09? • Low • Medium • High	Figure 7.1
23c. Were those risk classifications used to determine: i. fees and charges for different businesses ii. Inspection frequency for different businesses	Table 7.5
23d. Were the frequency of food safety inspections related to the compliance history of individual food businesses/premises in 2007-08 and 2008-09?	Table 7.5
PART 4 - Enforcement Activity	
24a. How many food safety inspections of business premises did council undertake in 2007-08 and 2008-09?	Table 7.13
24b. Of these inspections, how many were: i. Routine inspections ii. Initiated by a complaint iii. Reinspections following a compliance breach	Table 7.13
24c. How many complaints were received from the public regarding food safety businesses in 2007-08 and 2008-09?	Table 7.13
25a. What is the basis on which food safety inspection fees are levied? Please indicate basis with an X. • Type of business • Business turnover • Risk category • Seating capacity • Premise area • Number of food handlers • Other	Table 7.10
25b. What was the total of all food safety inspection fees collected in 2007-08 and 2008-09?	

(continued next page)

Table B.3 **(continued)**

Survey question	*Table / figure number*
25c. What was the standard fee per hour charged for food safety inspections/re-inspections for each business food risk category? (If the standard fee is charged regardless of risk, please enter that fee value against each risk category). • Low • Medium • High	Table 7.12[a]
25d. What other fees did council charge food businesses in 2007-2008 and 2008-09, how much was charged per business and on what basis were the fees levied? • Administration • Notification • Licence • Registration • Other	Tables 7.9 and 7.12
25e. Do food safety inspection fees fully cover the direct cost (not including corporate overheads) of those inspections?	
25f. If no, what proportion of the direct cost (not including corporate overheads) of food safety inspections is recovered? Please indicate proportion with an X. • Zero - no fee charged • 1%-50% direct cost recovery • 51%-99% direct cost recovery • More than 100% direct cost recovery • Other	
25g. On average, how long did it take to conduct (on-site) a routine food safety inspection in 2007-2008 and 2008-09?	Table 7.13
26a. What percentage of primary food safety inspections of food businesses complied with all Critical Food Handling Practices (or key food safety regulations) in 2007-08 and 2008-09?	
26b. Of those food businesses not complying with all Critical Food Handling Practices (or key food safety regulations), what percentage subsequently complied following re-inspection?	
27. How many prosecutions initiated during 2007-2008 and 2008-09 were successful?	
28. What was the total value of fines collected for food safety breaches in 2007-08 and 2008-09?	
29a. Were businesses able to appeal food safety enforcement actions by council in 2007-2008 and 2008-09 and if so, how? Please indicate review type with an X. • Internal review • External review • Internal and external	Table 7.14
29b. How many food safety enforcement actions were appealed?	
29c. How many appeals were successful?	
30. In your view, what are the biggest compliance costs imposed on food businesses by food safety regulation?	

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Table B.3 **(continued)**

Survey question	*Table / figure number*
PART 5 - Relationship with the Not for Profit Sector	
31. What type of support does council provide not-for-profit (NFP) organisations?	Not used in this study
32. What are the main impediments your council faces in forming a closer relationship with NFPs in your local area? What could be done to enhance these relationships?	Not used in this study
PART 6 - General Comments	
33. Do you have any general comments or observations about this survey?	

a All councils reported 'flat fees' rather than per hour fees. Accordingly, 'flat fees' have been reported in table 7.12.

The Commission reviewed the completed surveys and sought clarification from the regulators on any anomalies in their responses. In September 2009, the Commission circulated a working draft of the study to the jurisdictions for their review and comment. The working draft contained the benchmarking data (from all sources) for all jurisdictions. The circulation of the working draft was the first time the jurisdictions had seen their survey responses in the context of the data from other jurisdictions.

Cost of data collection

The surveys asked the regulators to record the time taken to complete the survey. This provides an indication of the cost to jurisdictions of providing data to the Commission (table B.4).

Table B.4 **Time spent completing surveys**

	Aus	*NZ*	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Number of survey responses from:										
National regulators	1	1	na	na	na	na	na	na	na	na
State/territory regulators	na	na	1	3	2	3	1	3	2**a**	1
Local councils	na	19	12	22	12	20	9	9	na	na
Total time to complete survey(s) (minutes)	**840**	**2 110**	**1 280**	**4 410**	**2 070**	**1 965**	**1 360**	**1 049**	**990**	**180**

na not applicable. **nr** no response. **a** Although two responses (one for 'meat' and one for 'fish' were received from Department of Regional Development, Primary Industry, Fisheries and Resources.

Source: Surveys responses from Australia, New Zealand, Australian state and territory governments and Australian and New Zealand local councils (unpublished).

Consultancy — primary production and processing

The Commission engaged a consultant, Baldwins-FoodLegal, to identify the key areas of difference and similarity in the food safety regulation applying to primary production and processing activities. Specifically, the Commission sought information on the following industries:

- red meat and poultry meat
- eggs
- dairy
- seafood (including both fish and shellfish).

The engagement was to cover all the relevant acts of parliament and regulations of the Australian states and territories and New Zealand, but exclude industry negotiated codes of practice or conduct. The consultant was to base the analysis on the acts and regulations as they stood at December 2008 and was to consider such factors as:

- size of businesses covered by the regulation(s)
- requirements for business registration/accreditation/notification
- the use of food safety plans/programs (FSPs) or risk management plans
- inspections and audits for food safety purposes (including the tools and instruments used in these processes)
- labelling requirements, particularly as they relate to product source or supplier
- product sampling and testing requirements
- record keeping requirements
- requirements specifying the equipment or processes to be used in processing, storage or transportation of food products
- provisions relating to the condemnation of product as unfit or unsafe
- requirements relating to the environment or conditions of animals.

The resulting report from the consultant has informed benchmarking of primary production and processing regulation contained in chapters 9–12.

Information from business

Information from a leading Australian retailer

The Commission approached a leading Australian retailer to provide details of the compliance visits made by regulators to a sample of its stores across Australia and New Zealand. The retailer was asked to provide the details outlined in table B.5 for stores in New Zealand and each of the Australian states and territories. The Commission left the selection of the stores to the retailer's discretion so as to minimise the burden on the retailer by allowing it to select those stores best placed to provide the data. However, the Commission requested that, where possible, the stores selected should have as part of their operation some aspect of aspect of food preparation or handling — such as a deli, butchery or bakery.

Information was provided for a total of 26 stores — 1 store in New Zealand, 2 in New South Wales, 11 in Victoria, 7 in Queensland, 4 in Western Australia and 1 in Tasmania. The information from these stores is reported in Chapter 8.

Table B.5 **Information sought from a leading Australian retailer**
Town/suburb store

Date of visit	*Agency/ auditor*	*Aspect of store*	*Reason for visit*	*Was advanced notice of the visit provided?*	*Fee*	*Total staff time involved*[a]	*How long after the visit did the store receive a copy of the visit report*
	e.g. 3rd party auditor/ PrimeSafe/ Department of Health/ local council	e.g. Butchery / Bakery / Seafood / all of store	No reason (routine audit)/ Complaint / follow-up audit (for issues raised previously) / Other	Yes/No	$	Minutes	No report received / number of days

[a] Include only the time spent dealing with the auditor while they were on the premises.

Information from Meals on Wheels

Meals on Wheels operates in each Australian state and territory and, as many of the meals they deliver are to the elderly or people with disabilities who cannot cater for themselves, they need to comply with the FSP requirements applying to those providing food to 'vulnerable populations' in Australia. As such, Meals on Wheels provide an opportunity to compare and contrast the application of the FSP requirements across the Australian jurisdictions. To facilitate this comparison the Commission sought information from the state and territory branches of Meals on

Wheels using a questionnaire (table B.6). Cognisant of the Meals on Wheels' limited resources, the Commission did not seek exhaustive detail in the questionnaire, but rather sought broad, indicative information and anecdotal stories on which a case study could be built.

Table B.6 **Questionnaire — Meals on Wheels case study**

Question

1 The Commission is interested in understanding the general nature of operations in each jurisdiction, including whether:

- the operations are centralised (such as in South Australia) or decentralised?
- meals are predominately purchased from outside suppliers or cooked in Meals on Wheels kitchens?
- meals are fresh-cooked or cook-chilled?
- meals are largely delivered hot, chilled or frozen? If a mixture, can the broad proportions be estimated?
- the operations are run mainly by volunteers with some paid staff?

2 Background statistics on Meals on Wheels — please complete

Meals on Wheels statistics 2007-08

Jurisdiction	*No. of MOW providers*	*Total clients per day*	*Total meals per year*	*Total volunteers*	*Total paid employees*	*Regional clients*	*Meal price*
		'000	Million	'000		per cent	$
NSW							
Vic							
QLD							
SA							
WA							
Tas							
NT							
ACT							

3 Are food safety programs or plans a requirement in your jurisdiction?

□ yes

□ no

□ not sure

If yes, when was the requirement introduced?

(continued next page)

Table B.6 **(continued)**

	Question
4	For each jurisdiction, what costs were incurred as a result of establishing and implementing food safety plans? The Commission is interested in indicative costs incurred. Establishment costs could include: • researching and developing food safety programs • training of staff to establish and maintain food safety programs • drafting of each food safety program/plan • employing a consultant • purchasing equipment: – cook-chillers – data loggers for temperature testing – other
5	What ongoing management costs do jurisdictions incur? Management costs include: • completing the documentation on a regular basis • reviewing and updating the document outlining the program/plan • internal audits and external audits • routine checking of records to ensure tasks have been completed • other.
6	What changes have been made to the way meals are prepared and delivered as a result of new requirements to have food safety plans/programs? • delivering chilled meals instead of hot meals • no longer using eskies • temperature of meals tested on delivery • purchasing meals instead of preparing • employing more staff? If so, why: – volunteer numbers have declined – needed to meet additional requirements – other
7	What problems did you encounter while trying to implement and develop food safety plans?
8	What initiatives were helpful in implementing and developing food safety plans?
9	Are you required to have a food safety supervisor? □ yes □ no □ not sure
10	Other comments

The Commission received responses to the questionnaire from:

- New South Wales (including various individual providers within the state, namely: Camden, Swansea, Cooma and North Shoalhaven)
- South Australia
- Western Australia
- Tasmania.

Also, rather than complete the Commission's questionnaire, the Victorian branch provided information from their own recent survey. The 'Meals on Wheels' case study is reported in chapter 6.

Information from Seafood Services Australia

In November 2008, Seafood Services Australia (SSA) responded to concerns from its constituents about the cost of regulation by initiating the 'Regulatory Compliance Costs' survey. The survey was intended to obtain information from seafood business enterprises on the:

- compliance issues of concern
- the (estimated) direct and indirect costs of compliance
- opportunities to reduce the legislative compliance burden
- potential business costs savings that can be achieved.

SSA intended to use the information obtained from the survey to frame a report to Commonwealth, state and territory governments to illustrate the regulatory concerns of the industry. Part of SSA's strategy was to possibly:

> - … [seek] a commitment from the Australian Government for a separate Productivity Commission inquiry into the cost of regulatory compliance in the industry and opportunities to reduce this burden (SSA 2009a).

A draft survey was refined at the SSA Network Meeting on 6 November 2008 so as to better ensure it captured all the relevant concerns and costs. While the survey carefully defined the costs on which it was seeking information (box B.1), the survey sought only estimated figures in order to reduce the burden of responding for industry participants.

The survey was divided into five sections:

1. general and background information on the respondent
2. aquaculture
3. commercial fishing, harvest and collection fisheries
4. seafood handling, processing and retailing (including export and import)
5. respondent's views on regulatory compliance and its impact on their costs.

All respondents were to complete sections 1 and 5, with respondents from the respective industries completing sections 2, 3 and 4 as appropriate.

Box B.1 SSA's Regulatory Compliance Costs survey — definition of cost

What does the SSA mean by the cost of regulatory compliance?

In their survey, the SSA refer to recurrent costs imposed on seafood business by legislative requirements of governments (federal, state and local). Some examples of these costs were provided, including:

- aquaculture — costs of complying with permit or licence conditions. For example, the cost of monitoring and reporting on a range of performance criteria, levies
- wild harvest fisheries — costs of complying with permit or licence conditions. For example, costs associated with completing logbook requirements, export accreditation of fishing vessels
- processing/value adding — costs associated with accreditation and audit. For example, costs associated with the development and maintenance of food safety schemes and inspection and auditing of premises, including staff costs associated with the audit process
- export/import — costs associated with legislative requirements that apply to the export and import of seafood products.

The SSA also provided guidance that they were focused on the costs of food regulation and that businesses should not include cost details from their 'normal business costs' or costs incurred in relation to other regulatory matters, such as taxation.

Source: SSA (2009b).

Aside from general information on the respondent, the survey sought information:

- on the number of Commonwealth, state/territory and local government licences and permits a business was required to hold, as well as the cost of those licences and permits
- on the annual cost to the business to comply with the requirements of the licences and permits it holds
- on the details of the other aspects of regulation that place a cost on the business — including details of the costs
- from seafood processors on:
  - the details of the food safety plans (FSPs) required in order to comply with both government and private sector requirements, as well as details on the cost of developing and maintaining those FSPs
  - the frequency and cost of government audits of FSPs, including those of AQIS.

The Commission became aware of the survey in March 2009 through the consultation process with industry. In September, SSA provided a copy of its report based on the survey to the Commission. The Commission was not provided with the raw data from the survey, but used the information in the SSA report (SSA 2009b) in its benchmarking of the costs of seafood regulation in Chapter 12.

C Regulation of food imports and exports

This appendix describes the framework in place in Australia and New Zealand to regulate food imports and exports, including some of the fees and charges levied on businesses.

C.1 Regulation of imported food

Australian import requirements

Australia imports approximately 10 per cent of its food supply (Agriculture and Food Policy Reference Group 2005). This imported food must comply with two sets of requirements administered by the Australian Quarantine and Inspection Service (AQIS). The first set of requirements, under the *Quarantine Act 1908*, ensures that exotic pests and diseases do not enter Australia through food imports. The second set of requirements, set out in the *Imported Food Control Act 1992*, addresses public health and safety requirements. Food must first meet quarantine (biosecurity) requirements, otherwise it will not be permitted into Australia — only once imported food has cleared biosecurity requirements are the food safety requirements applied (Senate Standing Committee on Rural and Regional Affairs and Transport 2008).

The conditions that must be satisfied for a product to enter Australia are detailed in AQIS's online directory — the Import Conditions Database (ICON). ICON can be used by businesses to determine if a commodity intended for import to Australia needs a quarantine permit and/or treatment or if there are any other quarantine prerequisites. (The WA Department of Agriculture and Food report that the database is 'not comprehensive or complete'[1] (Department of Food and Agriculture (Western Australia) 2007).

[1] While the WA Department of Agriculture and Food comment may refer to incomplete quarantine rather than food safety information, any need for importers to access separate systems to obtain different import requirements for the same product augments the potential for confusion, lack of clarity and increased costs.

Under the *Imported Food Control Act 1992*, AQIS has responsibility for inspection and sampling of imported food to check for safety and compliance with the food standards detailed in the Australia New Zealand Food Standards Code (ANZFS Code). The inspection scheme is risk based and priority is given to those foods that FSANZ considers to pose a medium to high risk to public health.

Risk categories for imported food

The *Imported Food Control Act 1992* provides for the inspection and control of imported food using a risk-based border inspection program — the AQIS Imported Food Inspection Scheme (IFIS). FSANZ advises AQIS on the risk categorisation of foods for inspection under the IFIS. Food groups within each of these categories are listed in the Imported Food Control Order 2001, which is updated when the perceived health/safety of a particular imported food changes. It is the responsibility of FSANZ to evaluate and review the risk category of imported food, in consultation with relevant stakeholders (domestic industry, importers, government enforcement agencies). Amended advice is notified to AQIS in writing and AQIS then communicates the change to stakeholders with an Imported Food Notice. The roles of FSANZ and AQIS with regard to imported food are embodied in an MOU.

Foods are referred to AQIS for inspection under the IFIS by the Australian Customs Service (Customs) based on internationally agreed tariff codes. There are currently two[2] main risk categories for imported food:

- *Risk food* is referred, in the initial instance, to AQIS by Customs at a rate of 100 per cent of consignments. Initially, all risk food from a given producer is inspected and tested at a rate of 100 per cent against a published list of potential hazards—including micro-organisms and contaminants. Once five consecutive consignments from that producer have passed inspection, the inspection rate is reduced to 25 per cent; after a further 20 consecutive passes, the inspection rate is reduced to 5 per cent. Risk food not inspected is automatically released for sale. Risk food that is inspected is subject to 'test and hold' direction and is not released for sale until test results are known. Failed inspections for any consignment result in a return to 100 per cent testing of that food item from that producer until a history of compliance is re-established. Consignments of risk food which fail inspection and therefore do not meet Australian standards cannot

[2] A third category, *active surveillance foods*, which were inspected at a rate of 10 per cent of consignments of that food type from every supplying country, has been used in the past. For example, from December 2005 to March 2007, the following foods were listed for active surveillance: dried or moisture-reduced dates, figs and sultanas, egg pulp and egg powder, honey, and vegetable sprouts. As there have been no foods in this category since March 2007, it is not considered further in the discussion in this report.

be imported. Depending on the type of food and reason for failure, these foods must be destroyed, re-exported or brought into compliance (either through treatment or by downgrading the purpose of the food — for example, from human consumption to animal food or fertiliser). Food types currently determined to be risk foods are listed in box C.1.

- *Random Surveillance foods* are considered to pose a low risk to human health and safety and are inspected at a rate of 5 per cent of consignments of that food type. The random selection and referral process for surveillance food is not related to information such as the importer, producer or the country of origin of the goods and is not performance-based. Producers who regularly import consignments of random surveillance foods will, just by the frequency of their imports, have an increased likelihood of having a consignment inspected.

Analyses applied to random surveillance foods include those for pesticides and antibiotics above accepted levels, microbiological contaminants, natural toxicants, metal contaminants and food additives.

As the random surveillance foods are considered to be low risk, they are subject to a 'test and release' direction and can be distributed for sale before test results have been received. However, if AQIS receives adverse test results, the relevant state or territory food regulatory authority is advised so they can determine if a recall is required. Any action, such as a recall or withdrawal taken on goods released by an importer is at the importer's expense.

For random surveillance foods that fail an inspection, food will subsequently be inspected at a rate of 100 per cent of consignments until a history of compliance has been consistently demonstrated. These are called Holding Order foods. A holding order remains in place until favourable test results are received. Following five consecutive passes, the rate of referral returns to 5 per cent of consignments. There is no published list of foods that are subject to a Holding Order — AQIS advises the original importer of a failed food that a Holding Order has been applied to that particular food, but this information is confidential. Other comparable consignments of that type of food from that importer will also be referred to AQIS to ensure that non-compliance has been addressed.

Box C.1 **Imported foods categorised as 'risk foods' by FSANZ**

Since September 2007, the following food types have been listed as risk foods:

- Beef and beef products (whether cooked or uncooked and whether or not chilled or frozen)
- Cheese, other than cheese that is a New Zealand product, of the following kinds:
  (a) curd cheese
  (b) fresh cheese that is not fermented, including whey cheese
  (c) soft cheese
  (d) soft smoked cheese
  (e) surface ripened cheese
- Chicken meat that is cooked (whether or not chilled or frozen) but is not canned
- Coconut that is dried
- Crustaceans, including prawns, that are cooked (whether or not chilled or frozen), but are not canned
- Molluscs Bivalve (whether cooked or uncooked)
- Fish of the following kinds:
  (a) tuna, including canned tuna (whether dried or not)
  (b) tuna products
  (c) mackerel
  (d) ready to eat finfish
- Marinara mix (whether or not chilled or frozen)
- Manufactured meat that is uncooked or cooked, including meat pastes and pâté
- Paprika and pepper that are dried
- Peanuts, peanut products and any food that contains peanuts or peanut products
- Pistachios, pistachio products and any food that contains pistachios or pistachio products
- Pig meat that is cooked (whether or not chilled or frozen) but is not canned
- Poultry pâtés and poultry livers that are ready for consumption (whether or not chilled or frozen) but that are not canned
- Seaweed — Hijiki only
- Sesame seeds and sesame seed products

Source: Imported Food Control Order 2001

Most food imported into Australia and New Zealand is not inspected. This is because Australia and New Zealand are the major source of food imports to each other. Under the Trans Tasman Mutual Recognition Arrangement (TTMRA), only food from New Zealand that is regarded as 'risk food' is subject to inspection at the border by AQIS and similarly, the New Zealand Food Safety Authority (NZFSA) only inspects food from Australia if it is a 'prescribed food'. Equivalence determination of food safety systems covering dairy products was reached in 2007, enabling dairy products to be brought under the TTMRA and the removal of border inspection for these products. Each remaining risk food is now being assessed for equivalence of the food safety management systems in each country (AQIS 2009).

AQIS inspection and clearance of imports

All food referred for inspection is subject to a visual and label inspection. This may include, for example, a visual inspection of the food and a check of the government to government certification for Bovine Spongiform Encephalopathy (BSE) free status for imports of beef and beef products. Some foods are also subject to analytical testing — for microbial, chemical or other hazards. AQIS Imported Food Notices (IFN) advise what tests are applied to particular foods and there is a separate IFN for each category of food.

The purpose of the testing is to determine if the food: (a) poses a risk to human health; or (b) complies with the ANZFS Code.

During the period July 2007 to June 2008:

- almost 20 000 entries of imported food were referred to AQIS for inspection under the Imported Food Inspection Scheme
- around 80 500 tests were applied — including approximately 27 420 label assessments, 24 840 analytical tests and 28 170 other tests.

Analytical tests are carried out by a laboratory on a sample of food taken during an inspection of imported food. At the end of 2008-09, there were 15 testing laboratories around Australia that are approved to analyse imported food for AQIS. Analytical tests undertaken include microbiological, chemical, contaminant and food additive tests. Most microbiological tests are for Escherichia Coli and Salmonellosis.

From these inspections of imported food, AQIS reported that:

- 97 per cent of imported food that was tested complied with Australian standards, with compliance rates not varying significantly between food groups (table C.1)

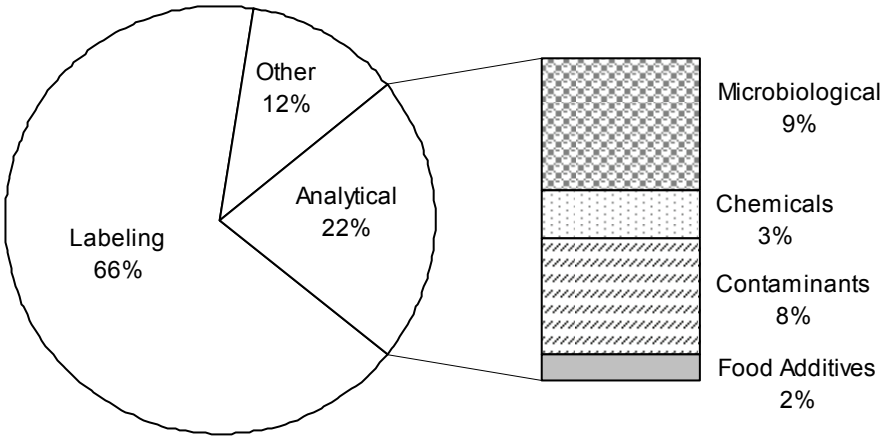
- incorrect labelling accounts for the majority of non-compliances — 66 per cent of failures are for labelling (figure C.1). Microbiological and contaminant problems are the main reasons for non-compliance with analytical tests (but note that the non-compliance of imports due to problems found in analytical tests is much lower than for products recalled from domestic market – see chapter 4 for more detail on FSANZ recall statistics)
- foods subject to the most analytical tests were seafood and horticulture:
  - seafood accounted for 18 per cent of tests applied. Included under this category are fresh, chilled, frozen and processed seafood products
  - horticulture, including fresh and processed fruit and vegetables, accounted for 17 per cent of all tests applied to imported food.

Table C.1 **AQIS inspection and test data by broad food group**
2007-08

Commodity	*Tests applied*	*Compliant results*	*Non-compliant results*	*Compliance rate*
	No.	No.	No.	%
Horticulture	13 294	12 947	347	97.4
Seafood	14 850	14 588	262	98.2
Beverages	5 544	5 372	172	96.9
Dairy	7 109	7 011	98	98.6
Meat	2 860	2 844	16	99.4
Cereals, flours & milled products	2 064	2 010	54	97.4
Other (incl. processed foods)	34 735	33 633	1 102	96.8
Total	80 456	78 405	2 051	97.5

Source: AQIS (2009).

Figure C.1 **Breakdown of test outcomes for non-compliant foods**
2007-08



Data source: AQIS (2009).

Fees to import food into Australia

The Australian Government requires AQIS to recover 100 per cent of the cost of running its inspection system and this is achieved by charging fees for services provided. The *Quarantine Service Fees Determination 2005* and the *Imported Food Control Regulations 1993* provide for the type and level of fees that can be levied on imported food. Specifically, chargeable services provided under the legislation include:

- cargo import clearance related quarantine risk profiling
- inspection, surveillance and treatment of imported goods
- inspection and clearance of sea containers
- fumigation monitoring of imports
- lodgement of quarantine entries
- applications and assessments of import permits
- overtime and shift services by an officer outside the ordinary hours of duty
- registration of premises for the purposes of performing quarantine inspections
- audits to ensure compliance with program procedures and regulations

The schedule of current AQIS inspection fees is reported in table C.2, and is accessible for businesses from the AQIS website.

Table C.2 **AQIS fees and charges for import clearance**

2008-09

Category	*Sub category*	*Description*	*Unit*	*Fee ($)*
Application fees	Import declaration	Customs Integrated Cargo System full import declaration — air or sea	each	10.00
	Lodgement	Lodgement of import declaration - electronic	form	7.00
		- manual	form	12.00
		Lodgement or variation of import permit - electronic	form	75.00
		- manual	form	130.00
	Assessment of import declaration	Goods subject to compliance agreement (includes imported food) and goods not subject to compliance agreement	item	30.00
	Assessment of permit application or variation	Non-standard goods (most food items are in this group) - up to 1 hour	item	80.00
		- additional ¼ hour	item	35.50
		Other categories of items (mostly non-food, but includes herbal teas, live animals, animal food)	item	40.00 to 260.00
		Assessment of application to perform quarantine service offshore	item	120.00
Inspection fees[ab]	Container	Full container	each	16.00
		Less than full container	each	4.00
	Tailgate	In-office or at quarantine approved premises	each	35.50
		Other - first container	each	80.00
		- subsequent containers	each	40.00
	Goods	In-office - per officer	¼ hour	35.50
		Out-office - per officer – first ½ hour	½ hour	80.00
		- additional ¼ hour	¼ hour	40.00
		Officer service - for 1 or more working days	day	714.00
		- for 1 or more working weeks	week	2 486.00
		- for 4 working weeks	week	9 397.00
Registration fees	Quarantine approved premises (QAP)	Application for approval or renewal - full financial year	form	900.00
		- part financial year	form	450.00
		QAP audit - first ½ hour	½ hour	80.00
		- additional ¼ hour	¼ hour	40.00
Goods storage fees	Released from quarantine	Goods not removed within 7 days of release	m³	12.00

a Fees for AQIS services performed during ordinary hours (6:30am to 6:30pm Monday to Friday, excluding public holidays). Additional fees apply outside of ordinary hours. **b** Inspections of food include: time spent arranging for analysis of food; preparing inspection reports; assessing results; and the supervision of treatment, destruction or re-export of food.

Source: AQIS (2009).

Where a single consignment is made up of multiple food lines, each subject to the Imported Food Inspection Scheme, the consignment clearance fee is applicable for each separate clearance that is granted. The costs associated with laboratory testing performed by AQIS appointed analysts are also payable by the importer.

NZ import requirements

Imported food constitutes 20 per cent (by value) of food consumed in New Zealand. All food and food related products imported into New Zealand for sale must comply with the Food Act 1981 and delegated legislation under that Act. This includes Emergency Food Standards, the New Zealand Food (Prescribed Foods) Standard 2007, labelling and compositional requirements of the ANZFS Code, and listing of the importer under the Food (Importer Listing) Standard 2008 and the Food (Importer General Requirements) Standards 2008. The NZFSA is the sole body tasked with administering these health and safety requirements for New Zealand's imports.

Following an external review of New Zealand's imported food regulation in 2004, a shift was made away from relying primarily on controls at the New Zealand border to manage the safety and suitability of imported foods, and toward a more responsive and flexible system based on managing food safety issues at an appropriate point in the food chain. Some of the changes to the import programme are subject to the passage of New Zealand's new Food Bill, but others that have been implemented under the existing legislation include: listing and record keeping requirements for importers; and the categorisation of imported foods by level of regulatory interest, with differential risk management based on that categorisation.

Standards for NZ importers

Although Customs, and to a lesser extent, Biosecurity New Zealand, enforce the Food Act 1981 provisions for imported food on behalf of the NZFSA, ensuring that imported products are safe, and suitable for sale and consumption, remains the responsibility of the importer. Importers have direct responsibility under the Food Act 1981 to ensure that the products imported by them for human consumption are safe and suitable.

To facilitate this responsibility and ensure that imported food is safe and suitable, the NZ Minister for Food Safety has issued, under Section 11C of the Food Act 1981, two standards that apply to food importers:

- *Food (Importer Listing) Standard 2008* — embodies the legal requirement for importers of food to be listed with NZFSA. From April 2009, all importers of

food for sale must be listed with NZFSA before importing food into New Zealand. There is no charge for listing as an importer. Importers are required to submit details such as their company's trading name and physical address, a contact person's name and postal address with NZFSA, for listing purposes.

- *Food (Importer General Requirements) Standard 2008* — enhances the Food Act 1981 requirements for importers to ensure food is safe and suitable. The importer is required to keep records that show how the products they import comply with all applicable New Zealand legislation. These records must show how their food products have been produced, transported and stored safely, as well as purchase records and relevant supplier information. For example, the importer must keep, for a period of four years, all applicable food safety certification documentation (including temperature records and other test results) relating to the imported food.

Risk categories for food in New Zealand

All food in New Zealand is categorized by the NZFSA into one of three levels of 'regulatory interest' — low, medium or high. This grouping determines the level of regulatory intervention by NZFSA with a particular food and enables differing import requirements that relate to the potential health risk of products in each group:

- Importers of foods of *low regulatory interest* are required to comply with general obligations as set out in legislation, such as registering with NZFSA, keeping records of imports, and, on request, supplying this information to NZFSA.
- Importers of foods of *medium regulatory interest* operate under a Food Control Plan, which involves recording the steps taken to manage the food safety and suitability of their products. Operators need to be aware of any food standards that apply to their products, and options for pre-clearance.
- Importers of foods of *high regulatory interest* also operate under a Food Control Plan, but are only able to import from countries/regions that have established pre-clearance arrangements with NZFSA.

In addition to these groupings, New Zealand also lists a number of foods which are considered to present a greater risk to public health and are monitored for specific hazards; these are termed 'prescribed foods' (box C.2). Generally, foods that are prescribed foods are also of high regulatory interest. However, there are some foods that remain on the prescribed list because of a past incident but are no longer considered to be of regulatory interest (NZFSA, pers. comm. 2009).

While most imported foods enter New Zealand without any restriction, prescribed foods are released into the market place only once their safety has been verified as complying with all relevant import requirements.

NZFSA has specific import procedures and requirements that apply to prescribed foods. These procedures are known as Imported Food Requirements (IFRs) — previously termed Standard Management Rules (SMR) (as SMRs are reviewed they are renamed as IFRs).

Border inspection and clearance procedures

The Food Act allows sampling and testing of any domestic or imported foods in the marketplace or at the border. However in practice, it is mainly prescribed foods and other food that is of high regulatory interest (because it is suspected of non-compliance) that is inspected at the border.[3]

The sampling frequency of a specific food imported into New Zealand is based on the sampling and testing history built up by each importer for that specific food. As a compliance history is developed, the frequency of sampling and inspection is reduced for the importer for that specific food. This reduction is governed by a 'switching rule', which has the following steps:

- sampling of foods of high regulatory interest initially starts out at a 'tightened' level (whereby every import of that specific food is sampled and tested), until 5 compliant imports have been cleared
- sampling is then lowered to the 'normal' level (whereby 20 per cent of imports of that specific food are sampled and tested), until another 5 consecutive compliant imports have been cleared
- sampling is then further lowered to the 'reduced' level (whereby 10 per cent of imports of that specific food are sampled and tested).

The frequency of sampling returns back to the tightened level if a specific food is tested and found not to comply.

Unless specified in the Imported Food Requirements (IFR) / Standard Management Rules (SMR) for a particular food, the results of tests taken outside New Zealand are not able to be supplied to meet this sampling and testing protocol.

3 These are captured under Schedule 1 of the Customs and Excise Act 1996.

Box C.2 **Foods categorised as 'prescribed' in New Zealand**

The following foods, when imported, manufactured, stored, transported, prepared for sale, or sold, are prescribed for the purpose of monitoring certain conditions and contaminates:

- meat or other food product of a bovine animal, and any food product derived from or containing the meat or products of a bovine animal
- bivalve molluscan shellfish (cooked and raw) including clams, cockles, mussels, oysters and scallops
- canned mushrooms, canned tomatoes and tomato products
- crustaceans (cooked and raw) including shrimps and prawns
- dates
- desiccated coconut
- finfish in waters from the tropics world-wide, the extreme south eastern US (including south Florida), and the Bahamian region.
- barracuda, amber jack, horseye jack, black jack, other large species of jack, king mackerel, large groupers and snappers and mackerel and barracuda in waters from mid to north eastern Australia
- hijiki (Mehijiki, Hiziki, Hijaki) Seaweed (*Hizikia fusiforme*)
- ice cream and iced confectionery
- manufactured and minced fish (surimi and marinara mix)
- meat paste, pate and fermented meat products
- nutmeg, paprika, pepper and cinnamon spices
- peanuts, pistachio nuts and peanut butter
- puffer fish and fugu
- raw milk cheese (cheese that has not been pasteurised or undergone cheese treatment according to the Food (Milk and Milk Products Processing) Standard 2007), soft cheese and grated cheese
- shark and dog fish; escolar, sword fish, marlin and shark species, tuna, mahi mahi, blue fish, sardines, amberjack, mackerel and herrings
- smoked or smoke flavoured vacuum packed fish
- soy sauce, flavoured soy sauce, and sauce mixtures with a soy sauce base
- tahini or crushed sesame seeds or any food containing these foods (including sesame seed paste, sesame paste, sesame seed butter, sesamum seed, hamas tahini, tahineh, tahina, tahine, halva dessert mix, hummus (halawa), halva, helva and babaganoush)

Source: Food (Prescribed Foods) Standard 2007 (NZ)

NZFSA specifies to Customs which tariff codes are to be monitored – that is, which food imports are to be stopped by Customs. Each type of food is referred to as a 'line item'; a consignment may contain several 'line items'.

If the food is stopped by Customs then the importer will need to apply to New Zealand's border clearance agency – the NZFSA Verification Agency (NZFSA VA) — for a NZFSA 'single use permit'. NZFSA VA (based in Auckland) now undertake all clearance related activities, including sampling and verification, for New Zealand imports.[4] Sampling and testing protocols for imported foods are listed in the appropriate IFR/SMR. The food cannot be released for sale until the appropriate clearance has been received.

The following three procedures are used to clear imports of high and medium regulatory interest. The individual IFRs and SMRs detail which option is available for the associated food.

- Where a government to government pre-clearance arrangement exists (for example, arrangements with AQIS), or NZFSA recognises specific overseas manufacturers, then approved certification will be accepted with imports of a prescribed food under that specific arrangement. In addition to the document check, a food type imported under a specific pre-clearance arrangement is required to be inspected (physical inspection or sampling and testing) at intervals to verify certification.
- Multiple Release Permits (MRPs) are issued for imported foods that are inadvertently captured by the tariff codes monitored by the NZFSA, or are subject to a pre-clearance agreement. MRPs are specific to importer, broker, food type and supplier, are issued for a defined time period and are reviewed on an annual basis for compliance.
- In the absence of approved certification, prescribed foods will be sampled and tested in New Zealand according to the sampling and testing protocol.

Fees to import food into New Zealand

Inspection, sampling, testing and clearance are done at the importer's expense. The charges for these procedures are listed on the NZFSA's internet site and detailed in

4 Prior to 1 July 2009, the NZFSA contracted the Auckland Central Clearing House to implement New Zealand's border clearance procedures and relied on inspection and sampling of prescribed imported foods by local Public Health Units. The change to use of NZFSA VA is an outcome of New Zealand's Imported Food Review in 2004 and is aimed at aligning roles and responsibilities to improve the efficiency of imported food regulation procedures (New Zealand Customs 2009).

table C.3. In addition, all storage, transport, processing activities and testing associated with each consignment is completed at the importer's expense.

Table C.3 **Fees for clearance of food imported into New Zealand**[a]
2008-09

Category	*Sub category*	*Agency*	*Unit*	*Fee*
Single use permit fees	Application	Auckland Central Clearing House (ACCH)	Line (food type)	$48.00
			¼ hour	$24.00
	Sampling & inspection	Local Public Health Unit	¼ hour	$24.00
Multiple Release Permit (MRP) fees	Application & renewal	NZFSA	¼ hour	$34.30
	Sampling, inspection & review	Local Public Health Unit	¼ hour	$24.00
	MRP audit	Local Public Health Unit	¼ hour	$24.00

a Fees are expressed in NZ dollars, including GST. Rates apply for normal working hours, with additional costs incurred if work is undertaken outside of normal hours.

Source: NZFSA (2009m).

C.2 Regulation of food for export

Requirements for the health and safety of Australia's food exports are administered by AQIS. Following a 2000 review of Australia's Export Control Act (the Frawley Review (Frawley et al 2009), the Australian Government agreed to use Australian standards for health and hygiene (food safety) as the underlying standard for all exports (referred to as Tier 1). Standards set by overseas governments (Tier 2) and additional market specific requirements (Tier 3) would then apply on top of domestic standards, but only to producers/processors wishing to access those markets (Government Response to the NCP Review of the *Export Control Act 1982,* 2000*)*. This arrangement ensures that the most stringent controls of one country are not applied to all exports. It also eliminates the additional costs of implementing separate domestic and export food safety systems.

Some of the commercial requirements of the overseas buyers for Australia and New Zealand's food exports are detailed in box C.3. Of these, the EU standards for food safety in seafood are often viewed as the most stringent of requirements for seafood and similarly, for red meat exports, the US standards are viewed as critical to meet.

Box C.3 **Standards of selected export destination countries**

European Union (EU) standards necessitate that countries which wish to export food to the EU have a 'competent authority' responsible for official controls throughout the production chain. The authority must be empowered, structured and have the resources to implement effective inspection, take corrective action, if necessary, and guarantee credible hygiene and public health attestation. In addition, EU hygiene legislation places specific requirements on key aspects of food production and processing. In seafood for example, EU requirements impact on the structure of vessels used in fishing, landing sites, processing establishments and on operational processes, including freezing and storage. The EU standard, among others, allowed imports only from approved vessels and establishments, such as processing plants, freezers, factory vessels and cold storage, which had been inspected by the 'competent authority' of the exporting country and found to meet the EU requirements.

The European Commission Health and Consumers Directorate-General undertook an audit in late 2008 to check the effectiveness of NZFSA as a 'competent authority' in delivering assurances of product safety in the fish products and bivalve molluscs industries.

In the **United States** (US), the Food Safety and Inspection Service (FSIS) is responsible for ensuring that US domestic and imported meat, poultry, and egg products are safe, wholesome, and accurately labelled. To export meat, poultry, and egg products to the US, Australia and New Zealand are required to establish and maintain inspection systems that are 'equivalent' to those of the US. For these purposes, AQIS and NZFSA are deemed to be 'competent authorities' and are responsible for certifying individual exporting establishments to FSIS and for providing annual re-certification documentation. This process focuses on demonstrated controls in place for five risk areas: sanitation; animal disease; slaughter and processing; residues; and enforcement. FSIS undertakes document and on-site audits of foreign inspection systems and reinspects meat and poultry at the port-of-entry to ensure that equivalent inspection systems have been maintained.

The NZFSA report that during 2004, a FSIS audit in New Zealand included eight meat slaughter operations, five further processing operations, six regional offices and four laboratories, as well as NZFSA in Wellington.

Indonesia and **Malaysia**, with their large Muslim populations, require halal practices to be undertaken for all halal products imported into their countries. Australia currently has eight halal certifiers that are recognised by the Indonesia's Council of Clerics; New Zealand has two halal certifying bodies (New Zealand Islamic Meat Management mainly certify meat and the Federation of Islamic Associations do most of the certification on halal dairy exports).

In March 2009, the Indonesian Islamic clerics council set new standards for halal certifiers to meet. It evaluated the halal certifying bodies in New Zealand and, subsequently, Indonesia announced that it no longer recognised them and would not accept New Zealand beef exports. Consequently, New Zealand has until 1 October 2009 to modify halal practices in order to continue to export its beef to Indonesia. Australian halal certifying bodies were also evaluated — three were temporarily suspended, but all eight were eventually approved.

Sources: European Commission (Health and Consumer Protection Directorate-General) (2006); Radio Australia News (2009).

Regulation of Australian food exports

AQIS regulates food exports from Australia under the conditions and restrictions of the Export Control Act 1982. The Act provides a listing of goods that are 'prescribed'. Prescribed goods have requirements under the Act and associated Regulations and Orders that have to be met in order for the product to be exported (box C.4), but only some of these are relevant to food safety. Foods that are classified as prescribed goods include:

- dairy
- live animals
- fish and fish products
- plants and plant products
- eggs and egg products
- meat and meat products
- grain
- animal food (frozen raw meat)
- food labelled as organic
- fresh fruit and vegetables
- dried fruit.

All other goods are classified as non-prescribed. Some foods that are non-prescribed goods include pasta products, biscuits, jams and confectionery.

As a general rule, AQIS only assists in the export of goods that are prescribed, but will become involved in the export of non-prescribed goods if an importing country requires AQIS or government to government certification.

Box C.4 **Australian export legislation**

The Export Control Act 1982 sets out the requirements for businesses wanting to export 'prescribed goods' and the broad responsibilities of AQIS in regulating exports. Specifically, AQIS is empowered to conduct inspections and audits, issue certificates, issue requests for corrective action and apply sanctions for non-compliance.

A general order that is under the act and supports its operation is the *Export Control (Prescribed Goods – General) Orders 2005*. This order covers the administrative areas of legislation that are common to all the export food commodities, including requirements for registration of establishments.

There are also a number of commodity specific orders that require exporters: to comply with specified Australian food standards; to ensure that the exported product is fit for human consumption; and to make sure that statements made in relation to the condition and preparation of the product are accurate:

- *Export Control (Animals) Order 2004*
- *Export Control (Eggs and Egg Products) 2005*
- *Export Control (Fish and Fish Products) Orders 2005*
- *Export Control (Meat and Meat Products) Orders 2005*
- *Export Control (Milk and Milk Products) Orders 2005*
- *Export Control (Organic Produce Certification) Orders*
- *Export Control (Plant and Plant Product) Orders 2005*
- *Game, Poultry and Rabbit Meat Orders 1985*
- In addition, there is a range of Acts that enable inspection and charging of exporters (and each of these Acts also has associated regulations and orders):
- *Export Inspection and Meat Charges Collection Act 1985*
- *Export Inspection (Establishment Registration Charges) Act 1985*
- *Export Inspection (Quantity Charge) Act 1985*
- *Export Inspection (Service Charge) Act 1985*
- *Meat Export Charge Act 1984*
- *Meat Export Charge Collection Act 1984*
- *Meat Inspection Act 1983*
- *Meat Inspection Arrangements Act 1964*
- *Australian Meat and Live-stock Industry Act 1997*

Sources: AQIS (2009); Australian Customs and Border Protection Services (2009),

Business interaction with AQIS for export purposes

- There are a number of AQIS procedures that exporters need to comply with in order to export food products. Depending on the product and its destination, the food exporter may need, for the purposes of demonstrating food safety:[5]
- an export declaration — notification to customs of the nature, destination, transportation means and date of intended export. This is required for all exported commercial goods and is not related to food safety
- an export permit — required for prescribed food products by the Australian Customs Service prior to export clearance being granted to verify that the product is eligible for export to its intended destination (ie. this is not related to food safety as such). For some food products, export permits can be issued electronically in conjunction with the export declaration (see box C.5)
- an approved arrangement — an arrangement between AQIS and the exporter that details, for each stage of production, controls used to ensure that food safety and other legislative and importing country requirements are met. For food processors, this includes a HACCP plan
- registration of premises for export — requirements for registration are specified in various orders, instructions and guidelines which cover the construction and operation of establishments, record keeping requirements and the need for approved arrangements. Approved arrangements are necessary for the registration of premises used by businesses under the Meat, Dairy and Fish Export Programs. Registration of premises is required for the preparation of prescribed goods in order to obtain an export permit, and is perpetual (except in the case of a livestock establishment, for which registration is reviewed annually)
- inspection of prescribed goods to ensure that the goods are 'safe, wholesome, accurately described and meet international market conditions and obligations' (AQIS). For example, AQIS is required to inspect all meat carcasses (under the *Export Control (Meat and Meat Products) Orders 2005*)
- export certification — government to government assurance by AQIS to the importing country, that the exported food is wholesome, prepared under hygienic conditions and meets all health and safety standards of Australia and the importing country (box C.5).
- Food safety requirements in export certification and registration processes are delivered through a range of commodity-specific export programs:[6]

[5] For the export of livestock or meat from cattle, sheep or goats, an export licence may also be required (under the Australian Meat and Livestock Industry Act 1997).

- Meat Export Program (includes both red meat and poultry)
- Fish Export Program (includes both fish and egg products)
- Dairy Export Program
- These programs provide inspection, verification and certification services to industry, in addition to operational, policy and technical advice on exporting.
- To back up its assurance that approved arrangements are working and food safety requirements are met, AQIS does audits of approved arrangements and/or inspections of products. A combination of announced and unannounced audits is conducted. The frequency of audits for export purposes in each product group is noted in table C.4. In the Dairy export programs, audits are conducted by third-party auditors, usually the state regulatory authorities, on behalf of AQIS. There is appeals policy under the meat, fish or dairy programs to enable businesses to dispute AQIS audit or non-compliance reports.

Table C.4 **AQIS regulation of selected exports**

2007-08

Export program	*Premises registered*[a]	*Audit frequency*	*Requests for corrective action*[b]	*Export certificates issued*
	No.		No.	No.
Meat and meat products	790		1 580	
Abattoirs & boning rooms		Monthly		
Food processors		Every 3–6 months		
Cold stores & container stores		Annual		
US approved cold stores		Quarterly		
Dairy products [c]	431			25 668
Producers of milk & milk products		6 monthly		
Handlers & storers of milk & milk products		Annual		
Fish and fish products[d]	1 129	Annual minimum; maximum monthly	2 258	33 129
Eggs and egg products[d]		Annual minimum; maximum monthly		707
Misc. other food products				7 500
Total	6 717			

[a] Some establishments are registered under more than one program. [b] Estimated by AQIS based on at least one corrective action request per audit with at least two audits per establishment per year. [c] In addition to these inspections for dairy, 'load out inspections' are carried out on each exporter at least once per year. [d] For products in this group, there is scope to reduce audit frequency based on performance.

Source: DAFF (2008d); ANAO (2007).

6 There are also export programs for horticulture, grain, organics and live animal export, but these are directed, not at food safety, but at meeting importing country quarantine requirements for the absence of specific chemicals, or animal and plant pests and diseases.

- AQIS has, for some products (such as horticulture), moved away from final product inspection and now uses quality assurance based systems. Businesses with a Quality Assurance arrangement with AQIS can use an employee (who has been approved by AQIS) to conduct inspections for export purposes. AQIS conducts spot checks on this 'self sign off'. Any failures by a business under the self assessment system see that business fall back to the AQIS inspector system. This places more responsibility for product safety and quality on the exporter and enables exporters to reduce the direct involvement of AQIS personnel in export inspection.
- For a meat premises, full export registration entails daily on-site presence of an AQIS veterinarian (and inspectors) and a monthly audit by a senior veterinarian. AQIS had 373.5 meat inspectors and 184 vets on staff across Australia at the end of 2007-08 (Australian Government Department of Agriculture, Fisheries and Forestry 2008). Export abattoirs are also required to be AusMeat accredited and are audited regularly to ensure trade description requirements are met (this is voluntary for premises supplying only to the domestic market).[7] Livestock supplied to exporting meat premises have to meet strict sourcing requirements, including a supplier declaration (related to the health of the animal and freedom from chemical residues), carry an identification tag and undergo pre-slaughter inspection by a veterinarian (this is not required for domestic supply).

AQIS issued 33 129 certificates for fish and fish products in 2007-08, 707 certificates for eggs and egg products, 25 668 certificates for dairy products and 7500 certificates for other miscellaneous food products.

[7] AUS-MEAT Limited is an industry-owned, not-for-profit company that is responsible for setting standards for meat exports under Regulation 3 (1) of the *Australian Meat and Livestock Industry (Export Licensing) Regulations 1998*.

Box C.5 **Export documentation and certification by AQIS**

Export permits and other documentation

AQIS's EXDOC is a business-to-government electronic system that is intended to provide cost savings and faster turnaround times for export documents. EXDOC is used to issue electronic export permits and manage the documentation requirements for the following exported agricultural commodities and their products: meat, game, poultry, rabbit, milk, fish, grain, plant and horticulture. An exporter wishing to send a consignment of one of these products inputs all the relevant information about the type, production, preparation, quantity and destination into a computer and electronically sends the information to EXDOC. If requested, EXDOC automatically transmits some of that information to Customs to obtain an Export Clearance Number (ECN). Obtaining Customs clearance in this way provides efficiencies for exporters because if they went to Customs separately for an ECN, they would need to provide Customs with similar information already held by EXDOC. EXDOC processes the information and electronically transmits information back to the exporter, including an Exporter Permit Number (EPN) and an ECN. In normal circumstances, AQIS guarantees that each electronic transaction will take less than 15 minutes. On an average day it takes less than five minutes. In the absence of EXDOC, exporters fill out forms in quadruplicate and send them by post or courier.

Export certification

Under AQIS's export certification system, an export certificate is provided for food and agricultural commodities, confirming that the product has met all the health and food safety standards and quarantine requirements of the importing country, down to details such as the date and specific boning room of an abattoir where meat was slaughtered. An export certificate can be a *health certificate* (food and live animals), a *phytosanitary certificate* (horticultural products, grains) or an *organic* or *biodynamic* certificate (organic or biodynamic products) Export certificates, in paper form, are usually couriered to importers and they are required as part of the import clearance process.

To streamline quarantine procedures, reduce transaction costs and turnaround times for goods and enhance certification security, AQIS is trialing an electronic system for government-to-government certification of exports. E-cert seeks to replace the paper export certificate with an electronic certificate transmitted directly to the importing government ahead of the goods. The E-cert system originated in New Zealand and was introduced into Australia in 2001.

Source: AQIS (2009).

Australian government fees and charges to export food

AQIS currently has three basic types of fees: establishment registration (for registration of an export establishment including registration for EXDOC); fees for services (for specific services such as an audit); and documentation fees (for issue of documentation) — see table C.5. Fees vary by type of product and are reviewed annually with the relevant industry export consultative committee. While a

component of some export fees are related to monitoring and assurance of food safety compliance, a significant component of many of the export fees is related to other factors, such as recovery of expenses for marketing and foreign market access arrangements.

All export inspection and certification charges have been subsidised by the Australian Government, at a rate of 40 per cent, since November 2001 (table C.6). The *Quarantine and Biosecurity Review 2008* found no clear policy objectives for the subsidy and recommended its abolition. However, legislation to implement this recommendation was rejected by the Australian Senate in September 2009. The subsidy is estimated to be worth around $40 million per year to Australian exporters.

Table C.5 **AQIS fees for the export of selected food products**

2008-09

		Unit	*Fee ($)*
Documentation *(seafood, eggs, processed fruit & vegetables)*	Export permit; certificate of condition; any other document		
	- manual	doc	60
	- electronic (fee varies with process)	doc	16–42
	- replacement document	doc	202
(dairy)	Export permit, govt certificate or any other document		
	- manual	doc	113
	- electronic (fee varies with process)	doc	6–15
	- replacement document	doc	301
(meat)	Meat health certificate		
	- manual	doc	31
	- electronic	doc	12
	- replacement	doc	305
Fee for service *(seafood, eggs, processed fruit & vegetables)*	Service at ordinary place of work	¼ hour	26
	Service at other location	¼ hour	43
(dairy)	Service at other location	¼ hour	67
(meat)	Meat inspector[c]	hour	63
		year	53 609
	Veterinary officer[c]	hour	80
		year	82 997
	Area technical manager[d]	hour	182
		day	1 184
	Meat chemical approvals	approval	200
Registration *(seafood)*	Application/transfer establishment registration	Application	334
	Storage establishment land/vessel	year	949
	Vessel - processing and/or packing[a]	year	1 281–1 469
	Land establishment - processing and/or packing[b]	year	1 281–1 469
	Vessel – partial preparation	year	543
	Land establishment – partial process/live	year	949
(dairy)	Application/transfer of registration	Application	300
	Exporting business (fee varies with size of operation)	year	1 468–2 654
	Storage establishment	year	625
(meat) [e]			No charge
Exemptions *(dairy)*		Application	170–567

[a] Fee varies with vessel size. [b] Fee varies with number of lines of product. [c] Rates apply to ordinary hours – higher rates apply for overtime and shiftloading. Rates are also available on a daily, weekly or monthly basis. [d] Area technical manager fees apply to non-compliance followup audits and specific requests for attendance. [e] Under the Australian Government's subsidy arrangements for export fees in 2008-09, there was no charge for export registration of meat facilities. This arrangement has been estimated to be worth up to $21 000 per year for an export processor and up to $90 000 per year for an export slaughter facility.

Source: AQIS (2009).

Table C.6 **Impact of the 40 per cent export program subsidy**
2001-02 to 2008-09[a]

Export program	*$'000*	*$'000*
	2008-09	2001-02 to 2008-09
Grain	4 252	
Horticulture	2 590	
Live animals	2 093	
Organic Foods	87	
Dairy	840	
Fish	2 156	
Meat	31 411	
Total subsidy received by business	**43 428**	**279 792**

a Includes budgeted funding for 2008-09.

Source: Senate Standing Committee on Rural and Regional Affairs and Transport (2009).

Regulation of New Zealand food exports

More than 80 per cent of the food produced in NZ is exported, contributing to more than half NZ's total export earnings. The NZFSA is the principal government body responsible for ensuring the safety and suitability of NZ's food exports under the *Food Act 1981* and the *Animal Products Act 1999*.

Registration for export

Exporters must be registered with NZFSA, but there are exceptions – registration is not required if a business is exporting animal products not for human or animal consumption (eg: hides, skins, feathers) and does not require an official assurance; or if export is for non-commercial purposes, is a sample for scientific purposes, or is otherwise exempt under the *Animal Products (Exemptions and Inclusions) Order 2000*. New Zealand had 1063 registered exporters (as at 29 May 2009) – the list of registered exporters is published on the NZFSA website.

General requirements for export

General requirements for export (GREX) are export requirements to safeguard assurances provided by NZFSA for export of animal products. They are specific to a product and/or export market and outline general requirements that animal products must meet to be eligible for export, such as:

- packaging, labelling and branding
- seals on cartons and containers

- transport, equipment and storage (for example, temperature control for road and rail transport, and at wharves)
- verification.

These requirements can be accessed by exporters from NZFSA's website. The number of GREX provisions has increased in recent years from 14 in 2007 to 21 in 2008 and 24 so far in 2009.

Risk management programs for exporters

All primary processors of animal products and some secondary processors (such as butchers dealing in both homekill and regulated meat) are required to operate under a risk management program in order to export. A risk management program (RMP) is a written plan designed by an animal product business to manage its biological, chemical and physical hazards (see chapter 13 for further details). It ensures that the resulting animal product meets relevant standards and is fit for its intended purpose. Businesses that export animal products but are not the processor or manufacturer, need to ensure that all processors and manufacturers involved in the production of their product operate an RMP, or other appropriate risk management system (such as an export approved premise or food safety programme). Businesses that are exempt from the requirement to have an RMP in order to export include:

- primary producers of animal products (e.g. sheep and beef farmers)
- dairy processors of dairy products consumed on premises
- certain dairy products that are multi-ingredient foods
- egg producers who have 100 birds or fewer and sell all eggs direct to the consumer
- primary processors of animal material for purposes other than human or animal consumption (e.g. skinning and shearing).

Regulated control schemes

Regulated control schemes are imposed by the government (through NZFSA, with industry consultation) to manage food-related risks when:

- an individual risk management program would not be feasible or practicable, or
- it is more efficient for the government to run a programme, or
- they are needed to meet the market access requirements of foreign governments.

Regulated control schemes may be either legislated under regulation, or issued as a notice under the *Animal Products Act 1999*. Regardless of the way a particular scheme is legislated, all relevant manufacturers, both domestic and export, are required to participate. Currently, New Zealand has regulated control schemes for: limited processing fishing vessels; bivalve molluscan shellfish; and contaminant monitoring and surveillance.

Official assurances

In addition to registering exporters, the NZFSA performs the regulatory duties of the "Competent Authority" for the New Zealand Government, providing official assurances that attest to the safety and suitability of exports. An official assurance is a government-to-government certificate confirming that the product is fit for purpose, has met requirements of New Zealand's legislation, as well as any specific requirements of the importing country.

NZFSA Verification Agency offices around New Zealand or the Dairy Cert Unit in Auckland sign and issue nearly all official assurances issued under the *Animal Products Act*. Export certificates are the most common tool used by NZFSA when providing official assurances, with over 200 000 export certificates issued every year (NZFSA, sub. 2).

The need for an official assurance increases the cost to export. This is because an official assurance requires the exporter and processor to meet additional criteria, such as:

- demonstrating how export requirements are managed
- having additional traceability systems
- being verified more frequently
- applying and paying for certificates.

There are currently 228 laboratories around New Zealand that are approved by NZFSA to undertake tests for export assurance purposes (NZFSA 2009k).

Box C.6 **E-cert**

Electronic Certification (E-cert) is an NZFSA web application used to assist with providing government-to-government assurances that animal products exported from New Zealand comply with the regulatory requirements of importing countries Specifically, E-cert allows information relating to an official assurance to be independently verified and for the product status and country eligibility assigned to a product to be traced as ownership of that product changes through the supply chain.

There are three different E-cert systems:

- Animal Products E-cert used for exported animal products excluding dairy products (ie meat, seafood, game, poultry, eggs, pet food, bee products, hides, wool and skins)
- Dairy E-cert used for exported dairy products
- Phyto E-cert used for exported plant products. This E-cert system is owned and operated by Biosecurity, MAF.

The primary purpose of E-cert is to track the market eligibility and product status from the time of production until export (verification), and approve and print sanitary export certificates (certification).

Source: NZFSA (2009l).

NZ government fees and charges to export food

The fees and charges for export of food products from New Zealand are set under the *Animal Products (Fees, Charges and Levies) Regulations 2007* (Schedule 1).[8] These regulations allow for NZFSA and Biosecurity NZ to charge exporters for provision of documentation such as official assurances; provision of inspection, verification and registration services and assessment of applications; and registrations of premises and businesses for export purposes. As in Australia, these fees and charges vary in amount and complexity between industries.

The cost of E-Cert's ongoing development and operation is also recovered from industry. For industry users required to use Animal Products E-Cert, the cost of use is NZ$0.09 per request from the system plus NZ$0.14 per second of use (excluding GST). For other industry groups not required to use E-cert, the cost of use is lower — NZ$0.05 per request plus NZ$0.08 per second of use (excluding GST).

8 The *Animal Products (Fees, Charges and Levies) Amendment Regulations 2009* provided updated fees to apply from 1 July June 2009.

Table C.7 **Fees and charges under NZ Animal Product Regulations**

2008-09

Category	*Subcategory*	*Unit*	*Fee (NZ$)*
Documentation	Official assurance	Application	36.00
	Replacement official assurance	Application	1 000.00
	Statement of NZ standard	Application	25.00
Fee for service	Assessment of applications for listing, registration, recognition or accreditation by officer of the Ministry		
	- for each hour spent	hour	137.25
	- for each additional ¼ hour in final part-hour	¼ hour	34.31
	Assessment of applications for listing, registration, recognition or accreditation by person not an officer of the Ministry		
	- for each hour spent	hour	150.00
	- for each additional ¼ hour in final part-hour	¼ hour	37.50
	Travel by assessment officer	km	0.69
	Other work-related costs incurred by Ministry	As incurred	
	Use of electronic certification system		
	NZFSA verification services[a]		
	- establishment charge for verifier in export and game sectors	hour	36.84
	- establishment charge for veterinary verifier	hour	65.41-69.76
	- circuit charge on primary processors and secondary processors who slaughter and dress animals other than fish	hour	24.13
	- circuit charge on coolstores	year	1 078.00
	- circuit charge on fish processors	year	538.00
	- circuit charge on bivalve molluscan shellfish processors	year	1 517.00
	- circuit charge on fishing vessels		
	- circuit charge for all verifiers	month	20.35
		hour	87.25
Registration[b]	Registration of risk management program	Application	
	- initial application		137.25
	- amendment/update to program		137.25
	- use of food safety program as risk management program		100.00
	Registration as exporter	Application	137.25
	Application for recognition/accreditation	Application	137.25
	Listing as game estate, homekill or recreational catch service provider, other	Application	137.25
	Application to list/renew/register as transport operator, sorting shed operator, depot operator, limited processing vessel, shellfish harvest operator	Application	137.25

[a] Rates are exclusive of GST and apply for normal working hours, with additional costs incurred if work is undertaken outside of normal hours. [b] With each application for registration, there is also an assessment required, with cost as detailed under 'fee for service'.

Sources: Animal Products (Fees, charges and levies) Regulations 2007.

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