



Australian Government
Productivity Commission

Performance
Benchmarking of
Australian Business
Regulation:
Food Safety

Productivity Commission
Issues Paper

April 2009

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 or by contacting the Media and Publications section on (03) 9653 2244 or email: maps@pc.gov.au

Contents

1. SCOPE OF THE STUDY	4
What has the Commission been asked to do?	5
How can you participate in this study?	5
Background to this study	6
What is a ‘regulatory burden’?	9
The focus is on ‘performance benchmarking’	13
2. Food safety in Australia and New Zealand	15
Why food safety is important	15
Food safety regulation — the joint Australia/New Zealand approach	18
Food safety regulation in Australia	19
Food safety regulation in New Zealand	21
3. What are we covering in this study of food safety regulation?	22
Which regulations?	22
Which regulators?	25
Which administration and enforcement practices?	26
Studying food safety regulation by examining the regulations and regulators	28
4. The Commission’s approach	33
5. What are the ‘top 10’ burdens arising from food safety regulation?	35
Attachment A: Background documents	37
Attachment B: How to make a submission	42
References	44

THE ISSUES PAPER

The Commission has released this issues paper to assist individuals and organisations to prepare submissions to the study 'Performance Benchmarking of Australian Business Regulation: Food Safety'. This paper contains and outlines:

- the scope of the study
- matters about which the Commission is seeking comment and information
- the Commission's approach to the study
- how to make a submission.

KEY DATES

Receipt of terms of reference	23 December 2008
Due date for submissions	15 May 2009
Release of draft report	October 2009
Final Report	December 2009

CONTACTS

Administrative matters:	Christine Underwood	Ph: (02) 6240 3262
Other matters:	Sue Holmes	Ph: (02) 6240 3351
Facsimile:	(02) 6240 3377	
Email address:	foodsafety@pc.gov.au	
Website:	www.pc.gov.au/projects/study/regulationbenchmarking/ohs-food-safety	
Freecall number for regional areas:	1800 020 083	
Telephone Typewriter (TTY):	1800 803 344	
Postal address for submissions:	Business Regulation Benchmarking – Food Safety Productivity Commission PO Box 1428 Canberra City ACT 2601	

1. Scope of the study

What has the Commission been asked to do?

The Commission has been asked to continue the program of performance benchmarking Australian business regulation ('the benchmarking program'). Specifically, the Commission has been asked to benchmark the burdens on business arising from food safety regulation and from occupational health and safety regulation. This study considers the burdens arising from food safety regulation, while a separate companion study considers the burdens arising from occupational health and safety regulation.

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

Attachment A contains the terms of reference for the studies.

How can you participate in this study?

As part of the study process, the Commission will engage in a number of rounds of consultation with stakeholders, such as individual businesses, business groups, government agencies, regulators, consumer groups and unions. The Commission is also seeking written submissions from interested parties on the regulatory matters that are of most concern and the data sources that may be useful to the study. The Commission is particularly interested in the views and experiences of businesses subject to food safety regulation (box 1) and encourages such businesses to make a submission to this study.

While this paper sets out a variety of matters on which the Commission is seeking information and comment, participants are free to raise any matters in their submission(s) that may be relevant to the study.

The Commission is aware that some interested parties may have already invested significant resources in drafting submissions to other studies and reviews into food safety regulations. To save the time and resources of these participants, the Commission is happy to accept that material as a submission to this study. For example, submissions made to the Bethwaite review can be re-submitted to this study, with or without amendment.

The details of how to make a submission are contained in attachment B.

Box 1 Businesses subject to food safety regulation

Businesses handling food at any stage ‘from the paddock to the plate’ face obligations arising from food safety regulation and, thus, fall within the scope of this study. For most of these businesses, their core business is, in some way, related to food — for example:

- primary production
- food processing (includes activities such as the killing and gutting of animals for food, and the pasteurisation of eggs)
- food manufacture (includes activities such as the milling of flour and the canning of food)
- food transport
- food export and import
- food storage
- food retailing and service.

Other businesses, such as hospitals, aged care and child care providers, also fall within the scope of this study in so far as they handle food as part of their broader business — for example, the preparation and delivery of meals for those in their care.

Background to 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 to help implement that decision (box 2).

On 24 October 2008, COAG’s Business Regulation and Competition Working Group agreed that the Commission should study the regulation of food safety, and of occupational health and safety, for the next phase of the benchmarking program. It is intended that these studies will complement COAG’s reform processes and initiatives, and those of the jurisdictions themselves.

Box 2 Performance Benchmarking of Australian Business Regulation — the Commission's previous studies

The 'feasibility' study

To help implement COAG's 2006 agreement on benchmarking and measuring regulatory burdens, the Commission was asked to examine the feasibility of developing quantitative and qualitative performance indicators and reporting framework options. The terms of reference for this study are contained in attachment A.

This feasibility study (PC 2007) concluded that benchmarking was technically feasible and could yield significant benefits.

The 'quantity and quality of regulation' and '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
- benchmark the administrative compliance costs of business registrations.

In December 2008, the Commission released two companion reports addressing these areas.

The reports served to test the usefulness of different benchmarking indicators and approaches to collecting benchmarking data. The reports also provided lessons for future studies. In particular, the business registrations report highlighted the potential challenges in obtaining data from individual businesses.

Performance Benchmarking of Australian Business Regulation: Quantity and Quality

The 'quantity and 'quality' report (PC 2008a) 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. 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 (PC 2008b) provides estimates of compliance costs for business in obtaining a range of registrations required by the Australian, state, territory and selected local governments. 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.

In February 2009, the study's Advisory Panel agreed that the benchmarking study on food safety regulations would benefit from New Zealand's participation. Prior to this, the Commission's feasibility study on benchmarking had indicated that New Zealand's involvement in the benchmarking program would be useful, given a number of regulatory regimes are already shared and because it has comparable regulatory objectives in many areas and operates within a similar legal framework (PC 2007). This is especially so in the case of food safety, where the regulatory frameworks of Australia and New Zealand are integrated.

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

What is regulation?

For this study, 'regulation' is broadly defined to include 'government rules' that influence or control behaviour, as well as the administration and enforcement of those rules. The rules are usually implemented to promote certain outcomes in the community. In the case of food safety regulation, governments have implemented regulations to limit the instances of foodborne illness, and associated costs to society, that can arise anywhere from the 'paddock to the plate'.¹ Regulation includes legislation and formal regulations, as well as quasi-regulation, such as some codes of conduct (or codes of practice) and guidance materials that do not involve 'black letter' law. Even though most codes and guidance materials are not 'black letter' law, the enforcement practices of regulators or decisions of the courts can give them the effect of being law.

Given the breadth of food safety regulation, the Commission proposes to target this benchmarking study on those aspects of regulation intended to serve the same objective, but with differences in how they seek to achieve that objective. Such differences may arise either due to the content of the regulation or differences in how it is administered and enforced.

¹ Certain food safety regulations include objectives other than food safety. For example, the Australia New Zealand Food Standards Code (Box 5) includes some requirements directed at achieving 'nutritional outcomes' — such as Standard 1.2.8 (Nutritional Information Requirements) and the mandatory fortification of wheat flour (for making bread) with thiamin and folic acid within Standard 2.1.1 (Cereals and Cereal Products). The Commission has not excluded such regulations from the scope of this study where they form part of a broader suite of food safety regulations.

What is a ‘regulatory burden’?

The aim of this study is to benchmark the ‘regulatory burdens’ imposed on business by the food safety regulation of all levels of government. For this study, regulatory burdens relate to the costs imposed by regulation that would otherwise not arise for business. They can be broadly classified to include:

- additional administration and operational costs (including paperwork costs) needed to meet regulatory requirements
- additional costs associated with changing the ways that things are done by businesses in order to meet regulatory requirements
- additional costs associated with changing or restricting what is produced by businesses in order to meet regulatory requirements
- constraints on the capacity to respond to changing technology and market demand.

Box 3 provides some guidance on the identification of regulatory burdens.

Box 3 **Identifying and estimating regulatory burdens**

To assist participants in identifying regulatory burdens, the sorts of burdens often encountered are listed here.

Administration and operational costs

Regulatory burdens are only those **additional** costs that arise from regulation. The following categories can be used as a guide to identifying administration and operational costs.

- The cost of **reporting (or providing notification)** before or after an event.
- The cost of the **education and training** required to maintain an awareness of the regulations and changes to regulatory requirements, as well as training staff about regulatory requirements.
- The cost of applying for, and maintaining, **permission** to conduct an activity. This relates, for example, to licences and permits.
- The cost of **record keeping** in order to have statutory documents up-to-date. For example, keeping records of storage temperatures.
- The cost of **cooperating** with audits, inspections and enforcement. For example, audits of food safety programs and food safety plans, and food safety inspections.
- The cost associated with **publication and documentation**, including the signs and documents required for particular activities.
- The costs associated with **procedures**, including the costs associated with doing non-administrative tasks, such as equipment inspections.
- **Other costs** not covered in the above categories.

Changing the way things are produced

Regulations that limit business decisions regarding inputs, processes or technologies can lead businesses to change their production methods. This can result in higher costs of production.

Changing what is produced

Although excluded from accounting measures of compliance costs, lost opportunities can pose a significant compliance cost. These often result from regulation-induced changes in prices and resource allocation, as well as trade effects and delays in the introduction of new products and services. Regulations can change the incentives facing businesses in ways that lead them to change the characteristics of their products or even to change what they produce.

Source: PC (2008c).

How regulatory burdens arise

Regulatory burdens arise in the first instance through the requirements contained in legislation, regulations and other regulatory instruments with which business must comply.

Secondly, the institutional framework under which regulation is administered and enforced may create burdens on business. For example, a business seeking information on regulatory requirements in a jurisdiction with three regulators may face higher search costs than in a jurisdiction with a single regulator. Alternatively, a single regulator with multiple regulatory responsibilities may not provide as prompt, or as relevant, advice compared to a regulator (or regulators) for whom food safety regulation is their sole responsibility.

Thirdly, the actions of regulators may create burdens for business. For example, a regulator's inconsistent application (or interpretation) of regulatory requirements may necessitate a number of changes in the operations of a business in order to achieve compliance. Even where a business does not need to undertake such changes to its business, the uncertainty caused by the differing approach of regulators can, in itself, be a regulatory burden. The partial enforcement, or non-enforcement, of a regulation may exacerbate the effect of regulatory burden(s) by placing those businesses complying with the regulation at a competitive disadvantage when compared to non-complying businesses.

Finally, enterprises doing business across national/state/territory borders are likely to have their costs of compliance compounded on account of differing or duplicated regulatory requirements, even though those regulations have the same objectives.

Unnecessary regulatory burdens

In order for most regulations to achieve their objectives, it is a necessary consequence that some burden is placed on business. However, where regulations are poorly designed, or the approach to enforcing and administering them ill considered, they may impose greater burdens than are necessary to achieve their objectives. 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.

Such unnecessary burdens may arise as technology changes, markets and tastes change, and regulatory frameworks and approaches evolve.

Not all regulation creates an 'additional burden'

When a business would behave in an identical manner regardless of whether a certain regulation was in effect, that regulation cannot be considered to impose an additional burden on that business. 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:

- the Victorian Competition and Efficiency Commission (VCEC) was told that many companies, particularly larger firms with a national presence, operate to a higher level of food safety than required by regulations (VCEC 2007). The VCEC also received submissions noting that the major supermarket chains require their suppliers to comply with food safety plans which often duplicate or exceed the requirements in food safety regulation
- concern for a business' reputation can cause it to act in a manner at least consistent with, if not beyond, the minimum requirements of food safety regulation. Jin and Leslie (2004) found that chain restaurants in Los Angeles have stronger incentives to maintain hygiene than independent restaurants, because a failure by one damages the reputation of the chain (cited in VCEC 2007)
- the Allen Consulting Group (2002) found that prior to the introduction of Food Safety Standards 3.2.2 (Food Safety Practices and General Requirements) and 3.2.3 (Food Premises and Equipment) in Australia, around 40 per cent of the 206 businesses interviewed already met the minimum requirements of the standards and so would not incur any additional costs from the introduction of the standards

-
- in certain jurisdictions, there is some overlap in a business' obligations under food safety regulation and under other consumer protection laws (for example, the Fair Trading Acts). Under consumer protection laws, businesses would arguably have an obligation to provide food that is 'safe' in order to meet the requirement that goods sold be fit for their intended purpose. Accordingly, in the absence of any food safety regulation, businesses would still undertake certain duties in order to comply with consumer protection laws.

The focus is on 'performance benchmarking'

The Commission's feasibility study identified two types of regulatory benchmarking that could be undertaken — *performance benchmarking* and *standards benchmarking* (box 4). For the reasons outlined in box 4, a performance benchmarking approach is considered more appropriate for this study. However, in the future it may be possible to develop agreed standards of measurement for well defined areas of regulation with common objectives.

Benchmarking involves the collection of data on an agreed set of indicators, or measures, from different sources to enable comparisons. Benchmarking can assist in setting targets for future performance, identifying areas for improvement and measuring progress against set objectives. In particular, performance benchmarking may:

- highlight potentially unnecessary burdens on businesses, where differences in regulatory burden across jurisdictions are not attributable to differences in regulatory objectives
- highlight the regulatory approaches, for comparable objectives, that generate lower burdens on business
- increase government accountability for the efficient delivery of regulation, through the increased transparency afforded by benchmarking
- promote 'yardstick' competition among jurisdictions on compliance costs.

Box 4 **Framework options for benchmarking**

The Commission's feasibility study, *Performance Benchmarking of Australian Business Regulation*, identified two possible frameworks for undertaking a benchmarking study of business regulation:

- *performance benchmarking* involves measuring and comparing indicators of regulatory performance across jurisdictions, and over time, without reference to any specific standards or performance
- *standards benchmarking* involves the comparison of jurisdictions' performance against standards or policy targets.

There are a number of obstacles to benchmarking regulatory burdens using a standards benchmarking methodology:

- there is no established 'best practice' standard against which regulatory burdens alone can be measured. The burden of regulation varies with the objectives of that regulation and the manner in which it operates to achieve its objectives. Consequently, any benchmarking standard(s) for regulatory burdens will vary with the objectives of the regulation, the extent to which those objectives are realised and the benefits created within the economy
- time-constraints make the development of standards as part of the study process infeasible
- a standards benchmarking approach may limit the potential gains from the benchmarking exercise, particularly if the standards are applied in practice as a 'tick the box' exercise by regulators. The consequence of setting minimum standards may be that regulators have little incentive to move beyond those standards.

Source: PC (2007); PC (2008a).

The reference period for benchmarking

The reference date for the comparison of food safety regulations will be 30 June 2008. However, because the Commission intends to use existing data wherever possible, it may be difficult to present figures on burdens for a common period. As a consequence, the Commission may need to put caveats on some of the benchmarking indicators due to changes to relevant regulations between the sourcing of data and 30 June 2008.

Issue 1 — *Has the cost of complying with food safety regulation changed significantly since 30 June 2008? If so, please provide details of the changes you have observed (including any factors you consider contributed to the change).*

2. Food safety in Australia and New Zealand

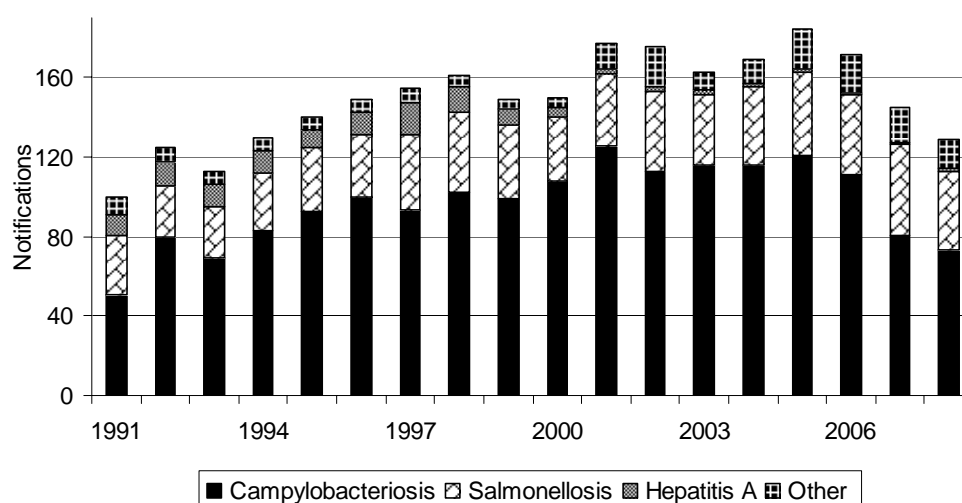
Why food safety is important

The risks posed by unsafe food are evident in a 1995 food poisoning outbreak in Adelaide. The outbreak, caused by some pieces of Garibaldi mettwurst contaminated with a toxin producing *Escherichia Coli* (E Coli), ultimately resulted in the death of a four-year-old girl and the hospitalisation of 23 other children.

Figures 1 and 2 provide an indication of the changes in the incidence of foodborne illness in Australia and New Zealand (respectively) using the notification rates for gastrointestinal diseases as a proxy measure.² While not all of the cases of gastrointestinal diseases captured in figures 1 and 2 may have been transmitted by food, expert opinion suggests a significant proportion of cases are attributable to foodborne transmission (table 1).

Figure 1 **Notification rates for gastrointestinal diseases — Australia (1991–2008)^a**

Notification rate per 100 000 population



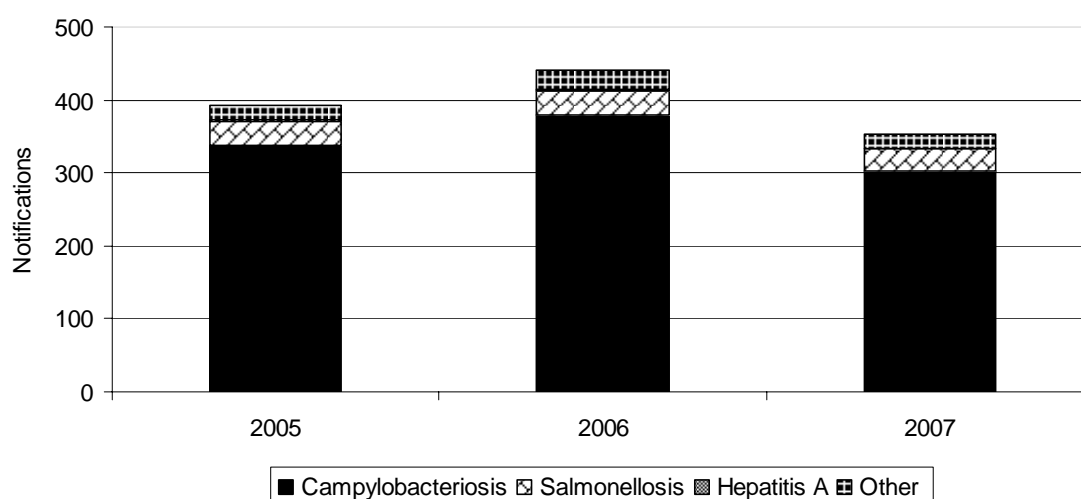
^a 'Other' category includes diseases such as Hepatitis A, Shigellosis, Verocytotoxin producing *E. coli* (VTEC) and Shiga-like Toxin producing *E. coli* (STEC) infections, and Listeriosis.

Data source: National Notifiable Diseases Surveillance System, Australian Government Department for Health and Aging, Canberra, www9.health.gov.au/cda/Source/Rpt_2_sel.cfm.

² Any comparisons of figures 1 and 2 should be made with caution due to the different reporting systems of the two countries.

Figure 2 Notification rates for gastrointestinal diseases — New Zealand (2005–2007)^a

Notification rate per 100 000 population



^a 'Other' category includes diseases such as Hepatitis A, Shigellosis, Verocytotoxin producing *E. coli* (VTEC) and Shiga-like Toxin producing *E. coli* (STEC), and Listeriosis.

Data source: Williman, Cressey and Pirie (2008a); Williman, Cressey and Pirie (2008b).

Table 1 Proportion of gastrointestinal diseases attributable to foodborne transmission — New Zealand

<i>Disease</i>	<i>Minimum</i>	<i>Most likely</i>	<i>Maximum</i>
	%	%	%
Campylobacteriosis	37	58	70
Salmonellosis	45	61	69
Listeriosis ^a	78	85	92
Shiga-like Toxin producing <i>E. coli</i> (STEC) infection ^a	27	40	51

^a Captured in 'other' category in figures 1 and 2.

Source: Cressey and Lake (2005) quoted in Cressey and Lake (2008).

While the rate of notified campylobacteriosis cases in New Zealand is comparatively high (over three times the incidence of Australian cases based on 2007 data), such comparisons need to be treated with caution because of the different reporting systems of the two countries.

The prevalence of food safety risks is further illustrated by table 2.³

Table 2 Estimates of illness due to foodborne transmission in Australia^a

<i>Foodborne illness</i>	<i>Deaths per year</i>	<i>Hospitalisations per year</i>	<i>Mean days in hospital per patient</i>	<i>Visits to GPs per year</i>	<i>No. of days (lost paid work and activities) per year^b</i>
Gastroenteritis	80	15 000	2	1.4 million	5.8 million
Listeriosis	26	120	23	180	3 000
Guillain-Barré syndrome	12	120	13	770	9 900
Haemolytic uraemic syndrome	3	30	9	45	290
Irritable bowel syndrome	3	2 700	2	91 700	49 500 ^c
Hepatitis A	1	24	4	540	6 020
Toxoplasmosis	0	21	8	1 200	9 020
Reactive arthritis	0	20	5	17 100	61 050

^a Some of the data in the table, such as the number for listeriosis cases, has been adjusted upward by the authors (Abelson, Forbes and Hall) to account for any under reporting of cases. ^b Includes lost work days and 'household activity' days. ^c New and old cases of irritable bowel syndrome.

Source: Abelson, Forbes and Hall (2006).

Aside from the risks to human health (and life), foodborne illness has a broader cost for the community. Some of the potential costs to the community arise from:

- medical costs and the cost of travel to seek treatment or to care for the sick
- lost productivity (due to absence from work, either on account of sickness or to care for the sick)
- business disruptions arising from food recalls
- government costs incurred in investigating and treating the illness
- loss of business either through decreased sales or the destruction of affected food
- lost leisure time
- legal costs.

³ Table 2 is based on estimates due to a lack of reliable data. The difficulties in obtaining reliable data in 1999 were highlighted by the Australian New Zealand Food Authority (the predecessor of FSANZ) when it estimated that less than 1 per cent of all foodborne illness cases were captured by the notification schemes (ANZFA 1999).

Estimates of the cost to the community of foodborne illness indicate these costs are significant. For example:

- the Institute of Environmental Science and Research estimated the annual cost to the New Zealand community to be in the vicinity of \$86 million (Cressey and Lake 2008)⁴
- Abelson, Forbes and Hall (2006) estimated the annual cost of selected foodborne illness in Australia to be \$1.25 billion⁵
- Food Science Australia and Minter Ellison Consulting estimated the annual cost of food borne illness to exceed \$1.67 billion (FSA and MEC 2002)⁶
- the Australian New Zealand Food Authority estimated the annual cost of food borne illness to be around \$2.6 billion (ANZFA 1999).⁷

The figures in table 2 attest to the inability of consumers to judge the safety of food by sight and underlie the rationale for food safety regulation. This aligns with the primary objective of food safety regulation, namely to protect the health and wellbeing of the community from food-based risks, and to prevent misleading conduct relating to the sale of food.

Food safety regulation — the joint Australia/New Zealand approach

Australia and New Zealand have cooperated on food safety regulation for some time. The food standards of the two countries were first harmonised in 1983 as part of the Australia New Zealand Closer Economic Relations Trade Agreement. This cooperation extended further in 1995 when Australia and New Zealand signed a Joint Food Standards Setting Treaty (the ‘Food Standards Treaty’), which committed both countries to the development and implementation of a single set of food standards.

⁴ The estimate relates to direct medical costs (such as medications and consultation with a medical practitioner), direct non-medical costs (such as travel to seek treatment) and the cost to the community of lost production arising due to the illness.

⁵ The estimated costs relate to the illnesses listed in table 2. The cost estimate relates to medical costs, the cost of foodborne disease surveillance and control units, lost business productivity, business disruptions associated with food recalls, impacts on lifestyle, costs of caring for ill family members and the cost of fatalities.

⁶ The cost estimate relates to direct medical costs, direct non-medical costs, the cost of fatalities, and costs to government and industry incurred in responding to foodborne illness (including medical costs and legal costs).

⁷ The cost estimate relates to costs broadly categorised as medical care, travel, investigation of illness, loss of productivity, emotional loss (including the cost of fatalities to the community), loss of business and legal costs.

The Food Standards Treaty provides for a bi-national agency to develop the relevant food safety standards that will apply in both Australia and New Zealand. Food Standards Australia New Zealand (FSANZ) is the agency presently responsible for the development of these food standards (the Code, box 5).⁸

Box 5 The Australia New Zealand Food Standards Code (the Code)

The Code sets out the compositional requirements for food and mandates compliance with the use of ingredients, additives, food colouring, processing aids and residues. It also sets out standards for advertising, marketing and product labelling as well as food hygiene and standards for the processing of certain primary products. The Code has four chapters:

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

Chapters 3 and 4, and the sections of chapter 1 dealing with country of origin labelling and maximum residue limits, do not apply to New Zealand.

The New Zealand Government reserves the right not to adopt certain standards — the decision not to adopt the Code's requirements regarding 'country of origin labelling' is an example of the use of this discretion. Similarly, New South Wales, Queensland, South Australia and Western Australia have provisions within their legislation/regulations that provide for partial application of the Code and/or modifications to the operation of the Code in their jurisdictions.

Source: Theobald (2007); VCEC (2007); FSANZ (2007); FSANZ (2008a); FSANZ (2008b).

Food safety regulation in Australia

Australia's national system of food safety regulation evolved through the 1990s in response to a number of influences, including:

- increases in the incidence of foodborne illness

⁸ FSANZ is an independent statutory agency established by the *Food Standards Australia New Zealand Act 1991* (Aus). FSANZ also undertakes a range of other functions in Australia, such as the national coordination of food recall systems.

-
- the spread of franchised food outlets and national retail chains across state and territory borders
 - a general trend to performance-based regulation and away from prescriptive rule-based regulation
 - a growing acknowledgement of the need for a system of food regulation that was consistent across Australian jurisdictions, as well as being consistent with international standards in order to facilitate access to international markets. (VCEC 2007).

The move toward a national approach to food safety regulation was affirmed in 1998 by the Blair review of food regulation which found Australia's regulatory framework to be 'complicated, fragmented, inconsistent and wasteful' (Blair 1998).

As 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.⁹ To achieve national consistency, the states and territories agreed in 1991 to unilaterally adopt common food standards (FSANZ 2007). This agreement was subsequently updated and confirmed by COAG in 2000 and 2002 (FSANZ 2009).

As part of the 2000 and 2002 COAG agreements, and specifically, the 'Food Regulation Agreement', the states and territories agreed that the 'Model Food Provisions' (based on the Model Food Act developed by FSANZ in 2000) would serve as the basis for the respective 'Food Acts' and primary production Acts. The Model Food Provisions contained essential 'core provisions' (Annex A) that every state and territory was obligated to implement and 'non core provisions' (Annex B) relating to administration matters that could be removed or amended at the discretion of each jurisdiction in light of their 'differing administration or enforcement arrangements'.

The legislation that has actually been adopted by the Australian states and territories is not always consistent with the Model Food Act — even with regard to the core Annex A provisions. One example of this inconsistency, at a basic level, is the different terminology used by Queensland and Victoria to define the meaning of 'food' (Theobald 2007). Another example is the varying inspection powers granted by the jurisdictions — table 3 provides a comparison of these inspection powers with the corresponding provisions from Annex B.

⁹ In most jurisdictions, local councils also play a significant role in enforcing food safety regulation.

Table 3 Comparison of inspection provisions of Model Food Act with State/Territory Food Acts — July 2007

	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>
Powers of authorised officers	✓	Δ	Δ	✓+	✓+	✓	≈	≈
Self-incrimination not an excuse	—	—	Δ	✓	✓	✓	≈	—
Power of seizure	✓	Δ	Δ	Δ	≈	Δ	✓	≈
Search warrants	≈	—	Δ	✓+	≈	≈	≈	≈+
Failure to comply with requirements of unauthorised officers	✓	Δ—	Δ	✓—	Δ	✓—	≈	≈
Interfering with seized items	✓	Δ	Δ	Δ	✓	✓	≈	✓
False information	✓	Δ	Δ	✓	✓	✓	✓	—
Obstructing or impersonating authorised officers	✓	✓	✓—	✓—	≈	—	✓Δ	Δ—

Key: ✓ Wording same with local names/numbers used, ≈ Intent same, wording slightly different, Δ Intent similar, but information is reworded and/or contained in more than 1 section/subsection, + Extra requirement/wording to that in Model Food Bill, — Part (or all) of this item is not included in this jurisdiction's legislation.

Source: Theobald (2007).

The development of the Model Food Act was undertaken before introduction of primary production standards into the Code had been considered. Accordingly, the regulation of primary production and certain food processing activities have taken different forms in each jurisdiction. Even now, with some primary production standards having been established, the means by which the jurisdictions implement them varies — for example, while a Primary Production and Processing Standard for Seafood (Standard 4.2.1) has been established, the regulation of the seafood sector is implemented in New South Wales through the *Food Regulations 2004* (NSW), in Victoria through the *Seafood Safety Act 2003* (Vic) and in South Australia through the *Primary Produce (Food Safety Schemes) (Seafood) Regulations 2005* (SA).

Food safety regulation in New Zealand

The Code (specifically chapters 1 and 2 — see box 5) provides some of the basis for food safety regulation in New Zealand. In addition, the New Zealand Food Standards also apply and include:

- maximum residue limits for agricultural compounds in food
- food hygiene and food safety provisions (including for high risk imported foods)
- export requirements (relating to ‘third country trade’)

-
- requirements regarding dietary supplements.¹⁰

Some of the standards in the New Zealand Food Standards, such as maximum residue limits, are comparable to standards in the Code applying only to Australia.

The New Zealand Food Safety Authority (NZFSA) is the primary regulator of food safety in New Zealand. In addition to its responsibilities for the administration and enforcement of the Code, the New Zealand Food Standards, Food Act 1981(NZ) and certain primary production legislation, the NZFSA is also responsible for the development of New Zealand's food safety and primary production standards as well as maximum residue levels for agricultural and veterinary chemicals.

Prior to the NZFSA becoming the single regulator in 2002, the Ministry of Health administered and enforced the Food Act and the Ministry of Agriculture and Forestry administered and enforced all other food-related legislation (for the most part, aimed at primary production, food processing and exports).

Similar to most Australian jurisdictions, local councils also have certain responsibilities for food safety regulation within the New Zealand regulatory framework.

Since 2003, NZFSA has been conducting a major review of New Zealand's food laws. Specifically, the review is seeking to:

- address inequities in the way the food industry is regulated across the country
- clarify the roles of the regulators (including NZFSA, public health units and local councils)
- stem the rise in the number of reported foodborne illnesses.

3. What are we covering in this study of food safety regulation?

Which regulations?

This study is concerned with regulation directed at assuring the provision of safe and suitable food to the public. In determining which regulations target food safety outcomes, the Commission will be guided by the Code's definition of 'unsafe

¹⁰ The New Zealand Food Standards are issued under Section 11C of the *Food Act 1981* (NZ), which gives the Minister responsible for the administration of the Act the power to issue food standards that set minimum requirements for the quality and safety of food for sale.

food’ — food is considered to be unsafe where it would be likely to cause physical harm (both immediate and delayed-onset) to a person who might consume it.¹¹ However, food is not considered unsafe simply because it causes adverse reactions in people with allergies or sensitivities that are not common to the majority of the public. Further, food can be considered unsuitable if, for example, it is damaged or perished in some way, originates from a diseased animal or contains a chemical or biological agent that is foreign to the food.

Food safety objectives across Australia and New Zealand are mainly pursued through the following regulatory instruments:

- the Code (see box 5) and the New Zealand Food Standards (New Zealand only)
- the jurisdictions’ Food Acts and other legislation related to both the current and proposed standards of the Code (see table 4)
- legislation applying to primary production — so far as it relates to food safety outcomes or overlaps with other food safety regulation
- the *Export Control Act 1982* (Aus) — so far as it relates to food safety outcomes or overlaps with other food safety regulation.

Issue 2 — *Is there any other regulation related to food safety that should be covered in this benchmarking study? If so, please provide details.*

Issue 3 — *Of those food safety regulations imposing a cost on your business, which do you consider could be improved while still meeting regulatory objectives?*

Issue 4 — *In conducting your business, do you face additional costs because of differences in regulations between local councils, or the Australian states and territories, or between Australian jurisdictions and New Zealand? What are those differences and what effect do these differences have on the costs you incur in complying with them? Do these differences create any other issues for your business?*

¹¹ It is assumed that such food would have been subject to processes (such as preparation) that were relevant to its intended use and the food was consumed by the person according to reasonable intentions.

Table 4 Food safety — Acts and regulations^a

	<i>Act(s)</i>	<i>Regulations(s)</i>
Aus	Imported Food Control Act 1992	
NZ	Food Act 1981	Food (Safety) Regulations 2002
	Animal Products Act 1999	Dietary Supplements Regulations 1985
	Agricultural Compounds and Veterinary Medicines Act 1997	Food Hygiene Regulations 1974
	Wine Act 2003	Food (Fees and Charges) Regulations 2007
		Animal Products (Regulated Control Scheme-Dairy Export Quota Products) Regulations 2008
		Animal Products Regulations 2000
		Animal Products (Dairy) Regulations 2005
		Animal Products (Dairy Industry Fees and Charges) Regulations 2007
		Animal Products (Regulated Control Scheme Bivalve Molluscan Shellfish) Regulations 2006
		Animal Products (Regulated Control Scheme — Contaminant Monitoring and Surveillance) Regulations 2004
		Animal Products (Fees, Charges, and Levies) Regulations 2007
		Animal Products (Regulated Control Scheme — Limited Processing Fishing Vessels) Regulations 2001
		Dairy Industry (National Residue Monitoring Programme) Regulations 2002
		Wine Regulations 2006
NSW	Food Act 2003	Food Regulations 2004
Vic	Food Act 1984	Food (Competency Standards Body) Regulations 2001
	Meat Industry Act 1993	Food (Forms and Registration Details) Regulations 2005
	Seafood Safety Act 2003	Meat Industry Regulations 2005
	Dairy Act 2000	
Qld	Food Act 2006	Food Regulations 2006
	Food Production (Safety) Act 2000	Food Production (Safety) Regulation 2002
SA	Food Act 2001	Food Regulations 2002
	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	Health Act 1911	Health (Food Standards) (Administration) Regulations 1986
	Food Act 2008 ^b	Health (Food Hygiene) Regulations 1993
		Health (ANZ Food Standards Code Adoption) Regulations 2001
		Health (Meat Hygiene) Regulations 2001
Tas	Food Act 2003	Food Regulations 2003
	Meat Hygiene Act 1985	Meat Hygiene Regulations 2003
	Egg Industry Act 2002	Egg Industry Regulations 2004
	Dairy Industry Act 1994	Dairy Industry Regulations 2004

(continued next page)

Table 4 (continued)

	<i>Act(s)</i>	<i>Regulations(s)</i>
NT	Food Act 2005 Meat Industries Act 1996	Meat Industries Regulations 1997
ACT	Food Act 2001	Food Regulations 2002

^a This table is not an exhaustive list of 'food safety' acts and regulations. The table concentrates on those acts and regulations that either give effect to, or are in some way related to, the Australia New Zealand Food Standards Code (both current and proposed standards). The table excludes a number of acts and regulations unrelated to the Australia New Zealand Food Standards Code, but which include food safety as one of their objectives. For example, certain acts and regulations dealing with the use of farm and veterinary chemicals and stock disease control are not listed here. ^b The *Food Act 2008* (WA) has received Royal Assent, but is yet to come into full effect pending proclamation of the commencement date (only s. 1–2 have come into operation). The *Health Act 1911* (WA) remains the relevant legislation pending proclamation (and will be the relevant legislation for the benchmarking period 2007–08).

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. The regulators listed in Table 5 are within the scope of the study, as are those regulators who administer and enforce legislation that although unrelated to the Code, has food safety as one of its objectives (for example, certain acts and regulations dealing with the use of farm and veterinary chemicals and stock disease control).

For the purposes of this study, the definition of a regulator excludes those bodies and government agencies that design and review the regulation. Accordingly, this report will not consider in any detail the activities of those bodies solely responsible for the making of regulation.

The burden(s) on business due to regulation is affected by the manner in which a regulator interprets, applies and enforces regulations. In many jurisdictions, local councils have extensive responsibilities for food safety administration and enforcement in addition to the responsibilities of regulators at other levels of government. Hence, the performance of regulators, across all levels of government, is under reference so far as it affects the regulatory burden on business.

Table 5 Food safety — regulators^a

<i>Regulator(s)</i>	
Aus	Australian Quarantine and Inspection Service
NZ ^b	New Zealand Food Safety Authority
NSW ^b	NSW Food Authority
Vic ^b	Department of Human Services (Food Safety Unit) PrimeSafe Dairy Food Safety Victoria
Qld ^b	Queensland Health Safe Food Production Queensland
SA ^b	Department of Health Primary Industries and Resources South Australia Dairy Authority of South Australia
WA ^b	Department of Health
Tas ^b	Department of Health and Human Services Department of Primary Industry and Water Tasmanian Dairy Industry Authority
NT	Department of Health and Families Department of Regional Development, Primary Industry, Fisheries and Resources
ACT	ACT Health

^a Regulators responsible for the acts and regulation listed in table 4. ^b Local councils/governments and/or local health authorities also have a regulatory function within the jurisdiction.

Which administration and enforcement practices?

The manner in which regulators administer the regulation for which they are responsible can vary across states and territories and even within them. Some of the administration practices that may influence the regulatory burden faced by business include:

- the manner in which businesses can interact with regulators — for example, a regulator who can only be contacted in one way (via email, for example) may place a greater burden on business compared to a regulator that can be contacted (and will respond) through a range of communication methods (such as face-to-face, telephone and email)
- the information available to businesses — for example, a reference to the legislation or regulation that indicates a business must be registered would not relieve the business of as great a burden as a document that outlines the registration process and the requirements a business must fulfil in order to be registered
- the manner in which businesses can complete mandated requirements — for example, limiting the options for paying the regulator's fees and charges to cash or cheque may be more burdensome to business than a broader suite of payment

options that also includes the acceptance of credit cards and the use of BPay and direct credit/debit facilities.

Enforcement strategies can vary from regulator to regulator, and even for a given regulator depending upon the issue. Some of the varying strategies can be typified as:

- proactive risk management versus reactive — for example, a proactive regulator may aim to prevent foodborne illness through an enforcement strategy of education and frequent inspections, whereas a reactive regulator may wait for a complaint before initiating any contact with a food business
- combative versus cooperative — for example, a recent Sydney Morning Herald article showed that some New South Wales councils were inclined to issue warnings and work with businesses to remedy food safety breaches. Other local councils demonstrated a greater tendency to use punitive actions such as fines and prohibition orders (Moore 2008)
- legalistic versus discretionary — for example, legalistic approaches entail strict enforcement to the ‘letter of the law’, whereas a discretionary approach may be more tempered and have greater regard for the proportionality of any given issue under consideration.

***Issue 5** — What are the main government agencies and regulators with whom you interact regarding food safety matters?*

***Issue 6** — What government agencies and regulators do you think should be examined in the benchmarking study? Why?*

***Issue 7** — Are there food safety regulation services that have been contracted out to private service providers that should be covered by this study? Why?*

***Issue 8** — Are there any particular aspects of the food production chain on which the Commission should focus its benchmarking of food safety regulations? Why?*

***Issue 9** — Food safety regulation may have different impacts on businesses operating in the same industry. For example, certain regulation may impose greater relative costs on a small business compared to a large business.*

Where a regulation has different impacts on businesses operating in the same industry, please provide details of the specific regulation and the differing impacts it has on business.

Issue 10 — What is the impact on business of Australian jurisdictions using their discretion in implementing Annex B of the Model Food Act (which relates to the administration and enforcement of food safety regulation)?

Issue 11 — What are the differences in the fees charged to business by regulators? What are the differences in the administrative costs borne by the regulators?

Studying food safety regulation by examining the regulations and regulators

The Commission's study will examine food safety regulation on three levels:

1. the regulations and regulators — including the 'black letter' law and the legal responsibilities of regulators
2. the administration and enforcement practices of regulators — to the extent those characteristics contribute to the types of regulatory burdens outlined in box 3 (page 10)
3. selected aspects of food safety regulation — the areas to be analysed will be those that have a material impact on business and there are significantly divergent practices across jurisdictions.

The regulations and regulators

In examining food safety regulation at this level, the Commission will separately compare and contrast the regulations and regulators by:

- identifying any differences in their written food safety regulation
- identifying differences in regulators and their responsibilities.

Some of the areas the Commission may examine include the divergence between the Australian jurisdictions, and between the Australian jurisdictions and New Zealand, such as:

- the discretion(s) exercised by Australian jurisdictions in their implementation of Annex B of the Model Food Act
- the different models employed by the Australian jurisdictions and New Zealand for regulating food safety in the 'paddock' and at other stages through to 'the plate'
- the different roles for the regulation of food safety that are assigned to local councils/authorities in Australian jurisdictions and New Zealand
- the non-enforcement, or partial enforcement, of certain aspects of the Code.

The administration and enforcement practices of regulators

The practices of regulators will be examined through analysis of:

- the allocation of regulatory responsibilities in each jurisdiction and the resourcing of the respective regulators
- business notifications, registrations, licences and permits (including applications, renewals and amendments)
- the interpretation and enforcement of food safety regulation by regulators.

The Commission will draw on the lessons from the ‘quantity and quality’ benchmarking study (PC 2008a) to refine some of the indicators used in that report. The Commission will also explore the use of new indicators in order to gain insights into some of the unique aspects of food safety regulation that may give rise to regulatory burdens on business. Box 6 provides further information on some of the characteristics of regulators and their practices that the Commission is considering studying in this report.

Issue 12 — *Which of the indicators in Box 6 are the most relevant to the effectiveness of a food safety regulator? Are there any other measures that would indicate the effectiveness of regulators or the burdens their actions may cause?*

Issue 13 — *The Commission seeks comment from participants on the incidence of non-compliance or partial compliance (by business) with food safety regulation, as well as the incidence of non-enforcement or partial enforcement by regulators.*

Issue 14 — *Among other matters, the Commission is also interested in examples of:*

- *differences in the interpretation of regulatory requirements — by the one regulator (for example, different opinions from inspectors from the same regulator on common issues) or across regulators*
- *the efficacy, consistency, timing and frequency of food safety inspections, and audits of food safety plans and programs*
- *the approach of regulators to enforcement activities.*

Box 6 Possible indicators for the administration and enforcement practices of regulators

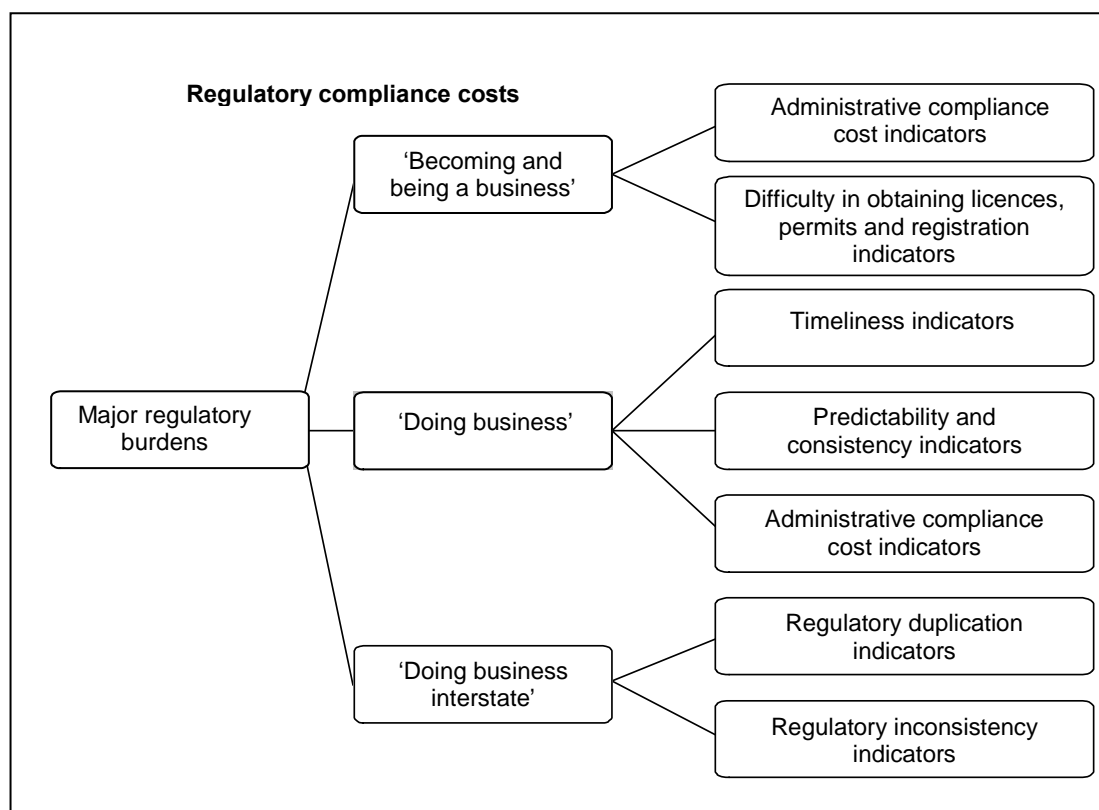
The Commission may compare indicators on:

- **Regulators, their resourcing and balance of responsibilities**
 - information on the budget and staff numbers of regulators, along with details of the number and the type of businesses they regulate, would illustrate the resourcing of regulators relative to their responsibilities
 - indicators, such as staff experience and training, would provide some insight into to the quality of a regulator's resources
- **Business registrations/notifications/licences/permits (applications, renewals and amendments)**
 - the indicators could include information on the mechanisms by which businesses can access information on their regulatory obligations, obtain and submit any forms required, make payments of fees and charges, and seek a review of administrative decisions. The ease with which businesses can update their details with regulators could also be considered
 - indicators on the incidence and nature of fees and charges could be sought by the Commission. These indicators would build on the Commission's benchmarking of 'business registrations' study (PC 2008b) by determining whether those jurisdictions with relatively lower registration fees continue to impose a lower fee burden on business over the regulatory lifecycle.
- **Enforcement of regulation**
 - the indicators could include enforcement strategies, the transparency of those strategies and the availability and cost of appeal processes.

Selected aspects of food safety regulation

A detailed analysis of the compliance costs arising from differences in the regulation, and enforcement and administration practices will be undertaken. Consistent with the framework established in the Commission's initial study into the feasibility of the benchmarking program (figure 3), this analysis will consider the regulatory burdens associated with becoming and being a business, doing business, as well as the burdens imposed by regulatory duplication and inconsistencies in doing business interstate.

Figure 3 **A regulatory benchmarking framework**



Source: PC (2007).

Box 7 outlines some of the types of issues the Commission could examine in its more detailed analysis of selected aspects of food safety regulation. Further, the Commission's initial consultations with business and other stakeholders have raised some other potential areas for analysis, including:

- *suspected intentional contamination of food* — Queensland's *Food Act 2006* contains a unique requirement for the mandatory reporting to the health authority where a business suspects intentional food contamination has occurred. This is said to have led to a significant administration burden on business
- *the degree to which codes and guidance documents become 'legally enforceable'* — this can arise when inspectors use codes and guidance material as the criteria for determining compliance rather than assessing a business' compliance with the actual regulatory requirements or where courts use them to determine liability
- *the proportionality of enforcement actions* — particular concern has been raised about enforcement actions that are not proportionate to the breach of the regulation and, in some cases, do not contribute to a business delivering the outcomes sought by the regulation

Box 7 **Jurisdiction-specific aspects of food safety regulation**

In its submission to the Commission's Report, 'Annual Review of Regulatory Burdens on Business - Manufacturing Sector and Distributive Trades' (PC 2008d), Woolworths raised a number of unique regulatory requirements across jurisdictions, as follows:

- '...In Victoria, all food business[es] are required to develop and maintain food safety programs, including programs for low risk businesses, such as petrol stations that have a milk fridge and liquor stores that conduct wine tastings.
- ... Currently [in New South Wales], Local Government[s] are responsible for annual store inspections under the Food Act and the [NSW] Food Authority remains responsible for [the audit of meat units within stores] under the Food Regulation, Part 3 Food Safety Schemes.
- In Queensland, there is no clear distinction between responsibilities for Local Government EHOs [Environmental Health Officers] and the Department of Health Population Centre EHOs, who both inspect supermarkets according to the Food Act. There is also a duplication of effort by SafeFood Queensland who use contract auditors to audit meat and delicatessen departments under the Food Production (Safety) Regulation. The use of contract auditors involves an inordinate amount of time to perform the audit, thereby increasing revenue because of an hourly charge. Also, both Local Government and SafeFood Queensland perform pre-opening inspections of supermarkets for registration/accreditation purposes.
- In South Australia, Local Government EHOs and PIRSA [*Primary Industry and Resources South Australia*] both inspect supermarkets on a fee for service basis. PIRSA inspect meat and delicatessen departments and EHOs inspect the entire store once or twice annually. In 2 years of inspecting premises, PIRSA have not identified any significant problems.
- Northern Territory Health perform annual inspections in Supermarkets efficiently and as needed. There is no duplication of effort in this state.
- Western Australian Local Councils EHOs perform annual inspections and some Councils charge for the service whilst others do not. Additional inspections performed are in Supermarkets as a result of customer complaints.
- Registration/audit fees between each jurisdiction vary considerably...'

Source: Woolworths (2008).

- *the thresholds at which regulation comes into effect* — for example:
 - New South Wales' Regulatory Impact Statement for introducing a 'Egg Food Safety Scheme' anticipates that only those businesses producing more than 20 dozen eggs per week will require a licence from the NSW Food Authority (NSWFA 2005)
 - Tasmania's Egg Industry Act 2002 does not apply to a person keeping less than 20 hens

-
- Queensland’s Egg Scheme (contained in the Food Production (Safety) Regulation 2002) applies to all producers¹²
 - New Zealand egg producers are exempt from the requirement to have a registered risk management program where they meet *all* of the following criteria:
 - ... they produce eggs for sale for human (or animal) consumption from 100 birds or fewer
 - ... sell all eggs that are intended for human or animal consumption direct to the consumer or end user
 - ... do not sell any eggs to any person for further sale (NZFSA 2005).

4. The Commission’s approach

The Commission will use submissions, as well as consultation with business, regulators and other stakeholders (such as consumer groups and unions), to help identify where differences between (and within) jurisdictions impose an unnecessary burden on business and so warrant benchmarking. In order to identify useful areas to benchmark, the Commission will apply the following criteria the list of regulations, and administration and enforcement practices raised as being of concern by stakeholders and those identified by the Commission. These criteria will be used to ensure that regulations (and administration and enforcement practices) most relevant to future reform are covered in the study:

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 relevant to either current or proposed reforms
3. there appears to be a significant difference between jurisdictions in the cost the regulation (or its enforcement/administration) imposes on business
4. in jurisdictions where the costs are higher, the difference in the cost of a regulation (or its enforcement/administration) does not appear to be matched by a commensurate increase in the effectiveness of the regulation in achieving its stated objective

¹² There are, however, some exceptions in the application of Queensland’s Egg Scheme — for example, it does not apply to those producing eggs only for their own consumption.

-
5. it appears feasible to construct indicators which will enable informative benchmarking across jurisdictions, wherever possible based on existing data.

Advisory panel

In accordance with the letter from the Treasurer (attachment A), an Advisory Panel has been established to facilitate advice from governments on the benchmarking study, and to enable a coordinated approach to data collection. An initial meeting of the panel, involving representatives from the Australian Government, State and Territory Governments was held on 5 February 2009. This meeting informed the scope, coverage and methodology outlined in this paper.

With its inclusion in the benchmarking study of food safety regulation, New Zealand subsequently joined the Advisory Panel.

Consultation

Prior to preparing this paper, the Commission has visited, or held discussions, with a number of peak industry bodies, government representatives and regulators. As part of the study process, the Commission will engage further consultation with stakeholders, such as individual businesses, business groups, government agencies, regulators, consumer groups and unions.

Data collection

Although the Commission will undertake its own research and data gathering activities, it will need to rely on the cooperation of governments and business to provide much of the information and data it needs. The Commission may also engage consultants to assist with certain aspects of the data collection process. That said, to the extent possible, the Commission will endeavour to minimise the burdens placed on jurisdictions and businesses through requests for data and information.

Issue 15 — *Wherever possible in this study, the Commission will use existing data sources on both the burdens arising from food safety regulations and food safety outcomes. Which existing studies or sources of data would you consider suitable for use in this study?*

Draft Report

Following consultations and receipt of submissions, a draft report will be prepared and released for public comment. Participants will be invited to make further submissions to respond to the draft report.

5. What are the ‘top 10’ burdens arising from food safety regulation?

***Issue 16** — To ensure the study includes the most significant burdens on business, the Commission invites participants to provide details of the 10 obligations arising from food safety regulation that, in their experience, are the most burdensome. The Commission would welcome any information participants can supply on the size/cost of their ‘top 10’ burdens. Box3 (page 10) provides some examples of the types of burdens businesses may face in complying with food safety regulation.*

***If you are a business**, it would assist the Commission if you could supply some brief details on your business along with your information on the ‘top 10’ burdens. Information on the following would be especially useful:*

- *jurisdiction of operation*
- *type of business (for example, abattoir, rendering plant, canning plant, food transport, food retail (eg café, butcher))*
- *number of employees*
- *the number of sites/locations of business operations*

In forming their opinion of the regulations imposing the greatest cost, participants should consider the types of burdens listed in Box 3 (page 10) and the ways in which regulatory requirements have resulted in them:

- *altering inputs to production*
- *altering production processes*
- *using a less preferred technology.*

Participants should also consider the ways regulatory requirements have resulted in:

- *alterations to the characteristics of goods or services*
- *cessation of the production of goods or services*

-
- *missed opportunities to produce goods or services, for example, arising from regulatory constraints that prevent them from taking advantage of emerging opportunities such as technological change and new markets.*

Attachment A: Background documents

A1 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

A2 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.

A3 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

A4 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

PO Box 6022
Parliament House
CANBERRA ACT 2600



Telephone: 02 6277 7358
Facsimile: 02 6273 4125
<http://assistant.treasurer.gov.au>

Attachment B: How to make a submission

This is a public study and the Commission invites all interested individuals and organisations to take part. Anyone can make a public submission. In your submission, you do not need to address all the issues raised in this paper and you may comment on any other issues that you consider relevant to the terms of reference.

There is no specified format

A submission can be anything from a short note or email outlining your views on a few matters to a more substantial document covering a wide range of issues. Where possible, you should give evidence to support your views, such as data and documentation. Although we welcome every submission, multiple, identical submissions do not carry any more weight than the merits of an argument in a single submission.

Participants can make subsequent submissions throughout the course of the study. In particular, participants will be invited to make further submissions to respond to the draft report, which is expected to be released in October.

Submissions should be public documents

The Commission seeks to have as much information as possible on the public record. This is a public study, and the Commission will make submissions available for others to read. Submissions will become publicly available documents once placed on the study website. This will normally occur shortly after receipt of a submission, unless it is marked confidential or accompanied by a request to delay release. Any confidential material sent to the Commission should be provided under separate cover and clearly marked.

Email lodgement is preferred

If possible, submissions should be lodged by email or as a text or Microsoft Word document (.txt, .rtf, .doc), rather than Adobe Portable Document Format (.pdf), to ensure screen readers can read them. (Submissions may also be sent by mail, fax or audio cassette, and arrangements can be made to record oral submissions over the telephone.)

Please ensure that the version sent to the study is the final version, and that you have removed any drafting notes, track changes, annotations, hidden text, marked revisions, as well as any internal links. Please also remove large logos and decorative graphics (to keep file sizes down). This will enable the submission to be more easily viewed and downloaded from the website. Copyright in submissions sent to the Commission resides with the author(s), not with the Commission.

Each submission should be accompanied by a submission cover sheet containing the submitter's personal and organisational contact details. The submission cover sheet is available at the end of this attachment or from the study's website:

www.pc.gov.au/projects/study/regulationbenchmarking/ohs-food-safety

Please lodge your submission with us by 1 May 2008 so that we can make full use of it in our draft report. Other key dates, submission addresses and contact details are provided at the front of this paper.

Productivity Commission SUBMISSION COVER SHEET

(not for publication)

Performance Benchmarking of Australian Business Regulation: Food Safety

Please complete and submit this form with your submission:

By email: foodsafety@pc.gov.au OR by fax: (02) 6240 3377

Or by post: Performance Benchmarking Australian Business Regulation
Productivity Commission
PO Box 1428
Canberra City ACT 2601

Organisation

Street address

Suburb/city **State & Postcode**

Postal address

Suburb/city **State & Postcode**

Principal contact **Phone**

Position **Fax**

Email address **Mobile**

Please indicate if your submission:

- ☐ contains NO confidential material
- ☐ contains SOME confidential material (provided under separate cover and clearly marked)
- ☐ contains confidential material and the WHOLE submission is provided 'IN CONFIDENCE'

Please note:

- For submissions made by individuals, all personal details other than your name and the state or territory in which you reside will be removed from your submission before it is published on the Commission's website.
- Submissions will be placed on the Commission's website, shortly after receipt, unless marked confidential or accompanied by a request to delay release for a short period of time, where they will remain indefinitely.
- Confidential material should be provided under a separate cover and clearly marked 'IN CONFIDENCE'.
- Copyright in submissions resides with the author(s), not with the Productivity Commission.

References

- Allen Consulting Group 2002, *Final Report to the Department of Health and Ageing (C'wealth) — Food Safety Management Systems Costs, Benefits and Alternatives*, Melbourne, <http://www.allenconsult.com.au/publications/download.php?id=295&type=pdf&file=1> (accessed 5 January 2009).
- ANZFA Australia New Zealand Food Authority 1999, *Food Safety Standards Costs and Benefits: An Analysis of the Regulatory Impact of the Proposed National Food Safety Reforms*, Barton, <http://www.foodstandards.gov.au/newsroom/publications/foodsafetystandardscostsandbenefits/incidenceoffoodborne633.cfm> (accessed 7 January 2009).
- Abelson, P., Forbes M. and Hall G. 2006, The Annual Cost of Foodborne illness in Australia, March 2006, Barton, [http://www.ozfoodnet.org.au/internet/ozfoodnet/publishing.nsf/Content/137D93E765468F17CA2572130080B157/\\$File/cost-foodborne.pdf](http://www.ozfoodnet.org.au/internet/ozfoodnet/publishing.nsf/Content/137D93E765468F17CA2572130080B157/$File/cost-foodborne.pdf) (accessed 7 January 2009).
- Blair, B. 1998, Food a Growth Industry, Report of the Food Regulation Review Committee, Canberra.
- COAG (Council of Australian Governments) 2006, Council of Australian Governments Meeting 10 February 2006 Communiqué, Canberra. www.coag.gov.au/meetings/100206/index.htm (accessed 24 March 2008).
- 2007, Communiqué, Council of Australian Governments Meeting 13 April 2007 Communiqué, Canberra, <http://www.coag.gov.au/meetings/130407/index.htm> (accessed 1 April 2008).
- Cressey, P and Lake, R. (Institute of Environmental Science & Research Limited) 2005, *Ranking food safety risks — development of NZFSA policy 2004- 2005*, Christchurch.
- 2008, *Risk ranking: estimates of the cost of foodborne disease for New Zealand*, Christchurch, March 2008.
- FSA and MEC (Food Science Australia and Minter Ellison) 2002, *National Risk Validation Project*, Report to the Commonwealth Department of Health and Aging and New South Wales Department of Health, Canberra.
- FSANZ (Food Standards Australia New Zealand) 2007, Background, <http://www.foodstandards.gov.au/aboutfsanz/background.cfm> (accessed 29 February 2008).
- 2008a, Australia New Zealand Food Standards Code, Barton, <http://www.foodstandards.gov.au/thecode/foodstandardscode.cfm> (accessed 29 February 2008).

-
- 2008b, Food Safety Standards (Australia only), Barton, <http://www.foodstandards.gov.au/thecode/foodsafetystandardsaustraliaonly/> (accessed 29 February 2008).
- 2009, Inter-government agreement, Barton, <http://www.foodstandards.gov.au/aboutfsanz/intergovernmentalagreement/index.cfm> (accessed 1 February 2009).
- Jin, G. and Leslie, P. 2004, Reputational incentives for restaurant hygiene, Stanford University, Palo Alto, California.
- Moore, M. 2008, 'Food safety laws ignored', *Sydney Morning Herald*, 30 December 2008, p. 1).
- NSWFA (NSW Food Authority) 2005, Regulatory impact statement — Amendment Food Regulation 2004 — NSW Food Act 2003 — egg food safety scheme, Sydney, http://www.foodauthority.nsw.gov.au/_Documents/industry_pdf/regulatory-impact-statement.pdf (accessed 6 February 2009).
- NZFSA (New Zealand Food Safety Authority) 2005, *Some egg producers exempted*, Wellington, 17 March.
- PC (Productivity Commission) 2007, *Performance Benchmarking of Australian Business Regulation*, Research Report, Melbourne.
- 2008a, *Performance Benchmarking of Australian Business Regulation: Quantity and Quality*, Research Report, Canberra.
- 2008b, *Performance Benchmarking of Australian Business Regulation: Cost of business registrations*, Research Report, Canberra.
- 2008c, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, Issues Paper, Melbourne.
- 2008d, *Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades*, Research Report, Canberra.
- Theobald, C. (Cormorant Technical Services Pty Ltd) 2007, Comparison of Food Acts in Australia with the Model Food Bill, Paper prepared for the Australian Food and Grocery Council, July.
- VCEC (Victorian Competition and Efficiency Commission) 2007, *Simplifying the menu: food regulation in Victoria*, Final Report, September 2007, Melbourne.
- Williman, J., Cressey, P. and Pirie, R. (Institute of Environmental Science & Research Limited) 2008a; *Annual report concerning foodborne disease in New Zealand 2006*, Christchurch, May 2008.
- 2008b; *Annual report concerning foodborne disease in New Zealand 2007*, Christchurch, June 2008.

Woolworths 2008; *Woolworths Limited: Response to issues paper — Productivity Commission annual review of regulatory burdens on business - manufacturing and distributive trades*, Bella Vista.