

Food Regulation Review Committee

**Report of the  
Food Regulation Review**

July 1998

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## Foreword

Food is one of the necessities of life. It is therefore not surprising that food regulation attracts wide interest in Australia. Indeed many countries throughout the world are currently coming to grips with the complexities of their food regulatory systems.

Australia can be justifiably proud of its international reputation for producing safe food. However, we are aware food-borne illnesses are on the increase in a number of countries and there is evidence of resistant strains of bacteria emerging - both are international phenomena. We are also aware of unwarranted costs to business due to inconsistencies and duplication within the regulatory and enforcement framework. At the same time, there is a need for the agrifood industry to become increasingly competitive to be successful exporters to international markets. It is against this background that the governments of Australia agreed to a comprehensive review of food regulation and the Prime Minister announced the Food Regulation Review in March 1997.

As independent chair of the Review, I am required to report to governments on ways to reduce the regulatory burden on the food industry and to clarify and simplify the food regulatory system, while providing safer food to all Australians.

The review covered all imported, exported and domestic food regulations, from primary production through to processing and retail. Because of its comprehensiveness the Review took great trouble to meet with, and seek information from, all stakeholders. We greatly appreciated the large number of written submissions we received as well as the wide support for the public hearings held throughout Australia. Special efforts were made to ensure the voice of small business was heard as was that of New Zealand - Australia's partner in the Australia New Zealand Food Authority (ANZFA) and the Australia New Zealand Closer Economic Relations Trade Agreement (CER).

I have been assisted in preparing this draft report by an inter governmental/ industry / consumer Review Committee. However, there was disagreement within the Committee on some quite contentious recommendations.

I was not attracted to a minimalist approach to reform, advocated by some parties — that is, to leave institutional arrangements as they are and just recommend greater dialogue and better coordination between government agencies. My recommendations embrace legislative, procedural and structural reforms. This package of reforms, if accepted by governments, will result, I believe, in significant and lasting reform of the food regulatory system in a way which will substantially improve both its efficiency and its effectiveness. The end result will be an improvement in consumer safety while reducing the regulatory burden on industry.

I would like to thank the Review Committee for their advice and assistance in the Review and also the hard work of the Review Secretariat.

Dr WH (Bill) Blair OAM  
Chair, Food Regulation Review  
July 1998

## **Food Regulation Review Committee**

**Independent Chair:** Dr Bill Blair OAM

### **Committee Members:**

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Mr Graham Peachey	Australia New Zealand Food Authority (from March 1998)
Mr Bob Calder	Department of Primary Industries and Energy
Dr Bob Biddle	Department of Primary Industries and Energy
Dr Cathy Mead	Department of Health and Family Services
Mr Keith Croker	Department of Industry Science and Tourism
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Mr Colin Morley	Food Industry Council of Australia
Mr Bob Bishop	Australian Chamber of Commerce and Industry

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## Executive summary

### *Background*

The intention of the governments of Australia to undertake a review of food regulation was announced by the Prime Minister in his March 1997 statement, *More Time for Business*, following discussions and agreement on a national approach to the review by the Commonwealth, the States and Territories and the Australian Local Government Association.

The key objectives of the Review were:

While protecting public health and safety, to:

- reduce the regulatory burden on the food sector, and examine those regulations which restrict competition, impose costs or confer benefits on business; and
- improve the clarity, certainty and efficiency of food regulatory arrangements.

The Review was also required to take a strategic overview of a number of concurrent government review activities to ensure a coordinated and consolidated approach to food regulation across all three spheres of government and across the agriculture and health portfolios.

The Review combines two reform initiatives:

1. the 1996 Small Business Deregulation Task Force report *Time for Business* which proposed a comprehensive review of food regulation, and
2. the Commonwealth Government's legislative review program under the national competition principles agreement which referred to the *Australia New Zealand Food Authority Act 1991*.

The Review investigated all food regulatory matters, focusing on regulations administered by agricultural and health agencies and involving the three spheres of government. It encompassed all types of government regulation-making, compliance and enforcement in relation to imported food and food produced for export and domestic consumption. It was also required to cover the whole of the food industry, including primary production, processing and retail.

Dr W H (Bill) Blair OAM was appointed as independent chair of the Review Committee. The Committee comprised industry, consumer and government representatives from the Commonwealth, the States and Territories, local government and New Zealand.

While taking account of the broader public interest objectives of food regulation, the Review was undertaken from the perspective of agrifood businesses, both large and small, affected by government regulation. The Review Committee worked in close collaboration with food industry associations, small business, health and consumer groups, as well as with other interested parties.

The Committee gathered information through:

- conducting public hearings and workshops in all capital cities and some regional centres;
- inviting written submissions, and receiving over 170 submissions from the agrifood industry, consumers, health and primary industry agencies, and regulators;
- undertaking extensive consultation with key stakeholder groups;
- investigating the current food-related regulatory arrangements throughout Australia;
- researching the social and economic costs and benefits of food regulation;
- undertaking case study work with industry and regulators on the impacts of regulation;
- conducting focus group meetings with small business, consumers and public health professionals; and
- conducting a second round of public comment on a draft report.

The final Review Report will be provided to:

- the Hon. Trish Worth, Parliamentary Secretary to the Commonwealth Minister for Health and Family Services and chair of the Australia New Zealand Food Standards Council;
- the Hon. John Anderson, Commonwealth Minister for Primary Industries and Energy and chair of the Agriculture and Resource Management Council of Australia and New Zealand; and
- Senator Warwick Parer, Commonwealth Minister for Resources and Energy and chair of the Ministerial Council for Fisheries, Forestry and Aquaculture.

The Council of Australian Governments will also consider the report.

### ***Context***

‘The agrifood industry’ describes the food supply chain from the farm, fishing boat or orchard to the kitchen, restaurant or cafe in Australia or to our overseas customers. It is a source of employment, wealth generation and investment opportunity for many Australians. The benefits from an innovative and efficient food industry flow through to associated economic activities, such as tourism and entertainment.

There is currently a wide mix of regulatory approaches in Australia which vary from agency to agency and jurisdiction to jurisdiction. These approaches range from mandatory, and sometimes prescriptive, regulations through a variety of co-regulatory and quasi-regulatory arrangements to voluntary industry driven schemes and total deregulation. Indeed, within a single agency this full spectrum of alternative approaches is sometimes used.

There is a need to ensure the benefits of government regulation outweigh the costs. All government activities (including developing and enforcing regulation/legislation) use public resources and these costs are borne by the community through the taxation system or directly by businesses in the form of government fees and charges. Regulatory activity also has indirect costs on industry in the form of the time and effort it takes to comply. While these latter costs are borne by businesses in the first instance, they are sometimes passed on to consumers in higher prices for goods and services.

### *Findings*

The current regulatory framework for food in Australia is complex and fragmented and involves a large number of agencies and legislation spread across three spheres of government.

Approximately 150 Acts and associated regulations control food or agrifood businesses in Australia (including imported food and food produced for export and domestic consumption). This excludes levy Acts and local government by-laws as well as Acts which apply generally to businesses such as, for example, tax laws and occupational safety and health laws. In addition, there are over 90 separate national food product standards.

These laws and standards are developed, administered and/or enforced by numerous Commonwealth departments and statutory bodies, over 40 State and Territory agencies and departments and over 700 local governments.

The current food regulatory system in Australia is undergoing a number of reforms, many of which are independent, others which are closely interrelated. Some of these involve review of legislation and others procedural and administrative reform.

Governments' primary role in food regulation is to protect public health and safety. The food industry as a whole relies on consumer confidence in a safe food supply to sell its products. To maintain consumer confidence in the food supply governments must continue to take a proactive rather than a reactive role in addressing public health and safety issues.

Consumers also need protection from misleading and deceptive behaviour and access to appropriate information about food, diets and food related illness and disease.

It is widely accepted that when food safety failures occur the costs, both direct and indirect, to the community, industry, government and the economy as a whole can be considerable.

Figures on the economic costs of food safety failures are not readily available. However, the impact on individuals and business is readily apparent.

In Australia in the 1990s reported outbreaks of food-borne illness from viral and bacterial causes resulted in illness to thousands of individuals and some examples can be given of the types of costs and losses involved:

- permanent health damage, including 23 cases of haemolytic-uraemic syndrome (HUS) in one outbreak incident alone;

- at least four least deaths
- significant product recall costs to companies including press advertisements (\$200,000 in one case) and product recovery and disposal; and
- loss of market share and profits, not limited to the companies involved. Examples include reduced sales for one company of almost \$6 million in the year following a product recall. In another example sales of a product category were still well below the level that existed prior to a food-borne illness outbreak for similar products. This situation can continue for considerable time after an incident occurs.

Internationally, food-borne illnesses remain a major public health threat. In recent years, some industrialized countries have experienced a significant increase in the incidence of food-borne illnesses. In addition, a number of food-borne pathogens, such as multi-antibiotic resistant *Salmonella typhimurium*, *Listeria monocytogenes* and *E. Coli 0157*, have emerged as significant threats to public health (Kaferstein F K, 1997).

In Australia, the notification rates and case rates for diseases such as salmonellosis and campylobacteriosis, considered to be primarily food-borne, have been increasing since the 1980s (Crerar S et al, 1996).

While Australia delivers safe food and food regulation has done much to reduce the costs of food-borne illness and diet-relate disease, it has not removed it. However, the costs, when there is a breakdown in the safety of the food supply provide a strong incentive to ensure the effectiveness of the food regulatory system is maintained and efficiency improved. Any changes to the food regulatory system in Australia must not lead to a reduction in the protection of public health and safety or lessening of consumer protection.

Most agrifood businesses employ practices and equipment which match or exceed the standards required by law. During the course of the Review, it was noted that many proprietors and managers have difficulty in separating what they do as a natural part of good business practice from what they do solely to comply with food-specific or food-related regulations. Regardless of regulations, most food suppliers have strong incentives to produce safe food of the type consumers want and for which they will pay.

Despite extensive consultations with industry and systematic investigations of costs, it has not been possible for the Review Committee to comprehensively identify the cost of the regulatory burden on the food industry arising from food regulation.

The food regulatory system in Australia generally delivers safe food and Australia enjoys an enviable international reputation in this regard. Despite this, Australia continues to experience occasional significant lapses in food safety and there is growing concern within the community about the frequency and severity of food-borne illnesses. there is clearly scope for improving the effectiveness, and hence the public health outcome, of the food safety system.

The concerns industry raised, however, focused more on the inefficiency of the regulatory system.

The Review undertook extensive consultation with all stakeholder groups – from industry, government and the general public; and from primary producers through to retailers. This process identified two major sources of complaint by industry about the food regulatory system in Australia. Firstly,

- that certain individual food laws and regulations are inappropriate (for example, too prescriptive, requiring costly compliance activities, unenforceable, ambiguous, too restrictive); and
- secondly, that the food regulatory system is inefficient, and imposes significant and unwarranted costs on the food industry. Both types of complaint were made by all sectors of the agrifood industry.

The food regulatory system in Australia is considered to be complex, fragmented, inconsistent and wasteful.

The food industry incurs costs due to duplication of effort between regulatory agencies, overlap of legislation and functional responsibilities, inconsistency of regulatory approaches between jurisdictions and difficulty in dealing with the large number of agencies and food laws involved.

Consumers and industry are concerned about inconsistent and inadequate surveillance and enforcement. Within local government, in particular, there are significant problems stemming from inconsistent resourcing and widely divergent enforcement practices and priorities.

The main issues arising from consultations can be grouped into the categories of:

- lack of uniform legislation;
- inconsistent application of regulations by enforcement officers;
- inconsistent interpretation of legislation/regulations by enforcement officers;
- lack of clarity and consistency in agency roles and responsibilities;
- overlap and duplication of agency responsibility;
- lack of coordination between government agencies;
- inadequate and uncoordinated enforcement effort;
- multiple audits by industry and governments;
- inadequate training of auditors and enforcement officers;
- lack of training in hygiene by food handlers;
- insufficient consumer education on food safety;
- inefficient food standards setting processes;

- inappropriate food standards and regulations;
- insufficient small business consultation in government decision making; and
- inadequate access to information concerning food regulation.

Food safety is arguably the single most important challenge for the agrifood industry. Australia's reputation for safe food is well-earned. It is due largely to the efforts of the industry to implement and maintain high-quality systems and practices for producing safe food at all parts of the food supply chain.

Industry and government agree that, to further increase the agrifood industry's international competitiveness and reputation, there is a need for continuous improvement at all parts of the food supply chain to ensure food safety, as well as by taking every opportunity to reduce the current regulatory burden.

The system of food safety management in Australia is very effective. However, the issues identified in this Review point to the need for governments to fundamentally address the efficiency of the system. An improved national food regulatory system will become more efficient through, amongst other things, a strong partnership approach to food regulation by all three spheres of government.

Efficiency will also be gained through improved coordination and interaction between the agrifood industry and government regulatory agencies working towards more strategic and effective integration of the existing arrangements. An improved system will need to combine a preventative, risk-based approach and an ongoing effort to minimise regulatory costs on industry, while ensuring food safety outcomes.

In parallel, there needs to be a movement towards increased industry self-regulation, but only where it can be used effectively to manage the food safety risk and where industry has the capability to manage self regulation. Complete self-regulation of the food industry may never be achieved because there will always be an expectation by consumers and industry of a minimum legislative framework, but there is considerable scope for a move in that direction through a co-regulatory approach.

The co-regulatory approach is based on the three spheres of government, industry and consumers working together as partners, with government setting minimum performance-based standards through consultation, and giving business greater flexibility in how it meets the standards, without reducing business' responsibility for meeting the standards.

The partnership model proposed for the national safe food system provides a good starting point, particularly for food safety objectives. However, it is necessary for governments to take this further in order to improve the efficiency of the system and to address duplication and overlap within the system.

There is an urgent need for governments to implement an integrated and coordinated national food regulatory system to replace the fragmented and piecemeal system of food regulation in place at the moment. To bring this about will require a strong partnership approach across all three spheres of government and with industry and consumers. The governments of Australia will need to work together with commitment and purpose to achieve the reforms proposed in this report.

The recommendations in this report are designed to:

- recognise the primacy of public health and safety;
- reduce inconsistencies, duplication and unnecessary costs;
- embrace and give effect to the principle of minimum effective regulation; and
- encourage individuals and businesses to accept more responsibility for ensuring improved food safety outcomes and regulatory compliance.

The Review proposes a package of structural, legislative and administrative rearrangements to reduce the costs of business compliance. The Review recommends centralising food regulatory policy within a single Commonwealth/State/Territory government agency, responsible to a single Ministerial Council; and a greater commitment to a government–industry partnership to ensure appropriate performance-based regulations are implemented efficiently, at least cost, and effectively across the whole agrifood industry. This should be supported by a rationalisation of legislation, standards, regulatory agencies, registration systems, compliance requirements and streamlining of administrative procedures to improve effectiveness, efficiency and accountability.

In summary, the reports suggests there is a need for governments to:

- implement an integrated and coordinated national food regulatory system, through:
  - improved partnership arrangements; and
  - adopting nationally consistent guiding principles.
- improve compliance and enforcement arrangements, through:
  - service agreements;
  - interpretation guidelines;
  - contestable service delivery;
  - a national auditor accreditation framework;
  - amended food recall arrangements;
  - improving cooperative arrangements between Trade Practices, Fair Trading and Food Acts; and
  - rationalising enforcement agencies.
- improve legislation and national decision making processes, through:
  - nationally uniform food laws;
  - centralising national decision making on food laws;
  - rationalising national food regulatory agencies;
  - improving the interface between regulation of food and drugs; and

- streamlining food standards setting procedures.
- improve monitoring and surveillance systems, through:
  - integrating systems from paddock to plate; and
  - prioritising food safety research.
- improve communications to industry and consumers, through:
  - better risk communication;
  - single business entry point;
  - rigorous consultations; and
  - reviewing complaints handling.
- amend the *Australia New Zealand Food Authority Act 1991* by:
  - developing objectives for the Act;
  - amending the objectives used for developing standards; and
  - updating ANZFA's functions.

The package of reform measures proposed in this report provide the potential for significant medium to long term cost savings to governments. These savings should be passed on to the agrifood industry, either directly, through reduced fees and charges, or indirectly by reduced compliance and paper work burden.

## **Review recommendations**

### ***An integrated and co-ordinated food regulatory system***

1. That the Commonwealth, State, Territory and local governments act together to:
  - give significantly greater impetus to achieving a well-integrated, streamlined and cost-effective co-regulatory system to effectively protect public health and safety, across the whole food supply chain, and
  - develop more effective working relations and strengthen partnerships between agencies involved in food regulation, the agrifood industry, relevant statutory authorities and consumers.
2. That development of an improved food regulatory system be guided by the principles of:
  - protecting public health and safety;
  - making decisions based on sound science and assessed risk;
  - open, consultative and accountable government practices;
  - accessible systems responsive to consumer and industry needs;
  - clear, simple, practical and, as far as possible, nationally uniform systems and legislation;
  - minimal regulatory costs to industry and governments through minimum, effective, performance and risk-based regulation;
  - consistency with international obligations (including World Trade Organization (WTO) agreements and Australia's Treaty with New Zealand);
  - providing information to consumers;
  - regularly reviewing regulatory arrangements and evaluating their effectiveness;
  - regulation which does not unjustifiably restrict competition

### ***Improved compliance and enforcement***

3. Where a government or food regulatory agency enforces national food laws, a service level agreement should be developed specifying the level and nature of the compliance and enforcement services to be delivered. The negotiated agreement should include nationally-consistent risk-based enforcement and compliance strategies and priorities.

4. Food regulatory agencies should develop and publish plain English interpretation and compliance guidelines for all food laws, regulations and standards. These should be developed in consultation with, and made available to, enforcement officers, consumers and the agrifood industry.
5. All food regulatory agencies within Commonwealth, State, Territory and local governments should increase use of contestable service provision, wherever practical and effective in protecting public health and safety.

This should include, but not be limited to, using contestable third party auditing, laboratory services and end-product inspection.

This should include arrangements where the regulatory agency retains oversight controls which include strong legal sanctions being invoked where the objectives are not met.

6. Food regulators and the food industry should work together to develop:
  - an integrated national framework of food safety auditor accreditation; and
  - a national system for the auditing HACCP-based food safety programs .

These infrastructure developments will facilitate mutual recognition of food safety audits by regulatory agencies and commercial organisations.

7. In relation to food recalls, the Commonwealth Minister for Health or delegate, has access to the power to order a mandatory recall of food.
8. The State and Territory health departments and the ACCC and its State and Territory counterparts develop cooperative arrangements to facilitate consistent enforcement of the provisions relating to false, misleading and deceptive conduct in the Food Acts the Fair Trade and Consumer Affairs legislation and the Trade Practices Act.
9. Each State and Territory government should take steps to integrate their food regulatory agencies, from paddock to plate, and thereby reduce the number of State and Territory food regulatory agencies.

### ***Better legislation and national decision making***

10. a) Commonwealth, State and Territory governments should develop and implement a nationally uniform food safety regulatory framework that adopts a preventative approach, applies to all agrifood businesses and places a legal obligation on these businesses to produce safe food.

This food safety regulatory framework should:

- be implemented in accordance with the principles for food regulation enunciated in Recommendation 2;

- be flexible, to ensure any compliance requirements for agrifood businesses are proportional to the food safety risks within that business; and
  - be used to rationalise existing food business licensing and registration systems to a single food business registration/notification requirement.
- b) The food safety regulatory framework should be supported by a nationally consistent and transparent system for assessing food safety risks and categorising businesses and industry sectors according to risk.
- c) In developing the national food safety regulatory framework, governments should pay particular attention to minimising costs incurred by businesses in implementing and maintaining preventative food safety systems, and to ensure the benefits of this approach to food safety regulation outweigh the costs.
- d) Existing food safety and food hygiene regulations should be reviewed and repealed, where appropriate, during the implementation period of the food safety regulatory framework.
11. The governments of Australia to agree that all domestic food laws in Australia should be developed nationally and enacted uniformly. All existing food laws should be reviewed with the aim of improving national uniformity.
12. The governments of Australia should to agree that responsibility for developing all domestic food regulations and standards be centralised within a national agency that operates as a partnership between the Commonwealth and the States and Territories.
- The resulting food regulations or standards would be recommended to Commonwealth, State and Territory Ministers for national agreement and uniform adoption and be enforced and administered by the appropriate State and Territory regulatory agency.
13. The Commonwealth government should take steps to integrate development and implementation of domestic and export food regulations and reduce the number of Commonwealth food regulatory agencies through the amalgamation of, at least, the food regulatory policy functions of AQIS and ANZFA. The government should consider amalgamating other Commonwealth regulatory agencies to further streamline and improve food regulation in Australia.
14. The governments of Australia should establish a single Commonwealth / State/ Territory and New Zealand Council of Food Ministers to be responsible for developing all food regulations in Australia.

15. The Therapeutic Goods Administration and the Australia New Zealand Food Authority should work together to improve clarity of regulation of products at the interface between drugs and food.
  
16. In relation to maximum residue limits:
  - a) ANZFA and NRA legislation and administrative processes should be amended to facilitate streamlined MRL setting. This needs to ensure that amendment of the Maximum Residue Limits Standard in the *Food Standards Code* is simultaneous with registration, and completed within the same timeframe. To avoid confusion, the NRA should only publish ANZFA-approved MRLs.  
  
A joint publication, between the NRA, ANZFA and AQIS should be produced that includes the MRLs of Australia and its major trading partners for agricultural and veterinary chemicals and the maximum permitted concentrations (MPCs) of contaminants for both foods and feeds;
  - b) State and Territory governments should take steps to standardise the control of use arrangements in all States and Territories;
  - c) Australia should improve consistency with international standards by accepting Codex MRLs for imported products, where appropriate; and
  - d) all information on Australian chemical uses which may result in residues above the Codex MRL, should be provided to, and negotiated with, Codex to enable residues in Australian exports to be accommodated in international standards.

17. ANZFA and ANZFSC should:
  - a) streamline its standards-setting process, wherever possible, without compromising its ability to consult appropriately on the impacts of new and amended standards;
  - b) proceed with its review of the *Food Standards Code* to be completed as scheduled at the end of 1999, to ensure inappropriate prescriptive food standards are removed; and
  - c) adopt the principles in Recommendation 2.

***Integrated monitoring and surveillance***

18. The governments of Australia should, as a matter of priority, integrate the systems of food monitoring and surveillance from paddock to plate.

This should include, where necessary, strengthening the current food-

borne illness, food safety and food production surveillance systems; and improving linkages, in partnership with government and industry, which will deliver improved information on food safety hazards to governments, industry and consumers.

19. Relevant government agencies and research and development corporations should give priority to research to support food safety initiatives.

The research agenda should be driven by, and the outcomes inform, food safety programs, monitoring and surveillance, research and development and evaluation. There is also a need for strategic investment to improve identification of emerging food safety issues.

### ***More effective communications***

20. Food regulatory agencies should give high priority to food safety education, including information on food safety risks.
21. The Business Entry Point programs should take steps to include food regulation in their information and licensing systems in a way which:
  - uses a single coordinating agency to manage the system on behalf of other government agencies;
  - allows for direct electronic access, such as, through the internet, operator assisted transaction or personal contact;
  - allows for other bodies such as local governments to act as agents of the coordinating agency and to use the system to include information about their own requirements; and
  - is open and accessible to consumers and industry and is advertised widely.
22. All food regulatory agencies should review their policy-making processes to ensure consultations are rigorous and the perspectives of all relevant stakeholders are considered.
23. All food regulatory agencies should review and upgrade their existing complaint and appeal mechanisms. Relevant guidance may be found in *Benchmarks for industry-based customer dispute resolution schemes (DIST, 1997)* and *standard A National standard on complaints handling AS 4269–1995*.

### ***Review of the ANZFA Act 1991 against the national competition principles***

It has been necessary to review the Act as it is presently constructed, however, several of the preceding recommendations could require further changes to the ANZFA Act.

24. An objective should be included in the ANZFA Act, as follows:

‘The objective of this Act is to ensure that, by means of establishing and operating the Australia New Zealand Food Authority:

- a) there be effective protection of public health and safety and provision of information to consumers to enable informed choice;
- b) people enjoy the benefit of equivalent protection of public health in relation to food, wherever they live in Australia and New Zealand; and
- c) decisions of the business community are not distorted, and markets not fragmented, by variations between participating jurisdictions in relation to adopting or implementing major food regulation measures.

These measures give effect to Australia’s and New Zealand’s international treaty obligations and national cooperative agreements in relation to food.’

25. The Section 10 objectives should be recast as follows:

‘Factors the Authority must considered in develop and varying food regulatory measures.

1) The objectives of food regulatory measures in order of priority are:

- a) protecting public health and safety; and
- b) preventing misleading and deceptive behaviour.

2) The Authority, in developing or varying food regulatory measures, must have regard to:

- a) promoting consistency between domestic and international food standards where these are at variance;
- b) the need for standards to be based on:
  - the systematic application of public health risk assessment, including the best available scientific data; and
  - risk management principles;
- c) trade and commerce in the food industry;
- d) fair trading in food; and

- e) provision of information to enable informed consumer choice.<sup>6</sup>
26. Section 7 should be amended as follows:
- a) develop, maintain and evaluate food standards and alternative approaches (including codes of practice) in relation to food;
  - b) undertake tasks related to national food regulatory systems;
  - c) in consultation with other jurisdictions, or on its own initiative, coordinate and conduct surveillance and research of relevance to the other functions of the Authority;
  - d) in consultation with other jurisdictions, coordinate and monitor enforcement activities;
  - e) in cooperation with other jurisdictions, or on its own initiative, develop food education initiatives;
  - f) in cooperation with the department administering Division 1A of Part V of the *Trade Practices Act 1974*, coordinate the recall of food under that Division;
  - g) at the request of other jurisdictions, to coordinate action by the States and Territories to recall food under State and Territory laws;
  - h) develop assessment policies in relation to food imported into Australia and New Zealand;
  - i) provide advice to the Minister in relation to food;
  - j) participate in international, regional and bilateral negotiations relevant to food standards;
  - k) to make the Authority's knowledge, expertise, equipment, facilities and intellectual property available to other persons on a commercial basis; and
  - l) any functions incidental to the foregoing activities.<sup>7</sup>
27. It is recommended that section 7 be amended by including a new section 7A as follows:
- <sup>7</sup>7A. In carrying out its regulatory functions contained in section 7, the Authority must consider whether the benefits to the community as a whole will outweigh the costs and whether there are no alternatives which are more cost-effective in achieving such benefits.'

## Objectives and scope

### Review objectives

The key objectives of the Review were:

While protecting public health and safety, to:

- reduce the regulatory burden on the food sector, and examine those regulations which restrict competition, impose costs or confer benefits on business; and
- improve the clarity, certainty and efficiency of food regulatory arrangements.

The full terms of reference of the Review are listed in Appendix A.

At the commencement of this Review, there were various government activities underway to reform food regulatory arrangements. The Review was required to take a strategic overview of these activities to ensure a coordinated and consolidated approach to food regulation across all three spheres of government and across the agriculture and health portfolios. The Review was to have regard to the principles incorporated in the Competition Principles Agreement.

### Background

The intention of the governments of Australia to undertake a review of food regulation was announced by the Prime Minister in his March 1997 statement, *More Time for Business*, following discussions and agreement on a national approach to the review by the Commonwealth, the States and Territories and the Australian Local Government Association.

The review combines two reform initiatives:

1. the 1996 Small Business Deregulation Task Force report *Time for Business* which proposed a comprehensive review of food regulation, and
2. the Commonwealth Government's legislative review program under the national competition principles agreement which referred to the *Australia New Zealand Food Authority Act 1991*.

## Scope

The Review investigated all food regulatory matters, focusing on regulations administered by agricultural and health agencies and involving the three spheres of government. It encompassed all types of government regulation-making, compliance and enforcement activities, as well as industry self-regulation in relation to food and imported food produced for export and domestic consumption. It was also required to cover the whole of the food industry, including primary production, processing and retail.

## Definitions

Regulation, broadly defined, is:

In its broadest sense government regulation ... [is] any intervention in the economy ... which may cause individuals to pursue their interests in ways they might otherwise not have chosen' (Industry Assistance Commission, 1986).

Regulation, therefore, is all those activities of government that influence or control, either directly or indirectly, the food industry or consumers. This may be through regulatory controls or through quasi-regulation and includes all types of government compliance and enforcement activities and any rules, standards, guidelines, codes of practice or other restrictions 'for which there is a reasonable expectation of compliance but which don't have the full force of law' (Small Business Deregulation Task Force, 1996).

Because the Committee was asked to report to the Agriculture and Health Ministers, the work of the Committee concentrated on the regulation made by these bodies in relation to food. In doing so, the Committee did not actively discourage comments from stakeholders on closely related regulatory topics, such as transport and environmental regulations.

For the purposes of the Review, food regulation was taken to be:

Actions by government which affect the safety or quality of, or the information available in relation to food; encompassing all types of government regulation-making, industry self-regulation, compliance and enforcement activities; and covering relevant activities of all businesses in the food supply chain, including primary producers, food processors, retailers and food preparation businesses.

Regulatory burden on the food sector was taken to be the costs to industry of food regulatory compliance which governments require over and above normal, prudent commercial practice (such as extra fees, paperwork, equipment and time, etc.).

## The Review Committee

Dr W H (Bill) Blair OAM was appointed as independent chair of the Review Committee. The Committee comprised industry, consumer and government representatives from the Commonwealth, the States and Territories, local government and New Zealand.

It was supported by a small Secretariat within the Australia New Zealand Food Authority (ANZFA). Both the Department of Primary Industries and Energy and the Department of Health and Family Services provided officers to supplement the ANZFA Secretariat.

### **Conduct of the review**

While taking account of the broader public interest objectives of food regulation, the Review was undertaken from the perspective of agrifood businesses, both large and small, affected by government regulation. The Review Committee worked in close collaboration with food industry associations, small business, health and consumer groups, as well as with other interested parties.

The Review Committee actively sought the views of people interested in or involved with the business, regulation or safety of food in Australia and New Zealand. A full list of the businesses, individuals and organisations consulted appears in Appendix B and this is broken down by sector in Appendix C.

### ***Public hearings***

Public hearings were held in each capital city in Australia and New Zealand and in a number of regional centres. The aim of the public hearings was to identify the concerns of business, governments and the community in relation to food regulation.

People were invited to attend these hearings through press advertisements in local newspapers, radio interviews with the Chair of the Review, direct mail-out and coverage in food industry magazines.

Individuals from a wide range of backgrounds attended the meetings, including: members of the public; representatives from small, medium and large agrifood businesses; industry associations; all spheres of Government; consumer organisations; environmental groups; educators; contractors; manufacturers of equipment for the food industry; the transport industry; and others.

### ***Written submissions***

The Review Committee called for written submissions and received over 170. An issues paper was available to provide background information on the Review and to assist those wishing to provide submissions.

### ***Research***

Research into the issues that affect the agrifood industry and food regulation included:

- the nature of the agrifood industry in Australia and New Zealand;
- regulation of the agrifood industry in Australia and New Zealand;
- the benefits and costs of regulation;
- agrifood regulation in international jurisdictions;
- regulatory reform in general, in Australia and overseas; and

- consumer interests and concerns regarding the food industry and food regulation.

### ***Commissioned research***

The Secretariat commissioned a number of consultants to identify and report on all Australian regulation pertaining to the agrifood industry; identify the government costs of food regulation; and review the *Australia New Zealand Food Authority Act 1991* (ANZFA Act) against the national competition principles.

### ***Focus group meetings***

Focus group meetings were held in a number of capital cities with representatives from small businesses, consumers, local governments and public health officials. The Review Committee was particularly interested to ensure small business concerns were identified and focus groups were considered the most appropriate means of achieving this.

### ***Workshops***

Workshops, with invited stakeholder groups, were held in all capital cities to explore and evaluate various options the Review Committee was considering.

A workshop was also held to consider issues relevant to the review of the ANZFA Act. A number of stakeholder groups gave opinions on the current limitations of the ANZFA Act and suggested possible improvements.

### ***Face-to-face meetings***

The Chair of the Review met with representatives from a number of key stakeholders in the agrifood industry. This included:

- agrifood industry associations;
- food retailers;
- food processors;
- primary producers;
- chambers of manufacturers;
- chambers of commerce and industry;
- consumers' associations;
- local governments; and
- Federal, State, Territory and New Zealand governments.

### ***Comment on the Draft Report***

The draft report was released for public comment in late May 1998. Interested stakeholders had four weeks in which to provide comment on the Draft Report and its

Recommendations. A 'Rapid Response Form' was provided to allow stakeholders to provide their comments quickly and succinctly, if they wished. A summary of the response to the draft recommendations is at Appendix D.

Comments were received from 144 organisations or individuals; 111 of which consisted of, or included a Rapid Response Form. In general the recommendations in the draft report were well accepted. Details of responses to each recommendation are summarised in Appendix D.

In addition, Dr Blair attended a number of meetings in each capital city to discuss the draft recommendations face-to-face with small and large groups of interested stakeholders. The details are in Appendix B.

As a consequence of written and verbal comments received, some amendments were made to the report and to several of the recommendations.

### **Reporting requirements**

The Review Report has been provided to:

- the Hon. Trish Worth, Parliamentary Secretary to the Commonwealth Minister for Health and Family Services and chair of the Australia New Zealand Food Standards Council;
- the Hon. John Anderson, Commonwealth Minister for Primary Industries and Energy and chair of the Agriculture and Resource Management Council of Australia and New Zealand; and
- Senator, the Hon. Warwick Parer, Commonwealth Minister for Resources and Energy and chair of the Ministerial Council for Fisheries, Forestry and Aquaculture.

The Council of Australian Governments will also consider the report.

## Importance of the agrifood industry in Australia

‘The agrifood industry’ is a term used to describe the food supply chain from the farm, fishing boat or orchard to the kitchen, restaurant or cafe in Australia or to our overseas customers. It is a source of employment, wealth generation and investment opportunity for many Australians. The benefits from an innovative and efficient food industry flow through to associated economic activities, such as tourism and entertainment.

The food industry is more than an economic activity. It affects our entire way of life. The ready availability of cheap nutritious foods does much to promote the general good health, high nutritional status and well-being of Australians. The benefits of our relatively inexpensive, plentiful and varied food supply influence virtually all economic, social and family activities.

The wide range of cuisines which has come from our multicultural mix has done much to shape our national character. Food provides a focus for many social activities within the family, workplace and community. The range, quality and innovative style of the foods and beverages offered in Australian cafes, restaurants and hotels entices both international and domestic tourists.

### **Agriculture**

Agricultural production in Australia is highly competitive by world standards. This is largely due to the capacity of Australia’s farmers to seize opportunities presented by constantly changing markets. Around 80 per cent of Australia’s agricultural output is traded on the world market.

In 1995–96, there were over 100 000 farm businesses in Australia and the total farm turnover was almost \$27 billion (Australian Bureau of Statistics, 1996a).

### **Fisheries**

The gross value of fisheries production in 1993–94 was some \$1.8 billion (Australian Bureau of Agricultural and Resource Economics, 1997). Finfish constitute approximately 60 per cent of the Australian catch, but lobsters, prawns and other shellfish are economically more valuable.

In Australia, aquaculture is becoming an increasingly important part of fishery production accounting for 25 per cent of the total value of seafood production in 1996–97. Prawns are farmed in New South Wales and in Queensland, recording a value of \$35 million in 1996–97. All commercial oyster production and much of the commercial mussel production is cultured. Freshwater crayfish such as marron, red claw crayfish and yabby are grown in inland farms. Rainbow trout and Atlantic salmon, which are both introduced species, are cultured commercially in Australia. Atlantic salmon production is currently restricted to Tasmania and is a high-value product. A large proportion of salmon is exported to the Asian market, where Tasmanian producers enjoy a commercial advantage in being able to supply fresh fish outside the Northern hemisphere growing season (Kailola et al, 1993).

The most lucrative fishing industry is that of prawns and lobsters. Much of the prawn and lobster catch is exported, mainly to the Asian region.

### **The food processing industry**

In the past, Australia was seen as a leading producer and exporter of raw agricultural commodities, but not necessarily a producer of processed foods. Australia is now recognised globally as an important producer of value-added food products. Today the food and beverage industry has the largest turnover and is the second largest employer in the manufacturing sector. Food and beverage processing employed just under 158 000 people in 1995–96 and had a gross turnover of over \$41 billion. Food and beverage processing contributed 18.4 per cent of gross product (Australian Bureau of Statistics, 1996b).

### **International trade**

The Australian agrifood industry recognises the need to compete on the world market and has made increasing inroads into new overseas markets while establishing its hold on existing markets. Total processed food exports were over \$9 billion in 1996–97. Highly processed food exports have increased by 155 per cent in the eight years to 1996–97 and have significantly increased their share of total food exports. Unprocessed food comprised 10.4 per cent of Australia's export trade in 1996–97 and was worth over \$8 billion (Department of Foreign Affairs and Trade, 1997).

In 1996–97 total agrifood imports (processed and unprocessed) were just over \$3.5 billion, while total agrifood exports were over \$17 billion. Imports were approximately one-fifth of the export value, which indicates a very healthy balance of trade in agrifood products (Department of Foreign Affairs and Trade, 1997).

The Prime Minister's Supermarket to Asia Council was set up in 1996 to encourage an export culture and to promote Australian food products in Asia. The potential for increased market share in Asia is considerable given Australia's comparative advantage in efficiently producing basic food products, our geographical proximity and our reputation for producing safe food. The liberalisation of market access, together with improved transportation and storage technologies, brings this expanding market within closer reach of the Australian food industry.

### **Retail**

Food retailing, which includes supermarkets, grocery stores and takeaway food retailing, had a turnover of over \$50 billion in 1995–96 and represents approximately 36 per cent of all retail turnover.

Hospitality and services, including hotels, clubs, restaurants, cafes and selected services, had a turnover of over \$20 billion in 1995–96 (Australian Bureau of Statistics, 1997). In Australia, as in other western countries, there has been a trend towards eating meals away from home and even when eating at home, a significant and increasing number of meals are likely to have been partly or totally prepared outside the home. Both the food retail and hospitality industries have responded to this change in consumer demand, which has resulted in considerable positive growth in turnover in both these sectors. Increased tourism, both international and domestic, will increase demand for catering and hospitality services.

## **Food regulation in context**

The importance of the agrifood industry lies both in its contribution to the economy and the essential role food plays in sustaining life, health and social relationships.

The varied roles of food generate a wide variety of economic, public health and safety and personal concerns about contents and processes used in the food supply chain.

### ***Industry expectations***

In general, the review consultations and existing research suggest that agrifood businesses would like to see the following outcomes for the industry as a whole:

- maintenance of the image and market advantage of the Australian food industry as a producer of clean and safe food;
- all segments of the food supply chain (from paddock to plate) committed to deliver safe food;
- a competitive and profitable industry with access to international markets;
- mandatory regulation only where there is a risk of market failure and other strategies are ineffective;
- a simple regulatory system that provides support for industry to achieve the objectives of safe food at minimum cost to industry;
- requirements imposed on each business based on the food safety risk posed by that business;
- as far as possible one set of regulatory requirements;
- certainty about how to meet those regulatory requirements;
- flexibility about how the objectives are to be achieved (to facilitate business innovation and the ability to respond to changing market demands);
- consistent interpretation of regulation by all government bodies interacting with a particular business and similar requirements for similar businesses wherever they are located in Australia;
- access to information about food safety and threats to public health;
- partnership with governments in managing the regulatory system (that is, each industry participating in the decision-making and enforcement processes for its own sector);
- accountability, openness and transparency of decision-making processes; and
- effective and appropriate sanctions applied to those who threaten the safety of food.

### ***Consumer expectations***

Consumer views and expectations about food, agrifood business and its regulation are also varied. The research is inconsistent, particularly with regard to the ranking of issues. The list below summarises the key issues derived from the research but is not intended to imply a hierarchy.

In general, consumers expect:

- food that is safe and free from microbial, physical or chemical contamination (issues raised include tampering, food handling, spoilage, additives, etc.);
- food that is affordable;
- honesty and integrity of the information provided on labels and adequate access to other information about food products;
- protection from, and rapid government response to, new and emerging threats and diseases;
- access to a diverse and nutritious food supply (with an emphasis on freshness and 'natural' foods);
- clear national standards based on the precautionary principle that safety should be proved before approval is given;
- simple, easy access to regulatory authorities;
- strong efforts by governments to enforce standards;
- highly visible and effective access to complaint and redress mechanisms;
- access to information about diet and health;
- open communication when things go wrong; and
- ecologically sustainable production.

### ***Government's role***

All three spheres of government act in a variety of ways to achieve the industry and consumer expectations identified above. Governments have a responsibility to provide a high level of consumer protection (meeting the legitimate demands and expectations of consumers); to avoid regulations that impose unnecessary burdens on the agrifood industry; and to support the other industry and consumer expectations identified.

Government activities include:

- industry programs such as assistance for market access or for research and development (e.g. Department of Industry Science and Tourism, Department of Primary Industries and Energy);
- education and training (schools, vocational education, community education campaigns);

- health promotion in relation to food and nutrition;
- supporting market-driven ways of achieving goals (e.g. quality assurance systems, market vendor declarations);
- developing and enforcing regulations, where there is a risk that some businesses may act to compromise the expectations outlined above.

### **Regulatory practices in Australia**

There is a need to ensure the benefits of government regulation outweigh the costs. All government activities (including developing and enforcing regulation/legislation) use public resources and these costs are borne by the community through the taxation system or directly by businesses in the form of government fees and charges. Regulatory activity also has indirect costs on industry in the form of the time and effort it takes to comply. While these latter costs are borne by businesses in the first instance, they are sometimes passed on to consumers in higher prices for goods and services.

For these reasons, it is desirable that all government programs be effectively targeted, monitored and reviewed to ensure the intended outcomes are achieved, at least cost. In recent years, the Commonwealth, State and Territory Governments have adopted programs of legislative and regulatory review, in line with a set of principles and guidelines for national standard setting and regulatory action endorsed by the Council of Australian Governments (COAG) in April 1995 and amended in November 1997.

The principles and guidelines require regulation makers to consider whether effective alternatives to explicit government regulation (or ‘black letter law’) exist, recognising there is a spectrum of regulatory forms and their appropriateness depends on the specific circumstances and the nature of the industry and problem concerned. To ensure economic efficiency and to minimise the costs of food regulation, government regulation and quasi-regulation of the food industry is subject to cost-benefit analyses in the form of regulatory impact statements.

For any current or proposed regulation, the pertinent questions, to minimise the use of government regulation, are:

What is the problem that needs to be addressed?

Why should governments intervene?

What are the alternative approaches to dealing with the problem (both regulatory and non-regulatory)?

What are the costs and benefits (to all affected parties) of these options?

What is the least interventionist/regulatory approach possible to address the problem effectively?

Which approach will have the greatest net benefit?

How should the approach be implemented to best achieve the objectives?

When should it be monitored and reviewed?

This process, when undertaken thoroughly, is designed to ensure the needs of all stakeholders are taken into account and the best practice outcome (highest net benefit) results. Rigorous use of this process helps eliminate excessive government regulation.

This regulatory impact analysis process is currently being used by all Commonwealth, State and Territory agencies. It should continue to be used in all decisions concerning development of food regulation to ensure the benefits of food regulation (which predominantly accrue to the community) outweigh the costs (which are often imposed on agrifood businesses). The use of regulatory impact analysis should be monitored to ensure it is being done effectively.

Australian governments at State, Territory and Commonwealth level have agreed they will only regulate community or market activities where it can be shown there are problems which cannot be addressed by any other measures.

A crucial element in the efficiency of government interventions is a strong partnership between the agrifood industry, consumers and government.

## **Current regulatory arrangements and reforms**

The terms of reference for the review required a description of the current approaches to food regulation, including the types of regulation and regulatory practices and institutional arrangements. The review was also to describe recent and current regulatory reforms and reviews and their likely effects.

There is currently a wide mix of regulatory approaches in Australia which vary from agency to agency and jurisdiction to jurisdiction. These approaches range from mandatory, and sometimes prescriptive, regulations through a variety of co-regulatory and quasi-regulatory arrangements to voluntary industry-driven schemes and total deregulation. Indeed, within a single agency the full spectrum of alternative approaches are sometimes used.

### **Current regulatory arrangements**

The current regulatory framework for food in Australia is complex and fragmented and involves a large number of agencies and legislation spread across three spheres of government.

Approximately 150 Acts and associated regulations control food or agrifood businesses in Australia (including imported food and food produced for export and domestic consumption). This excludes levy Acts and local government by-laws as well as Acts which apply generally to businesses such as, for example, tax laws and occupational safety and health laws. In addition, there are over 90 separate national food product standards.

These laws and standards are developed, administered and/or enforced by numerous Commonwealth departments and statutory bodies, over 40 State and Territory agencies and departments and over 700 local governments.

The legislation regulates matters such as health and safety, food quality or grade requirements, nutritional and content information and other labelling requirements, weights and measures, trade practices, the buying and selling of particular commodities, certification of particular foods, quarantine requirements, notification of diseases, environmental sanitation, control of agriculture and veterinary chemicals, animal health and disease control and supporting standards.

Within the States and Territories, the number of agencies involved in food regulation varies but can typically include the Health and Agricultural portfolios, meat and dairy authorities and other authorities or boards responsible for commodities such as eggs, dried fruits etc., fishery departments, consumer affairs departments, environment and planning authorities and in some instances departments of local government.

These agencies' functions include, but are not limited to, policy responsibility for and/or enforcement of food hygiene regulations and food standards, management of chemical residues, licensing of various premises, enforcement of standards for meat and poultry and other foods, weights and measures, the Fair Trading Acts, export certification and audit functions.

State and Territory health departments usually delegate the power to enforce the *Food Standards Code* and food hygiene regulations to local governments. Local government's food enforcement activities link closely with waste collection and disposal, building and development approvals, planning functions, roads and drainage infrastructure and, in some States, the water and sewage functions.

Commonwealth regulators include the Department of Primary Industries and Energy (DPIE), the Department of Health and Family Services (DHFS) and the Department of Industry Science and Tourism (DIST).

DPIE responsibilities include the Australian Quarantine and Inspection Service (AQIS), the National Registration Authority (NRA), the Office of Food Safety, the National Residue Survey (NRS), the Bureau of Resource Sciences (BRS), and various statutory bodies including the Australian Wine and Brandy Corporation, various meat and livestock corporations, the Australian Horticultural Corporation, the Australian Wheat Board and the Australian Barley Board.

DHFS responsibilities include ANZFA, the Therapeutic Goods Administration (TGA), the National Centre for Disease Control (NCDC) and the National Health and Medical Research Council (NHMRC).

DIST responsibilities include industry assistance programs, policy for the consumer protection provisions of the Trade Practices Act and regulating genetically manipulated organisms in conjunction with other agencies such as DPIE and ANZFA.

The main Commonwealth agencies also participate in, and have obligations in relation to, international policy development, standards setting and trade agreements. Mechanisms for national and trans-Tasman coordination of food regulation exist, at the national level, through the Australia New Zealand Food Standards Council (ANZFSC) and the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ).

Some of the national agencies mentioned above have specific food and/or industry policy and program coordination responsibilities, if not food regulatory responsibilities, as part of a broader government policy development framework. This framework involves a wide range of key stakeholders including the Commonwealth, States, Territories, local government, industry, health professionals and consumer groups. These stakeholders are involved in an array of formal and informal mechanisms for policy and standards development, consultation and coordination.

Under the Constitution, the right to make laws in relation to exports was ceded to the Commonwealth. No such arrangement was made for food legislation, other than through powers such as those relating to corporations. Domestic food regulation is therefore, the constitutional right of the States and Territories.

State and Territory jurisdictions entered into an arrangement with the Commonwealth government in 1991 agreeing to adopt (automatically by reference and without amendment) food standards developed by the then National Food Authority and agreed by Health Ministers (this replaced a 1986 agreement which had a similar intent). Consequently, all manufactured or unprocessed food products offered for sale

in Australia (whether produced domestically or imported) must comply with the *Food Standards Code*.

The 1991 agreement significantly reduces, but does not remove, the States' and Territories' ability to develop their own food standards. It is limited to the extent that power to enact separate food standards is restricted to specific situations. The enabling legislation, the Food Acts,<sup>1</sup> are not uniform. An attempt to create uniformity by developing a proposed national model Food Act, in the 1980s, was of limited success as most jurisdictions made amendments to the Act as it passed through their Parliaments. There are now eight different Food Acts within Australia.

Within local government, over 700 local councils can make by-laws or ordinances to regulate the activities of food enterprises. These powers are used infrequently, often only to apply fees and charges for inspecting premises, but some councils have created laws to supplement State hygiene regulations. The proposed new State and Territory Food Acts, if adopted, will override these by-laws and prevent this occurring in future.

State and Territory Health Ministers agreed, in principle in 1995, to adopt new national hygiene standards, which ANZFA was developing, by adopting them as standards of the *Food Standards Code*. These will replace the various State and Territory regulations governing food hygiene.

The Commonwealth, through AQIS, is responsible for administering and enforcing food export regulations which are developed jointly with ANZFA.

Within each State and Territory, there are a variety of statutory authorities which administer regulations governing certain sectors of the food industry, most notably the meat and dairy authorities. These regulations generally cover food safety requirements and, in some cases, market or price support mechanisms. In 1995, Commonwealth and State and Territory Primary Industry Ministers agreed to develop national food safety standards for the domestic meat market: these have been implemented through the State and Territory Meat Acts (in Western Australia, the Health Act).

ANZFA's recommendations are adopted into State and Territory law only after they have been accepted by a majority of State and Territory Health Ministers. This partnership arrangement includes New Zealand. The Treaty between New Zealand and Australia in relation to developing joint food standards means standards ANZFA develops and which are accepted by the ANZFA will generally apply in New Zealand. However, the New Zealand government has reserved the right to not adopt these standards and to develop standards specifically for application in New Zealand where this is appropriate.

### **Reforms to the current regulatory arrangements**

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<sup>1</sup> All references to Food Acts in this report should be read to include the WA Health Act and the Tasmanian Public Health Act.

The current food regulatory system in Australia is undergoing a number of reforms, many of which are independent, others which are closely interrelated. Some of these involve review of legislation and others procedural and administrative reform. A number of these are briefly described below.

### ***Imported foods***

The *Imported Food Control Act 1992* is being reviewed in line with competition principles. A pilot scheme has been initiated recently in which certain importers take responsibility for inspecting their own imports under guidelines from AQIS. This will not exempt these importers from random inspection or any other kind of inspection.

### ***Meat industry reforms***

Recent reforms in the meat industry include:

- implementing HACCP-based quality assurance programs;
- restructuring statutory authorities and other bodies; and
- reforming the meat inspection systems.

The industry has developed, and is encouraging adoption of, quality assurance systems (CATTLECARE and Flockcare) to prevent chemical residues entering the food supply chain. The industry has also introduced a national Vendor Declaration System for cattle: the producer, upon sale of cattle, signs a declaration form outlining the recent management and husbandry history (60 days prior to sale) of the cattle.

A body called Safemeat has been established to provide strategic direction for meat safety. Safemeat members include chief executive officers of the Commonwealth and one State Department of Primary Industries, Chairpersons of the relevant industry associations and the Commonwealth Chief Veterinary Officer.

The existing meat industry statutory authorities will be replaced by industry-owned companies. For example, most of the functions currently carried out by the Australian Meat and Livestock Corporation and the Meat Research Corporation will be conducted by Meat and Livestock Australia Ltd.

The Meat Industry Council, with support from the Commonwealth Department of Industry Science and Tourism, Food Quality Program, conducted a project (Project 1) to scientifically demonstrate the advantages of quality assurance systems based on the Hazard Analysis Critical Control Point (HACCP) principles. HACCP is a preventative approach that aims to introduce a systematic method of identifying and controlling food safety hazards to achieve lasting, through-chain food safety gains. The results of Project 1 showed significant improvements in the safety of products (46 per cent to 53 per cent) at all plants where it was conducted.

A second project (Project 2) is being conducted with AQIS to reform the meat inspection service. The purpose of Project 2 is to compare the performance of processing plants before and after transition to a company-driven HACCP-based

quality assurance system, rather than the previous government inspection arrangements.

AQIS is, or has, implementing a number of other reforms: it has moved away from end-product inspections and toward process control systems in the seafood, dairy and dried fruit industries based on HACCP principles. Where these process control systems are in place AQIS has commenced a transition to other authority inspections (e.g. State dairy authorities) and third party audits.

### ***Food Standards Code***

ANZFA is reviewing the *Food Standards Code*. This review plays a crucial role in the trans-Tasman agreement. The reviewed standards will become joint Australia New Zealand food standards.

The objectives of the review are in accord with the general aims of the Review of Food Regulation. The review of the *Food Standards Code* objectives are to:

- reduce the prescriptiveness of standards to facilitate innovation by allowing a wider permission of the use of ingredients and additives, but with consideration of the possible increased need for consumer information;
- develop standards which are easier to understand and make amendment more straightforward;
- replace standards which regulate individual foods with standards that apply across all foods or a range of foods;
- consider the possibility of industry codes of practice as an alternative to regulation; and
- facilitate harmonisation of food standards between Australia and New Zealand.

The reviewed *Food Standards Code*, by providing risk-based unambiguous uniform regulation, will help the agrifood industry provide safe food and not inhibit development or innovation in the industry. The review is expected to be completed in 1999–00.

### ***National Safe Food System***

The National Safe Food Working Group (NSFWG) was established jointly by the Standing Committee on Agriculture and Resource Management (SCARM), the Standing Committee on Fisheries and Aquaculture (SCFA) and the Australia New Zealand Food Authority Advisory Committee (ANZFAAC), to make recommendations to these Committees on a model for a national safe food system (National Safe Food Working Group, 1997).

The aim of the Model is to:

- increase the confidence of both domestic and international consumers in the safety of Australian foods;

- enhance the view that Australia is a reliable supplier of safe food; and
- more effectively use current government and industry resources to achieve the aim of a safer Australian food supply.

The elements that comprise a national safe food system are currently in place, but are not fully integrated. The national safe food system is a whole-of-government approach to food safety and, as such, is closely linked to the outcome of this Food Regulation Review. Government emergency, monitoring and surveillance activities are key elements of the model, as are industry-driven programs such as the Pig Meat Hygiene Program, the Australian Seafood Industry Quality Assurance Project, the Food Safe Quality Assurance Program and the individual quality assurance schemes of larger food enterprises.

The policy objectives of the national safe food system, as recommended by the working group, are:

- safeguard consumer health by protecting the safety of Australia's food supply;
- strengthen Australia's competitive position as a reliable producer and exporter of safe food;
- implement a fully integrated approach to food safety across all steps of the food supply chain;
- recognise that industry has prime responsibility for ensuring food safety, with policy and program support from government including consumer education;
- ensure the safe food system is driven by market requirements and meets Australia's international obligations; and
- provide a comprehensive framework for a national approach to risk-based food safety management that includes government, industry and consumers.

The working group also identified the following principles as needing to underpin a national safe food system:

- a shared vision that all Australian food will fully satisfy consumer and export market expectations for a safe product;
- joint commitment and responsibility by all stakeholders along the food supply chain to contribute to supplying safe food;
- management of the risks to safe food production and handling through preventive strategies and activities;
- continuous improvement of the national safe food system through effective monitoring, evaluation, response and review; and
- effective, integrated management of all food hazards.

The national system needs to be firmly based on a preventive risk management approach and mechanisms to ensure consistent outcomes and needs to recognise

industry's ability, in the main, to deliver safe food with minimal government intervention.

### ***Export Control Orders***

Export Control Orders are the standards AQIS enforces as a requirement of importing countries. DPIE is conducting an internal review of the Export Control Orders.

Two changes have been made to the Export Meat Orders, providing for a common quality assurance system for meat exports and allowing, under some circumstances, exports from plants not registered as export plants.

Many of the other Export Control Orders are being re-written to make them less prescriptive and clearer.

### ***National hygiene standards***

ANZFA, at the request of ANZFSC, is developing a series of food hygiene standards to ensure production of safe food. This goal is shared by industry throughout the food supply chain.

Current food hygiene regulations in the States and Territories are seen as prescriptive and, because each State and Territory has its own food hygiene regulations, there is a lack of national consistency.

The proposed reforms to Australia's food hygiene regulations comprise a package of new standards in the *Food Standards Code*, the infrastructure arrangements required for their implementation, and the reforms to the State and Territory Food Acts. The proposed standards will apply to all Australian agrifood businesses currently covered by the *Food Standards Code*. These standards cannot enter into force until State and Territory Food Acts have been amended.

Under the proposed food hygiene standards agrifood businesses will be required to develop food safety programs over a six-year period, based on identifying and controlling all food safety risks or hazards.

Five major infrastructure projects have been identified that must be undertaken for timely implementation of the food hygiene standards. These projects are:

1. Food industry guidelines for each major food industry sector to address the issues associated with developing, implementing and recognising food industry sectoral guidelines.
2. National system for auditing food safety programs, including auditor competencies.
3. National risk classification system for agrifood businesses to establish certain implementation requirements for the food hygiene standards.
4. National food safety training competencies. ANZFA is developing a Code of Practice for Food Industry Training Competencies to guide both food business proprietors and enforcement officers.

5. Nationally consistent arrangements for notification of agrifood businesses. ANZFA will develop a system for notifying agrifood businesses to a relevant authority.

### ***Review of State and Territory Food Acts***

A working party, consisting of State and Territory health department and industry and consumer association representatives and coordinated through ANZFA, is currently reviewing the State and Territory Food Acts. The purpose of the review is to enable uniformity of legislation and to implement the new national hygiene standards. This involves examination of each provision of the model Food Act and each provision of existing State and Territory Food Acts (or food provisions of Health Acts) to:

- assess whether existing provisions are still necessary in new Food Acts and recommend their deletion or retention with or without amendment; and
- assess what new provisions should be included in new Food Acts and recommend their incorporation.

Assessment of these provisions will be based on identifying the broad purpose of food regulation and efficient means of food regulation. The review must also consider existing Food Acts against COAG's national competition principles policy—under the NCP Agreement, Acts must be reviewed against these principles.

The intended outcome of the project is a set of nationally uniform Food Acts across Australia. ANZFA will be seeking agreement from the States and Territories on a method of ensuring the new Food Acts are adopted uniformly.

The review of the Food Acts is being conducted in parallel with the Food Regulation Review. Recommendations will be made to ANZFSC at the same time that Food Regulation Review recommendations will be presented to ANZFSC and ARMCANZ.

### ***National competition policy reviews***

The inter governmental Competition Principles Agreement of 11 April 1995 established Australia's National Competition Policy. The COAG Competition Principles Agreement requires that all existing legislation which restricts competition and/or involves significant cost or confers a benefit on business be reviewed by the year 2000. The guiding principles of these reviews is that legislation should not restrict competition unless demonstrated to have benefits to the community which are greater than its costs, and when it is the only way to achieve the objectives.

All jurisdictions have scheduled their reviews over the next three years. The legislation of all State and Territory statutory authorities responsible for some form of industry control will be reviewed under this process. To date, only a small number of reviews of food-related legislation have been completed.

### ***Other State and Territory activities***

#### **New South Wales**

The New South Wales government is reviewing its dairy and meat legislation against the national competition principles. In this process it will address the regulatory reforms required within these industries. The NSW Health Department is preparing a public consultation paper on food safety regulation in New South Wales to canvass views on the best means of responding to the changes being brought about by the reforms currently underway.

New South Wales is also considering consolidating food safety regulatory agencies within the primary industries portfolio (meat, dairy, horticulture and fisheries). This could be extended to include amalgamating NSW Health's food regulatory functions with this food safety agency.

### **Victoria**

Food Safety Victoria has been established within the Department of Human Services. All food safety responsibilities within the State have transferred to Food Safety Victoria. This body reports to the Minister for Health and has an administrative arrangement with the Department of Natural Resources and Environment for enforcement in statutory authorities relating to dairy and meat.

The Minister responsible for Agriculture retains primary responsibility for the primary industries. More formal cooperative arrangements are planned that will establish how the standards for food safety will be met and maintained.

The Food Safety Council which advises the Minister for Health includes representatives from primary and secondary industry as well as other experts. The Council is working, in association with ANZFA, on risk classification for food safety and establishing a timeline for implementing food safety plans based on HACCP principles. The highest risk premises will be required to implement food safety plans first and other businesses will progressively be required to implement food safety plans over the following three years.

### **Queensland**

A Food Industry Committee of the Chief Officers' Forum has recently been established with a prime role of improving coordination of government programs for the food industry. Two working groups have been established under the Committee: the Safe Food Working Group and the Industry Development Working Group. The Safe Food Working Group is to ensure Queensland has effective systems for producing safe food, and the Industry Development Working Group makes recommendations on food industry development.

The Minister for Health's Food Safety Task Force reported in February 1998 with a number of recommendations to move towards ensuring food safety throughout Queensland. A majority of those recommendations have been, or are in the process of being, implemented. A small number of recommendations which relate to considering functional and legislative issues are being addressed by the Safe Food Working Group. Officers from the Department of Health and local government are developing risk assessment protocols for agrifood businesses.

### **Western Australia**

The current food provisions in the WA Health Act will be rescinded with the introduction of the new Food Act. A Meat Safety Council is being established.

### **South Australia**

The Health Commission has established an advisory group, the South Australian Food Hygiene Implementation Committee (SAFHIC), to help develop and introduce food hygiene reforms. The Committee is chaired by the Commission and includes representation from business, the Australian Institute of Environmental Health, local government, the Business Centre and consumers. SAFHIC is supported by a larger reference group which is mostly business and other government departments; and has established two working parties to deal with implementing the food hygiene standards.

### **Tasmania**

The Tasmanian Parliament has passed the new *Public Health Act 1997* and the new *Food Act 1998*, and the ARMCANZ Meat Standards have been introduced. All three are the responsibility of the Health portfolio: this arrangement aims to provide a paddock to plate, seamless approach to meat hygiene and food safety in general.

The Department of Health is developing a risk classification framework which is proving successful. These risk classification protocols are based on the United Kingdom model, adapted for local conditions. The Health Department has introduced a Memorandum of Understanding with the Primary Industries Department to clarify roles and responsibilities.

### **Northern Territory**

A Meat Industries Act has recently been passed which is similar to those in other States and Territories.

### **Australian Capital Territory**

A trial involving 20 proprietors, as part of the Food Safety Project, aimed at developing the skills of food premises proprietors has been successfully completed. During the trial proprietors developed their own food safety plans. The trial is funded by the Commonwealth and organised by the Chamber of Industry and Commerce and involved environmental health officers (EHOs). The Health Protection Service is working with the poultry industry to modify the SCARM requirements for chicken meat to local conditions.

## **Benefits and costs of food regulation**

### **Benefits of food regulation**

Governments' primary role in food regulation is to protect public health and safety. The food industry as a whole relies on consumer confidence in a safe food supply to sell its products. To maintain consumer confidence in the food supply governments must continue to take a proactive rather than a reactive role in addressing public health and safety issues.

Consumers also need protecting from misleading and deceptive behaviour and access to appropriate information about food, diets and food-related illness and disease.

Benefits of food regulation to businesses include creating a level playing field, removing anti-competitive activities and providing a clearer understanding of the role and responsibilities of agrifood businesses for food safety and the community.

Legislation which prohibits false and misleading representations in the marketplace benefits individuals and the community and protects businesses against anti-competitive behaviour that can harm the industry. Effective food safety regulation can also contribute to the desirability of Australia as a tourist destination.

It is widely accepted that when food safety failures occur the costs, both direct and indirect, to the community, industry, government and the economy as a whole can be considerable.

Costs to consumers include:

- loss of life;
- short-term medical and pharmaceutical expenses associated with illness and disability;
- potential long-term health complications and resulting medical costs; and
- income loss.

Costs to industry and businesses include:

- loss of productivity;
- significant additional business costs in dealing with food recalls and disposal;
- loss of market share;
- regulatory fines;
- product liability law suits;
- increased product liability insurance premiums;
- decreased business viability; and
- additional costs to rectify processing and/or practices.

Costs to government include:

- significant public sector costs including control costs for food-borne illness outbreaks;
- investigations of outbreaks;
- specific monitoring and surveillance costs;
- additional laboratory costs;
- hospital and pharmaceutical costs; and
- litigation costs.

Other costs to the economy may include:

- damage to Australia's image as a market for clean and green produce;
- loss of export markets; and
- loss of tourist trade.

We can broadly describe the benefits resulting from effective food regulation and the results of failures in the food safety system. However, quantifying the costs and benefits is problematic because of the difficulty in identifying:

- the reduction in the incidence of food-borne illness and diet-related disease;
- the consequent reduction in the incidence and severity of human illness and loss of life;
- the savings, by consumers and society as a whole, of preventing illness and loss of life resulting from food-borne illness and diet-related disease; and
- flow-on benefits to industry and the economy through improved trade and commerce attributable to a reputation for safe food.

Figures on the economic costs of food safety failures are not readily available. However, the impact, on individuals and business, is readily apparent.

In Australia in the 1990s reported outbreaks of food-borne illness from viral and bacterial causes resulted in illness to thousands of individuals and some examples can be given of the types of costs and losses involved:

- permanent health damage, including 23 cases of haemolytic-uraemic syndrome (HUS) in one outbreak incident alone;
- at least four deaths;
- significant product recall costs to companies including press advertisements (\$200 000 in one case) and product recovery and disposal; and
- loss of market share and profits, not limited to the companies involved. Examples include reduced sales for one company of almost \$6 million in the

year following a product recall. In another example sales of a product category were still well below the level that existed prior to a food-borne illness outbreak for similar products. This situation can continue for considerable time after an incident occurs.

Internationally, food-borne illnesses remain a major public health threat. In recent years, some industrialised countries have experienced a significant increase in the incidence of food-borne illnesses. In addition, a number of food-borne pathogens, such as multi-antibiotic resistant *Salmonella typhimurium*, *Listeria monocytogenes* and *E.Coli 0157*, have emerged as significant threats to public health (Kaferstein F K, 1997).

In Australia, the notification rates and case rates for diseases such as salmonellosis and campylobacteriosis, considered to be primarily food-borne, have been increasing since the 1980s (Crerar S et al, 1996). The figures below indicate the increase in notification rates for these diseases over the period 1987–96.

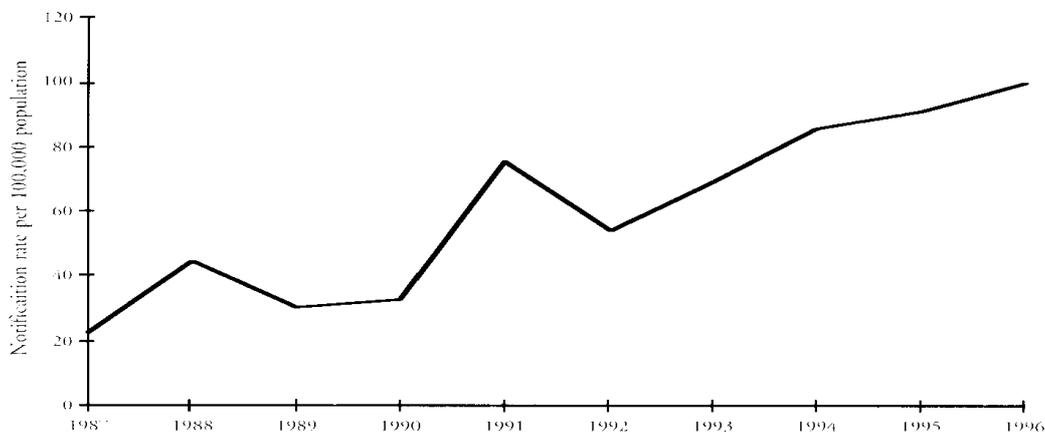


Figure 1: Notification rate for campylobacteriosis, 1987–96, by year

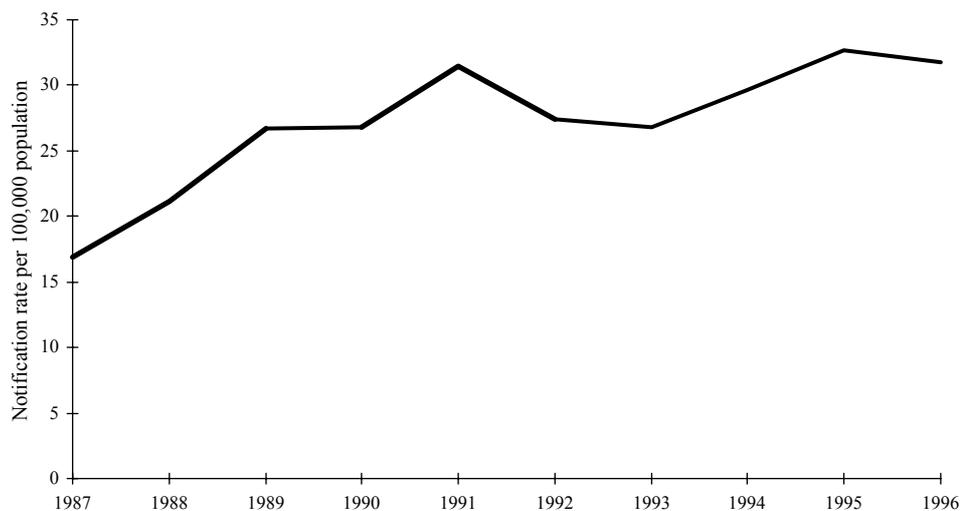


Figure 2: Notification rate for salmonellosis, 1987–96, by year

### **Limitations on Campylobacter and Salmonella data 1987–96**

There were no nationally-agreed case definitions before 1991. While there have been nationally-agreed case definitions since 1991 it is not known to what extent individual jurisdictions have adopted them.

Due to under-reporting, notified cases represent only a proportion of the total number of cases which occurred. This proportion may vary between diseases, between jurisdictions and over time.

Methods of surveillance vary between jurisdictions, each of which has its own requirements for notification by medical practitioners, laboratories and hospitals.

Reasons for a rise in the number of notifications may include more laboratory testing, improved methods of diagnosis, changes in reporting requirements in addition to a true increase in the incidence of disease (Communicable Diseases Network, Australia New Zealand National Notifiable Diseases Surveillance System, personal communication).

Although Australia does not have an adequate surveillance system to indicate the incidence of food-borne illness, some estimates of the annual number of cases and their possible costs can be made from a combination of Australian and overseas data. While such data is imperfect, it is the best currently available.

In 1996 there were 21 010 notified cases of illness in Australia that may be attributed to food-borne origins. Surveillance data in the United States that are similar to those in Australia indicate that fewer than 1 per cent of cases of salmonellosis are detected during an outbreak. If under-reporting in Australia is of a similar level the annual incidence of food-borne illness in Australia can be estimated to be in the order of 2.1 million cases per year. Based on the cost estimates in the United States (A\$1 545 per case) and Canada (A\$1 100 per case) of acute bacterial food-borne illness, (Todd, 1989) a conservative Australian estimate of \$1 000 per case of food-borne illness would equate to a total annual estimated cost of \$2.1 billion (ANZFA, 1998b).

Food regulation also covers nutrient composition, ingredient information and claims that can be made in relation to food. It is this information, in addition to other sources of information, that consumers use to make choices about diet. Diet-related disease is an important public health issue, particularly given the world-wide increase of non-communicable diseases that can be attributed to diet.

The major causes of death, illness and disability in Australia thought to be linked to nutrition and for which some form of prevention is likely to be applicable are coronary heart disease, stroke, hypertension, atherosclerosis, some forms of cancer (stomach, colon, rectal, breast and endometrial), diabetes (non-insulin dependent), osteoporosis, dental caries, gall bladder disease, and some non-cancer disorders of the large bowel.

These diseases have significant cost implications for communities and governments. It is estimated that the direct cost to the health delivery system of diet-related disease in 1989–90 was \$1.5 billion and the indirect costs (i.e. earnings foregone through illness and premature death) were \$0.75 billion, giving total costs in 1989–90 of \$2.3 billion (Australian Institute of Health and Welfare, 1992).

While Australia delivers safe food and food regulation has done much to reduce the costs of food-borne illness and diet-related disease, it has not removed it. However, the costs when there is a breakdown in the safety of the food supply provide incentive to ensure the effectiveness of the food regulatory system is maintained and efficiency improved. Any changes to the food regulatory system in Australia must not lead to a reduction in protecting public health or lessening of consumer protection.

### **Costs of compliance with food regulation**

Basically, some regulation is necessary, particularly to ensure consistency and safety in an industry that does not yet require any qualifications for food handlers. However, food regulations in Australia need to be on a national basis—our food supply is national and exporting is vital for our nation's future. State and local differences impede national interests.

*Sizzler Australia, submission no 79.*

It is difficult for industry to identify and track the costs of compliance with food regulations. Businesses find it very difficult to separate regulatory burden (the costs over and above normal, prudent commercial activities) from the cost of good business practices. Despite extensive consultations with industry and systematic investigations of costs, it has not been possible for the Review Committee to identify the dollar cost of the regulatory burden on the food industry arising from food regulation.

Most agrifood businesses employ practices and equipment which match or exceed the standards required by law. During the course of the Review, it was noted that many proprietors and managers have difficulty separating what they do as a natural part of good business practice from what they do solely to comply with food-specific or food-related regulations. Regardless of regulations, most food suppliers have strong incentives to produce safe food of the type consumers want and for which they will pay.

As a recent consultants' report from New Zealand points out, consumers' choices strongly influence producers' investments in food safety and quality, and in information on labels. Other incentives to produce or provide safe food include the firm's reputation, potential loss of business, monitoring by third parties such as supermarkets or customer organisations (e.g. national chains) and litigation.

The consultants noted also that many improvements in food safety are due, in part, to adoption of improved technologies, such as refrigeration and cleaning agents, and scientific understanding of and public education about bacteria. Some of these improvements pre-date the current regulatory regimes in Australia and New Zealand.

The difficulties of quantifying compliance costs, other than licence and inspection fees, have also been noted in other reviews. In late 1992, the Business Regulation Review Unit of the then Queensland Department of Business, Industry and Regional Development commissioned a study (KPMG Peat Marwick, 1992) to identify State and local government regulatory impediments to Queensland's food processing sector to ascertain if the Queensland Government could take positive action to remove inappropriate or unnecessary regulation.

The study found the food-related regulations which caused problems for the industry were: differing interpretations by State health departments of national food labelling

requirements; regulations concerning the farming and processing of native fauna for food; multiple inspections for exporters of dairy products; and inappropriate fees charged for discharging water for seafood and aquaculture businesses.

More recently, a British survey sought to establish the extent to which food companies costed the impact of food regulation on their business operations, as well as to gain their views on the benefits and constraints of food regulations (Heasman, 1997). Of the 68 respondents, two-thirds found it 'difficult' or 'very difficult' to identify the areas of the company's operations in which the costs of compliance mostly accrue, and more than three-quarters said they would have problems quantifying food-related compliance costs. Many of the Australian agrifood businesses which responded to this Review's requests for costing information indicated similar difficulties.

### **Costs to small business**

In late 1997, the Commonwealth Office of Small Business commissioned a study, *Overcooked: a study of food compliance costs for small business*, of the costs for small business of complying with government food-related regulations (i.e. excluding customer or commercial requirements). Thirty-seven businesses in the four eastern States and the ACT were interviewed, being drawn from 12 different sectors of the industry and included mainly manufacturers/processors and some retailers. Of the 28 manufacturers, half were involved in exports.

The report states that food regulation imposes a significant burden on small business.

The following costs were reported, but should be regarded as indicative only. The consultants qualify the accuracy of their data due to the small sample size and the short time available for the study.

Firm 'size' ranged from annual turnover of less than \$100 000 through to about \$13 million, with up to 100 employees.

The average cost of food-related regulatory compliance per firm was just over \$13 700, representing 0.3 per cent of average annual turnover.

The main elements of the 'regulatory burden' are the cost of the owner's/firms' time (44 per cent), capital expenditure (26 per cent), inspection fees and charges (14 per cent), licence fees (9 per cent) and test fees (7 per cent).

The average burden in this study was higher for manufacturers (\$17 407), averaging \$19 967 for exporters and \$14 847 for non-exporters.

The figures above compare with retailers' average burden of \$2 216 (or 0.1 per cent of turnover).

Capital expenditure—the second-highest category of compliance costs in the small business study—refers to unnecessary capital expenditure including premature obsolescence of existing equipment which becomes redundant well before the end of its working life because of regulatory decisions ... it is in the area of capital expenditure that differences in the interpretation of the relevant regulations or guidelines can have severe cost implications.

The report goes on to state that ‘many of the food regulatory compliance burdens have their origins in inconsistencies and duplication within and between regulatory agencies and in non uniform coverage and application of food regulations’ (page 1).

Many small businesses are unsure of their compliance obligations and would not pursue business opportunities rather than deal with government red tape and bureaucracy.

The Office of Small Business report includes a number of case studies which are relevant to this Review.

### **Costs to medium-to-large business**

With regard to medium and large agrifood businesses, the following quotes illustrate similar difficulties such companies have in separating the costs of compliance.

Although it has not been found possible to quantify the costs of the present inefficient (regulatory and inspection) systems, we believe them to be significant. Furthermore the current system stifles innovation and the opportunity to bring more healthy and convenient products to the Australian consumer.

*Goodman Fielder, submission no 97, page 4.*

In general, our members expressed a need for compliance as it creates a level playing field for all operators and ensures poor operators don’t bring down the industry’s reputation through contamination ... The actual cost of compliance was not seen to be of concern as it tended to ensure standards were met which would be beneficial to the industry as a whole.

*Business East, submission no 45, page 3.*

Many regulations may be seen as being an impost, but ... we tend to concentrate on our core business (food service) and, within the law, ignore regulations as such ... Our company will generally exceed most regulatory requirements due to our internal emphasis on food safety, HACCP and operations ... Our main concern is with the interpretation of the regulations by the various agencies—in particular, local government. As a national operation, we find significant differences (interpretation of regulations between States and different local councils).

*Sizzler Australia, submission no 79, page 1.*

Recently, the Australian Food Council (AFC) surveyed its member companies on the costs of compliance with food regulation. The AFC reported a ‘conservative estimate’ of the annual total salary costs arising from regulatory demands and compliance monitoring by its members to be in excess of \$20 million. However, the AFC acknowledged that this figure would include a component of time and costs incurred in ensuring the safe production of food in accordance with good manufacturing practice.

AFC member companies mentioned other regulatory costs arising from ‘inefficiencies, inconsistencies, duplication and lack of coordination’. Some examples include:

- 13 licences required for a single dairy plant in Victoria, six of which relate to registration of a dairy or food production plant;

- an estimated 42 inspections and audits per year, at a cost of \$150 000 for a large dairy company;
- a review of all its product labels and implementation of a compliance training program will cost one company more than \$100 000;
- label changes can cost from \$400 for minor changes to \$4 000 per label type for a major revision—regulatory review of the standard for just one product category could cost the company between \$90 000 and \$120 000 in label changes;
- weight regulations on packaged goods are more stringent in Australia than other countries, their application differs across States and are ‘a bit of a bureaucratic nightmare’, sometimes requiring over-stickering for imported products of up to five or 10 cents per label.

Noting the difficulty of accurately estimating the full range of costs and charges, the AFC estimates that another \$3 million each year is spent on industry resources involved in work on regulatory development and review committees and working groups. This includes internal AFC consultations, as well as formal participation in food regulation working groups at no cost to the regulatory agencies. Such costs would also be incurred by all sectors of the agrifood industry and are likely to be substantial in total.

Even though the food manufacturing sector is Australia’s largest manufacturing sector and one of the fastest growing exporter of elaborately transformed goods, these costs are described as ‘a lead weight’ (Mitchel H. Hooke 1998) to the food industry’s efficiency and international competitiveness.

### **Costs to food exporters**

The following serves as an example of the type and level of costs applying to exporters.

Although the regulatory charges for exporters varies between State and Territory, the following is an example of the main direct compliance costs faced by a small-to-medium food manufacturing company involved in export as well as supplying the domestic market:

- full-time on-site AQIS inspector — \$65 544 p.a. (‘It is hoped that once our company achieves MSQA accreditation, this cost will cease’.)
- health certificates (current charge — \$13.65 for each, 6–10 issued per week, averaging about \$5 500 p.a.)
- annual AQIS registration \$11 560 p.a.
- quarterly AQIS audits and inspections \$650 per quarter = \$2 600 p.a.
- Meat Authority registration fee — \$1750 p.a.
- local government fees — \$700 p.a.

The total costs of which amounts to \$87 654 p.a.

Whilst we understand regulatory authorities have to recover some fees, we feel registration fees are overlapping. Perhaps a 'one off' registration fee, plus an annual nominal registration fee would be sufficient, particularly in view of the quarterly AQIS review/audits. Our company is very aware of the need to be quality conscious and competitive in world markets ... however, the costs imposed by regulatory authorities are making it too difficult to remain competitive in both domestic and overseas markets.

*Tibaldi Smallgoods, submission no 177, page 2.*

The Office of Small Business study found the regulatory costs associated with exporting contributed significantly to the overall cost burden and acted as a disincentive to developing overseas markets.

### **Costs to food importers**

Food and beverage importers consider the Imported Food Inspection Program (IFIP), conducted jointly by AQIS and ANZFA, to be a major cost burden on their industry and, as a consequence, to the buying public.

The importing community is of the opinion that inspection procedures lack flexibility, and importers are forced to maintain what they consider excessive inventory (up to 30 per cent) as a consequence. This is claimed to be due to the time taken to carry out inspection and testing, compared to the time the importer normally takes to receive and distribute the product to the market.

According to a recent industry working group study, 'inspection levels of imported products by AQIS can be high, often with minimal instances of non-conformance recorded' (Industry Working Group on Quararantine 1998).<sup>2</sup> Based on \$2.6 billion worth of imported food and beverages in the 1996–97 financial year, the industry claims it incurred a total extra cost of \$39 million, not including the interest costs on delayed payment due to late delivery of product and consequent risk of contract loss.

These issues, among others, are being investigated through the National Competition Policy Review of the Imported Food Control Act. A report is planned for release towards the end of 1998.

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<sup>2</sup> Based on the commonly accepted industry standard for calculating the cost of extra stock (15 per cent of its value) and a conservative estimate of 10 per cent extra stock.

### Costs to government

Information on the costs to governments of food regulation is difficult to obtain because of the large number of agencies currently engaged in this activity. For this purpose, 'food regulation' was limited to regulations developed by departments of health and agriculture specifically for the food industry. It did not include costs associated with ...

The Review Committee commissioned an independent study to provide this information. The study involved interviewing the main food regulatory and local government agencies in all States and Territories and a significant sample of local governments (determined and weighted to give statistical validity at a national level). The objective of the study was to estimate, on a national basis, the costs, revenues and levels of activity associated with food regulation. In all cases, revenue means monies collected from industry through cost recovery arrangements and excludes monies provided through government appropriations.

The comparable costs and revenues of Commonwealth food agencies have been added to these figures and the results are at Tables 1 and 2. The study indicates that the estimated annual net cost to governments of Australia of food regulation is approximately \$60.2 million, with total costs being \$ 160.7 million and total cost recovered revenue being \$ 100.5 million.

	<b>\$million</b>
<b>Domestic</b>	
Commonwealth	22.5
State/Territory	19.6
Local government	33.4
<b>Total</b>	<b>75.5</b>
<b>Imports</b>	
Commonwealth	2.6
State/Territory	-
Local government	-
<b>Total</b>	<b>2.6</b>
<b>Exports</b>	
Commonwealth	81.2
State/Territory	0.5
Local government	0.1
<b>Total</b>	<b>81.8</b>
<b>Total expenditure</b>	<b>159.9</b>

*Table 1: Estimated annual expenditure by governments on food regulation 1996–97*

	<b>\$million</b>
<b>Domestic</b>	
Commonwealth	10.1
State/Territory	14.2
Local government	15.4
<b>Total</b>	<b>39.7</b>
<b>Imports</b>	
Commonwealth	2.6
State/Territory	-
Local government	-
<b>Total</b>	<b>2.6</b>
<b>Exports</b>	
Commonwealth	58.2
State/Territory	-
Local government	-
<b>Total</b>	<b>58.2</b>
<b>Total expenditure</b>	<b>100.5</b>

*Table 2: Estimated annual revenue collected by governments from industry for food regulation 1996–97*

## Summary of major issues identified

The food regulatory system in Australia generally delivers safe food and Australia enjoys an enviable international reputation in this regard. Despite this, Australia continues to experience occasional significant lapses in food safety and there is growing concern within the community about the frequency and severity of food-borne illnesses. There is clearly scope for improving the effectiveness, and hence the public health outcome, of the food safety system.

The concerns industry raised, however, focused more on the inefficiency of the regulatory system.

The Review has required extensive consultation with all stakeholder groups — from industry, government and the general public; and from primary producers through to retailers. This process identified two major sources of complaint by industry about the food regulatory system in Australia. Firstly, that certain individual food laws and regulations are inappropriate (for example, too prescriptive, requiring costly compliance activities, unenforceable, ambiguous, too restrictive); and secondly, that the food regulatory system is inefficient, and imposes significant and unwarranted costs on the food industry. Both types of complaint were made by all sectors of the agrifood industry.

Much of the food regulation in Australia is currently being examined in detail against the national competition principles or through other processes with the objective of removing unnecessary or inappropriate regulations. Food laws currently being reviewed (or soon to be reviewed) in this way include:

— at the Commonwealth level —

- Export Control Act;
- Imported Food Control Act;
- Agriculture and Veterinary Chemicals Act;
- Australia New Zealand Food Authority Act (part of this review); and
- Food Standards Code;
- Pig Industry Act;
- Wheat Marketing Act; and

— at the State and Territory level —

- Food Acts;
- Poultry Meat Acts;
- Agriculture and Veterinary Chemicals Acts;
- Dried Fruits Acts;
- various commodities marketing Acts;
- food hygiene regulations;
- Meat Industry Acts; and
- Dairy Industry Acts.

This Review has consequently focused on complaints concerning the inefficiency of the system as a whole, rather than on individual regulations. Relevant comments on particular regulations and standards have been referred to the appropriate authority for investigation.

The food regulatory system in Australia is considered to be complex, fragmented, inconsistent and wasteful.

The food industry incurs costs due to duplication of effort between regulatory agencies, overlap of legislation and functional responsibilities, inconsistency of regulatory approaches between jurisdictions and difficulty in dealing with the large number of agencies and food laws involved.

Many of these problems arise at, but are not limited to, the service delivery element of the regulatory system and impact in the form of inspections, registrations/licenses and audits.

Consumers and industry are also concerned about inconsistent and inadequate surveillance and enforcement. Within local government, in particular, there are significant problems stemming from inconsistent resourcing and widely divergent enforcement practices and priorities.

The main issues arising from consultations can be grouped into the categories of:

- lack of uniform legislation;
- inconsistent application of regulations by enforcement officers;
- inconsistent interpretation of legislation/regulations by enforcement officers;
- lack of clarity and consistency in agency roles and responsibilities;
- overlap and duplication of agency responsibility;
- lack of coordination between government agencies;
- inadequate and uncoordinated enforcement effort;

- multiple audits by industry and governments;
- inadequate training of auditors and inspectors;
- lack of training in hygiene by food handlers;
- insufficient consumer education on food safety;
- inefficient food standards setting processes;
- inappropriate food standards and regulations;
- insufficient small business consultation in government decision making; and
- inadequate access to information concerning food regulation.

### **Lack of uniform legislation**

The need for uniform national legislation for food was frequently raised during consultations by many different sectors. It was pointed out that there are different:

- food safety regulations in each State and Territory and for the various segments of the food supply chain;
- regulations for export food and food produced and consumed domestically; and
- requirements for registration of agrifood businesses by the various agencies, including local government authorities, the meat and dairy authorities and AQIS.

Each State and Territory Health Department has separate hygiene regulations which are often prescriptive and in many cases outdated. Stakeholders continually raised this issue and there was broad support for uniform adoption of the new national food hygiene standards ANZFA is developing on behalf of the States and Territories.

Food safety regulations are complicated further by the fact that various meat and dairy authorities, departments of health and in some cases State and Territory primary industry departments are involved, each with differing legislation.

There is no nationally consistent arrangement for registering or licensing agrifood businesses. Domestic and export meat works must be registered by AQIS; domestic dairy and meat establishments are registered by the meat and dairy authorities; and several States and Territories require higher risk businesses, such as restaurants and retail outlets offering fresh or cooked foods, to be registered or licensed (this is usually administered by local governments). The fee structures and paperwork burdens associated with these registration schemes vary considerably across jurisdictions. Industry complains that these registration or licensing requirements overlap, resulting in a single food business being required by the different food laws to hold a number of separate food establishment registrations. For instance, export meat registration, domestic meat registration and food premises registration under the Food Acts. Many of these requirements vary from State to State.

### **Inconsistent application of regulations by enforcement officers**

As agrifood businesses expand or move from one location to another (into new local government areas or States and Territories), they encounter inconsistent levels of enforcement, even when the laws are the same.

Two particular problems for businesses were reported. Firstly, those expanding into new locations are sometimes faced with more stringent enforcement of the regulations than they were expecting, based on previous experience. This can amount to a significant and unpredictable cost to the business. Secondly, the differential enforcement activities encountered between a food business and its competitors, that is, inconsistent application of the rules by different inspectors, is considered ‘unfair’.

There were some comments on the different inspection regimes applied to imported and domestic foods. In some circumstances, imported foods are inspected more rigorously than foods produced domestically. In other cases, the complaints were about imported food not being subject to inspections. The system for determining which foods are inspected, and the nature of these inspections, differs for domestic and imported foods.

### **Inconsistent interpretation of legislation/regulations by enforcement officers**

Agrifood businesses with premises in more than one jurisdiction report that they often encounter inconsistent interpretation of legislation and regulations. Small businesses, in particular, complain they learn one set of ‘rules’ only to find the next inspector on duty interprets the same rules differently.

Inconsistent interpretation of regulation occurs on different levels — between States and Territories, between agencies, and between individual inspectors. This is a significant complaint and was encountered in every State and Territory and for most agencies (Health departments, meat and dairy authorities and AQIS).

Many detailed examples of this were provided to the Review Committee where it could be shown that having to constantly query instructions or vary operating arrangements were imposing significant costs on business.

### **Lack of clarity and consistency in agency roles and responsibilities**

In the past, inconsistent jurisdictional responsibility across Australia for particular types of businesses may not have attracted much attention. This is not the case now. Australia’s agrifood businesses are becoming increasingly mobile, better informed and more competitive.

Food business operators report being annoyed that in one State or Territory agency ‘A’ is responsible for enforcement of their type of business, while in a neighbouring State or Territory it is agency ‘B’. This is aggravated when the different agencies have different fees/charges and inspection/auditing practices.

The most prominent example of this is the different responsibilities for auditing domestic meat processing and meat retail establishments in the States and Territories. In some cases this work is undertaken by State/Territory health inspectors, in others

by State meat authority inspectors, and in others it is the responsibility of local government inspectors.

A related complaint was that there are too many agencies involved in food regulation in Australia and there were frequent suggestions this needed to be rationalised. Both the food industry and consumers report being confused by the complexity of the existing system.

### **Overlap and duplication of agency responsibility**

The most significant, and least understood, overlap of legislative responsibility occurs between health departments and agriculture departments at the State and Territory level. There is a common misconception in government and in industry that primary industry businesses are the sole jurisdiction of primary industry departments and that health departments' responsibility begins at or around the farm gate. In many cases, the perceived dividing line is blurred because of the various responsibilities for meat processing works and retail outlets.

Health departments have broad responsibility under the various Food Acts for ensuring the safety of food (which is variously defined, but includes raw and unprocessed foods) which extends onto the farm to include primary produce which is intended for sale for human consumption. The fact that this power is seldom invoked reflects, firstly, the lower risk status of much raw product and, secondly, that primary industry departments and meat/dairy authorities have instituted various legislative and quality assurance arrangements to improve safety.

Legislative power to act in response to food safety concerns is duplicated across both portfolios, but administratively and in terms of practical enforcement, arrangements are usually made at local government level to reduce duplication of effort.

This issue has arisen recently in relation to developing nationally uniform hygiene arrangements and the preference of Health Ministers to make this a nationally integrated, 'paddock to plate' system.

Other areas where there are overlapping or intersecting government processes which lead to inefficiencies are:

- development of maximum residue limits (MRLs) for chemical residues;
- differing arrangements for regulation of food and drugs;
- differing ANZFA and ACCC practices in relation to food labelling; and
- inconsistent food recall arrangements.

### **Lack of coordination between government agencies**

The duplication and overlap between agencies and the inconsistent approaches to legislation and its interpretation and enforcement, referred to above, are compounded by lack of effective coordination and communication between agencies. This lack of coordination is very evident to agrifood businesses and to consumers. They report

many problems which could have been avoided by better coordination between agencies.

Informal linkages have often been developed to help overcome these problems, but these informal processes (often involving industry) add to the complexity of the system. The formation, by different government agencies, of consultative groups involving government, industry and consumers to discuss similar topics sometimes confuses more than informs participants.

### **Inadequate and uncoordinated enforcement effort**

The effectiveness of food regulation depends on the level of compliance and the effectiveness of the enforcement programs directed to encouraging and monitoring compliance. Both the food industry and consumers frequently raised as a problem the lack of government-provided resources to enable effective enforcement of regulations. The perceived problem may be the result of lack of, or uncoordinated, risk assessment practices for enforcement programs.

Lack of effective and consistent enforcement was often described as facilitating 'unfair competition'. Business operators feel particularly aggrieved when they 'do the right thing', spending time and money complying with regulations, and observe that their competitors are not penalised and are not made to comply.

Local government enforcement activities received particular mention. In some States, local governments have a statutory limit on the extent to which they can increase Council/Shire rates to fund their services. At the same time, the pressures on local government resources have increased as food safety becomes more of a problem, the number of agrifood businesses increase and the responsibilities of local environmental health officers expand.

Some local governments have responded to these budgetary pressures by implementing fee-for-service charges for inspections of food premises. While this funds (in most cases only partly) regular inspections of premises, there has been a reduction in resources available for education and extension services. Inspectors report they have become more reactive and less proactive in managing food risks and this is seen as detrimental to food safety outcomes.

### **Multiple audits by industry and governments**

A major problem recounted across the food industry is the increasing number of audits required of agrifood businesses. Government regulators (both export and domestic) and the private sector impose these audits. Most large retail chains and medium-to-large manufacturing companies are now requiring, or moving towards the requirement for, quality and safety audits for all their suppliers. Consequently, government requirements for auditing are often seen as an unnecessary impost on top of the private audits.

Examples were often cited of agrifood businesses being subjected to 10 or 12 separate audits by different auditors in any one year. In the chicken meat industry, for example, companies can be required to undertake 19 separate audits in any one year.

The costs of auditing extend beyond the actual service charge for the audit to company time and effort in providing the requested information and paperwork, and amending production and handling processes for what are sometimes considered 'petty' reasons. This situation is made worse when the requirements of the different auditing systems are not compatible.

All sectors of the food industry have urged removal or reduction of this duplication of effort and the excessive cost it imposes. There is also dissatisfaction with the present system of accrediting auditors.

### **Inadequate training of auditors and inspectors**

The level of complexity in modern food manufacturing requires that specialised people be recruited (for monitoring food establishments) ... It is inappropriate for the manufacturer to be training these personnel ... and there is the frustration of having an adequately protected process which is not approved simply because the regulatory person is insufficiently trained to understand.

*Golden Egg Farms, submission number 60, page 2.*

Businesses criticise the low level of skills demonstrated by some auditors and inspectors, especially in their ability to identify and assess food safety hazards. This points to the need to improve auditors' and inspectors' post-qualification training and skills updating because:

- agrifood businesses are enlarging and becoming more complex;
- new processing, handling and storage technologies are being adopted; and
- governments are moving steadily towards industry self-management, necessitating more systems auditing and less end-product testing by inspectors.

To maintain food industry and consumer confidence, it will be necessary for governments and industry to ensure that auditors and inspectors are adequately trained and supported.

Improved training would help alleviate the problems of inconsistent application of regulations.

### **Lack of training of food handlers**

There is general dissatisfaction with the level of basic food hygiene knowledge within the food industry. Consequently, there was support for the proposed requirement (under the national Food Hygiene Standards) for mandatory training of food handlers. This was supported by consumers and many business operators. However, food business operators are unsure of the implications and costs of this requirement. Consumers are seeking an effective training system and effective enforcement of this requirement.

### **Insufficient consumer education on food safety**

Agrifood businesses are concerned that purchasers/consumers do not have adequate food safety knowledge.

It appears that, in recent decades, the general knowledge of food safety and hygienic practices in the community has fallen and there needs to be some government effort to counter this trend.

Some local governments have very good programs in place to help small businesses and charity stall operators achieve food safety. Some also offer seminar programs to schools.

### **Inefficient food standards setting processes**

There was strong support for the ANZFA-administered national food standards setting process in which the States and Territories participate. Participants praise its open, accountable and consultative processes and the fact that it results in nationally uniform standards and regulations.

The main criticism of the ANZFA process is that, in some cases, it is too slow, relying, as it does, on two and sometimes three rounds of public comment. While ANZFA's legislation requires it to process applications for new or amended food standards within 12 months, it can extend this to 18 months and 'stop the clock' in certain circumstances. Industry claims that in some cases, this is too costly in terms of lost time in adopting new and emerging technologies. The length of time involved and the public nature of the consultations combine to reduce competitive advantage in the marketplace for new food products.

### **Inappropriate food standards and regulations**

Consumer groups and small businesses both raised the issue of inappropriate standards and regulations. In some cases, the regulations are considered to set standards which are too low and at other times too high.

Industry refers to regulations which are too prescriptive and not risk based. Inspectors and agrifood businesses frequently suggested there were too many prescriptive food standards in areas of low food safety risk, notably labelling standards. There were numerous reports of regulations being too prescriptive and inflexible, particularly in relation to hygiene regulations affecting retail outlets, food manufacturing establishments and meat processing establishments and in relation to the Export Meat Orders.

Of particular concern to consumers is inadequate food ingredient information on product labels. They argue consumers cannot send market signals to manufacturers if the information concerning the product is inadequate or not informative. This issue extends beyond product labelling to information in pamphlets, signs, advertising and menus.

Industry wants minimum effective food regulations which seek to control food hazards and risks, but they usually do not want regulations which seek to control commercial activities unrelated to public health and safety. Regulating areas of

commercial decision making is inefficient and anti competitive and presents barriers to innovation and private sector vigour.

The Review Committee notes that many government agencies are currently reviewing their food laws to remove or reduce prescriptive standards and regulations.

### **Insufficient small business consultation in government decision making**

A particular problem raised by small businesses is lack of small business input to government decision-making processes in relation to food regulation. They seek greater input to consultation processes and greater representation on advisory committees, boards and consultative panels. They would also like to see improved government advocacy of small business concerns.

### **Inadequate access to information concerning food regulation**

Consumers and small businesses report considerable difficulty in accessing the right information about government food policies and programs. This, perhaps, is a result of the variety of agencies involved in food and a general public and business perception of a lack of clear roles and responsibilities.

The type of information sought includes: changes to the regulations and standards and to the regulatory system; reviews of government programs; the safety of the food supply; plain English information about standards and regulations; licensing requirements; and complaints and appeals handling.

## Summary of review findings

The key objectives of the Review are:

While protecting public health and safety, to:

- reduce the regulatory burden on the food sector, and examine those regulations which restrict competition, impose costs or confer benefits on business; and
- improve the clarity, certainty and efficiency of food regulatory arrangements.

There is a high level of food safety and public health in Australia, however, the system that delivers this is inefficient, fragmented and imposes undue costs on the agrifood industry. This is a particular problem at a time when industry is trying to improve its international and domestic competitiveness.

There is an urgent need for governments to implement an integrated and coordinated national food regulatory system to replace the fragmented and piecemeal system of food regulation in place at the moment. To bring this about will require a strong partnership approach across all three spheres of government and with industry and consumers. The governments of Australia will need to work together with commitment and purpose to achieve the reforms proposed in this report.

To address the Review objectives and to focus on the concerns of the agrifood industry and consumers which were identified through the consultation process, the Review has identified a number of key elements of the regulatory system needing reform.

The recommendations in this report are designed to:

- recognise the primacy of public health and safety;
- reduce inconsistencies, duplication and unnecessary costs;
- embrace and give effect to the principle of minimum effective regulation; and
- shift more of the onus for ensuring improved outcomes and regulatory compliance to the individual and the business enterprise.

The Review proposes a package of structural, legislative and administrative rearrangements to reduce the costs of business compliance. The Review recommends centralising food regulatory policy within a single Commonwealth/State/Territory government agency, responsible to a single Ministerial Council; and a greater commitment to a government–industry partnership to ensure appropriate performance-based regulations are implemented efficiently, at least cost, and effectively across the whole agrifood industry. This should be supported by a rationalisation of legislation, standards, regulatory agencies, registration systems, compliance requirements and streamlining of administrative procedures to improve effectiveness, efficiency and accountability.

In summary, the following chapters suggest there is a need for governments to:

- implement an integrated and coordinated national food regulatory system, through:
  - improved partnership arrangements; and
  - adopting nationally consistent guiding principles.
- improve compliance and enforcement arrangements, through:
  - service agreements;
  - interpretation guidelines;
  - contestable service delivery;
  - a national auditor accreditation framework;
  - amended food recall arrangements;
  - improving cooperative arrangements between Trade Practices, Fair Trading and Food Acts; and
  - rationalising enforcement agencies.
- improve legislation and national decision-making processes, through:
  - nationally uniform food laws;
  - centralising national decision making on food laws;
  - rationalising national food regulatory agencies;
  - improving the interface between regulation of food and drugs; and
  - streamlining food standards-setting procedures.
- improve monitoring and surveillance systems, through:
  - integrating systems from paddock to plate; and
  - prioritising food safety research.
- improve communications to industry and consumers, through:
  - better risk communication;
  - single business entry point;
  - rigorous consultations; and
  - reviewing complaints handling.
- amend the *Australia New Zealand Food Authority Act 1991* by:
  - developing objectives for the Act;
  - amending the objectives used for developing standards; and
  - updating ANZFA's functions.

## **An integrated and coordinated food regulatory system**

Food safety is arguably the single most important challenge for the agrifood industry. Australia's reputation for safe food is well earned. It is due largely to the efforts of the industry in response to market forces and technological advances to implement and maintain high-quality systems and practices for producing safe food at all parts of the food supply chain.

Indeed, industry profitability and competitiveness is highly dependent on avoiding breakdowns in food safety and adhering to food standards, since an outbreak of food poisoning can damage an entire sector of the industry for a sustained period.

For these reasons, there is considerable support within the industry for appropriate regulatory arrangements, and for those arrangements to be capable of optimal response to any occurrences of food safety breakdowns.

Industry and government agree that, to further increase the agrifood industry's international and domestic competitiveness and reputation, there is a need for continuous improvement at all parts of the food supply chain to ensure food safety and to reduce the current regulatory burden.

## **An improved national food regulatory system**

The system of food safety management in Australia is very effective. However, the issues identified in this Review point to the need for governments to fundamentally address the efficiency of the system. An improved national food regulatory system will become more efficient through, amongst other things, a strong partnership approach to food regulation by all three spheres of government.

Efficiencies will also be gained through improved coordination and interaction between the agrifood industry and government regulatory agencies—both must work towards more strategic and effective integration of existing arrangements. An improved system will need to combine a preventative, risk-based approach and an ongoing effort to minimise regulatory costs to industry, while ensuring food safety outcomes.

Fragmentation of responsibility amongst a myriad of state, local and statutory authorities has contributed to paper burden and costs. Streamline by addressing this overlap and duplication, making considerable difference with a national outcome.  
*National Council of Women, submission number 114 page 5.*

Some government involvement will always be necessary to ensure safe food, consistent and uniform standards, beneficial trade agreements, and the ability to monitor performance and enforce standards. However, government food regulation should be systematically reviewed to demonstrate that it delivers these public benefits cost-effectively, and that regulations are not hampering innovation.

In parallel, there needs to be a steady movement towards increased industry self-regulation. Complete self-regulation of the food industry may never be achieved because consumers and industry will always expect a minimum legislative framework, but there is considerable scope for a move in that direction through a co-regulatory approach.

The co-regulatory approach is based on the three spheres of government, industry and consumers working together as partners, with government setting minimum performance-based standards through consultation, and giving business greater flexibility in how it meets the standards, without reducing business' responsibility for meeting the standards.

The partnership model proposed for the national safe food system provides a good starting point, particularly for food safety objectives. However, it is necessary for governments to take this further in order to improve the efficiency of the system and to address duplication and overlap within the system. The following recommendations provide a foundation on which other reforms need to be built.

### **Recommendations**

1. That the Commonwealth, State, Territory and local governments act together to:
  - give significantly greater impetus to achieving a well-integrated, streamlined and cost-effective co-regulatory system to effectively protect public health and safety, across the whole food supply chain, and
  - develop more effective working relations and strengthen partnerships between agencies involved in food regulation, the agrifood industry, relevant statutory authorities and consumers.

2. That development of an improved food regulatory system be guided by the principles of:
- protecting public health and safety;
  - making decisions based on sound science and assessed risk;
  - open, consultative and accountable government practices;
  - accessible systems responsive to consumer and industry needs;
  - clear, simple, practical and, as far as possible, nationally uniform systems and legislation;
  - minimal regulatory costs to industry and governments through minimum, effective, performance and risk-based regulation;
  - consistency with international obligations (including World Trade Organization (WTO) agreements and Australia's Treaty with New Zealand);
  - providing information to consumers;
  - regularly reviewing regulatory arrangements and evaluating their effectiveness;
  - regulation which does not unjustifiably restrict competition; and
  - reliance on industry self-regulation, but only where this is appropriate in relation to food safety risk and where industry has the capability (particularly where small business is concerned).

## **Improving compliance and enforcement**

Governments and their agencies undertake activities to determine the degree of compliance or non compliance with legislation and regulations and consequently to encourage or enforce compliance. Compliance and enforcement activities include administrative arrangements and legislative requirements to aid enforcement, for example, food recall provisions.

As previously indicated, there are a large number of agencies involved in enforcing food regulations and a large number of regulations for them to enforce. This leads to a variety of problems for the industry. This situation is compounded by the fact that the responsibilities of the various agencies to enforce particular regulations differ. For instance, enforcement activities for retail meat establishments vary from State to State and may be undertaken by the health department, local government or meat authorities.

A number of compliance and enforcement issues of significant concern to the agrifood industry were identified during the consultation processes. These include:

- inconsistent application of effective enforcement;
- inconsistent interpretation of legislation and regulations;
- the need to have an option for contestable service delivery including auditing;
- multiple food safety auditing;
- inconsistent food recall powers;
- inconsistent enforcement of the Trade Practices Act and the State and Territory Food Acts; and
- duplication of compliance and enforcement effort.

The following recommendations are designed to address these problems.

### **Greater consistency in applying effective enforcement**

The effectiveness of food regulation depends on the level of compliance and the effectiveness of the enforcement programs directed to encouraging and monitoring compliance. Both the food industry and consumers frequently raise as a problem the lack of resources provided by governments to enable effective enforcement of regulations. The problem may also be the result of lack of, or uncoordinated, risk assessment practices for enforcement programs.

Lack of effective enforcement was often described by industry as facilitating ‘unfair competition’. Business operators feel particularly aggrieved when they ‘do the right thing’ to comply with regulations and observe that their competitors are not penalised and do not comply.

Although local government enforcement activities were particularly raised in this context, complaints extended to meat authorities, AQIS and health departments.

Inspection and enforcement practices for food products imported into Australia rely mainly on end-product inspection and analysis. Traditionally, this has also been the case for domestically-produced foods. The agrifood industry is concerned that perceived differential inspection rates of imported and domestically produced foods are disadvantaging some sectors of industry.

Food products imported into Australia are tested using IFIP protocols which aim to ensure all imported food is safe and complies with the *Food Standards Code*. The program operates on a cost recovery basis with the importers paying a documentation fee and the cost of laboratory testing. Under IFIP the frequency of inspection and testing (microbiological and/or chemical analysis) for particular foods is determined using a risk assessment process and history of past compliance.

Domestically-produced food, on the other hand, is inspected and tested at a frequency which varies considerably between jurisdictions. It is difficult to directly compare the frequency of inspection of imported food, tested under IFIP, with that of domestically-produced food because of the different methods used to determine priorities.

Although most States and Territories use risk assessment protocols, there are no nationally consistent practices for assessing food safety risks and determining product inspection and analysis priorities. There are no nationally agreed enforcement strategies based on food safety risk assessment that can be used to determine the frequency of product inspection and testing of imported and domestically-produced foods in a consistent manner.

There is a need for nationally-agreed enforcement strategies which could form the basis of service-level agreements for the various enforcement agencies. This requirement is particularly needed to support the work of local governments. As noted previously, local governments are largely self funded for food regulatory enforcement and extension activities. Whilst all local governments seek to meet the prescribed requirements under their respective State or Territory enabling legislation, the ability of local governments to implement these requirements is a function of their resources, capacity, local needs and competing priorities.

Unless there is a desire by governments to revise current local government funding arrangements, developing such performance agreements may not ensure provision of consistent enforcement and extension activities. However, they are seen as an essential first step in addressing this issue.

Nationally-consistent enforcement strategies need to apply to inspection and testing of food products by all food regulatory agencies to ensure consistency of approach between imported and domestically-produced foods, to satisfy Australia's World Trade Organisation obligations.

Service level agreements will help achieve national consistency and improving accountabilities. These agreements would help address resourcing issues.

### **Recommendation**

- 3.** Where a government or food regulatory agency enforces national food

laws, a service level agreement should be developed specifying the level and nature of the compliance and enforcement services to be delivered. The negotiated agreement should include nationally-consistent risk-based enforcement and compliance strategies and priorities.

### **Implementation strategy**

The service level agreements should be developed nationally, wherever appropriate, and be agreed by Ministers. Service level agreements may include a Memorandum of Understanding, contract or other agreement.

Accountability would be improved if there were regular performance audits against the service level agreements.

### **Greater consistency in interpreting legislation and regulations**

A frequent complaint was that advice to industry and consumers on interpreting food regulations is often inconsistent.

Inconsistent interpretation of regulation occurs on different levels: between States and Territories, between agencies within States, and between enforcement officers. Regulations identified as causing particular interpretation concerns include those relating to labelling, compositional and food safety.

There are also problems with inconsistent interpretation of the *Food Standards Code*. However, it is expected this will be alleviated, to a large degree, by the review of the *Food Standards Code*.

Interpretation of meat industry regulation in Australia is inconsistent across both export and domestic meat processing establishments and in the retail sector. Proprietors with businesses in different locations are often subjected to different standards of enforcement. Submissions received provided some telling examples.

A meat retailer being instructed by an inspector to relocate a steriliser; another inspector instructing it to be returned to its original position (WA Health); a meat retailer in one municipality being permitted to use sawdust on the floor in the processing area while in another shire the practice is illegal (Vic Health); three veterinary officers give approval for an abattoir to load chillers in a particular fashion, two other officers withdraw that approval, totally disrupting the company's production (AQIS); a meat processing establishment being made to install lighting in animal lairages at the direction of the plant veterinary officer, another vet orders the lights to be relocated (AQIS).

*National Meat Association submission number 115 page 4.*

These problems point firstly to the need for less prescriptive regulations to provide flexibility to businesses to comply with the desired outcomes and not be bound by inflexible regulations.

However, performance-based standards, by themselves, create different problems, both for industry and for enforcement officers. It is crucial that small business, in

particular, have clear unambiguous guidelines about their compliance obligations. The benefits of flexible outcome-based regulations are reduced if they are not supplemented by detailed guidance on the steps businesses can take to satisfy regulatory requirements. There is a need to develop and publish interpretation and compliance guidelines to support consistent interpretation and provide the necessary assistance to industry.

At present, a network of senior food officers and ANZFA staff meets regularly to discuss interpretation issues related to food standards. This forum should be augmented by a representative from the Australian Institute of Environmental Health to provide a closer linkage to local government EHOs. Interpretation guidelines this forum developed would apply, and could be used, nationally.

### **Recommendation**

4. Food regulatory agencies should develop and publish plain English interpretation and compliance guidelines for all food laws, regulations and standards. These should be developed in consultation with, and made available to, enforcement officers, consumers and the agrifood industry.

### **Implementation strategy**

These guidelines should be publicly available and updated as necessary. They should be developed for all new as well as existing laws, regulations and standards.

### **Contestable service delivery**

Governments should explore contestable service delivery as a way of improving performance and reducing costs. Where feasible, the right to deliver government services should be open to a range of private sector providers or, where it is more effective to have only one provider, the right to provide the service on behalf of government should be put to tender. Such potential competition would provide incentives for improved public sector performance which would lead to the lowest costs to industry and subsequent improved private sector performance.

Contracting out should be considered only where the private sector can effectively and efficiently deliver government policy objectives. Consideration must be given to the need for accountability to Ministers and Parliaments, the ease of specifying and monitoring delivery of the services required, the capacity of the agency to manage contracts, the likely cost savings and the risk of service disruption through contracting out.

Contestable service delivery should be considered for compliance and enforcement functions such as laboratory services, end-product inspection and food safety auditing. Clearly, in relation to food safety auditing, the government regulator would need to retain the right to prosecute agrifood businesses and would have to have effective monitoring systems and arrangements for redress in place to ensure effective delivery of services. The government regulator would also need some course of redress in the event that a certified auditor was found not to be providing a competent audit consistent with the specified food safety requirements.

Contestable service delivery is already well advanced in some States. For example, the Victorian government has adopted a policy of outsourcing and contestability of service delivery, where feasible. The policy currently requires service provision agencies to mount a suitable case if they consider outsourcing would not be appropriate for a particular government service. At the local government level in Victoria, 50 per cent of total expenditure must be contestable. As well as the benefits these policies will bring, there are potential difficulties for councils in negotiating and renegotiating contractual arrangements.

Auditing of agrifood premises or food operations may be conducted by a number of different individuals or parties. Food safety auditing required by government regulatory agencies may be undertaken by employees of that agency (second party audit). Audits may also be conducted by an independent, external individual or organisation (third party audit). An internal audit (first party audit) is where employees of a food business audit the food operations of their business. Internal auditing is a component of quality management and quality assurance systems and should not replace, but should reduce the frequency of, second or third party auditing. However, as a business' food safety systems mature, in conjunction with effective internal auditing, the frequency of third or second party auditing may be reduced within a risk-based auditing system. Such a flexible approach to auditing could reduce costs to all parties, including consumers, while maintaining high levels of food safety and ensuring appropriate government control.

Where governments allow third party food safety auditing, the system needs to be backed up by an effective process of checks and balances including government inspection (second party audits) to ensure audits are being properly performed.

An important consideration for food safety auditors relates to the problem of conflict of interest in relation to their audit activities. To avoid the possibility of conflict of interest, auditors should, where possible, not be involved in designing or implementing the food safety programs they audit. However, in certain circumstances this may not be practicable, for example where agrifood businesses operate in remote areas. In general, auditors must avoid any activities that conflict with their independence of judgement and integrity in relation to their audit activities.

There is also a potential conflict of interest where a third party certification body is funded directly by the company it assesses. The onus must be with the regulator to ensure the certification body is covering the requirements, the auditors are qualified to deal with (for example) food safety issues, and there are sanctions to prevent unreliable certification bodies participating.

Government bodies often charge fees for auditing services. These fees vary significantly between food industry sectors and often between States in the same industry sector. To achieve full cost efficiency, government regulatory bodies need to make greater use of audits conducted by certified third party auditors. They may decide to provide a choice for industry between second party and third party audits, but government food regulatory agencies should not exclude the option of third party food safety auditing on the presumption that it will be too costly for industry.

A flexible approach to food safety auditing is recommended. For example, accredited local government EHOs, as well as third party auditors should be able to audit or

inspect food premises. The choice needs to be available to businesses, even where it is known that third party auditors are unlikely to be able to provide price competitive services.

It will also be necessary for regulatory agencies to ensure food safety risks are not increased through using third party auditors. Auditors must be accredited and must possess the key competencies relevant to the food operations they audit. In addition, appropriate regulatory agency monitoring arrangements are required.

### **Recommendation**

5. All food regulatory agencies within Commonwealth, State, Territory and local governments should increase use of contestable service provision, wherever practical and effective in protecting public health and safety.

This should include, but not be limited to, using contestable third party auditing, laboratory services and end-product inspection.

This should include arrangements where the regulatory agency retains oversight controls which include strong legal sanctions being invoked where the objectives are not met.

### **Implementation strategy**

All food regulatory agencies within Commonwealth, State, Territory and local governments should adopt and implement appropriate policies relating to outsourcing and contestability of all appropriate service delivery activities.

### **Improved efficiency of food safety auditing**

A major concern held by many agrifood businesses is the increasing number of audits and inspections to which they are being subjected. Many of these audits are principally related to food safety requirements and are imposed by:

- a number of government regulatory agencies (for both export and domestic production); and
- their major customers. Most large retail chains and medium to large manufacturing companies are now requiring, or are moving towards requiring, safety and quality audits for all their suppliers.

One matter that cannot be overlooked is the cost, on a business, by the number of visits made by different government inspectors. Each visit takes time from staff in the business, and many visits are made at times that are inappropriate given individual firms trading and staffing patterns.

Using meat retailers in Queensland as an example, they can expect to receive visits from officials representing meat inspection, health department, consumer affairs, weights and measures, workplace health and safety and industrial relations.

*National Meat Association submission number 115 page 7.*

As noted previously, responsibility for ensuring compliance with food safety regulations falls to a number of government authorities or agencies at the Commonwealth and State and Territory level and to local government.

In some industries, the government agencies involved have partially achieved audit rationalisation. For example, in the dairy industry there has been some rationalisation of export and domestic food safety auditing. However, in other sectors there is still a need for rationalisation.

There is a need for food safety audits, conducted by one government agency, to be recognised by, and to satisfy the requirements of, other government agencies. This mutual recognition of food safety auditing between government agencies will require a number of initiatives, such as developing:

- a nationally uniform system of auditor competencies;
- a national accreditation and certification system for food safety auditors and auditing agencies;
- a framework for a national system for auditing HACCP-based food safety programs; and
- a national food safety risk assessment and classification system.

JAS–ANZ is an accreditation organisation jointly established by Australia and New Zealand. One of its prime purposes is to remove the need for multiple audits for safety and quality systems (including HACCP-based food safety systems). It is working closely with ANZFA to develop appropriate systems for accrediting and monitoring bodies that will certify the food safety programs proposed under the new national Food Hygiene Standards.

In addition to the auditing requirements of government agencies, many agrifood businesses are subjected, by their customers, to an increasing number of audits of their safety and quality assurance systems. The increasing requirements of many retail chains and manufacturing companies for safety and quality audits for their major suppliers is recognised as a commercial arrangement if agrifood businesses are to sell their product. However, it means many agrifood businesses are subject to as many as 10 or 12 separate audits by different auditors in any one year. Some businesses report up to 19 audits a year.

There is a need for recognition of food safety audits between commercial organisations and of government-conducted audits. However, a complicating factor for reciprocal recognition of audits, in this instance, is that customer auditing requirements often include quality factors in association with food safety elements.

Industry itself, is taking action to reduce this duplication. However, for maximum gain in this regard, governments and industry will need to work closely together to develop a system which will provide the necessary effectiveness and commercial flexibility.

A further complicating factor is the increasing number of commercially available quality assurance systems. These can be specific to product groups and often specific

to discrete parts of each process chain. The majority of these systems contain food safety elements based on HACCP principles, however, there is a concern that some quality assurance systems may lack adequate food safety elements. Agrifood businesses considering an investment in a quality assurance system need to ensure the system will at least satisfy minimum food safety regulations.

A national system or template is required to enable existing and future quality assurance systems to be assessed for the adequacy of their food safety elements. The National Classification Framework, developed by the Australian Quality Council, could provide the conceptual basis for such an assessment system. Collaborative work between key players in Australia's agrifood industry and government is currently underway to further develop this concept through the Prime Minister's Supermarket to Asia Quality and Safety Working Group. Adoption of such a nationally agreed framework could also provide a benchmarking system for minimum food safety auditing procedures. In turn, this would enable reciprocal recognition of food safety audits performed by second or third party auditors, thus providing a means to minimise duplication of food safety auditing and associated costs.

### **Recommendation**

6. Food regulators and the food industry should work together to develop:

- an integrated national framework of food safety auditor accreditation; and
- a national system for the auditing HACCP-based food safety programs.

These infrastructure developments will facilitate mutual recognition of food safety audits by regulatory agencies and commercial organisations.

### **Implementation strategy**

All sectors of the agrifood industry, ANZFA, DPIE, JAS-ANZ and other relevant agencies to work closely together to develop the integrated national framework of food safety auditor accreditation. This would be based on a nationally-agreed set of auditor competencies and food safety requirements. It would also benefit from a detailed examination of existing audit systems.

### **Consistent and timely food recall arrangements**

The primary reasons for government involvement in food recalls are consumer protection and confidence. Almost all recalls are voluntary and are conducted by the food business, with assistance from State and Territory health departments, EHOs and ANZFA. The *Food Industry Recall Protocol*, published by the National Food Authority in 1994, is a valuable guide for industry on the procedure for carrying out recalls.

However, there is some concern in the food industry that occasionally recalls have not been adequately coordinated and that there is potential for costly incorrect decisions.

At the moment, not all States and Territories have uniform powers to order mandatory food recalls and within the Commonwealth, it is the Minister for Consumer Affairs who has this power.

There are a number of initiatives currently under way that will go a long way to addressing these concerns. These initiatives, which will improve the effectiveness, national consistency and timeliness of food recalls, are:

- a requirement in the proposed national Food Hygiene Standards that all agrifood businesses must have a satisfactory system for recalling food that is found to be unsafe;
- State and Territory Food Acts will include uniform food recall powers that will enable mandatory recalls to be conducted within all States and Territories; and
- a government health agencies protocol to enhance the management and coordination of food recalls between Commonwealth and State and Territory agencies.

In situations where food offered for sale is posing an immediate threat to the safety of consumers in more than one State or Territory, ANZFA currently needs to ask the Minister for Consumer Affairs to order a recall. Experience has shown that this arrangement can be unsatisfactory. To address this situation the Commonwealth Minister for Health should have access to the mandatory recall powers of the *Trade Practices Act 1974* (TPA) in relation to food. This would allow ANZFA, in consultation with State and Territory health departments, to undertake national, mandatory food recalls in an effective and timely manner. This power would only be needed when the recall cannot be adequately addressed under State or Territory legislation.

### **Recommendation**

7. In relation to food recalls, the Commonwealth Minister for Health or delegate, have access to the power to order a mandatory recall of food.

### **Implementation strategy**

DIST's Consumer Affairs Division should investigate and recommend the most effective way for the Commonwealth Minister for Health to have access to the mandatory recall powers in the TPA.

### **Consistency of enforcement between the Trade Practices Act and the Food Acts**

The Australian Competition and Consumer Commission (ACCC) is the agency charged with enforcing the TPA at the Commonwealth level in relation to corporations. The State and Territory Fair Trading and Consumer Affairs agencies enforce the Fair Trading Acts, Consumer Protection Acts and Sale of Goods Acts at the State and Territory level. The Food Acts are enforced by State and Territory food agencies and by local government. The TPA applies to all consumer products, including food, and to services, while State and Territory Food Acts apply only to food.

Enforcement of food labelling standards is not a high priority for State and Territory authorities or for local government, unless the labelling is related to protecting public safety. ACCC involvement in food labelling issues relates almost exclusively to enforcing breaches of sections 52 and 53 of the TPA which deals with false, misleading and deceptive conduct. The ACCC has limited resources and only takes on cases it considers constitute the most flagrant breaches, the greatest detriment to consumers and the greatest opportunity to increase compliance with the law.

However, the public consultation processes have revealed a level of dissatisfaction with the current enforcement of labelling requirements. Industry experience has been that State and Territory health agency enforcement of breaches of food labelling standards have occasionally been the subject of small court-imposed fines but are more usually rectified through undertakings to correct errors within a time period appropriate to the nature of the breach. In contrast, industry perceives ACCC involvement as being more adversarial, out of proportion to the problem and costly to companies in terms of publicity and legal costs.

The impact of action against perceived breaches is therefore very uneven and unpredictable depending on which legislation or regulation is used, the size of the company and the scale of its product distribution. It can, and does, have a highly discriminatory influence.

*Australian Food Council submission number 166 page 17.*

One of the underlying causes for the reported inconsistent enforcement is that some offence provisions in the TPA also occur in State and Territory food legislation. This duplication of provisions relates to the Food Acts offences of 'false, misleading or deceptive conduct', 'not of the nature, substance or quality demanded' and to the sale of food which is 'adulterated', 'unfit for human consumption' or 'not suitable' (this offence is proposed for the new State and Territory Food Acts).

'False, misleading or deceptive conduct' is the TPA offence most clearly duplicated in State and Territory Food Acts. Consequently, there is potential for enforcement activity between the ACCC and the State and Territory food agencies to overlap, and for different case law precedents to develop. For the other Food Acts offences, listed above, there is a less clear issue of duplication with the TPA. These Food Acts offences were originally developed and have evolved to allow local authorities to control certain conduct and behaviour in relation to the sale of food.

One way to resolve these problems is for State and Territory food agencies and the ACCC to work together to develop a protocol specifically relating to these offences. The protocol should specify ACCC involvement in enforcing breaches of the TPA offences provisions and the State and Territory food agencies involvement in enforcing Food Acts.

This would help eliminate duplication of enforcement effort, share information of mutual interest and enhance the effectiveness of the agencies. This could be achieved through a more formalised process involving Memorandums of Understanding to clarify roles and responsibilities and to guide the food agencies and the ACCC as to when it would be appropriate for either to take enforcement action. The ACCC has adopted this approach with a number of other enforcement agencies, to maximise efficiency of enforcement effort. This approach has proved valuable as the TPA covers many areas of conduct that also fall within the jurisdictions of other regulators.

A further option would be to delete some or all of the offences provisions from the State and Territory Food Acts. This would mean EHOs utilising TPA equivalent provisions in the Fair Trading Acts for enforcement and possibly an expanded enforcement role for the ACCC. This option is favoured in some quarters, but would not, in itself, resolve the issue of consistent enforcement, as the ACCC and the State and Territory food agencies would each retain an enforcement and prosecution role under the provisions of the TPA. Additionally, there is considerable doubt that relying on the TPA and Fair Trading Acts would provide the same flexibility of response to unacceptable conduct as do the Food Acts.

### **Recommendation**

8. The State and Territory health departments and the ACCC and its State and Territory counterparts develop cooperative arrangements to facilitate consistent enforcement of the provisions relating to false, misleading and deceptive conduct in the Food Acts the Fair Trade and Consumer Affairs legislation and the Trade Practices Act.

### **Implementation strategy**

ANZFA and the State and Territory health departments and the ACCC and State and Territory Fair Trading agencies develop Memorandums of Understanding for agreement by Ministers. The Memorandums of Understanding to be in place by January 1999.

### **Consolidation of State and Territory enforcement agencies**

Industry repeatedly voices its dismay with the number of regulatory agencies, particularly within the States and Territories. This is exacerbated by local government involvement. However, individual agrifood businesses do not have to deal with multiple local governments unless they have operations in more than one council area. The issue that confuses and annoys industry is the administrative and compliance burden imposed by the numerous food regulatory agencies that can affect a single enterprise. These agencies can be within the same government jurisdiction or spread over all three spheres of government.

This is particularly the case (but is not limited to) when several agencies have food safety responsibilities. For instance, a meat processing plant can be subject to inspection and registration by the Health Department, a local government EHO, the State Meat Authority and by AQIS.

The current plethora of agencies across all three levels of government and industry, operating under different statutes or protocols which, in aggregate, impose substantial costs on an industry which has very low profitability levels across sectors; this complexity, and cost level, highlights the need for effective integration of effort.  
*Meat Industry Council, submission number 140 page 21.*

The food industry would welcome government moves to rationalise the numbers of agencies which regulate the food industry. Ideally, there would not be three spheres of government involved in food regulation. Various stakeholders pointed to the need to remove at least one layer of government regulation. However, amalgamation of food regulatory agencies within each jurisdiction is seen as the minimum necessary reform

to achieve tangible savings to industry. This would result in a reduction in the number of licenses, registrations and inspections required by individual agrifood businesses without any decrease in food safety.

Reforms the New South Wales government is currently considering would appear to be in the right direction. New South Wales may move firstly to consolidate food regulatory agencies within the primary industries portfolio (meat, dairy, horticulture and fisheries). Secondly, they may amalgamate the food regulatory functions of the Department of Health with this new primary production food safety agency.

A very large component of the agrifood industry, as well as other stakeholder groups, continue to experience problems with the multiplicity of State-based agencies. Adding new ‘coordinating’ agencies, as some government officials proposed, could exacerbate this problem.

Small business does not have the resources to handle a multiplicity of regulations and regulatory agencies. It has not the time to deal with issues raised by differing organisations, it requires simplicity.

*Western Australian Fishing Industry Council, submission number 109 page 2.*

The financial implications of this recommendation have not been costed. However, it can reasonably be assumed that amalgamating agencies usually results in ongoing savings in administrative overheads (offset in the short term by establishment costs). Consolidation of State/Territory enforcement agencies would result in less duplication, and thus cost efficiencies. It may also uncover gaps in inspection services, suggesting a more intensive resource requirement. If this were the case, the increased inspection costs may be met from the savings in administrative overheads.

Dairy factories exporting product are subject to three levels of licensing—AQIS, State and local food premises. In Victoria, the State Dairy Industry Authority and local government require separate inspections on a half to one day basis for the two State bodies once per year—a total of 28 days for the company.

*Bonlac Foods, submission number 118 page 1.*

## **Recommendation**

9. Each State and Territory government should take steps to integrate their food regulatory agencies, from paddock to plate, and thereby reduce the number of State and Territory food regulatory agencies.

## **Implementation strategy**

All States and Territories should investigate areas of overlap and duplication and the detailed benefits and costs of agency amalgamation (including benefits to industry).

Resulting agency amalgamations could be staged over a number of years, commencing with consolidation of primary industries regulatory agencies, but extending to Health Department food agencies. This should not be limited to food safety, but extend to include all food standards responsibilities.

The review of all meat and dairy legislation against the national competition

principles provides an opportunity which should be built on in implementing this recommendation.

## **Better legislation and national decision making**

Food laws in Australia have been developed piecemeal, over time. Consequently there is no nationally uniform legislative framework and this is of increasing concern to the agrifood industry.

A frequent complaint of the food industry and consumers was the large amount of legislation that applies to the food industry and that it varies from State to State and Territory. It is difficult to quantify the costs imposed on the agrifood industry by food laws, but it was often raised as a problem. There are costs associated with acquiring copies of regulations, interpreting them and finding out which agencies need to be consulted in the first place. Added to this there are the direct costs of complying with the regulations and the remedial costs of rectifying the situation when regulations are overlooked or misunderstood (by both industry and government).

Only the largest agrifood businesses and industry associations have the resources to deal with this regulatory maze. Smaller businesses and associations have great difficulty keeping themselves properly informed of the requirements and implications of all food regulations. Agrifood businesses that wish to operate in more than one State or Territory must acquaint themselves with the differing legislative requirements across the States and Territories in which they wish to operate.

It has been suggested that governments should focus on outcomes at a national level, leaving each jurisdiction to develop appropriate legislation and regulations as they desire. However, this often leads to divergent legislative practices and is the cause of industry complaints about lack of uniformity.

The issue of which and whether standards/regulations need to be uniform across Australia has concerned governments for some time. It has been considered that where actions by one State or Territory have adverse effects on other States and Territories, the issue becomes national. While section 92 of the Constitution guarantees freedom of interstate trade, individual States and Territories can enact laws which obstruct free trade.

One of governments' responses to this dilemma has been the Mutual Recognition Agreement for Goods and Services. In relation to goods, this says broadly that if goods can be sold in one State, then they can be sold in any other State or Territory regardless of whether they comply with the laws of that State or Territory. While this agreement provides some benefit to agrifood businesses wishing to move products from one jurisdiction to another, it does not address the problems of businesses encountering different requirements for food production processes or design of premises.

The current problem for agrifood businesses is not that there are impediments to trade in goods due to inconsistent regulation, but rather that they must comply with different process regulations in different jurisdictions.

If Australia were newly discovered, and a federal system of government were to be established tomorrow, common sense would dictate that food legislation would be a Commonwealth responsibility.

*QUF Industries, submission number 28 page 1.*

## **Towards a nations food safety regulatory framework**

The agrifood industry expresses concern with overlapping and, as sometimes occurs, contradictory food regulation, particularly as it relates to food safety.

Health departments are primarily responsible for protecting human health and agriculture and primary industry departments are primarily responsible for facilitating agricultural production and trade. Consequently, the legislative and administrative responsibilities of the two portfolios overlap, but for different policy objectives. This only becomes a problem when the policy objectives merge to the extent that both portfolios decide to develop regulations or legislation with the same or similar objectives. Given that trade facilitation is underpinned primarily by food safety, the potential for this to occur is significant.

The primary example of overlapping or duplicate legislative requirements is in the area of food safety and hygiene. Over the years, each State and Territory and the Commonwealth has enacted a number of regulations for the domestic agrifood industry, that contain (often very prescriptive) food safety and/or hygiene provisions. These include State and Territory food hygiene regulations, Meat Acts, Dairy Acts, Fisheries Acts and Chicken Meat Acts and associated regulations.

Administrative arrangements surrounding food regulation and food safety have been developed in an ad hoc fashion across sectors and jurisdictions over many years ... there is a sound case for a national efficiency audit and review of procedures to improve and streamline administrative arrangements and regulatory structures.  
*Public Health Association, submission number 124 page 5.*

To address this situation there is a need for an effective regulatory framework based on nationally uniform food safety regulations that espouse a preventative rather than reactive approach to managing food safety. This regulatory framework needs to provide flexibility for different compliance requirements based on the degree of food safety risk and must explicitly cover all food safety hazards: microbial, chemical and physical. Industry and governments widely accept that HACCP-based systems are the most appropriate method for agrifood businesses to identify, monitor and control food safety hazards.

In view of the increasing complexity of producing, processing, distributing and retailing food, it is also necessary to ensure the entire food supply chain is managed within this single framework. There is little point in managing food safety risks within one part of the agrifood industry, if contamination can be introduced at other points which are not covered by the framework. Universal involvement of all agrifood industry sectors will serve to build awareness of food safety issues and encourage a more professional approach to food safety.

This 'paddock to plate' approach to food safety regulation is consistent with the European Union (EU) whose Food Hygiene Directives apply to the entire food supply chain and must be adopted by member states.

To achieve an appropriate level of food safety and to take account of the concerns of, and differences between, individual agrifood industry sectors a consultative process, involving all agrifood industry sectors, governments and consumers, must be used to develop this national food safety regulatory framework. Food safety regulation needs

to be the minimum necessary to achieve food safety and must be designed and implemented in such a way as to take full account of the fact that primary responsibility for producing safe food lies with agrifood businesses.

Food safety regulation should provide a legal obligation for all agrifood businesses to produce safe food and provide the flexibility required for these businesses to achieve this outcome. Agrifood businesses should not be hampered in this regard by inappropriate or unnecessarily prescriptive food safety regulations.

### ***Risk-based national food safety regulatory framework***

The food safety regulatory framework must be soundly based on a systematic and uniform assessment of the overall risk to public health arising from potential hazards associated with the type of agrifood business, the nature of the food, the degree of handling and the size of the operation. A consistent food safety risk assessment and risk categorisation process must be applied to all agrifood businesses in a ‘paddock to plate’ approach to ensure any compliance requirements are proportional to the business’ food safety risk.

The assessed risk category (for instance, low, medium or high) of a food business (or agrifood sector) could be used to determine a number of implementation and ongoing management policy decisions, such as:

- the timeframe for applying new food safety regulations to a business or to a sector as part of a staged implementation process. The highest risk premises or sectors should be required to comply earlier than those with a lower risk;
- the level of complexity of a business’ HACCP-based food safety system; and
- the auditing frequency of a business’ food safety system. Premises with the highest risk food handling practices would need to be audited at a higher frequency than that required for low risk premises.

Food Science Australia, DPIE, ANZFA and other key government and industry bodies have recently begun developing a national risk classification and categorisation system that will apply to all agrifood businesses.

Consistent risk assessment practices does not mean risk management, in the form of regulatory responses, must be identical across all agrifood sectors. Different sectors will require different responses within the regulatory framework. For example, decisions may need to be taken that reflect the capacity of an agrifood industry sector to comply. However, the risk assessment and risk classification processes which underpin management decisions should be soundly based in science and applicable to all agrifood businesses.

### **Administrative arrangements for the national food safety regulatory framework**

The administrative and enforcement powers for the food safety regulatory framework should be nationally consistent and should be formally delegated to an appropriate agency or agencies within the States and Territories. In accordance with Recommendation 9, this agency should be the new consolidated food regulatory agency. In the absence of a consolidation of agency responsibilities, the relevant

agency would be either the Meat Authorities, Dairy Authorities, State and Territory agriculture departments, health departments or local government, depending on the food sector covered. This approach to administration and enforcement will significantly increase the likelihood of successful implementation of the national food safety regulatory framework.

Formal delegation should involve clear demarcation of responsibilities in the form of service level agreements, in accordance with Recommendation 3. This will help achieve national consistency and improve accountability of State and Territory enforcement agencies and local governments.

### **Other requirements of the national food safety regulatory framework**

Non-mandatory guidelines, codes of practice and quality assurance programs which are appropriate to specific agrifood industry sectors and to the level of food safety risk should be developed to help businesses by providing a guide to compliance with outcomes-based food safety regulation. Industry bodies should develop these guides, preferably in association with governments. Guidelines, codes of practice and quality assurance programs should be as generic as possible for particular types of businesses and should be based on accepted good agricultural practice or good hygienic practice. Well constructed and appropriate guidelines are likely to play an important role in minimising costs to individual agrifood businesses, particularly small businesses, of implementing HACCP-based food safety systems.

An increasing number of agrifood businesses, including food processors, retailers and primary producers, have already implemented HACCP-based quality assurance programs, many of which are industry sponsored. It is, therefore, essential that businesses or primary producers that have invested in quality assurance arrangements which incorporate appropriate HACCP-based food safety systems, be deemed to comply (or recognised in some other way) with equivalent obligations under the national food safety regulatory framework. These businesses should not have to develop additional food safety systems.

There are a number of licensing or registration systems in use in different sectors of the agrifood industry and many agrifood businesses are currently subject to more than one registration and/or licence requirement. Implementation of a national food safety regulatory framework would provide an opportunity to rationalise existing food business licensing and registration systems to a single national food business registration/notification requirement.

We are currently registered as a Food Premises with the City of Greater Dandenong and as such pay a registration fee ... We have a current Victorian Meat Authority licence which allows us to store meat [for] local consumption ... We also have a dairy export licence ... Again this licence comes at a cost ... We [have] yet another licence involving the provision of a place for performance of quarantine. Again, ... at a cost.  
*South Gippsland Ice Supply, submission number 102 page 1.*

To protect public health and safety, all food handlers and supervisors should have knowledge and skills appropriate to their tasks and appropriate to the agrifood industry sector in which they work. National competency standards for food handlers and supervisors, across all industry sectors, should be developed to provide a flexible, inexpensive support for the national food safety regulatory framework



## **The national Food Hygiene Standards**

The principles, characteristics and requirements for the national food safety regulatory framework, as described above, could be implemented through the proposed national Food Hygiene Standards and the revised uniform State and Territory Food Acts. ANZFA and State and Territory governments are in the process of developing three national Food Hygiene Standards (see page xxx) that are proposed to be adopted by reference into the uniform State and Territory Food Acts (see page xxx).

However, some sectors of the agrifood industry have expressed concerns about the Food Hygiene Standards, or to certain elements of the Standards, and/or current proposals for their implementation.

### **Agrifood industry concerns with the national Food Hygiene Standards**

Some sections of the food service and catering industries have sought exemption from the requirement to develop HACCP-based food safety programs. Their reasons include:

- potential costs, particularly to small businesses, of developing and maintaining a HACCP system;
- perceived complexity of the required HACCP-based food safety programs;
- potential for increased paper burden; and
- failure to demonstrate the need for change to the present system of food safety regulation.

The food service and catering sectors are likely to be among the higher risk sectors of the food industry. If this is confirmed, using a uniform risk classification system, then these sectors should not be exempt from the requirement to develop HACCP-based food safety programs.

Governments must ensure HACCP-based food safety programs, especially for small businesses, can be simple to develop and straightforward to implement and operate. These should be generic, as far as possible, for particular types of businesses. Additionally, governments should consider the capacity of businesses within these sectors to comply, and should consult extensively with businesses and their representative bodies. Most importantly, the costs businesses incur implementing and maintaining mandatory HACCP-based food safety program requirements should be minimised and must be justified by the expected reduction in costs to the community and businesses of food-borne illnesses.

Exemptions from the Food Hygiene Standards for the primary production sector have been sought because it is argued that food safety can be achieved by relying on market forces, that is, by non-regulatory means, and because primary production is basically a low food safety risk activity.

Many primary industry sectors, are making considerable headway in introducing quality assurance systems on-farm. A few examples of existing industry-sponsored

quality assurance programs available include CATTLECARE, Flockcare, SQF 2000, SeaQual and the Australia Fresh Certification Scheme. These industry initiatives to improve product safety and quality are particularly significant and should be recognised and encouraged by governments.

Primary producer peak bodies argue that mandating the Food Hygiene Standards will reduce the incentive for farmers to adopt appropriate quality assurance programs and that commercial, legal and insurance pressures will drive the requirement for HACCP-based quality assurance programs back to primary producers. However, some primary producer representatives have suggested to the Review Committee that quality assurance programs will never be voluntarily adopted by 100 per cent of industry participants, and that the stragglers may be high risk producers.

Within primary production, microbial food safety risks are known to be relatively low in a number of sectors and many primary products are subject to further processing, such as canning, baking, cooking, blanching, dehydrating, freezing etc that would further reduce the microbial risks. It is appropriate for this issue to be addressed within a national risk classification system. Governments should make decisions about the application of the Food Hygiene Standards to the individual sectors within primary production, based on an agreed risk classification system. Consequently, in low risk sectors, it would be appropriate that industry self regulation is used as the appropriate regulatory form.

### **Existing food hygiene legislation and regulations**

Existing food hygiene provisions in State and Territory Food Acts will become redundant when the proposed national Food Hygiene Standards are introduced, and will be progressively repealed. In addition, food safety and/or food hygiene provisions in the many other Dairy and Meat Acts and regulations should be reviewed and repealed, where appropriate. The first step will be to identify all existing domestic food safety and food hygiene laws and regulations in Australia. A working group, with representatives from all involved agencies and industry, should undertake this project which could be linked to the national competition policy reviews of those Acts.

The Australian Standards for the hygienic production, processing, handling and transportation of meat and meat products (generally referred to as the ARMCANZ Meat Standards) are mandated in State and Territory Meat Acts and include a requirement to develop HACCP-based food safety programs. It is expected that compliance with the ARMCANZ Meat Standards will satisfy some Food Hygiene Standard requirements. However, it would be desirable for the ARMCANZ Meat Standards to be amended to be more compatible with the outcomes-based Food Hygiene Standards. As well, the prescriptive component of the ARMCANZ Meat Standards could become non-mandatory guidelines for compliance with the Food Hygiene Standards. This could be achieved by 'deemed to comply' arrangements.

### **In Summary**

To achieve lasting food safety improvements throughout the whole food system and to achieve the benefits of increased confidence of domestic and international

customers in the Australian food system, all agrifood businesses should be included within a national food safety regulatory framework.

This report supports the intent of the proposed national Food Hygiene Standards, while advising a cautious approach to their implementation:

- likely costs, incurred by businesses in implementing and maintaining any requirements of the standards, must be justified by a reduction in costs to the community and businesses of food-borne illnesses;
- any obligations placed on agrifood businesses, such as the need for HACCP-based food safety programs, must be commensurate with the level of food safety risk within those businesses;
- where agrifood businesses are involved in industry-sponsored quality assurance programs which deliver substantially equivalent food safety outcomes, they should be recognised as fulfilling that obligation under the standards; and
- there should be a lengthy phasing-in period of requirements under the standards to ensure all agrifood businesses have sufficient time and incentive to adopt commercial quality assurance schemes or implement food safety programs. Ministers should regularly review this implementation process to assess these issues and to respond to developments in the risk categorisation system and any new or emerging food safety issues, such as new pathogens.



## Recommendations

10. a) Commonwealth, State and Territory governments should develop and implement a nationally uniform food safety regulatory framework that adopts a preventative approach, applies to all agrifood businesses and places a legal obligation on these businesses to produce safe food.

This food safety regulatory framework should:

- be implemented in accordance with the principles for food regulation enunciated in Recommendation 2;
  - be flexible, to ensure any compliance requirements for agrifood businesses are proportional to the food safety risks within that business; and
  - be used to rationalise existing food business licensing and registration systems to a single food business registration/notification requirement.
- b) The food safety regulatory framework should be supported by a nationally consistent and transparent system for assessing food safety risks and categorising businesses and industry sectors according to risk.
- c) In developing the national food safety regulatory framework, governments should pay particular attention to minimising costs incurred by businesses in implementing and maintaining preventative food safety systems, and to ensure the benefits of this approach to food safety regulation outweigh the costs.
- d) Existing food safety and food hygiene regulations should be reviewed and repealed, where appropriate, during the implementation period of the food safety regulatory framework.

## Implementation strategy

Commonwealth, State, Territory and local governments and the agrifood industry should work in partnership to:

- develop a nationally consistent risk classification system for agrifood businesses and industry sectors;
- agree to a staged implementation, based on food safety risk categories, for the national food safety regulatory framework;
- develop non-mandatory sectoral guidelines or codes of practice to help agrifood businesses meet the requirements of outcomes-based food safety regulation;

- implement a formal recognition system for existing and future quality assurance programs which deliver food safety outcomes that are substantially equivalent to any regulatory requirements;
- implement a flexible, inexpensive system to achieve appropriate competencies for food handlers and supervisors; and
- undertake an audit of existing domestic food safety laws and regulations in Australia (current and proposed) and to recommend legislation or regulations for repeal.

### **Uniform national food laws**

There is also a need for general food law, other than food safety laws and including enabling Acts, to be unified in an integrated national legislative framework. All legislation needs to be effective, straightforward, easy to understand and to use for all those concerned—producers, processors, transporters, retailers, wholesalers, enforcement authorities and consumers. Many stakeholders see uniform national food law as a fundamental element of an improved food regulatory system.

The achievement of uniformity is strongly supported through the development of national standards, consistency in their application and uniform training competencies. National uniformity has many advantages for both business and regulators.  
*Government of Queensland, submission number 106 page 12.*

Stopping short of uniformity and seeking only national consistency, would not address the frequent complaints made by the agrifood industry to this Review about lack of uniformity. While government officials may be content with consistency, food industry operators experience difficulty in dealing with different legislation in each jurisdiction.

The regulatory system needs to provide a simplified uniform legislative framework but it needs to do it in a way that allows for local differences and flexibility where these are appropriate.

Once the minimum effective level has been agreed and implemented it would not in Australia's interests to have competition between the States and Territories with each setting lower safety standards to attract or retain industry or development. It may be appropriate, however, for States and Territories to compete on the efficiency and cost of administering the legislation.

Inconsistent legislation between jurisdictions imposes unwanted costs on the food industry. There is an argument that to ensure uniformity of food regulation, it should be developed nationally and enacted at the Commonwealth level with the States and Territories responsible for enforcement and administration.

Government regulations, if not nationally consistent, can be anti-competitive, imposing unfair advantage or disadvantage on competing companies.  
*Australian Dairy Products Federation, submission number 119 page 3.*

It is proposed that food laws be developed nationally in partnership with all three spheres of government. To ensure there are no divergences, these Acts could be

enacted at the Commonwealth level (or indeed by any single jurisdiction) and administered and enforced by the States and Territories (and local governments where appropriate). This model is most appropriate when regulations are outcomes- or performance-based.

There also needs to be a vertically integrated approach to avoid duplication of regulations and compliance checks.

*Australian Dairy Products Federation, submission number 119 page 4.*

Use of Commonwealth, rather than State legislation, would require formal referral of power by at least one of the States (which have the constitutional right to make laws in relation to domestic foods) to the Commonwealth. This would require State and Territory government agreement that the Commonwealth will enact core provisions of national legislation and delegate enforcement powers to State agencies. This would only take effect in the States and Territories which have referred power to the Commonwealth or which have enacted complementary legislation recognising the Commonwealth legislation. Under this arrangement, each State and Territory can withdraw from or amend the arrangement at any time through an Act of Parliament. Governments are currently considering this implementation model in relation to the revised State and Territory Food Acts.

There are currently four Acts which cover the food/health activities of ... dairy premises (Dairy Industry Act, Food Act, Health Act and Export Control Act, if an exporter). We need a single set of legislation which covers all these aspects (preferably a national one) which clearly sets out the responsibilities and 'territories' of the various inspectorial stakeholders.

*Victorian Dairy Industry Council, submission number 130 page 7.*

Where issues are national, as in the case of domestic and international food regulations, the regulations should be national but enforced ... at the State level.

*Western Australian Fishing Industry Council, submission number 109 page 7.*

## **Recommendation**

11. The governments of Australia to agree that all domestic food laws in Australia should be developed nationally and enacted uniformly. All existing food laws should be reviewed with the aim of improving national uniformity.

## **Implementation strategy**

The Commonwealth could enact core provisions of legislation, with State and Territory legislation giving effect to the national legislation within the States and Territories and incorporating State and Territory specific requirements, where these may be necessary. The governments of Australia to enter into agreements to this effect, as necessary. The draft agreements could be developed through inter-governmental working groups reporting to COAG.

The Commonwealth/State/Territory Committee on Regulatory reform could monitor implementation of this recommendation.

All food businesses need to be covered by uniform regulations which are interpreted and enforced uniformly.

*Small Business Combined, submission number 120 page 2.*

In the case of food regulation, national consistency and coordination of administrative arrangements, legislative provisions and process reviews are essential goals for effective public health and safety management.

*Public Health Association, submission number 124 page 5.*

### **Single agency to develop national domestic food legislation**

To avoid inconsistent and duplicated food regulation in future, all food legislation and regulation for the domestic market should be developed nationally by a single food standards agency acting in partnership with and on behalf of the States and Territories.

To reduce the risk of over regulation or inappropriate regulation, the agency needs to be committed to, and publicly accountable for, the principles of good regulation (as agreed by COAG), for regulatory review and for preparing competent and defensible Regulatory Impact Statements.

The 1991 Agreement between governments, which lead to development of ANZFA, was designed to achieve national standards. However, other agencies also develop food regulations independent of the ANZFA processes.

Fragmentation of responsibility amongst government and statutory authorities has contributed to the confusion and increases in food safety issues and costs. A national approach is essential with all parties agreeing to the outcomes.

*National Council of Women, submission number 114 page 4.*

... the Federal Government should be able to formulate a user-friendly set of guidelines and regulations that can be adopted and applied by other levels of Government in total. This would mean massive restructuring and reassignment of responsibilities, but should also cut costs and help avoid 'railway gauge' type problems in our food industries.

*WG Spiers, submission number 116 page 3.*

Industry development and implementation of quality assurance programs or other alternatives to food regulation would not be disrupted by centralised food regulation development. Additionally, the central food standards agency would advocate the use of alternatives to regulation wherever appropriate in relation to food safety risks. The outcome would be to centralise policy decisions which result in mandatory legislation, thus avoiding duplication of legislation/regulations across governments and portfolios and streamlining the impact of regulation on the food industry.

This recommendation is consistent with a recent State and Territory Health Ministers' decision to ask ANZFA to develop national hygiene standards to replace existing State and Territory hygiene regulations. It builds on the original inter-governmental agreement to establish ANZFA to develop national food standards.

This would result in all food regulation residing in a single location, the *Food Standards Code*, thus improving business and consumer access to regulatory information.

While development of the standards would occur at a national level, they would still be enforced at a State and Territory level (or by local governments where appropriate). Consolidation of agencies at the Commonwealth level would increase the opportunities for rationalisation of State and Territory inspection services. The newly created Commonwealth agency could, through negotiations and consultations with State and Territory governments, rationalise inspection arrangements to the extent that one food agency could be cross-delegated to perform all government inspections.

This agency should be responsible for national policy development and have the primary objectives of:

- protecting public health and safety; and
- facilitating trade.

The agency would be responsible for coordinating appropriate implementation arrangements through negotiation with the States and Territories. It needs to:

- be fully committed to accepted government regulatory practices such as regulatory impact analysis;
- implement Australia's international obligations;
- build strong relationships with the agrifood industry; and
- adopt the general principles for food regulation proposed in Recommendation 2.

Consideration needs to be given to establishing an appropriate board of governance for the agency with representation from the various industry sectors, consumers and governments.

### **Recommendation**

12. The governments of Australia should to agree that responsibility for developing all domestic food regulations and standards be centralised within a national agency that operates as a partnership between the Commonwealth and the States and Territories.

The resulting food regulations or standards would be recommended to Commonwealth, State and Territory Ministers for national agreement and uniform adoption and be enforced and administered by the appropriate State and Territory regulatory agency.

### **Implementation strategy**

An inter-governmental agreement would be required. It would also be necessary, over time, to transfer all existing food safety legislation to the national standards agency for review and adoption through this new national mechanism.

This could follow the national competition policy reviews of all food legislation affecting businesses.

### **Rationalisation of Commonwealth decision-making bodies**

Within the Commonwealth, both ANZFA and AQIS have food regulatory responsibilities; ANZFA for domestic food and AQIS for exported food (the two agencies share responsibility for imported food). While industry does have complaints about both agencies (rates of fees, speed of processes, levels of prescriptiveness, lack of responsiveness), there is a very high level of support for their activities.

There are concerns throughout industry, however, about the large number of agencies with food regulatory responsibilities in Australia. In particular, there is widespread dissatisfaction with the dual export and domestic regulatory systems and many industry participants have complained about the costs and administrative burden imposed by the existence of two systems. To export food goods, businesses are often required to produce two quite different standards and sometimes to run two production lines, as well as being subject to the audit, inspection and registration requirements of two different organisations.

Businesses which currently export experience these costs and the problems associated with the export regulatory system. There is also a large number of agrifood businesses (often small businesses) wishing to export who consistently reported difficulty in dealing with the dual nature of the export and domestic food regulatory systems. Many, in fact, had given up their export efforts and count this as a significant lost opportunity.

One way of addressing these concerns, and the inefficiencies which result, is to consider amalgamating all or part of AQIS and ANZFA. This would provide an opportunity for, and give considerable impetus to, rationalising and integrating the domestic and export systems of inspection, certification and registration.

It can also be argued there is a stronger chance for domestic and export standards to converge where they are developed and negotiated by the same agency. However, it must be acknowledged that complete convergence of export and domestic regulations is unlikely to occur, because ultimately export requirements are determined by importing countries.

The benefits would include:

- the potential to integrate, or at the very least rationalise, export and domestic regulations;
- a unified national approach to managing emergency situations;
- greater potential to influence importing countries' food safety requirements resulting from unified and strengthened food safety decision making;
- reduced potential for perceived conflicts of interest between facilitating trade and protecting public health and safety;
- ongoing savings to industry and government from integrated domestic and export food inspections, business registrations and auditing systems;

- a more cost effective approach to negotiating international standards developed by the Codex Alimentarius Commission (Codex);
- ongoing savings to industry and government from streamlined administration requirements from an integrated system of export and domestic food regulation; and
- greater opportunities for a whole-of-government approach to food regulation.

An alternative solution proposed by some government officials was to establish a new coordinating body. This was not considered a solution which would address industry's fundamental concerns about the excessive number of regulatory agencies.

The Commonwealth government should consider combining the export regulatory functions of AQIS with the domestic regulatory functions of ANZFA into a new Commonwealth food regulatory body. This proposal would maximise the potential to streamline administrative and legislative arrangements imposed on the agrifood industry.

The new agency would need to have the expertise and flexibility to manage delivery of nationally-agreed outcomes in a manner which reflects the different food safety risks along the food supply chain.

... perfect opportunity to rationalise domestic and export requirements and set up a seamless transfer between domestic and export production by providing a set of rules of construction, hygiene, food safety, etc. which applies to all premises and adding to this specific requirements for particular export countries, products, etc.

*Western Australian Fishing Industry Council, submission number 109 page 3.*

Care needs to be taken to ensure this does not weaken either the domestic or the export regulatory roles. Any such system will need to recognise the Commonwealth's constitutional obligations to regulate exports and AQIS's well established and highly regarded reputation in its dealings overseas. AQIS has highlighted the value, to Australia, of the AQIS 'brand name'.

In relation to the AQIS quarantine functions, it is noted the Commonwealth Government has not accepted the Nairn report, *Australian Quarantine: a shared responsibility*, recommendation for a separate statutory authority called Quarantine Australia because these functions are considered to be properly government functions. It is also noted that opportunities to rationalise border control inspection arrangements, where the Australian Customs Service also has responsibilities, are being investigated.

Consolidation of ANZFA and AQIS functions could be limited to the export and domestic policy development/negotiation roles, with separate service delivery and quarantine functions. Governments generally recognise that separating policy and service delivery provides efficiency gains and is referred to as a 'purchaser provider' arrangement. Under this arrangement, service delivery agencies are held accountable to the policy development agency for delivering the desired policy outcomes in the most efficient and effective way possible; the service delivery agency decides how best to deliver the service.

It could also involve the possible operational separation of the export and domestic roles within a single agency or a closer integration of these two functions. The pros and cons of these implementation options need to be considered closely, particularly in the context of joint arrangements with New Zealand, the role of a statutory board and constitutional responsibilities in relation to food.

This proposal, however implemented, has implications for the Treaty with New Zealand concerning joint food standards. New Zealand may be unlikely to sign-on to joint export negotiations and certification arrangements, as Australia and New Zealand compete internationally. However, it should be noted that Australia and New Zealand share many common goals in the export arena, particularly within Asia Pacific Economic Cooperation (APEC), so this joint approach may be expanded in the future. It would be possible for the Treaty to apply only to the domestic food standards functions of the new agency.

The full costs and benefits of this proposal have not been quantified and there would be some one-off establishment costs. Implementation of this recommendation would need to be subject to a detailed consideration of costs and benefits, including the flow-on benefits to the food industry across all sectors (both existing and potential exporters).

It was also put to the Review that amalgamation of Commonwealth agencies should be broadened to include the NRA (which has implications for Recommendation 16) and the TGA (which has implications for Recommendation 15).

### **Recommendation**

13. The Commonwealth government should take steps to integrate development and implementation of domestic and export food regulations and reduce the number of Commonwealth food regulatory agencies through the amalgamation of, at least, the food regulatory policy functions of AQIS and ANZFA. The government should consider amalgamating other Commonwealth regulatory agencies to further streamline and improve food regulation in Australia.

### **Implementation strategy**

The Commonwealth government should, in close association with the States and Territories and New Zealand, fully explore all options for, and the costs and benefits to all stakeholders of, consolidating food regulatory agencies.

ANZFA currently has a Board of Directors and this model should be adopted for the new agency. This Board would need to include representatives from relevant industry sectors and consumers.

### **Single Food Ministers Council**

There is a need to streamline food regulation decision-making processes and food regulation decision-making bodies. Currently there are several Commonwealth/State/Territory Ministerial Councils which share responsibility for food regulation in Australia (these Councils usually include New Zealand Ministers).

This has led to overlapping and sometimes duplicate food regulations applying to various sectors of the agrifood industry, particularly in the area of food safety. Ministerial Councils need to be rationalised to remove the potential for these inefficient regulatory arrangements.

The Review has considered several models, including: a single Ministerial Council with joint representation from agriculture and health portfolios; including only Health Ministers or a Council with one Minister from each State and Territory drawn from either health or primary industry (or possibly an industry Minister).

Regardless of State, Territory and Commonwealth representation, the Council should include a New Zealand government representative and possibly a local government representative.

Implementing this recommendation does not require implementation of a new Commonwealth food agency (Recommendation 12). The new Food Ministers Council could coordinate, at strategic level, the operations of both agencies.

### **Recommendation**

14. The governments of Australia should establish a single Commonwealth/ State/Territory and New Zealand Council of Food Ministers to be responsible for developing all food regulations in Australia.

### **Implementation strategy**

Implementation would require COAG agreement. Consideration should be given to including local government.

### **Improved government administrative processes**

There are a number of opportunities for the Commonwealth government to improve the efficiency of its administrative procedures which relate to national food regulation.

#### ***TGA/ANZFA interface***

A product that is a food in Australia can be a ‘therapeutic good’ in an export market. To be able to export such products, World Health Organisation-derived documentation is required ... (but) no agency or authority in Australia can provide such certification, and the export potential is lost.

*RP Scherer Australia, submission number 61, page 2.*

The TGA is responsible for regulating therapeutic goods and drugs, while ANZFA develops standards applying to food. Therapeutic goods prevent, cure or alleviate a disease or influence, inhibit or modify a physiological process. Foods provide nutrition or hydration, satisfy hunger or thirst or add flavour or texture. However, certain foods and food components do modify physiological processes and some therapeutic goods can demonstrate the properties of foods. Products such as alternative medicines, herbal preparations and dietary supplements do not reside clearly in either the food or drug category. Therefore, regulating these products is not straightforward.

This situation is not helped by the cross-referenced definitions of food and therapeutic goods contained in the Therapeutic Goods Act and the State and Territory Food Acts. The definition of food excludes therapeutic goods and the definition of therapeutic goods excludes food.

This problem could be eased by revising the definition of food. However, as the functions of foods and therapeutic goods do overlap, improving the definition of foods and therapeutic goods will not solve all the problems of regulating products on the interface.

Regulation of foods and therapeutic goods is substantially different. Therapeutic goods are either registered or listed. Registration requires a fee and ongoing inspections. Registered therapeutic goods must prove their safety and efficacy. Low-risk products such as products on the food/drug interface may be listed rather than registered. A listed therapeutic good must supply information on toxicology including laboratory studies, traditional evidence of use and human clinical studies. Listed therapeutics may only make claims for minor self-limiting conditions. Both registration and listing only apply to the particular brand name product.

Foods are not registered or listed and no fees are directly charged to amend or add to the *Food Standards Code*. Food standards are generic, they apply to all foods of the type specified. Currently, no therapeutic claims may be made in relation to foods.

At a formal and informal level there is a great deal of cooperation between ANZFA and the TGA to resolve both individual problems that arise at the food/drug interface, and to suggest policy and procedures to help decision making. The External Reference Panel for the Food Drug Interface Matters (ERPIM) was set up in 1997 and includes representatives of ANZFA, TGA, AQIS, State food and pharmaceutical agencies, the food industry, consumers and the therapeutics industry.

New Zealand has a less restrictive approach to regulating alternative medicines, medicinal herbs and dietary supplements than does Australia. The conservative approach to regulating dietary supplements in Australia, is extended to fortification of foods with vitamins and minerals. Fortification of a wide range of foods is allowed in New Zealand.

The food/drug interface may be affected by the 'health claims' standard ANZFA is currently considering. If this standard becomes law, manufacturers will be able to make claims that foods benefit the health of the consumer, although this may be restricted to claims they affect the risk factors associated with particular diseases. A health claims standard will have to ensure that the difference between a product that can claim improvement in health or a decrease in risk factors associated with a disease is differentiated from a product that can claim therapeutic effects.

### **Recommendation**

15. The Therapeutic Goods Administration and the Australia New Zealand Food Authority should work together to improve clarity of regulation of products at the interface between drugs and food.

### **Implementation strategy**

As a first step, the definition of food in State and Territory food laws and the definition of therapeutics in the Therapeutic Goods Act be amended to eliminate cross referencing.

### ***Development of maximum residue limits***

Export of Australian foods has been halted, from time to time, when an overseas customer has found an unacceptable amount of an agricultural or veterinary chemical in a food. Events such as the chlorfluazuron (Helix) incident, in which beef was found to contain this insecticide, damaged export trade in beef and affected domestic confidence in meat. This incident highlights how costly breaches in the control of agricultural and veterinary chemicals can be.

The legal level of residues of agricultural and veterinary chemicals in agrifoods is known as the maximum residue limit (MRL). Foods and agricultural commodities that contain residues of agricultural and veterinary chemicals at levels higher than the MRLs listed in the *Food Standards Code* cannot be legally sold as human food in Australia. Imported agrifoods are tested for compliance with the MRLs in the *Food Standards Code* and rejected if they do not comply.

Most countries set their own MRLs and Australia is expected to comply when exporting to these countries. However, some countries require that the exported foods comply with the Australian domestic standard. In Australia, large retailers or caterers require producers to comply with their quality assurance programs, which include Australian MRLs. Therefore, MRL regulations affect import, export and domestic trade in food.

The regulation of agricultural and veterinary chemicals ensures that consumers' total intake of the residues of agricultural and veterinary chemicals is safe and that the chemicals are not an occupational or environmental risk. In achieving these objectives governments should ensure regulation is undertaken in an efficient and effective manner.

The current process of MRL setting in agrifoods is lengthy. The NRA evaluates a chemical and its use(s), including toxicology, which is assessed by the TGA, then forwards its recommendations to ANZFA, which assesses the recommendation. This delays the release and use of a new chemical or an extension of use of a registered chemical and may increase the cost of food production, while agrifood producers postpone use of the chemical. Legally, they will be allowed to use the chemical, but not to sell food that contains residues of that chemical.

Industry is confused by the different processes NRA and ANZFA undertake relating to MRLs. It is the NRA's function to register agricultural and veterinary chemicals.

ANZFA is responsible for setting the standards for acceptable levels of agricultural and veterinary chemical residues in food. At present, after the NRA has completed the registration process, it notifies ANZFA of the need to change the MRL standard and it publishes a list of MRLs. This list has not been accepted by governments and has no legal standing. Whereas Health Ministers must accept ANZFA standards before they are published in the *Food Standards Code*. In this way the ANZFA MRLs become legally binding. NRA publication of recommended MRLs can cause confusion and should cease.

The confusion was highlighted by the submission from the Australian Supermarket Institute which stated:

There are two sets of legislation that relate to the control and use of agricultural chemicals applied to the fruit and vegetable sector in Australia. These sets of legislation are developed by ANZFA and the NRA. There are a significant number of operational issues that have arisen due to differences in definition and interpretation between the two agencies for the same food item. At the centre of these issues are three key aspects that require urgent attention: the actual point in the food supply chain at which the MRLs apply; the difference between Commonwealth, State and Territory allowances to use certain agricultural chemicals; and the approval process for agricultural chemicals for new/exotic varieties of fruit and vegetables.

*Australian Supermarket Institute, submission number 157, pages 3–4.*

In fact, there is only one standard regulating the level of residues in food, that is the Maximum Residue Limits Standard in the *Food Standards Code* and this needs to be communicated to industry. Control of use is a State and Territory responsibility. Certain States allow off-label use of pesticides while others do not. However, the safety of food is ensured as all food, must comply with clause 3 (2) of Standard A14 of the *Food Standard Code*, that states ‘there must be no detectable residue in the food’ unless that residue is allowed by a specific MRL.

State and Territory ‘control of use’ regulations should be nationally uniform and should be flexible enough to support alternative agricultural regimes such as integrated pest management (IPM) and hydroponic use.

Industry believes that Australia must take greater account of international standards for MRLs. Codex formulates an international set of food standards including a list of MRLs. Australia is a signatory to the WTO Agreement which sanctions these Codex food standards. Overseas market opportunities, based on Australia’s reputation as a producer of wholesome food, will be enhanced if Australia is seen to have MRLs that comply with, or are lower than, Codex MRLs. Currently, the NRA will propose an MRL higher than the Codex MRL, if Australian agricultural conditions require it. However, the notification system responsible for providing Codex with the scientific information on Australian agricultural conditions is not always effective or efficient.

Australia’s position in trade negotiations will be improved if Australia is seen to support the aim of reducing non-tariff trade barriers through accepting the Codex list of MRLs for imported agrifoods. In some cases, the MRL allowed in domestic produce will be less than Codex MRLs. As the Australian MRL is based on Australian conditions and agricultural practice, domestic producers will not be disadvantaged compared to importers—they simply do not require the higher level of chemical or have a pattern of chemical use that results in lower residues. New

Zealand, an exporter of similar foods to Australia, has accepted Codex MRLs for imports for many years without detriment to New Zealand producers. As part of the trans-Tasman agreement, it will be necessary for Australia to consider accepting Codex MRLs for imported food products.

The agrifood industry has said that access to reliable up-to-date information on the legal limits of agricultural and veterinary chemicals and contaminants is not readily available. Information on both the domestic limits and the limits of Australia's major export trading partners for both foods and stock feeds is needed. A combined publication from the NRA, ANZFA and AQIS is required to address this need.

The NRA and ANZFA have discussed the need to adopt both a unified method of risk assessment in setting MRLs and a parallel public consultation procedures. Parallel public consultation processes will require some modification of NRA and ANZFA legislation.

### **Recommendations**

#### **16. In relation to maximum residue limits:**

- a) ANZFA and NRA legislation and administrative processes should be amended to facilitate streamlined MRL setting. This needs to ensure that amendment of the Maximum Residue Limits Standard in the *Food Standards Code* is simultaneous with registration, and completed within the same timeframe. To avoid confusion, the NRA should only publish ANZFA-approved MRLs.

A joint publication, between the NRA, ANZFA and AQIS should be produced that includes the MRLs of Australia and its major trading partners for agricultural and veterinary chemicals and the maximum permitted concentrations (MPCs) of contaminants for both foods and feeds;

- b) State and Territory governments should take steps to standardise the control of use arrangements in all States and Territories;
- c) Australia should improve consistency with international standards by accepting Codex MRLs for imported products, where appropriate; and
- d) all information on Australian chemical uses which may result in residues above the Codex MRL, should be provided to, and negotiated with, Codex to enable residues in Australian exports to be accommodated in international standards.

### **Implementation strategy**

The NRA and ANZFA are currently developing unified risk assessment and parallel public consultation processes. A Memorandum of Understanding outlining the joint process should be drawn up by the end of 1998.

The Commonwealth Department of Primary Industry and Energy should coordinate the discussions of control-of-use and forward the resulting recommendation to ARMCANZ through SCARM. State and Territory agreement to be reached by December 1999.

Prior to the end of 1999, ANZFA should jointly recommend to the Ministerial Council those Codex MRLs which are not acceptable in Australia and accept all other Codex MRLs.

### *ANZFA's food standards setting processes*

ANZFA's food standards apply both to imported foods and to foods produced and consumed domestically.

ANZFA has been criticised by some within the food industry for delays in developing new and amended food standards. This has been directed at both ANZFA's internal processes, as well as the time the Ministerial Council, ANZFSC, takes in making decisions on standards, particularly in relation to relatively technical matters which have been subject to rigorous scientific analysis by the Authority.

The statutory process set out in Part 3 of the ANZFA Act ensures ANZFA's standards setting processes are not only transparent and consultative but also constrained by certain time limits. The time limits imposed have led to significant improvements compared to the food standards arrangements in place before ANZFA was established and, according to ANZFA, are often faster than similar processes overseas. In addition, in limited situations, determined on a case-by-case basis, ANZFA uses fast-tracking provisions.

Nevertheless, it would be appropriate for ANZFA to review its processes to ensure that efficiency gains are passed on to agrifood businesses. Some of these reforms may require legislative change and an opportunity is available to link these to legislative changes required as a result of the national competition review of the ANZFA Act (as discussed later in this report).

Further consideration of ANZFSC's role is also warranted. It may be more efficient, and thereby reduce turnaround times for standards, if ANZFSC's role was to set overall policies and strategic directions and to make decisions on major standards issues, consistent with government policies and international obligations. Standards matters of a more technical nature, such as additives, MRLs and MPCs could be decided by ANZFA consistent with the strategic direction set by ANZFSC and in keeping with ANZFA objectives and international obligations.

The Part 3 arrangements in the ANZFA Act were set up to ensure an open and consultative process—in streamlining its procedures, ANZFA should not compromise its need to consult appropriately with affected parties on the impacts of new or amended food standards.

### **Recommendation**

17. ANZFA and ANZFSC should:

- a) streamline its standards-setting process, wherever possible, without compromising its ability to consult appropriately on the impacts of new and amended standards;
- b) proceed with its review of the *Food Standards Code* to be completed as scheduled at the end of 1999, to ensure inappropriate prescriptive food standards are removed; and
- c) adopt the principles in Recommendation 2.

### **Implementation strategy**

ANZFA should report to ANZFSC as a matter of priority on actions that can be taken to streamline its procedures. This could include investigating ANZFA's administrative and legislative arrangements, as well as the role of ANZFSC itself.

## **Integrated monitoring and surveillance**

There has been an increase in the incidence of food-borne illness worldwide. The groups most vulnerable to food-borne illnesses are young children, the elderly, the immuno compromised and people of low socio-economic status. While food-borne illness outbreaks attract great attention, little is known about the true level of incidence in Australia. Current estimates suggest there could be around 2.1 million cases of food-related illness per year in Australia (ANZFA, 1998b).

The current food-borne illness surveillance system is not implemented consistently between States and Territories nor does it systematically link with other measures of either food-borne illness or food safety. Hence, accurate measures of the impact of food-borne illness in Australia are not possible. It is widely agreed however that the impact on industry, the community and government are significant particularly in terms of morbidity, mortality, economic loss and effects on trade.

Other food safety issues such as the potential chronic effects of contaminants including arsenic, lead, cadmium, agricultural and veterinary chemicals and mycotoxins affect public health. In an atmosphere which fosters innovation in the food industry and in which societal pressures are forcing radical changes in eating habits, knowledge of the nutrient content of foods and changing dietary patterns is also an important aspect of maintaining public health.

### **Role of monitoring and surveillance**

Monitoring and surveillance for food-borne illness and food safety serves a number of vital purposes, since it:

- is an indicator of the integrity of the food safety system;
- provides valuable baseline data, when combined with uniform controlled auditing, from which trends in food safety and composition can be established;
- provides adequate information for the timely detection of disease trends and provision of an early warning system for potentially important disease events including emerging diseases and resistant pathogens;
- supports benchmarking and accountability processes along the food supply chain to allow quality development and review of public health policy, regulatory action and outcomes including targeted food safety programs and food safety control systems such as HACCP;
- provides the scientific foundation on which risk management decisions can be based, evaluated and modified; and
- provides reassurance to overseas and domestic customers of the quality and safety of Australian foods.

Government and industry surveillance of food-borne illness, zoonotic and animal diseases combined with data from food product surveillance for microbiological, chemical and other contaminants can be used to generate a comprehensive food safety database.

Food safety is a complex matter that depends on a number of interrelated environmental, cultural and socioeconomic factors. The purpose of epidemiology and surveillance is to define those factors, how they interact and their relative importance in food-borne infections. The tools epidemiologists use to study food-borne disease include surveillance of specific infections in humans, monitoring of contamination with specific pathogens in foods and animals, intensive outbreak investigations, collecting reports of outbreaks at the regional level or national level, and studies of sporadic infections. With sufficiently elaborate systems of surveillance and investigation, it is possible to provide quantitative risk data, for food-borne diseases that will permit the wisest allocation of food safety resources (WHO, 1997).

Research is important to our understanding of food-borne illnesses and to develop and assess the effectiveness of food safety programs and policy. To assess the safety of various food commodities we need to know more about the hazards in these products and their relation to adverse health outcomes. Research into food-borne pathogens and food contaminants must be broad to address information needs at all points along the paddock to plate continuum. Research should particularly focus on current gaps in knowledge.

The research agenda should also be guided by the international recognition that food safety policy be based on risk assessment. Risk-based assessment inclusive of strong scientific evidence through surveillance and research from paddock to plate, can provide valuable information about Australia's food safety system. It also ensures that countries, including Australia, establish scientifically sound food safety policies and provide a mechanism for making informed comparisons of food safety between trading partners.

### **Problems with the current system**

Currently, food-borne illness and food safety data in Australia is collected from a range of disparate sources. This occurs through DHFS, ANZFA, DPIE, the States and Territories, industry and enterprises, public health and other laboratories. Some of this data is collected nationally and in some instances in conjunction with New Zealand. Further details are provided at Appendix E.

The current monitoring and surveillance 'system' does not provide timely, comprehensive, systematic and integrated information to governments, industry and consumers in a manner that enables appropriate public health and safety action to be taken.

Businesses also require information about the food safety and integrity hazards that affect their business and information about the avoidance action they should take.

Existing data, with regard to identifying particular control point failures in food production, is limited. It also lacks links to other surveillance systems across the food production chain, including animal surveillance systems.

Australia has a passive system of food-borne illness surveillance which does not provide early warning of disease outbreaks or trend analysis. Compounding these problems are a lack of coordination, resourcing and public health infrastructure with which to establish active surveillance systems.

The fragmented nature of the current system can be attributed to consumers infrequent reporting of food-borne illness incidents to general practitioners, a general lack of laboratory isolation data, a lack of epidemiological studies and population-based surveys to determine more accurate levels of morbidity. Inconsistent notification requirements between the States and Territories contributes to a lack of timeliness in identifying related episodes of food-borne illnesses or national trends. Overall, the system lacks the sensitivity to detect clusters of illness, cannot detect specific serogroups of pathogens and does not provide information on risk factors.

Currently, risk assessment is a very ad hoc process conducted by various bodies with an inadequate evidence-base and insufficient communication or coordination.

Baseline data in all aspects of surveillance along the food supply chain is lacking. Correction of this deficiency is paramount to the success of the system, as baseline data determine the degree of risk and the subsequent need for regulation or alternative approaches.

Food safety database development in Australia is at a very rudimentary stage. While some attempt has been made, by a limited number of jurisdictions, to aggregate surveillance data, it is often incomplete as mechanisms for sharing information between government and industry programs are insufficiently developed.

In addition, there has been little critical analysis as to what information is available, so monitoring has been of end results rather than the means to an improved understanding of the food safety environment.

### **Suggested improvements**

Foods may become contaminated at any point along the food supply chain. Initiatives to protect the food system need to focus on the hazards and foods that present the greatest risks to public health and develop and implement preventive controls of those risks. We should seek, where possible, opportunities for such controls through collaborations with various governments, industry sectors and other stakeholders. Information about the cost of food-related illness and the impact of regulation on food-related illness are prerequisites for developing effective food regulation.

Some fundamental changes must take place to achieve this. These changes should include:

- focusing surveillance through a national integrated surveillance and monitoring system;
- establishing greater intersectoral communication and collaboration;
- establishing appropriate infrastructure, support, data systems and nationally uniform legislation to improve the capacity for surveillance and reporting of food-borne illnesses; and
- using research to provide baseline data and sound scientific evidence upon which to base system improvements, interventions and best practice.

Food-borne illness surveillance should be further integrated with other food safety monitoring and surveillance activities along the food supply chain. This will require governments and industry to work together to develop mechanisms for suitable information sharing to better meet government, industry and consumer needs.

To ensure Australia successfully competes in the world food market the current passive system of surveillance needs to be strengthened by building up national infrastructure and implementing active surveillance systems. In particular, we will need population-based studies to provide much needed baseline data about the incidence of food-borne illness and the possible chronic effects of food contaminants, the epidemiological links among outbreaks of food-borne illness, and the relationships that may exist between outbreaks and the types of food commodities or products consumed. These studies can also quantify the degree of under-reporting of food-borne illness and, therefore, help interpret national passive surveillance data.

Epidemiological data are needed for a variety of reasons, namely informing public health authorities about the nature and magnitude of food-borne illnesses and their epidemiology, for the early detection of food-borne disease outbreaks, and for the planning, implementation and evaluation of food safety programs. Thus, epidemiological surveillance is fundamental to any food safety program (WHO, 1997).

As well as epidemiological studies, other areas of research that should be considered include:

- developing more rapid and sensitive laboratory methods for diagnosing pathogens such as *Salmonella*, *Campylobacter* and enterohaemorrhagic *E. Coli*;
- collecting pre-harvest (on-farm and pre-slaughter) pathogen data to encourage development of preventive controls at the animal production level;
- conducting microbiological baseline studies for various animal species and the relationships between various husbandry practices and the levels of these microorganisms;
- establishing the relationship between the numbers of low bacteria on raw product and food borne illness; and
- examining world best practice models for microbial risk assessment and developing a consistent framework for Australian industries.

National systematic risk assessment methodologies, underpinned by appropriate surveillance and research, are needed to improve the scientific basis for establishing food safety programs, standards and policies.

### **Recommendations**

18. The governments of Australia should, as a matter of priority, integrate the systems of food monitoring and surveillance from paddock to plate.

This should include, where necessary, strengthening the current food-borne illness, food safety and food production surveillance systems; and improving linkages, in partnership with government and industry, which

will deliver improved information on food safety hazards to governments, industry and consumers.

19. Relevant government agencies and research and development corporations should give priority to research to support food safety initiatives.

The research agenda should be driven by, and the outcomes inform, food safety programs, monitoring and surveillance, research and development and evaluation. There is also a need for strategic investment to improve identification of emerging food safety issues.

### **Implementation strategy**

ANZFA, DHFS and DPIE, in partnership with other key stakeholders from government and industry, collaborate to identify and develop strategic monitoring and surveillance information, systems and linkages.

The Commonwealth, States, Territories, industry and consumers identify strategic research priorities in the area of food safety. This work to be facilitated by ANZFA in partnership with the key stakeholders.

The various research and development corporations should be encouraged to facilitate and participate in this, including the initial 'stocktake' work.

## More effective communications

### Risk communication

While there is a need for more research and better data collection, business needs better access to existing knowledge. Much of the information about food safety hazards is not easy for businesses or consumers to access and is difficult for non-specialists to understand.

Businesses require good information about the hazards that affect their businesses: and good information about the action they should take to avoid those hazards. Without this, businesses face the prospect of injuring consumers, potential litigation or other court action and damage both to their business reputation and that of their entire industry.

Policy makers require similar information when developing regulations and industry guidelines. Information would also help increase consumer understanding of food safety risks and improve confidence in the agrifood market.

This points to the need for improved risk communication—an interactive exchange of information and opinions concerning risk by all stakeholders.

A pre-requisite for good risk communication is for the current and emerging information to be collected and collated; phrased in a simple and understandable manner and made accessible. Some agencies are doing this at present. For example the Bureau of Resource Sciences carries out this function for the primary industries portfolio. ANZFA has published a variety of guidelines and pamphlets on some issues and has plans to publish this type of information on the internet. State Departments of Health, local governments and industry associations have also produced pamphlets, videos and other material.

However, efforts to collate and disseminate information have been constrained by available resources and the priority assigned to these functions.

As a result, published information is patchy and incomplete. There is no central repository for information or a well-developed mechanism for links between pieces of information. Very little of the information is on the internet and business is unaware of how to access the information that is already available.

A recent and laudable example of how industry and governments can work together to improve food safety knowledge is the work of the industry/ government Food Safety Campaign Group.

### Recommendation

20. Food regulatory agencies should give high priority to food safety education, including information on food safety risks.

### Implementation strategy

Information about food hazards, risks and ways to minimise risks be published

through booklets, seminars, the world wide web and other media. Publication to be coordinated so information is linked and accessible.

Food regulatory agencies, to develop a strategy with performance indicators for food safety education and report annually to Ministers.

### **Access to the regulatory system**

Business people often find it difficult to distinguish between the roles and responsibilities of different government agencies and spheres of government: from the business perspective, all government requirements tend to merge.

Agrifood businesses share the general obligations to register their business names (State Consumer Affairs Offices) or register as a company (Australian Securities Commission); register workplaces (Occupational Health and Safety agencies); register for tax purposes (Australian Taxation Office and State Revenue Offices); etc. They may occasionally also have to deal with the ACCC.

Agrifood businesses also have to deal with a number of special regulations and standards which cover buildings and premises, food hygiene, food content and processes, waste disposal, labelling, health claims, adulteration and weights and measures. The interactions and transactions of agrifood businesses with the regulatory system encompass obtaining and giving information, making applications, filling in forms, paying fees and licences, being inspected or audited, and changing plans, procedures or premises in response to government requirements.

Agrifood businesses complain that the current regulatory system is confusing and contradictory. They are told different things by different people (even people from the same agency) and they still have to deal with several agencies with consequent costs in time and money.

There is substantial evidence to suggest that small business wants a 'one-stop shop' where all business transactions with all spheres of government can be conducted and information exchanged. The concept of a one-stop shop is supported by the report of the Small Business Deregulation Task Force, *Time for Business* and by the Mortimer Report.

In a recent survey, by the Single Entry Point Task Force, 74 per cent of firms surveyed believed that establishment of a business entry point would be more worthwhile than any other form of compliance improvement. Respondents to the survey also suggested that potential savings to individual businesses (of all kinds) from a single business entry point would be significant.

Two principles should guide transactions between governments and business:

- the number of contacts should be limited to those necessary for each business to obtain the information it requires; and
- the time spent on transactions with government (including finding out who to talk to, travel, filling in forms and waiting) should be the minimum necessary.

These principles would reduce expenses for both business and the total expenditure by governments (taken as a whole) on those transactions. The principles also suggest some ideal features for systems to manage those interactions. Such features should include:

- transactions (forms, fees, etc.) to be consolidated as far as possible;
- interactions (contacts, meetings) to be consolidated as far as possible, i.e. contact made for the enquirer/applicant rather than simply redirecting the enquirer;
- the system and access points to be highly visible and well advertised;
- many access points available;
- several different ways to access the information and make requests of the system depending on the nature of the transaction (e.g. internet access for simple information needs);
- information and forms to be easy to read and understand;
- information to be up-to-date;
- information about changes to requirements to be distributed to the relevant businesses; and
- regulatory authorities to be able to use the system to provide the service themselves, or to extend their own services.

An integrated transaction model provides many of the features outlined above for the ideal system. It utilises a coordinating agency which ‘manages’ all or most of the transaction with a business on behalf of other government agencies (‘clients’). The role of the coordinating agency is to facilitate and mediate a business’s interaction between governments and business and reduces the time spent transacting with government. Other government bodies and regulatory agencies delegate specific authority to the coordinating agency. Complicated transactions and decisions are referred to the responsible agency through the coordinating agency. The integrated transaction model has the potential to generate substantial savings to both government and business which can be offset against the cost of running the service.

The existing Business Information Services (BIS) and Business Licence Information Centres (BLIC) provide some of the ideal features.

However, while work on including food regulations in BIS is proceeding in the States and Territories, most of the regulations specific to agrifood businesses are not yet well covered by the systems.

Other limitations of the current BIS are:

- awareness of the systems could be greater in the business community;
- access is generally limited to telephone;
- it is not yet widely available on the internet;

- if a business approaches an agency (other than BIS) that agency may be unable to handle the transaction; and
- the system is reactive and does not distribute information about changed requirements.

In December 1997 the Commonwealth Government agreed to fund development of a whole-of-government Business Entry Point (BEP). BEP is intended to provide a simple-to-use channel for information and transactions between business and governments in all jurisdictions. Funds for Phase 1 of BEP were provided in the 1998–99 Commonwealth Budget.

BEP needs to be extended to include food regulatory information as a matter of urgency. The computer systems which underlie BIS should be made accessible through the internet where that has not already been done. Regulatory authorities (including local government) could be offered staff training and access to the computer systems so they can act as BEP agents and add in their own requirements where appropriate. There could also be links between the information about regulatory requirements and the information about hazards discussed in the preceding section.

Much of the information businesses need about regulations is also demanded by other interested parties that have a similar perception of the complexity and confusion of the regulatory system and would also appreciate easier access to regulatory information.

### **Recommendation**

21. The Business Entry Point programs should take steps to include food regulation in their information and licensing systems in a way which:
  - uses a single coordinating agency to manage the system on behalf of other government agencies;
  - allows for direct electronic access such as, through the internet, operator assisted transaction or personal contact;
  - allows for other bodies such as local governments to act as agents of the coordinating agency and to use the system to include information about their own requirements; and
  - is open and accessible to consumers and industry and is advertised widely.

### **Implementation strategy**

The Business Entry Point program and the bodies involved in putting food safety information on the internet agree on a process for linking regulatory information on the internet and the information about hazards that is published on the internet.

## **Participatory structures and processes**

Business, particularly small businesses and primary producers, complain that many government policy decisions that affect their business do not reflect the real risks or commercial realities inherent in that business. Small businesses report their voices are not heard when policy decisions are made that directly affect their profitability and livelihood.

One way of addressing this complaint is to increase representation by those businesses on the decision-making bodies. A second approach is to enrich the process of decision-making by seeking input from stakeholders through consultations, surveys, focus groups, reference groups, advisory committees, etc.

There are a number of initiatives for stakeholder participation in food regulation. The Victorian Meat Authority, the Australian Wine and Brandy Corporation and the new industry-owned corporations for the meat industry are all models of regulatory authorities in which stakeholders participate in electing the Board. However, care must be taken to maintain accountability to governments for expenditure of public funds.

It is critical to good policy that the perspectives of all stakeholders, including small business, consumers and larger enterprises, be canvassed. It is also essential that business sees it has been consulted and its perspectives reflected in the decisions made.

The choice about the way stakeholder views will be canvassed will depend on the decisions being made. In some cases the decision-makers may want advice on specific issues or decisions. On-going issues might best be served by an advisory committee. Issues that occur occasionally might best be supported by reference groups or other consultation mechanisms. The regulatory impact statement process requires consultations when new regulation or legislation is being proposed. However, only a few food agencies are required, by law, to conduct consultations for other policy decisions.

### **Recommendation**

22. All food regulatory agencies should review their policy-making processes to ensure consultations are rigorous and the perspectives of all relevant stakeholders are considered.

### **Implementation strategy**

Food regulatory agencies report the outcomes of the reviews to Ministers.

## **Complaints and appeals**

Most regulatory authorities have some process for dealing with complaints about unsafe food or appeals about requirements or sanctions imposed. Businesses consulted during the review were often unaware of the appeals processes. It appears

that appeal provisions are not effectively advertised despite the requirements to do so in customer charters within some jurisdictions.

Complaints about agrifood businesses are often made to the local council or the State or Territory Health Department or to Meat or Dairy authorities. The regulatory authority may then investigate the complaint and impose a sanction if a fault is found.

However, a few businesses and consumers reported some complaints did not appear to have been taken seriously and often it did not appear as if any action had been taken. Consumers reported difficulty identifying the appropriate body for complaints.

More significantly it was reported that if no action was seen to be taken about the incident, consumers felt cheated. Consumers do not see the courts as a valid option. It is often difficult to establish negligence or to quantify the extent of damage caused. In any case, consumers said they were less interested in getting financial compensation and more concerned with recognition of the trauma they may have suffered, an assurance it will not happen again and relevant punishment.

In *More Time for Business*, the Prime Minister announced a requirement for Customer Service Charters in all Commonwealth government agencies. Regulatory authorities should draw from the publication *Benchmarks for industry-based customer dispute resolution schemes* (DIST, 1997) to upgrade their complaint and appeal mechanisms. A private sector publication, *A National Standard on Complaints Handling AS 4269–1995*, might also provide guidance. It lists the following elements as essential:

- commitment to efficient and fair resolution;
- fairness;
- adequate resources;
- visibility of the processes to customers and staff;
- access to all;
- assistance available to formulate complaints;
- responsiveness to complaints;
- responsiveness to complainants;
- no charge to complainant (subject to statutory requirements);
- capacity to determine and implement remedies;
- systematic recording of complaints and their outcomes;
- identification and rectification of systemic and recurring problems;
- accountability and reporting; and
- regular reviews to ensure that the complaints handling system is efficient and effective.

### **Recommendation**

23. All food regulatory agencies should review and upgrade their existing complaint and appeal mechanisms. Relevant guidance may be found in *Benchmarks for industry-based customer dispute resolution schemes* (DIST, 1997) and standard *A National standard on complaints handling* AS 4269–1995.

### **Implementation strategy**

All food regulatory agencies report to Ministers on outcomes of the reviews.

### **Information about food products**

The biggest consumer demand for information is for accurate information about the food they purchase (ingredients, including additives, processes used, country of origin, etc.). The information demands are different for different consumers.

The *Food Standards Code* sets standards for labels and advertising covering issues including: date marking, language used, country of origin, type size and ingredients.

The State and Territory Food Acts have provisions which deal with misleading advertising, adulteration of products and which ensure food is ‘fit for the purpose’ for which it was sold.

The Trade Practices Act and State Fair Trading legislation also have ‘fit for purpose’ provisions and provisions about misleading and deceptive conduct.

Consumers complain that, despite the regulations, labels and advertising can be misleading or do not convey meaningful information. It is also reported that the overall impression food labels give is sometimes at variance with the small print on the label.

Consumers complain that there is often insufficient information about products, particularly for people who have uncommon information requirements (e.g. a rare intolerance to a specific ingredient). These varied information demands cannot be met entirely through labelling provisions partly because many products are not packaged (e.g. restaurant food) and because of the extremely wide range of information requirements.

Many larger companies have food product information services but these may not be viable for smaller operations.

The Committee supports food industry actions to ensure consumers get the information they need in relation to the food they consume.

## Resourcing arrangements

### Principles for cost recovery of government goods and services

All government programs are funded from one of two sources—either through budget appropriations from general revenue or by specific fees, charges or levies.

Since the early 1990s, Australian governments have periodically articulated the principles of ‘user pays’, ‘cost recovery’ and ‘contracting out’ of government services. The Commonwealth’s most recent statement of these principles is contained in *Guide to Commercialisation in the Commonwealth Public Sector*, Department of Finance, July 1996.

Generally, the Commonwealth, State and Territory Governments now accept that some or all of the cost of government goods and services which traditionally have been provided ‘free’ (i.e. through the ‘public purse’, without direct charge to the user or consumer) should be fully or partially recovered by government agencies through user-charging if:

- *there are no public interest or equity reasons not to attach charges to the goods or services being produced;*

where goods and services have elements of private and public benefits, such as health and education, partial cost recovery may be a more appropriate form of charging.

- *the direct beneficiaries of the goods or services can be identified;*

if a particular sector can be identified as directly benefiting from regulation, or the benefits are captured primarily by the regulated organisations or the purchasers of goods and services provided by those organisations, then the costs of regulation should not be borne wholly by the community.

- *charging for the goods or services is feasible and cost-effective;*

where the beneficiaries are very diffuse, it may not be cost-effective to introduce charging; and, the net benefits of regulation must be greater than or equal to the charge or levy.

- *users are able to influence their level of consumption;*

the user of a previously ‘free’ good or service should be able to exercise some control over the quantity they consume and, if possible, can choose an alternate source of supply of the same or similar goods or services.

Notwithstanding the above, the public interest may require a monopolistic supplier which stipulates the services it provides, e.g. regulatory services, such as quarantine or aviation safety.

### **‘Public interest’ and ‘private benefit’ components of food regulation**

The public interest component of any government program refers to benefit which accrues to the community as a whole, rather than to directly identifiable beneficiaries. Protection of public health and safety and other consumer protection issues is largely a public good.

Food-borne illness directly affects consumers, the relevant firm, related sectors of the food industry and the retailers at the end of the food supply chain, as well as food exporters who rely on the international reputation this country has for being a producer of safe food. Costs to the public health care system, and to the hospitality and tourism industry, can be significant.

The public interest components of food regulation include additional export earnings and employment growth through increased access to the global market, reduced medical costs, Australia’s continuing popularity as a tourist destination, and the economic spin-off benefits for other industries.

The benefits of regulations are shared by both business and consumers ... Consumers pay by way of taxes (federal and State involvement), rates (local government involvement), and as part of the businesses’ final price for the food. Industry pays by way of structural requirements, inspection costs and the cost of safe operational procedures.

*Redland Shire Council, submission number 95 page 3.*

... Costs to the industry are also created when the regulatory system does not keep pace with technological advances. The marketing of (new) products cannot occur until the regulatory system catches up ... Twelve months to introduce a new product is too long.

*Nestle Australia Ltd, submission number 93 page 3.*

However, in many situations, food regulations provide either a direct or indirect benefit to the food industry through improved consumer confidence in the safety of the food.

### **The ‘free rider’ effect**

The term ‘free rider’ refers to the situation where there is no effective way for an individual or organisation to exclude other individuals or organisations from enjoying the benefits of a good or service they purchase for themselves. For example, a business might decide to lease additional parking spaces in a shared parking lot for its customers’ convenience, but adjacent businesses might also benefit if there is no effective way of preventing other customers from using the car park.

The free rider effect prevents ANZFA conferring a benefit upon a sole beneficiary because it is authorised to create or vary a food standard which then applies to all food manufacturers or businesses.

However, TGA approval confers the right to market, manufacture, import or export a product upon any successful applicant, subject to other laws (e.g. patents) which TGA does not administer, or consider in the evaluation process. TGA approval does not confer proprietary rights to a sole beneficiary, individual or firm.

In summary, industry applicants do not gain proprietary interest or right from a food standard. From industry's perspective, the standards setting procedures impose costs in terms of opportunity costs, lost competitive advantage, and time and money spent dealing with the bureaucracy. These costs would be compounded if fees were imposed only upon applicants seeking changes to the *Food Standards Code* since the resulting (new or amended) standards will apply to the whole industry.

### **Current charging arrangements**

The importance, size and diversity of the agrifood industry largely accounts for the complex regulatory framework that has evolved around it. Other key factors are the changing rules of world trade in an increasingly global economy; Australia's federal and constitutional system; and the increased pressure in all spheres of Australian government to reduce resource consumption and withdraw from or contract out the provision of 'non-core services'.

For these and other reasons, there is inconsistency in the resourcing of and charging for food regulation activities in Australia.

### **Cost recovery at the Commonwealth level**

Within the Commonwealth, the main regulatory agencies concerned with food are AQIS, the NRA, DPIE, and ANZFA.

AQIS has moved, in recent years, towards a full cost recovery charging regime for its inspection services. NRA is almost fully funded for its compliance and licensing activities relating to registering agricultural and veterinary chemicals through a levy on agricultural and veterinary chemical product sales and from fees for registration, re-registration and permits.

Of the 50-plus pieces of legislation DPIE administers which provide for levies on primary products, almost 20 pertain to the NRS conducted by the Bureau of Resource Sciences which monitors chemical residues in 23 primary industry commodities to ensure they meet both domestic hygiene and export certification requirements. The NRS is therefore fully funded by industry.

In contrast, ANZFA remains fully budget-funded: however, in 2000–01 its current funding level is to be reduced considerably. In 1997, in response to the Federal Government's proposal to introduce cost recovery for the food regulatory process, ANZFA appointed a consultant to investigate funding options. A number were identified, as were the practical difficulties of obtaining funding from industry for ANZFA's standard-setting activities.

... even at the lowest level (of charges), the prospects of raising significant revenue in practice would not be high and the discouragement to the ... ongoing update and modernisation of the standards would be inimical to the public health and safety objectives embodied in the ANZFA Act. Moreover, there would be issues of equity and practicality ... (ANZFA, 1997a)

ANZFA's work is becoming increasingly complex. Industry is using more advanced technologies and consumers are demanding new and innovative foods. This is placing extra pressure on the food standards system. Issues such as irradiation, genetically

modified foods, novel foods and health claims will have an impact on ANZFA's resource requirements. There are a number of options open to ANZFA including budget supplementation, selling some services, or introducing a broad-based levy.

ANZFA's counterpart agency in the Commonwealth Health and Family Services portfolio, the TGA, evaluates proposals for marketing, manufacturing, importing or exporting drugs and other therapeutic goods (mainly, medical devices) for public health and safety reasons. The federal Government has required the TGA to increasingly recover its costs since 1992, and it is required to move to 100 per cent cost recovery from 1998–99.

The food industry perspective is that TGA approval relates to specific products or classes of products, generally protected by patent or licence, and their ability to perform designated therapeutic functions, while food regulation is intended to ensure only that all foods within broad product groups meet minimum public health and safety and information requirements.

In short, the costs of any attempt to impose charges on companies for the food regulation process, except for contestable food hygiene and safety services and in very limited circumstances of exclusive and capturable benefit, will almost certainly outweigh any benefits, and the collection costs of any equitable system would substantially outweigh the income which would be collected.

*Australian Food Council, response to the Draft Report, pages 4-5.*

### **State and Territory government arrangements**

State and Territory governments have differing arrangements for agrifood businesses in relation to licensing, registration and inspection requirements, and hence differing cost recovery levels. For businesses, these arrangements are further complicated by the real or perceived duplication between the various health, primary industries, environmental protection and/or fair trading agencies, and the industry-specific statutory marketing authorities.

### ***Local government resourcing***

Within local government, there are differences in the priority accorded (i.e. resources allocated) to enforcing food regulations, as well as differences in the charges and criteria for, and frequency of, inspections. In most States, local governments have a statutory limit on the extent to which they can increase Council/Shire rates to fund their services. This is commonly referred to as 'rate capping' or 'rate pegging'.

As the pressures on local government resources have increased, so too has food safety become more of a problem, due to the increased number of agrifood businesses and the expansion of local EHO responsibilities.

Some local governments have responded to these budget pressures by implementing fee-for-service charges for inspection of food premises. While this funds (in most cases only partly) regular inspection, there has been a reduction in resources available for education and extension services. This aspect of local government EHO work is much valued by small and micro agrifood businesses and non-commercial operations such as charity stalls. These premises often present high risks to public health. EHOs

report they have become more reactive and less proactive in managing food safety risks and this is seen as detrimental to food safety outcomes.

### **Summary of cost recovery arrangements**

In all spheres of government there are pressures to limit consumption of public resources in an era of increased complexity and demand for services. Whilst there are no easy solutions, there is a need to provide improved services at lower costs to both government and industry.

It is suggested that any further cost recovery from industry is introduced only after full evaluation of the benefits and costs resulting from the new and improved regulatory arrangement.

### **Future resourcing**

The package of reform measures proposed in this report provide the potential for significant medium- to long-term cost savings to government. These savings should be passed on to the agrifood industry, either directly, through reduced fees and charges, or indirectly by reduced compliance and paperwork burden.

The proposed arrangements present opportunities for governments to explore changes to existing cost sharing arrangements between governments, particularly in light of the need for improved accountability and specification of service delivery agreements.

If, following implementation of these measures, there remains a need for government to resort to any new cost recovery arrangements, this should be guided by the following principles (which were discussed earlier in this report):

- there are no public interest or equity reasons not to attach charges to the goods or services being produced;
- the direct beneficiaries of the goods or services can be identified;
- charging for the goods or services is feasible and cost-effective; and
- users are able to influence their level of consumption.

Furthermore, governments, and food regulators in particular, should continue to seek to streamline administrative and compliance arrangements to reduce the burden on the food industry.

## Review of the ANZFA Act against National Competition Principles

The ANZFA Act was scheduled for review against the national competition principles, as set out in the competition Principles Agreement, in 1998–99. To streamline this process the Federal Government decided to bring this forward to coincide with the broader Food Regulation Review.

The Committee is required to investigate and report on those parts of the ANZFA Act which restrict competition, or which impose costs or confer benefits on business. The full terms of reference of this review are included at Appendix A.

It has been necessary to review the Act as it is presently constructed, however, several of the preceding recommendations could require further changes to the ANZFA Act. For instance, the ANZFA Act could form the basis and the enabling provisions of the proposed nationally uniform food laws.

The ANZFA Act was enacted in 1991 as the National Food Authority Act. Its principal role was to establish a national body to develop and review food standards for State and Territory Governments to adopt by reference and without amendment.

ANZFA's principal function, as set out in Part 3 of the ANZFA Act, is to develop and review the standards relating to food available in Australia. ANZFA is not responsible for either implementing or enforcing food standards; its role is to develop and review standards and to make recommendations to ANZFSC.

Food standards prescribe a range of matters that relate to food composition, use of additives, production, storage, maximum levels of environmental contamination including heavy metals and pesticide residues, labelling and packaging. The legislation sets out a detailed procedure for developing new food standards or variations to existing food standards.

On 13 July 1991 the Commonwealth, States and Territories agreed to implement food standards under State and Territory food legislation, by reference and without amendment once adopted by ANZFSC. It is in this way that national uniformity is achieved. The 1991 Agreement provides for limited departures from national food standards because of exceptional environmental conditions not presenting any public health or safety risk, or in emergency situations effecting public health and safety.

In December 1995 an Agreement between Australia and New Zealand was signed to establish a system for developing joint food standards and an Australia New Zealand Food Standards Code. It is intended that food standards ANZFA develops and which ANZFSC approves will be adopted throughout Australia as well as in New Zealand.

The Australia–New Zealand agreement requires each member State and Territory to take legislative or other steps to adopt, without reference, food standards that are:

- a) prepared and recommended by ANZFA to ANZFSC, and
- b) adopted with or without amendment by ANZFSC, and
- c) publicised in the *Commonwealth Gazette* and the *New Zealand Gazette*.

The Agreement provides limited power for each member State and Territory to amend food standards where there are exceptional health and safety or environmental reasons for separate food standards. As well, New Zealand can vary a food standard for reasons relating to third country trade or cultural factors providing such a variation does not create a barrier to trade unless exceptional health, safety and environmental concerns exist.

Part 3 of the ANZFA Act contains 29 separate provisions dealing with developing and varying standards. Standards may be developed as a result of an application to ANZFA (Part 3 – Division 1) or on ANZFA's initiative (Part 3 – Division 2). Part 3 contains an extensive regime of public consultation and provision is made for administrative review of certain ANZFA decisions.

### **Problems with ANZFA Act**

To review the ANZFA Act it is necessary to consider the nature of the problems which led to introducing the legislation and to assess whether the ANZFA Act has addressed those problems and is providing net benefits to the community.

In the second reading speech to Federal Parliament, when the ANZFA Act was first introduced in 1991, the then Minister for Aged, Family and Health Services, Mr Peter Staples referred to the need for reform of the food regulatory system and stated:-

The industry was examined by what was then the Industries Assistance Commission (IAC) in October 1988.

The IAC's final report agreed that the current system of food regulation was a significant impediment to the development of an efficient and competitive industry in Australia—that is to the development of our export industry. Similar conclusions have been reached in a series of reports by the Business Regulation Review Unit.

The IAC concluded that current administrative mechanisms were costly in terms of time and resources and had reduced the efficiency and competitiveness of the Australian food industry through increased costs and impediments to product innovation and adoption of new technologies.

Moreover, difficulties with the current standards and their administration were impeding gains in public safety and consumer protection sought by the community.

The November 1988 report, *Food Regulation in Australia*, prepared by the Commonwealth Business Regulation Review Unit (BRRU) and the Victoria Regulation Review Unit (RRU) not only criticised the content of food standards but expressed concern about administrative structures in food regulation. The report stated:

Commonwealth/State cooperative arrangements for setting food standards are well developed and have been successful in achieving some modest reforms. Nonetheless the machinery is cumbersome and under-resourced.

In its conclusion, the BRRU/RRU report stated:

In judging the current system of food regulation in Australia, in light of the principles outlined above, a number of points bear repeating:

1. The system lacks a clear overriding objective and has failed to consider adequately the costs of regulation.
2. Regulations have not been the minimum necessary to achieve the objective and there has been an over reliance on highly prescriptive regulations and under-use of codes of practice.
3. There is also a degree of duplication, redundancy, inconsistency and lack of coordination.

The Inquiry considers that incremental reforms involving marginal variations of the status quo to be an inadequate response to the regulatory problems confronting the food industry. The Inquiry also believes that decision-making and change should be policy oriented and not simply reactive.

The December 1989 report, *Food Processing and Beverage Industries*, by the IAC was critical of the administrative arrangements for developing and reviewing food standards. The IAC found that while many attempts had been made to streamline administrative arrangements which support Australian food laws, the review processes remain both costly and lengthy. The IAC stated:

Nevertheless the approval process for adopting or modifying food standards is costly in terms of time and administrative resources. The Commission has identified three particular aspects that warrant attention: inadequate negotiation between committees and applicants; the inertia inherent in the consensus approach within committees; and the excessive number of stages in the process together with duplication of representation on the various committees.

It should be noted that while the IAC made a number of recommendations to address the shortcomings of existing administrative arrangements they did not go so far as to recommend establishing a single statutory body responsible for developing and reviewing food standards. Rather, the IAC's key recommendation was that the NHMRC should delegate its responsibility for advising the National Food Standards Council (NFSC) on food standards to the Australian Food Standards Committee.

Commonwealth, State and Territory Governments agreed, in 1990, to create an independent national body, comprising Commonwealth, State and Territory Ministers, to make recommendations relating to developing or reviewing food standards direct to the NFSC.

The Second Reading speech to the *National Food Authority Bill 1991* provides justification for establishing the National Food Authority (ANZFA's predecessor) due to the following problems associated with the then existing regulatory system:

- a lack of clearly defined objectives for food regulation, together with the lack of a single body with responsibility for driving the system and developing standards,
- complexities and rigidities which render the present system ineffective as responding swiftly to public health problems and innovations in food production technology, and
- deficiencies in the mechanisms for setting and reviewing food standards.

The explanatory memorandum to the Bill also set out the basic principles of the reforms being to:

- consolidate responsibility for domestic food standards development with a minimum number of decision-making layers;
- ensure uniformity between jurisdictions;
- establish objectives for food standards;
- promote coordination of domestic and international food standards;
- ensure an open and publicly-accountable arrangement which would allow input by interested parties and provide for public hearings where appropriate; and
- retain the involvement of the States and Territories in standards development and administration.

### **Objectives of ANZFA Act**

The Government-endorsed *Guide to Regulation* (Office of Regulation Review, 1997) states that:

The objectives [of the regulatory initiative] should not be specified so as to line up with (and thus pre-justify) the particular effects of the proposed regulation. Rather, it should be specified in relation to the underlying problem.

In the case of the ANZFA Act, while section 10 sets out ANZFA's objectives in developing standards and variations of standards (ANZFA's principal role), there is no provision in the Act which sets out ANZFA's overall objectives. By contrast, it should be noted that the *Competition Policy Review Act 1995* inserted, for the first time, the following object of the *Trade Practices Act 1974*:

The objective of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

The inclusion in legislation of objectives provides the following benefits:

- public transparency to ensure the content of regulation is consistent with the objectives which, in turn, should reflect the nature of the problems being addressed by the regulation;
- provision, to the administering agency, of a concise statement of its role which provides guidance in administering each of its particular functions;
- a basis for an administering agency to develop benchmarks against which it can measure its performance; and
- a level of public accountability by administering bodies.

Other than the direct costs of consulting with stakeholders and preparing an overall objective for the ANZFA Act there do not appear to be any other costs. Development

of an overall regulatory objective is a federal Government requirement and an important element of good regulatory practice.

### **Recommendation**

24. An objective should be included in the ANZFA Act, as follows:

‘The objective of this Act is to ensure that, by means of establishing and operating the Australia New Zealand Food Authority:

- a) there be effective protection of public health and safety and provision of information to consumers to enable informed choice;
- b) people enjoy the benefit of equivalent protection of public health in relation to food, wherever they live in Australia and New Zealand; and
- c) decisions of the business community are not distorted, and markets not fragmented, by variations between participating jurisdictions in relation to adopting or implementing major food regulation measures.

These measures give effect to Australia’s and New Zealand’s international treaty obligations and national cooperative agreements in relation to food.’

### **Objectives of Food Standards**

The 1988 BRRU/RRU report considered the role of food regulations should be largely confined to areas where governments have access to information and expertise which is not readily available to buyers and sellers. This view led to the conclusion that ‘the objectives of food regulation should be the control of food safety and for a limited range of nutritional objectives in the absence of which there would be clear health risks’.

The IAC’s December 1989 report into the food processing and beverage industries recommended repealing food regulations aimed at ‘subjective’ standards and those directed to preventing fraud and deception. The IAC considered these aspects either subjective or limiting the range of choice open to consumers, or were already adequately covered by general consumer protection laws.

However, when the ANZFA Act was introduced in 1991, [ANZFA’s] objectives in developing standards and variations of standards included not only that of protecting public health and safety but also other objectives. Section 10 of the ANZFA Act currently states:

Objectives of the Authority in developing standards and variations of standards

10. The Authority, in developing standards and variations of standards, must have regard to the following objectives in descending priority order:
  - a) the protection of public health and safety;

- b) the provision of adequate information relating to food to enable consumers to make informed choices and to prevent fraud and deception;
- c) the promotion of fair trading in food;
- d) the promotion of trade and commerce in the food industry;
- e) the promotion of consistency between domestic and international food standards where these are at variance.

In 1993, soon after its establishment, [ANZFA] set out, in its *Final Report of the Policy Review*, what the objectives of section 10 were meant to achieve.

**(a) Public health and safety**

In applying the objective of protecting public health and safety [ANZFA] notes that the role of food standards is to regulate individual foods or classes of foods and so to appropriately maintain compositional, nutritional and safety aspects of the food supply.

**(b) Adequate information**

In applying the objective of promoting informed choice and preventing fraud and deception [ANZFA] notes that the objective is generally satisfied by the mandatory inclusion of prescribed information in labels on or attached to food, in advertising or in signs displayed in connection with food, supported by information and education programs and materials that are designed to increase consumer knowledge and understanding and assist consumers in interpreting and applying this information.

**(c) Fair trading**

In applying the objective of promoting fair trading in food [ANZFA] notes that food standards are not the main means to prevent unfair or anti competitive practices but may promote fair trading by ensuring that standards do not favour one manufacturer or group of manufacturers over another.

**(d) Trade and commerce**

In applying the objective of promoting trade and commerce in the food industry [ANZFA] notes that the structure and content of food standards is of paramount importance and the approaches taken may hinder or facilitate trade and commerce.

**(e) Harmonisation with international standards**

In applying the objective of promoting consistency between domestic and international food standards [ANZFA] notes that it is required to consider the possibilities for the harmonisation of Australian standards with the standards of other nations and with the standards developed by designated standards bodies, such as the Codex Alimentarius Commission, when developing, varying and reviewing standards.

Following introduction of the ANZFA Act, a debate has taken place as to the appropriateness of the objectives for standard setting specified in section 10. An ACIL Economics Pty Ltd report to the Agri-Food Council Working Group on Regulatory Regimes expressed the view that section 10 should be amended to remove any ambiguity that its primary objective is to protect public health and safety. It stated:

Such an amendment would remove the need for other lower priority objectives apart from section 10(b) which is concerned with adequate information. Fair trading, the promotion of trade and commerce and harmonisation are irrelevant to determining

whether food is safe to consume, and ensuring consumers have adequate information on which to base choices. While industry and [ANZFA] might find these useful from time to time in considering standards, fundamentally they are not relevant to the safety/adequate information context (ACIL Economics Pty Ltd, 1993).

In its May 1994 response to the ACIL report, [ANZFA] stated that its prime objectives in setting standards are to protect public health and safety and to provide adequate information for consumers, but it is appropriate to give consideration to the secondary objectives of promoting fair trading, trade and commerce in food, and consistent national and international food standards.

In its submission to the Food Regulation Review, [ANZFA] commented on its objectives:

[ANZFA] considers that:

- its section 10 objectives have universal application to the entire food regulatory environment;
- restricting its section 10 objectives to one based solely on public health and safety would result in a food regulatory system that is risk averse, overly prescriptive, cautious in approach and trade restrictive. It would result in regulatory approaches being recommended that did not take account of trade, one of the principal criticisms of the old NHMRC system, which would, in turn, impose an unnecessary burden on industry, government and the community;
- the remaining objectives ensure that its recommendations also take into account the impacts on the food industry and international standards. This reflects the agreements of the State, Territory, New Zealand and Commonwealth Government when signing on to the Australia New Zealand Food Standards Setting System; and
- this multi-faceted approach guards against a regulatory environment which is narrowly focused, over cautious and reactive.

### **Revising Food Standards Objectives**

Having regard to the long ongoing debate between ANZFA and business concerning the objectives of food standards, there appears to be some common ground. Both acknowledge the relevance of the factors set out in section 10, but there are differing views as to whether it, in setting out a descending order of priorities, sufficiently differentiates between the weighting given to public health and safety and the other factors.

Two options have been explored. Firstly, there may be scope to amend section 10 to replace the existing approach, which lists factors in descending order of priority, with one which states that public health and safety is foremost, but that other factors should also be taken into account. This approach would also need to adequately provide for prevention of misleading and deceptive conduct as it specifically relates to food. (The Review has been advised that the term ‘misleading and deceptive behaviour’ is more appropriate, from a legal point of view, in relation to provision of information than is ‘fraud and deception’, which currently occurs in section 10.)

Secondly, section 10 can be reviewed in a way which takes into account the debate that has taken place about its content but which also considers other relevant

developments since the ANZFA Act was introduced in 1991. Such developments include the growth in international trade and approaches to regulation.

International obligations also need to be considered in the context of a competition review. International trade has grown in volume and importance since 1991 particularly in circumstances where tariff barriers have been reduced. The WTO Agreements, to which Australia is a signatory, impose certain obligations in relation to consistency between international and domestic standards. Two WTO Agreements are relevant to trade in food:

- the Agreement on the Application of Sanitary and Phytosanitary measures (SPS) allows member States to protect, amongst other things, human life or health from risk arising from additives, contaminants, toxins or disease-causing organisms in food and beverages; and
- the Agreement on Technical Barriers to Trade (TBT) which is not primarily health related, but deals with requirements concerning product characteristics or their related processes and production methods.

Accordingly, it is arguable that promoting consistency between domestic food standards and international food standards should not be the least important of five factors listed in section 10 of the ANZFA Act. In addition, Australia's international treaty obligations commit Australia to ensuring food standards do not have an adverse impact on trade.

The factors which refer to promoting fair trading and trade and commerce respectively appear excessive with the use of the word 'promotion'. It is the role of the Trade Practices Act and State and Territory Fair Trading legislation to promote fair trade. By contrast, it is arguable that, in developing standards under the ANZFA Act, 'fair trading' is a factor to be taken into account when considering the prime factor of public health and safety. The present inclusion, in section 10 of the ANZFA Act, of a stand-alone objective of promoting fair trade in food is a duplication of specific provisions contained in State and Territory fair trading legislation and the Commonwealth Trade Practices Act. On the other hand, if the element of fair trading was to be considered as part of the broader and more appropriate objective of public health and safety then no duplication of legislation would occur.

Consideration also needs to be given to whether any other factors should be included in section 10 of the ANZFA Act. In the 1993 Policy Review, ANZFA acknowledged that there is no such thing as absolute safety as there are inherent risks in everything. The Review stated that ANZFA, in its approaches to setting food standards, takes into account the degree of risk associated with various foods and food components through use of a range of scientific methodologies. ANZFA stated that the approach taken to managing risk is ultimately a policy decision determining 'what are acceptable risks, balancing the actual risks associated with various foods and food components against the benefits to various groups of their approval for use, and the cost to these groups of regulation. It must also take into account the often varied perceptions of risk expressed by interested groups.'

In the early 1990s risk management was the subject of examination by Commonwealth and State agencies responsible for regulatory reform. A paper prepared by the New South Wales Department of State Development in May 1992

stated that the process of regulatory action to deal with health and safety risk should be based on data, and should involve a systematic, analytical process to evaluate whether the measures proposed would give the greatest overall benefit to the community.

In 1995 the Office of Regulation Review published a survey of the practices of national and Commonwealth regulatory agencies in relation to the analysis and regulation of safety risk. In its response, ANZFA stated that:

For a substance which is added to food to perform functions which are not themselves nutritional, the material must generally be demonstrated to present no appreciable risk and, in the case of food additives and pesticides, must be demonstrated to have a technological or agricultural function before their use is permitted. In cases where there is an identified risk, this must be balanced against a benefit (for example, the risk inherent in not using the substance). In the case of whole foods, any risks arising from consumption of a food are deemed to be acceptable unless there is evidence to the contrary.

There also appears considerable merit in including an additional factor in section 10 of the ANZFA Act which relates to considering the available scientific data and applying health risk analysis and risk management principles. In suggesting such an inclusion it is acknowledged that ANZFA does give due weight to scientific data when developing food standards. The agreement between Australia and New Zealand for developing food standards provides the following statement which could be usefully incorporated as a factor in section 10:

Based on the best available scientific data, including systematic application of public health risk analysis and risk management principles.

While section 10 sets out ANZFA's objectives in developing food standards, there is no statutory provision requiring ANZFA to address the threshold issue of whether developing or varying particular standards will provide a net community benefit. However, ANZFA is addressing such issues in the form of regulatory impact statements as part of government policy requirements.

It is also arguable that 'provision of information', other than in relation to protecting public health and preventing misleading and deceptive conduct, is not a reason for regulation, but should be taken into account in determining standards and other regulatory measures. Provision of information to consumers is more appropriately undertaken through non-regulatory means such as community education and information programs. It should be noted that 'develop food education initiatives' is listed in section 7 of the ANZFA Act as one of ANZFA's broader functions.

Additionally, section 10 should apply to regulatory measures other than food standards, for example, codes of practice.

Consideration should therefore be given to recasting section 10 as outlined in the following recommendation. It should be noted that the proposed objectives to not in any way limit or constrain ANZFA's other functions as set out section 7 of the Act. Specifically, the objectives only apply to the regulatory component of ANZFA's work and do not remove the need for food safety and nutrition education and information initiatives and the provision of information to consumers.

**Recommendation**

25. The Section 10 objectives should be recast as follows:

‘Factors the Authority must considered in develop and varying food regulatory measures.

- 1) The objectives of food regulatory measures in order of priority are:
  - a) protecting public health and safety; and
  - b) preventing misleading and deceptive behaviour.
- 2) The Authority, in developing or varying food regulatory measures, must have regard to:
  - a) promoting consistency between domestic and international food standards where these are at variance;
  - b) the need for standards to be based on:
    - the systematic application of public health risk assessment, including the best available scientific data; and
    - risk management principles;
  - c) trade and commerce in the food industry;
  - d) fair trading in food; and
  - e) provision of information to enable informed consumer choice.□

### **Overcoming the problems**

The aims, in establishing ANZFA, were to address an inefficient and costly food standard setting process that was hampering growth of the food industry and exports and impeding the gains in public safety which the community was seeking. In assessing whether these problems have been overcome the following points should be noted:

- the food standard setting process has been made more efficient by establishment of a single body making recommendations;
- since its establishment ANZFA has made 236 recommendations in relation to food standards however some industry criticisms remain concerning excessive delays by ANZFA in making decisions;
- initial problems associated with excessive prescriptiveness of food standards have lessened through the ongoing review which is to be completed in 2000;
- problems remain concerning differing interpretations of food standards adopted by various State and Territory government officials; and
- since the end of 1994 ANZFA has worked closely with the Office of Regulation Review and, from the beginning of the standard setting process, undertakes cost-benefit analysis when developing food standards.

In general terms, it appears ANZFA has addressed, and is continuing to address, the pre-1991 problems, but some problems still remain and were referred to in Recommendation 17 of this report.

### **ANZFA Functions**

Section 7 of the ANZFA Act sets out ANZFA's functions. As currently written, section 7 states:

- (1) The Functions of the Authority are:
  - (a) to deal with applications for the development or variation of standards in accordance with this Act; and
  - (b) to prepare proposals for the development or variation of standards and to deal with those proposals in accordance with this Act; and
  - (c) to prepare draft standards and draft variations of standards and to make recommendations to the Council in respect of those draft standards or draft variations; and
  - (d) to review standards; and
  - (e) in consultation with the States and Territories, or on its own initiative, to coordinate the surveillance by the States, the Territories and any other bodies or persons of food available in Australia; and
  - (f) in consultation with the States and Territories, or on its own initiative, to conduct research and surveys in relation to any of the matters that may be included in a standard; and

- (g) in cooperation with the States and Territories, to develop food education initiatives; and
- (h) in cooperation with the Department administering Division 1A of Part V of the *Trade Practices Act 1974*, to coordinate the recall of food under that division; and
- (i) at the request of the States and Territories, to coordinate action by the States and Territories to recall food under State and Territory laws; and
- (k) to provide advice to the Minister on matters relating to food; and
- (l) to develop codes of practice for industry (in Australia and in New Zealand) on any matter that may be included in a standard; and
- (la) to make the Authority's knowledge, expertise, equipment, facilities and intellectual property available to other persons on a commercial basis; and
- (m) any functions incidental to any of the foregoing functions.

Section 7 does not reflect the importance that ought to be accorded to the developing alternative regulatory measures, including codes of practice and industry guidelines. While traditionally ANZFA's prime function related to standards (functions (a) to (d) and (f)), ANZFA needs to assess alternative regulatory measures when considering developing or reviewing food standards. Increased use of alternative regulatory measures, such as encouraging industry development and uptake of codes of practice, can reduce regulatory burden.

Function (l), relating to developing codes of practice, is too narrowly described: a more appropriate function would be 'develop alternative approaches including codes of practice'. There is also no need to go into as much detail on the mechanics for standards development as this is already covered in part 3 of the ANZFA Act. It is therefore possible to combine functions (a), (b), (c), (d) and (l) into a single function: 'Develop, maintain and review food standards and alternative approaches (including codes of practice) in relation to food'.

While reviewing ANZFA's functions it is appropriate to add another function: 'Undertake, at the request of the Australia New Zealand Food Standards Council, tasks related to national food regulatory systems'. This reflects ANZFA's growing role of working in partnership with other government departments and stakeholders on issues which are broader than standards, for example, food hygiene.

Currently, section 7 separates the surveillance (e) and research (f) functions. It may be more appropriate to combine the two as, 'coordinate and conduct surveillance and research of relevance to ANZFA's other functions'.

While introduction of the ANZFA Act has achieved uniformity of food standards, differing interpretation by State and Territory agencies is adding unnecessarily to compliance costs. This problem could be addressed if ANZFA was given a specific power to coordinate interpretation of food standards. Accordingly, consideration should be given to amending section 7 to include such a function.

In view of Australia and New Zealand's international obligations to ensure food standards do not have an adverse impact on trade and the need for consistency between domestic and international food standards, it is also appropriate to include a new function to recognise ANZFA's current work with international, regional and bilateral bodies on food standards.

### **Recommendation**

26. Section 7 should be amended as follows:

- a) develop, maintain and evaluate food standards and alternative approaches (including codes of practice) in relation to food;
- b) undertake tasks related to national food regulatory systems;
- c) in consultation with other jurisdictions, or on its own initiative, coordinate and conduct surveillance and research of relevance to the other functions of the Authority;
- d) in consultation with other jurisdictions, coordinate and monitor enforcement activities;
- e) in cooperation with other jurisdictions, or on its own initiative, develop food education initiatives;
- f) in cooperation with the department administering Division 1A of Part V of the *Trade Practices Act 1974*, coordinate the recall of food under that Division;
- g) at the request of other jurisdictions, to coordinate action by the States and Territories to recall food under State and Territory laws;
- h) develop assessment policies in relation to food imported into Australia and New Zealand;
- i) provide advice to the Minister in relation to food;
- j) participate in international, regional and bilateral negotiations relevant to food standards;
- k) to make the Authority's knowledge, expertise, equipment, facilities and intellectual property available to other persons on a commercial basis; and
- l) any functions incidental to the foregoing activities.'

As section 7 provides power to ANZFA to develop codes of practice, consideration should be given to amending section 7 to require ANZFA to be satisfied that the benefits to the community of self-regulation or co-regulation will outweigh the costs. While codes of practice are less regulatory than black letter law, they nevertheless constitute a regulatory option and therefore should be assessed as such.

### **Recommendation**

27. It is recommended that section 7 be amended by including a new section 7A as follows:

‘7A. In carrying out its regulatory functions contained in section 7, the Authority must consider whether the benefits to the community as a whole will outweigh the costs and whether there are no alternatives which are more cost-effective in achieving such benefits.’

It should be noted that including such a provision in the ANZFA Act would build on existing provisions which provide a model reflecting good regulatory practice, public consultation and review which consequently provides accountability. The legal consequences of introducing such a provision would be that if ANZFA failed to carry out a cost/benefit analysis its failure would be subject to administrative law challenge. However, the provision as proposed does not make the content or outcome of a cost/benefit analysis subject to challenge.

### **Restraints on competition**

Mandatory standards can help the marketplace because the same rule applies to all and they can promote certainty to agrifood businesses, particularly those unable to invest heavily in research and development or legal advice. However, such standards, by their very nature, can also be a barrier to competition by preventing or limiting the entry or expansion of food manufacturing businesses. It is only those who can meet such standards who are entitled to compete in the food market. Standards can be either prescriptive in their approach, requiring those regulated to comply with detailed requirements, or they can adopt a more performance/outcomes approach, allowing those regulated to determine how they can meet such standards.

Food companies of all sizes and types are required to comply with food standards which control such matters as food composition, use of additives, production, storage, labelling and packaging. Where a food company wishes to use a new additive not permitted by an existing standard, the company must seek a variation to an existing standard. Alternatively, development of a new food production technique may require an application for a new food standard to be developed. The costs to food companies of developing new food standards or varying standards involves the direct costs of complying with the procedures set out in the ANZFA Act and also the time taken to obtain new standards or variations.

In the past, the impact of restraints on competition in the food industry has been considerable. The IAC in its 1989 report, *Food Processing and Beverage Industries*, said:

The Commission considers that the efficiency of the food processing industry has been adversely affected by the food laws and that the access of consumers to new food products has been restricted ... A consequent indirect cost of the regulatory system has been the protection of existing manufacturers and products through restrictions on new manufacturers and delays in the introduction of new food and new technologies.

Before ANZFA was established, it was a substantial criticism that food standards were too prescriptive. When ANZFA was established, the Commonwealth promised that one of its major tasks would be to review the policy for setting food standards and prepare a timetable for review of each food standard. That review is underway.

Part 3, section 35 of the ANZFA Act requires ANZFA to make a recommendation to ANZFSO within 12 months of receiving an application to develop or vary a food standard. This period can be extended, in certain limited circumstances, by up to six months.

Business has criticised the Part 3 process as being too lengthy and costly. If the process is shortened it would reduce regulatory costs for business but it may, on the other hand, reduce opportunities for broader community input (including businesses) to developing standards. In a regulatory sense, the aim of business regulations is to achieve their overall objective at the least cost to business. These issues need to be explored when progressing Recommendation 17.

### **Overcoming the restraints on competition**

Following the 1993 Policy Review, ANZFA considered the extent to which it is necessary to prescribe detailed requirements for individual foods. Through the review of standards it is endeavouring to reduce the level of prescriptiveness and to replace standards which regulate individual foods with standards which apply across all foods or a range of foods. Standards regulating individual foods are only retained where it is considered necessary to achieve the objectives set out in section 10 of the ANZFA Act.

It should be noted that while less prescriptive food standards are more desirable, in that they allow food companies freedom to determine how they comply, often smaller companies complain that they introduce a degree of uncertainty. This is particularly evident when new standards are introduced and the small company feels compelled to obtain costly advice to ensure their compliance. In overall terms, less prescriptive standards are likely to deliver net benefits as they are less likely to impede food industry innovation and as regulatory certainty increases with the passage of time. Notwithstanding this, there is a need to help businesses meet their compliance obligations through development of industry guidelines.

When introducing the ANZFA Act it was recognised that Australian food producers who met domestic standards would be advantaged if the standards were consistent with international requirements. ANZFA has provided input to international standards development through its extensive and ongoing participation on Codex committees and the WTO. This work minimises the potential for restraints on international competition occurring as a result of differing domestic and international standards.

Australia and New Zealand are obliged, by the principles underpinning the WTO agreements, to ensure domestic standards and regulatory measures are:

- based on sound scientific principles;
- developed using consistent risk assessment practices;
- transparent;

- no more restrictive than necessary to achieve a legitimate objective;
- mindful of the equivalence of similar measures in other countries; and
- not used as arbitrary barriers to trade.

Since national uniform food standards were introduced and ANZFA established there has been considerable reform of food regulation. In its 1994–95 report, *Regulation and its Review*, the Industry Commission recognised ANZFA’s work ‘in processing a backlog of applications to vary food standards’ and its completion of ‘a review of food policy’. The Industry Commission also referred to the following developments:

- commencement of a standard-by-standard review of the entire *Food Standards Code*;
- development of regulatory impact assessment procedures for ANZFA’s food standards;
- review of ANZFA’s risk assessment and management procedures; and
- commencement of negotiations with New Zealand.

In terms of the length of the process set out in Part 3, it should be noted that section 37 of the ANZFA Act provides ANZFA with discretion in urgent cases to omit to do any one of the matters it is required to do in Part 3. This process can be used provided the objectives set out in section 10 are not compromised. Since 1991 ANZFA has used this process for urgency reasons on five occasions. Of these, three were on the basis of health and safety considerations, and two were for trade related reasons. It should be noted that Ministers recently agreed that in future Section 37 urgency provisions will only be considered on public health and safety grounds.

Section 36 of the ANZFA Act also enables ANZFA to omit to do one or more of the matters set out in Part 3 provided they are issues of minor significance or complexity and the omission will not have a significant adverse effect on the interests of any person or body. ANZFA has exercised this power on 56 occasions.

ANZFA was created following criticism, in the 1980s, about the lack of uniformity and the prescriptive nature of food standards. ANZFA, by developing and varying standards, does have an impact on competition in that only food which meets such standards can be sold domestically or imported into Australia. The existence of ANZFA has led to uniformity in food standards

and commencement of a process for reducing the prescriptiveness of those standards which have had an adverse impact on product development and innovation.

The *Australia New Zealand Food Authority Amendment Bill 1997 (No 2)* makes amendments to the ANZFA Act to enable ANZFA to overcome a number of deficiencies within the current legislation which prevent it having the capacity to plan, manage or prioritise its workload. The Bill contains amendments to enable ANZFA to conduct a standards review work program which will set priorities for a food standards review over three years. The Bill contains amendments to implement this work program by enabling ANZFA to:

- assess applications which are within the work program, at no charge to the applicant, by having regulations under the ANZFA Act exempt certain applications, including classes of applications, from charges; and
- delay assessing applications which are outside the work program until payment of appropriate charges, the amount of which will be directly related to ANZFA's costs of assessing that application.

This Bill, when passed, is likely to have several impacts on competition. For example, a food company seeking development of a standard which is outside ANZFA's work program will be required to fund ANZFA's cost of assessing that application; whereas a food company seeking development of a food standard which is within ANZFA's work program will not be subject to such a charge. In addition, a food company which funds development of a food standard will be placed at a competitive disadvantage in relation to other food companies which can 'free ride' by being able to use such a standard without incurring the costs associated with its introduction.

However, it may be that the public benefit of allowing ANZFA to carry out its prioritised and publicly-agreed program for developing or varying food standards directed to the broader national interest rather than the narrow interest of individual food companies outweighs the costs of any competitive detriment suffered by individual food companies.

Additionally, section 36A has been inserted into the ANZFA Act whereby ANZFA may rely on work or processes of other government agencies. This amendment has the potential to further reduce delays in processes, particularly for setting MRLs.

## **Costs and benefits of self regulation and mandatory food standards**

Alternatives to mandatory food standards are considered in terms of the costs and benefits of each regulatory option measured against their ability to protect public health and safety. The options available to ANZFA could range through a spectrum from ANZFA developing mandatory standards to the use of codes of practice or guidelines developed and managed by industry, with many co-regulatory arrangements in between. These options would need to be considered against the overall statutory objective of protecting public health and safety. As the prime focus of the ANZFA Act, as it stands, is in relation to developing standards and, to a lesser extent, codes of practice, the two extremes of this spectrum (mandatory and self-regulatory options) are considered, below, in terms of costs and benefits.

### ***Option 1 – Self regulation***

Under the COAG Competition Principles Agreement (CPA), restraints on competition can only be retained if the benefits to the community outweigh the costs, and regulatory restraint is the only means of achieving net public benefit. Accordingly, it is necessary to consider whether the perceived public benefits of the administrative processes of the current ANZFA Act can be achieved by some less regulatory alternative rather than the existing method of developing standards that are adopted by reference into State and Territory legislation. In considering this option, it is reasonable to consider the ANZFA Act and the Commonwealth, State and Territory Agreement to adopt food standards agreed to by ANZFSC as a single package resulting in food standards being given the force of law.

A less regulatory option to consider is whether the benefits of the present system (outlined in Option 2 below) can be achieved by developing standards in accordance with the processes set out in the ANZFA Act but without mandating such standards into State and Territory legislation. Under such an option, ANZFA would develop a code of practice as an alternative to a mandatory requirement in the *Food Standards Code*. Section 7 of the ANZFA Act provides that ANZFA may develop industry codes of practice on any matter that may be included in a standard. This means ANZFA may choose to develop a code of practice instead of developing a standard in the *Food Standards Code*.

ANZFA's paper on the use of codes of practice, unsupported by regulations or standards, states that they must be effective and that only occurs when there is a strong commitment of resources from industry. ANZFA states that codes of practice can be used when there is:

- a low health and safety risk which can be effectively managed in this way;
- a net benefit from implementing a code of practice rather than legislated regulation (from a regulatory impact evaluation);
- potential for a significant majority of industry participants to commit to the voluntary guidelines;
- agreement with industry that the provisions of the code of practice will be jointly developed by industry and ANZFA (and other agencies where necessary);

- a low incidence of imported product;
- an effective communication and training program demonstrated by industry;
- suitable administrative arrangements agreed between industry and ANZFA; and
- adequate ANZFA involvement in auditing industry compliance programs.

ANZFA states that, for codes to be effective and to have public credibility, they need to contain:

- a clear statement that they are voluntary and not mandatory;
- a clear statement of the objectives and principles which are designed to specifically address the potential for market failure which has been identified;
- a specific statement of the requirements or rules;
- a scheme of administration to ensure compliance with the rules; and
- provision for some form of ANZFA involvement in the administration and compliance assessment process.

ANZFA also states that codes of practice need to be supported by administrative arrangements. These could include:

- appropriate sanctions imposed by industry for non-compliance;
- provision for an independent complaints handling body;
- adequate knowledge, in the industry concerned, of the requirements of the code of practice;
- adequate training of industry participants;
- adequate monitoring by industry of compliance or non-compliance and appropriate data collection; and
- regular review to ensure the code of practice is meeting expectations.

### **Benefits**

The benefits which would flow from developing industry codes of practice include:

- codes may be a less costly alternative to mandatory regulation;
- codes could be implemented more quickly as ANZFA would not need to consider them. ANZFA could merely develop them, in consultation with stakeholders, i.e. in accordance with consultative processes set out in Part 3 of the ANZFA Act in relation to processes for developing and varying standards;
- reduced costs and uncertainty associated with interpreting such codes of practice as there would be a single body (ANZFA) to provide guidance. This can be contrasted with the present system where, despite advantages in

uniformity of standards, certain problems remain in relation to differing interpretations by various State and Territory government administering agencies;

- codes can be quickly altered to take into account technological developments; and
- industry ‘ownership’ of a code may result in a greater commitment to making it work.

### Costs

It is clear that, under a voluntary system of self regulation, there is unlikely to be universal adherence to voluntary codes and thus the level of protection afforded to public health and safety would fall. Having regard to the nature of these public benefits relating to public health and safety it is unlikely that such an approach would be acceptable.

In its November 1997 Policy Paper, *Role and Use of Codes of Practice*, ANZFA (1997b) considers that codes of practice may be appropriate where there is no major public health or safety risk or there is a low order public health and safety risk.

In its Policy Paper, ANZFA said it will undertake a regulatory impact assessment to determine the impact and costs to government, industry and consumers of developing a code of practice as an alternative to a specific provision in the *Food Standards Code*. Preparation of Regulatory Impact Statements is important because codes of practice, while generally less regulatory than mandatory standards, have attendant costs which may, in some cases, be greater than the costs imposed by mandatory regulations. Codes of practice contain standards which, like formal regulation, can be either general or prescriptive; they often require an independent body to administer them; and they should also be subject to periodic review to assess their effectiveness. These features impose significant compliance costs and it cannot be assumed that all self-regulatory codes of practice are less costly than mandatory standards.

ANZFA’s Policy Paper refers to its role in developing a code of practice but indicates that industry could establish, and presumably fund, a code administration committee. The paper suggests ANZFA and State or Territory representation on the committee. It is considered that there should also be a ‘public’ representative on the committee. The roles of the committee could include:

- monitoring and reporting on compliance;
- appointing a conciliator to handle disputes;
- arranging publicity of the code;
- arranging industry training sessions on the provisions of the code;
- imposing agreed administrative sanctions for non-compliance;
- establishing appropriate funding arrangements for administering the code;
- conducting periodic reviews of the effectiveness of the code and its procedures and, where appropriate, implementing amendments; and

- periodically reporting to ANZFA on the effectiveness of the code and its administration.

Having regard to the role of the administration committee it can be seen that the costs to industry of administering a code could be substantial. In addition, agrifood businesses will incur compliance costs in meeting the specific obligations set out in a code. Therefore, it is important that ANZFA carry out regulatory impact statements when considering developing a code of practice.

Where ANZFA decides to develop a code of practice it states that it will need to be satisfied that such a code is necessary to achieve a desired objective, is likely to be effective, and can be adequately resourced.

In overall terms, codes of practice have a legitimate role where they can deliver consumer benefit by adequately addressing some demonstrated market failure, at lower net cost than regulation. The inherent voluntary feature of codes will, in terms of the ANZFA Act, mostly result in their use when there is a low order of public health and safety risk.

### ***Option 2 – Mandatory food standards***

This option does not assess the impact of the costs and benefits of food standards themselves as these are subject of a separate review (the Review of the Food Standards Code). Rather, this option considers the costs and benefits associated with ANZFA's statutory role in making recommendations for developing and varying food standards.

The groups which are significantly affected by ANZFA developing and varying food standards include:

- ANZFA which is the statutory authority responsible for assessing applications made by third parties or developing standards and variations of standards on its own initiative;
- State, Territory and New Zealand governments which participate in the standard setting process;
- the members of the ANZFAAC comprising ANZFA's CEO, and representatives from DHFS, DPIE, each State and Territory Health Department and New Zealand; and
- industry and consumer bodies, and individual members of the community who participate in ANZFA's processes in relation to food standards in Australia and New Zealand.

### **Costs**

While ANZFA has a number of other functions in relation to education, policy, coordination and product recall, its principal role is in relation to developing or varying food standards. For the 1996–97 financial year ANZFA's total operating cost was \$8.7 million. In addition to the Commonwealth Government's costs, State and

Territory Governments also incur costs for participating in the process of developing and varying standards.

Individual agrifood businesses and industry bodies also incur costs for participating in the application, consultative processes and appeal mechanisms set out in Part 3 of the ANZFA Act. Similarly, individual consumers and consumer groups incur costs in relation to these processes and mechanisms. It is difficult to quantify these costs as they would differ substantially between applications for developing a new standard and variation of an existing standards. The costs would also vary considerably in relation to the nature of each particular standard.

Notwithstanding the ANZFA Act imposing time limits on ANZFA and ANZFSC, in relation to processing applications, several food companies, in their submissions to the Food Regulation Review, express concern about excessive delays. A major international food company criticises ANZFSC for its slowness in dealing with recommendations from ANZFA—it refers to delays in excess of two years. It also expresses concern about ANZFSC, in one case, amending an ANZFA recommendation against the scientific evidence. Another submission expresses concern that, in recent years, the timely manner ANZFA operations has slipped and that, in many cases, an extension of the 12-month time limit has been granted. The submission goes on to say that while this may reflect resource pressures on ANZFA, ‘time limits were included in the ANZFA Act to remedy the untimeliness of the previous regulatory system’.

Given the detailed consultative and appeal processes involved, compliance costs and paper burdens the ANZFA Act imposes on small business are considered to be substantial. Studies conducted in the United States and Australia have found that the costs of compliance with business regulations is much greater for small businesses than for larger business entities. These processes can be justified in the interests of protecting public health and safety and are part of open and accountable operations. Nevertheless, ANZFA should specifically address the need to reduce compliance costs and the paper burden on small business when it considers developing or reviewing specific standards.

### **Benefits**

The Industry Commission and the Office of Regulation Review identified the problems associated with the previous system for developing standards in 1980. These were the lack of uniformity and considerable delays which occurred as a result of a multi-tiered committee system which developed a consensus view, and the failure of State and Territory government to implement standards uniformly across Australia. The benefits of the ANZFA Act stem from establishing an improved system.

Thus, in assessing the benefits of the ANZFA Act there is a need to focus on the processes of food standards development to assess whether the present legislative system is addressing the problems identified earlier. In a broad sense, the benefit of developing and reviewing food standards is to protect public health and safety by reducing costs to the public sector and costs to individuals and the economy as a result of food-borne illness.

In particular, regulations requiring identification of food products and development of food standards provide significant benefits to consumers and the public sector. In terms of public costs, governments have important goals of protecting consumers [see CPA s.1 (3) (h)]. The Commonwealth, as the funder of medical and pharmaceutical benefits, has a strong interest in preventive public health measures as a means of containing these costs. Where the use of a food product causes or aggravates disease or causes allergic reaction, the cost of medical consultation and/or prescription remedy is borne by the Commonwealth through the Medicare Benefits Scheme, Pharmaceutical Benefits Scheme and consumer costs. On the other hand, labelling regulations can clarify information about beneficial components of food, such as folate and dietary fibre.

The first major benefit of the ANZFA Act has been consolidation of responsibility for food standards development with a minimum number of decision-making layers. To develop or vary a food standard, ANZFA, in consultation with the States and Territories, makes a recommendation to ANZFSC. Food standards and amendments to food standards agreed to by ANZFSC are gazetted by the Commonwealth and then automatically adopted by reference under State and Territory legislation.

The second key benefit of the ANZFA Act has been increased uniformity of food standards between State and Territory jurisdictions. Prior to the 1991 legislation and the Agreement there were some 44 differences between State and Territory laws and the *Food Standards Code*. Since then, ANZFSC has agreed to, and the States have adopted, a number of amendments to the *Food Standards Code*. This, together with actions by State and Territory agencies to remove differences, means the number of deviations had, by March 1998, fallen to 14. This figure includes three new deviations since introduction of the ANZFA Act. Uniformity in food standards reduces compliance costs for business as food products can be produced and sold in all States and Territories as long as they comply with a single standard.

Establishing a single statutory authority responsible for developing and varying food standards has led to improvements, in a regulatory sense, of individual food standards. The comprehensive review of food standards, which will be completed by 1 January 2000, aims to:

- reduce the level of prescriptiveness of food standards;
- develop standards that are easier to understand and amend;
- replace standards which regulate individual foods with standards that apply across all foods or a range of foods;
- consider using industry codes of practice as an alternative to regulation; and
- facilitate development of an Australia New Zealand Food Standards Code, having particular regard to Codex standards.

The review is also having regard to the COAG-endorsed competition policy principles. These principles aim to ensure regulation does not impose unnecessary restrictions on competition in the market place, and require detailed assessment of the social, environmental, health, economic and other impacts on all those affected by proposed regulation. They also require alternatives to the proposed regulation to be assessed.

Another benefit of the ANZFA Act has been establishment of objectives for developing food standards. The statement of objectives has resulted in a more publicly accountable legislative arrangement where interested parties have been able to assess individual food standards against ANZFA's statutory role. The inclusion of objectives for standards has resulted in healthy debate (referred to earlier). As indicated, there appears to be some scope for improving on the factors to be taken into account in the food standards process. These issues have been addressed by Recommendation 17 of this report.

## **Appendixes**

- A. Terms of reference
- B. Organisations and individuals consulted
- C. Matrix of participants
- D. Summary of comments on Draft paper
- E. Current regulatory framework arrangements
- F. Monitoring and surveillance

Glossary

Acronyms

References and bibliography

## **Appendix A - Terms of reference**

### ***Food Regulation Review***

- Objectives**      Whilst protecting public health and safety, to:
- reduce the regulatory burden on the food sector and examine those regulations which restrict competition, impose costs or confer benefits on business; and
  - improve the clarity, certainty and efficiency of food regulatory arrangements.
- Scope**            The review is to investigate and report on all food regulatory matters involving the three spheres of government. It will encompass all types of government regulation-making, compliance and enforcement activities, as well as industry self-regulation, in relation to food produced for export, import and domestic consumption.
- For the purposes of the Review, food regulation is taken to:
- be actions by government which affect the safety or quality of, or the information available in relation to, food;
  - encompass all types of government regulation-making, industry self-regulation, compliance and enforcement activities; and
  - cover relevant activities of all businesses in the food supply chain, including primary producers, food processors, retailers and food preparation businesses.
- Process**            While taking account of the broader public interest objectives of food regulation, the Review will be undertaken from the perspective of the firm affected by government regulation. The Review Committee will consult with food industry associations, small business, health and consumer groups, as well as with other interested parties. In making recommendations, the Review Committee will have regard to the review principles incorporated in the National Competition Principles Agreement.
- Tasks**
1. Propose some broad purposes for food regulation and develop policy objectives and principles for efficient food regulation, consistent with government policies.
  2. Describe current approaches to food regulation, including:
    - types of regulation and regulatory practices; and
    - institutional arrangements.

As part of this, describe recent and current regulatory reforms and reviews and their likely effects.

3. Identify the nature and magnitude of problems with existing food regulation as described in (2), and in particular identify:
  - areas where food regulation restricts competition or imposes unduly high costs on businesses, including paper burden and compliance costs; and
  - areas of inefficiency, overlap and/or duplication within or between regulatory agencies.
4. Develop options for addressing the problems identified in (3), having regard to the principles identified in (1), including appropriate resourcing roles for governments and industry.
5. Analyse and, as far as reasonably practical, quantify the costs and benefits of the options identified in (4), including their impact on consumers, businesses and governments.
6. Recommend changes to food regulatory arrangements, having regard to the analysis in (5).
7. Propose a process and timetable to implement the recommended changes and to monitor and evaluate implementation.
8. Review the *Australia New Zealand Food Authority Act 1991* against the national competition principles.

### ***Review of the Australia New Zealand Food Authority Act 1991***

1. The *Australia New Zealand Food Authority Act 1991* is referred to the Food Regulation Review Committee for evaluation and report by 30 June 1998. The Food Regulation Review Committee is to focus on those parts of the ANZFA Act which restrict competition, or which impose costs or confer benefits on business. The *Food Standards Code* is being reviewed over a five year period ending in December 1999 and this review will be expanded, with separate terms of reference, to address the national competition principles.
2. The Food Regulation Review Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:
  - a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-regulatory approaches.
  - b) in assessing the matters in (a), regard should be had, where relevant, to effects on public health and safety, the environment, welfare and equity, occupational health and safety, economic development, consumer

- interests, the competitiveness of business including small business, efficient resource allocation and international obligations.
- c) compliance costs and the paper work burden on small business should be reduced where feasible.
3. In making assessments in relation to the matters in (2), the Food Regulation Review Committee must apply the legislation review principles incorporated in the Competition Principles Agreement and must have regard to the analytical requirements for regulation assessment applied by the Commonwealth. The report of the Food Regulation Review Committee should:
- a) identify the nature and magnitude of the social, environmental or other economic problem(s) the ANZFA Act seeks to address.
- b) clarify the objectives of the ANZFA Act.
- c) identify whether, and to what extent, the ANZFA Act restricts competition.
- d) identify relevant alternatives to the ANZFA Act, including non-legislative approaches.
- e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the ANZFA Act and alternatives identified in (d).
- f) identify the different groups likely to be affected by the ANZFA Act and its alternatives.
- g) list the individuals and groups consulted during the review and outline their views.
- h) determine a preferred option(s) for regulation, if any, in light of objectives set out in (2).
- i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the ANZFA Act and, where it differs, the preferred option.
4. In undertaking the review, the Food Regulation Review Committee is to advertise in Australia and New Zealand, consult with key interest groups and affected parties, and publish a report.
5. Within six months of receiving the Food Regulation Review Committee report, the Parliamentary Secretary to the Minister for Health and Family Services will announce what action is to be taken, after obtaining advice from the Australia New Zealand Food Standards Council.

## **Appendix B - Organisations and individuals consulted**

### ***Written submissions***

#### **Commonwealth and New Zealand Governments**

Australia New Zealand Food Authority  
Australian Competition & Consumer Commission  
Bureau of Resource Sciences Australia  
Commonwealth Department of Primary Industries and Energy  
Department of Health and Family Services  
National Registration Authority  
New Zealand Ministry of Commerce  
New Zealand Ministry of Consumer Affairs  
Parliamentary Secretary for Workplace Relations and Small Business  
Comments forwarded to the Committee from various sources by the Commonwealth  
Department of Primary Industries and Energy  
Workplace Relations and Small Business

#### **State and Territory Governments**

Agriculture Western Australia  
Health Department of Western Australia  
Member for Bundaberg  
Northern Territory Government  
NSW Cabinet Office  
Nutrition Program, Health Department WA  
Premier and Cabinet (Queensland)  
Premier of Queensland  
Queensland Department of Health  
SA Dept of the Premier and Cabinet  
Small Business Development Corporation of Western Australia  
Victorian Department of Human Services

#### **Local Governments**

Ballina Shire Council  
Bankstown City Council  
Bayside City Council  
Brisbane City Council  
Cairns City Council  
City of Armidale  
City of Ballarat  
City of Bunbury's Environmental Health Services  
City of Gosnells  
City of Mitcham  
City of Perth  
City of Tea Tree Gully  
Gold Coast City Council  
Hastings Council  
Ipswich City Council

Local Government Association of Queensland  
Logan City Council  
Pine Rivers Shire Council  
Redland Shire Council  
South Sydney City Council  
Temora Shire Council  
Kempsey Shire Council  
Western Australian Municipal Association

### **Primary Producers**

Australian Citrus Growers Incorporated  
Australian Citrus Industry Council Inc  
Australian Wheat Board  
Bunny Bite Farms  
Golden Egg Farms  
Grains Council of Australia (2 submissions)  
Heritage Seed Curators  
National Farmers' Federation  
Northern Victoria Fruitgrowers' Association Ltd.  
NSW Farmers' Association (2 submissions)  
Organic Retailers and Growers Association Australia  
Peanut Company of Australia  
South Australian Farmers Federation  
South Australian Seafood Marketeers and Processors Association  
Suncoast Gold Macadamias  
Tasea Enterprises Pty Ltd  
Western Australian Farmers Federation  
United Graziers' Association of Queensland  
Western Australia Fishing Industry Council

### **Meat and Dairy**

Australian Dairy Products Federation  
Australian Milk Authorities  
Bonlac Foods  
Dairy Authority of South Australia  
Meat Industry Council  
National Meat Association of Australia (NSW)  
National Meat Association of Australia (Victoria)  
QUF Industries Ltd  
Tenderplus  
Victorian Dairy Industry Authority  
Withersfield Pty Ltd

### **Manufacturers**

Ardmona Foods Limited  
Australasian Bakery Engineers  
Australian Food Council  
CARGILL Processing Ltd

Confectionery Manufacturers of Australasia Ltd  
Flour Millers' Council of Australia  
Goodman Fielder  
Ilonka Continental  
Kraft  
Meriram  
Nestle Australia Ltd  
Orlando Wyndham Group Pty Ltd  
Princi Smallgoods  
Quality Mills and Ware's Bakers  
SA Wine and Brandy  
South Gippsland Ice Supply  
The Nutra Sweet Kelco Company  
Tibaldi Small Goods  
Uncle Toby's  
Winemakers' Federation of Australia Inc

**Retail and catering**

Australian Bulk Foods  
Australian Supermarket Institute  
Bakewell Foods Pty Ltd  
Catering Concepts Australia Pty Ltd  
Fishy Business  
Gardner Merchant (Australia) Pty Ltd  
Jurek's International Catering  
Larrikins Bar and Restaurant  
Merrimu Receptions  
Restaurant and Catering Industry Association  
Sizzler Australia  
Small Retailers Association of SA  
Tasmanian Independent Wholesalers  
The Catering Institute of Australia - WA

**Members of the public**

Bob Tait  
Carl Magrath  
Edward Ellis  
Elaine Attwood  
Herman Lauwers  
John McGuire  
John Patison  
Matthew Buck  
Patricia Keill  
Phil Clifford  
Tim Hunter  
Bill Spiers

**Consumer Associations**

Allergy Sensitivity Environmental Health Association Qld Inc  
Australian Consumers' Association  
Home Economics Institute of Australia Inc  
National Council of Women of Australia  
National Nutritional Food Association (New Zealand)  
Vegetarian/Vegan Society of Queensland Inc

**Academics, professionals and consultants**

Australian Business Chamber  
Australian Institute of Environmental Health  
Australian Institute of Environmental Health (SA Branch)  
Australian Quality Council  
Beale Management Consultants  
Blake Dawson Waldron  
Bread Research Institute Australia Limited  
Business East  
Chamber of Commerce and Industry WA  
CSIRO Division of Food  
Dietician's Association of Australia  
Dunn Son and Stone  
Food Liaison Pty Ltd  
Food Technology Association of Queensland Inc  
Gordon Hale and Associates  
Health and Hospitality Services  
Hunter Valley Food Technology Services  
Informed Systems Ltd (New Zealand)  
Joint Accreditation System of Australia and New Zealand  
Menzies Centre for Population Health Research  
National Association of Testing Laboratories  
Open Training and Education Network  
Public Health Association of Australia  
Slater and Gordon  
Small Business Combined Association of NSW  
Small Business Development Corporation  
The Australian Institute of Food Science and Technology (WA Branch)  
The Food Centre of WA Inc

**Other**

APV Australia  
Australian Country Information Service  
Australian Nursing Council  
Avcare  
Country Links Information Service  
Country Women's Association of NSW  
Croydon Conservation Society Inc  
Department of Public Health, United Kingdom  
Food and Beverage Importers Association  
Foodbank Australia Limited  
GMK Engineering

Hanna Instruments Pty Ltd  
 Heat and Control  
 Microserve Laboratory  
 Monsanto  
 National Public Health Partnership Group  
 RP Scherer, Australia  
 SA Country Women's Association  
 Scotty's Premium Pet Foods  
 Wildlife Preservation Society of Queensland

***Public hearings***

**Rockhampton**

Bill Spiers	Consultant
Val and Jacob Van de Wetering	Belmont Preserves
Dominic Nolan	Cattlemen's Union of Australia
Bruce Morton	Queensland Health
Toni Cooper	Queensland Health
Howard Howell	Rockhampton City Council
Paul Denton	Rockhampton City Council
Craig Patch	Rockhampton City Council
Jan Proposch	Banana Shire Council
Ted Aldred	Queensland Health
John Colevecchio	Gladstone City Council

**Brisbane**

R V Holmes	Queensland Department of Health
Brian Witherspoon	Toowoomba City Council
Kim Dutton	Alliance Consulting
Kerri Midso	Heat and Control
Martin Webb	Food Safety Task Force and Local Government Association and Queensland Institute of Environmental Health
James Visser	Food Safety Task Force and Restaurant and Caterers' Association of Queensland
Mr A Gow	Pine Rivers Shire Council
Roger MacBean	QUF Industries
Leawyn Munro	Safeguarding Queensland Food
Pam Luxford	Safeguarding Queensland Food
John Stickens	Queensland Livestock and Meat Authority
Peta Jamieson	Local Government Association of Queensland
Don Cameron	Queensland Chamber of Commerce and Industry
Nola Caffin	University of Queensland and Australian Nutrition Foundation

**Albury-Wodonga**

Karen Stacey	Wodonga Institute of TAFE
Peter Beck	Wodonga Institute of TAFE
Patricia Coysh	Parmalat Foods
Ron Haberfield	Parmalat Foods

**Canberra**

Bill Salter	Meat Industry Council
Brian Ramsay	Pork Council of Australia
David Panisak	Food Liaison
Georgina Glover	Office of Small Business
Graham Chalker	Australian Business Chamber
Helen Cowper	Department of Health and Family Services
Jane Carmody	Australia New Zealand Food Authority
Jane Kriegel	Freehill, Hollingdale and Page
John Wickens	Toxic Action Group Inc
Judy Stockdale	Consumers' Federation
Kirsten Pietzner	Grains Council
Kylie Sheehan	Joint Accreditation System of Australia and New Zealand (JAS-ANZ)
Margaret Campbell	Department of Health and Family Services
Marian Lloyd Smith	National Toxics Network
Paul Bonsell	Ali Baba Lebanese Cuisine
Paul Smith	Australian Quarantine and Inspection Service
Paul Udovisi	Canberra Milk
Rod Whiteway	Department of Industry, Science and Technology
Wendy Banham	Australia New Zealand Food Authority
<b>Sydney</b>	
Heather Bell	Mid-North Coast Population Health Unit
Paul MacDonald	Parrish Meat Supplies
Bernard Rubens	Kem-X Consultants
Bill Beale	Beale Management Consultants
Janet Moore	Gardner Merchant
Helen Tran	Quest International
Paul Shackelford	ECE
Gordon Hale	Gordon Hale and Associates
Suzanne Kennewell	Dietitians Association of Australia and Food Services, Royal Prince Alfred Hospital
Stephen Blaydan	Leichhardt Council
Ross Peters	Food Operations
David Henning	Woolworths
Mary DiMattina	Tourism Employment and Training Corporation
Sandra Maiden	Consultant
Fred Lloyd	Australian Quarantine and Inspection Service
Heather Yeatman	ANZFA member: Dept. of Public Health and Nutrition, University of Wollongong
Godfrey Quan	Sydney City Council
Samantha King	NuSkin Personal Care Australia
Keith Richardson	CSIRO Food Science and Technology
Ken Henrick	Australian Supermarket Institute
Bob Tait	self-employed engineer
Charles McElhow	Australian Meat Council
Bill Hetherington	Australian Meat Council
Neville Payne	Sydney City Council

Monique Ivanhoe	Bread Research Institute Australia Ltd
Susan Moxham	Australian Business Chamber
Ruth Povall	Australian Business Chamber
Peter Board	Consultant
Des Sibraa	Consultant and lawyer
Anthony Hay	Sydney Morning Herald
Nina Karen	Food Standards Committee of Dietitians Association of Australia
Michael Hurlson	Legal Branch, NSW Health
Diane Temple	Dietitians Association of Australia
Chris Chan	NSW Dairy Corporation
Joseph Nagler	J and E Nagler Agencies
Dominic Wykanak	member of the public
Warwick Huff	Australian Association of Restaurant and Caterers
<b>Tamworth</b>	
Bill La Haye	Tamworth City Council
Marilyn Smith	Cargill Processing
Anne Braithwaite	New England Public Health Unit
Charles Rablin	New England Public Health Unit
Greg Bell	New England Public Health Unit
Barbara Vance	Country Women's Association of NSW
Phil Chaseling	NSW Poultry Processors Association
Norm Butt	Armadale City Council
Ron Van Katwyk	Manilla Shire Council
Craig Darby	Hastings Council
Brian Wade	Tamworth City Council
<b>Hobart</b>	
John Farrar	
Dr Trevor Baird	
Noel Boneman	Mothers' Favourites
Ken Dobbie	
Sue Moir	
Guy Barnett	representing Tasmanian Independent Wholesalers
Lorraine Wing	
Harry Chunz	
Christopher Geevef	Blue Sky
Mark Dwyer	Hobart City Council
Terry Curtin	Hobart City Council
C McEachern	Hobart City Council
John Richards	
<b>Bairnsdale</b>	
Bill Hankin	Heritage Seeds
Greg McDonald	Victorian Dairy Authority
Debb Schmetzer	Heritage Seeds
Cath McCombie	TAFE employee
Robert Kirkwood	Sue's Kitchen (caterer)

Lindsay Jennings	Cattle producer
Gail Comer	Caterer
<b>Melbourne</b>	
Melanie McPherson	Australian Soft Drinks Association
Kevin Iles	Pride Meat Exports
Ray Stanhope	Consultant
Jenny Porter	City of Melbourne Health Services
Wendy Hunter	Student, Deakin University
Michael Hopf	Food Guard Hygiene Services
Jane Clifton	Gardner Merchant, Australia
Jennifer Thompson	Confectionery Manufacturers of Australia
David Greenwood	Confectionery Manufacturers of Australia
Helen Dornom	Australian Dairy Industry Council
Alison Paul	Food Standards Update
Andrew Dawson	Cadbury Schweppes
Denise Miley	Eastern TAFE
Geoff Brown	Packaged Ice Association of Australia
Geoff Ravenscroft	3M Australia
Sue Pilkington	Simplot Australia
Marlene Thompson	Bush Boake Allen, Australia
Ann Duffy-Lowry	Yakult, Australia
Lisa d'Ouveyra	Bonlac Foods, Ltd
Gary Blake	Australian Quarantine and Inspection Service
John Ward	Dunn Son and Stone, food analysts
John Tulloch	National Meat Association
James Ralph	National Meat Association
Glenice Terry	National Bioproducts
B Gartner	Consultant
Belinda Findlay	Blake, Dawson Waldron
Tony Linden	Consultant
Terry Oughtred	Victorian Department of Human Services
Jane Dixon	Royal Melbourne Institute of Technology
	Department of Social Science
Jan Powning	Victorian DHS Food Safety Strategy Unit
Rod Dedman	Victorian DHS Food Safety Strategy Unit
Trevor Miskin	Electro Chemical Engineering
Tony Rowden	National Meat Association
Robert Beattie	City of Kingston
Dusan Ivanic	City of Kingston
Helen Dornom	Australian Dairy Industries Corporation
Ian Henderson	Australian Institute of Environmental Health
Xavier Duff	Weekly Times
Angela Malberg	National Speciality Program in PH and Community Nutrition
	Health and Hospitality Services
Reg Holland	
John Gilbert	
<b>Darwin</b>	
Henry and Lilly Siedler	Le Gourmet Products

Tracey Ward	Territory Health Services
John Landos	Quarantine and Inspection Resources
Brian Parkin	Territory Health Services
Ken Cohalan	QUF Industries - Northern Territory
John Stacey	QUF Industries - Northern Territory
Scott Evans	Cathay Pacific Catering Services
Paul Styles	Tourism Council Australia
<b>Adelaide</b>	
John Brownsea	Small Retailers Association of SA Inc
Ron Boucher	Adelaide City Council
Jack Darjanos	Adelaide City Council
Elena Anear	South Australia Health Commission
Bob Aveniarg	Australian Bulk Foods
Joe Galea	Australian Bulk Foods
Don McInnes	
Rachel Dempster	National Foods Ltd
Ted Thornborrow	ECH Food Service
Elaine Attwood	Consumer Advocate
Ivan Hughes	The Business Centre
Patricia Carter	SA Food and Nutrition Project
Elizabeth Kellett	Children's Health Development Foundation
Ben Bowering	Quality Assurance Services
Ross Collins	Balfour Wauchope P/L
Chris Russell	SA Local Government Association
Cathy Isbester	Australian Institute of Environmental Health (SA Division)
Charles Hulse	Two Dogs International
Philip Quist	Chill Products
Danielle Rippon	City of West Torrens
Paul Sandercock	National Meat Association
Terry Gayer	City of Happy Valley, Noarlunga, Willunga
Beth Waddington	Country Women's Association
Jalal Dean	Australian Quarantine and Inspection Service
Roger Tilmuth	Dairy Authority of SA
Peter Morgan	
Ron Komorek	Australian Quarantine and Inspection Service
Louise Lesnida	Alckermans
Robin Vandergraaff	Primary Industries and Resources SA
Geoff Raven	Primary Industries and Resources SA
Jay Leddra	State Road Authority
Max Baldock	Small Retailers Association of SA
Alan Brown	Air Cargo Traders Pty Ltd
Peter Morgan	The Advertiser, SA
Allan Callegia	ABC Radio
<b>Perth</b>	
Petrice Judge	Premier and Cabinet (WA)
Andrea Michailidis	Premier and Cabinet (WA)
Dover Parker	WA Farmers Federation

Paul Carter	WA Farmers Federation
Tony McAuliffe	Australian Quarantine and Inspection Service
James Kobes	Australian Quarantine and Inspection Service
Howard Bromley	The Catering Institute, WA
Neville Moriarty	City of Bunbury
Tim Hunter	City of Bunbury
Stan Barclay	City of Perth
Graham McAlpine	Agriculture, WA
Jasna Lasinger	Tip Top Bakeries
Barry Moore	WA Bed and Breakfast Association
Murray Beros	Chamber of Commerce and Industry (WA)
Nick Lugg	Neverfail trading as Aquavital
Cheryl Hughes	The Food Centre of WA (Inc)
Barry Hooke	The Food Centre of WA (Inc)
Chris Richardson	Curtin University
Les Float	City of Stirling
Dean Bertolatti	Curtin University
Melanie Bridger	Shire of Gingin
Lillias Bovell	WA Municipal Association
Ellen Kittson	Agriculture WA
Dennis Gillam	City of Melville
Phil Oorjitham	City of Melville
Bob Heaperman	National Meat Association, WA
Jacinta Yow	Globe Meats
Tony Gibson	WA Fishing Industry Council

***Members of the Review Committee also held face-to-face meetings with the following agencies***

**Prime Minister and Cabinet**

Penny Taylor	Australian Chamber of Manufacturers
Mr Mark Fogarty	Australian Chamber of Manufacturers
Gerard Neville	Queensland Health
John Scott	Queensland Health
Bob Holmes	Queensland Health
Jim Dodds	Queensland Health
Michael Smith	Queensland Health
Rosemary Clarkson	Queensland Agriculture
Laurie Trueman	Queensland Premiers Office
Jacqueline Martin	Queensland Premiers Office
Mr Clive Bubb	Queensland Chamber of Commerce and Industry
Louise Sylvan	Australian Consumers' Association
Mara Bun	Australian Consumers' Association
Jeff Jureidini	Meat Industry Council
Robin Bligh	Meat Industry Council
Bob Combs	Meat Industry Council
Bill Salter	Meat Industry Council
Richard Wright	Meat Industry Council
Bill Hetherington	Australian Meat Council
Ross Peters	Food Operations

Andrew Penman	NSW Health
Peter Hendy	NSW Cabinet Office
Craig Sahlin	NSW Cabinet Office
David Abba	National Meat Association
Colin Morley	National Meat Association
Margy Osmond	State Chamber of Commerce (NSW)
John Newton	Australia Chamber of Manufacturers
Anne Astin	Victoria Agriculture
William Hart	Victorian Health
Anne Evans	Food Victoria
Jane Niall	Food Victoria
Kevin Love	Victorian Cabinet Office
Paul Myers	Victorian Cabinet Office
<b>The Food Forum on National Food Hygiene Regulation</b>	
John Pritchard	Australian Local Government Association
Graham Peachey	Australia New Zealand Food Authority
Winsome McCaughey	Australia New Zealand Food Authority
Wendy Craik	National Farmers' Federation
Judy Stockdale	Consumers' Federation of Australia
Irene Pessars	ACT Health and Community Care
Peter Arentz	Grocery Manufacturers Association
Geoff Sanderson	New Zealand Ministry of Commerce
Elizabeth Mac Donald	New Zealand Ministry of Commerce
Raj Rajasekar	New Zealand Ministry of Agriculture
Gail Powell	New Zealand Ministry of Health
Marion Crawshaw	New Zealand Ministry of Foreign Affairs and Trade
Stephanie Williams	New Zealand Ministry of Foreign Affairs and Trade
Elsbeth McMillian	New Zealand Food and Beverage Exporters Council
<b>Officials Committee, Food Administration Meeting</b>	
Mr Luxton	New Zealand Minister of Commerce
Dr Lockwood Smith	New Zealand Minister of Trade and Agriculture
Brenda Cutress	Grocery Manufacturers' Association and Australian Chamber of Commerce and Industry
Ken Henrick	Australian Supermarket Institute
Bruce Bevin	Australian Supermarket Institute
<b>National Public Health Partnership</b>	
Ms Gis Marven	Australian Chicken Meat Federation
Dr Jeff Fairbrother	Australian Chicken Meat Federation
Mr Cadman	
Norman Barter	Food Industry Council of Australia
Terry Mott	Food Industry Council of Australia
Graham Chalker	Australian Board of Commerce
John Martin	Australian Chamber of Commerce and Industry
<b>Supermarket to Asia Council Meeting</b>	
Bill Bowen	Australian High Commission in NZ
Reg Clairs	Woolworths
D Henning	Woolworths
Enzo Allara	Unifoods

Mitch Hooke	Australian Food Council
Harris Boulton	Australian Food Council
Ken Matthews	Cwth Department of Primary Industry and Energy
Paul Hickey	Cwth Department of Primary Industry and Energy
Digby Gascoine	Cwth Department of Primary Industry and Energy
Gardner Murray	Cwth Department of Primary Industry and Energy
Bernie Wonder	Cwth Department of Primary Industry and Energy
Janet Kerr	Cwth Department of Primary Industry and Energy
Wayne Ryan	Cwth Department of Primary Industry and Energy
Bob Biddle	Cwth Department of Primary Industry and Energy
Bob Calder	Cwth Department of Primary Industry and Energy
Keith Croker	Cwth Department of Science and Technology
Noel Benjamin	Cwth Department of Science and Technology
Ken Sedgwick	Queensland Treasury
Jayne Gallagher	Australian Seafood Industry Council
<b>Secretaries Forum</b>	
Tom Parks	Kraft
Peter Mitchell	Kraft
Dr Patrick Walsh	SA Department of Premier and Cabinet
Jim Fraser	Wine Institute of New Zealand
Mark Unsworth	NZ Breakfast Cereal Industry
Barry Hellbers	Retail Merchants Association, NZ
Chris Fuller	Trade NZ
Alan Norton	Trade NZ
Cherie Flynn	New Zealand Ministry of Health
Marion Riordon	New Zealand Ministry of Health
Dioan Dunron	New Zealand Ministry of Agricultural and Food
Owen Symmans	New Zealand Department of the Prime Minister and Cabinet
Megan Williams	Communication Trumps
Joan Wright	New Zealand Dairy Board
Fioan Gauriel	Nargon
Alastair MacFarlane	New Zealand Seafood Industry Council
Eamonn O'Shaughnessy	New Zealand Ministry of Foreign Affairs and Trade
Geoff Tempest	Goodman Fielder Milling and Baking NZ
Peter Jackson	McFarlane Labs (New Zealand)
Warren Sanderson	National Nutritional Foods Association
Ron Law	National Nutritional Foods Association
Tom Bleier	Health 2000+ Ltd (New Zealand)
Shailer Cottier	Nutra-Life (New Zealand)
Barry Stirling	Nutra-Life (New Zealand)
Dave Blanchard	Good Health (New Zealand)
Jeff Blackburn	Blackburn Croff & Co Ltd
Rob Shaw	Heartheies of NZ Ltd
Ed Richards	Beer Wine & Spirits (New Zealand)
Samira Wohhart	Trade NZ, Christchurch
Leone Evans	Trade NZ, Christchurch
Ben Winters	Aroma NZ Ltd

Cheryl Comfort	Canberbury Manufacturers' Association
Steve Canlton	Waitaki Biosciences International
Almeric Cheng	Only Organic (NZ) Ltd
Roger Sead	Leiner Davis Gelatin NZ Ltd
Steve Summer	Platinum Star Ltd
<i>Participants in focus groups</i>	
David Kallir-Preece	ACT Health Protection Service
Colin Thomson	Australian Institute of Health Law Ethics
Dorothy M Bowes	ASEHA
Claudia Cresswell	Consumer Federation of Australia
Brian Cusack	Victorian Department of Human Services
Bob Phelps	Australian Gene Ethics Network
Allison Wyndham	Molecular Genetics Group, John Curtin School of Medical Research
Margaret Rankin	Heamochromatosis Information and Support
Debra Parnell	Home Economics Institute of Aust (Vic)
Peta Frampton	Queensland Consumers Association
Sue Cassidy	Dieticians Association of Australia
Anita Blaby	Mallee Tenancy and Consumer Advice Service
Denis Nelthorpe	Consumer Law Centre (Vic)
Jo Boltin	St Kilda Community Group
Nick Krajnc	Consumer Sup Service, Kilmany Family Care
Rosemary Barker	Consumers Association of Victoria
Sally Nathan	Australian Consumers Association
Tony Webb	Food Policy Alliance
Max Odgen	Australian Council of Trade Unions
Mariann Lloyd-Smith	National Toxics Network
Val Johanson	Nutritional Food Association of Australia
Tony Harrison	Department of Human Services
S M Somerset	Dietitians' Association of Australia
Matt O'Neill	Australian Consumer's Association
Anne Evans	Food Victoria
Jenet Connell	Small Business Development Corporation
John Brownsea	Small Retailers Association of SA Inc
Warrick Hough	Restaurant and Catering Industry Association
Mark Lawence	Deakin University
Suzanne Russell	HEIA Consumer Affairs Standing Committee
Mareeta Grundy	National Heart Foundation
Lynne Flemming	Public Health Association
Heather Waddell	United Dairyfarmers of Victoria
Phillip L Clifford	La Trobe Shire Council
Val Cocksedge	National Council of Women of Australia
Les Cameron	'The Food Group' Barton Institute of TAFE
Duncan Moore	Maroondah City Council
Angela Vivanti	Dietitians Association of Australia
Amanda Benham	
Lenore Taylor	Brisbane Organic Growers
Dr Richard Hindmarsh	

John Erceg	Shire of Swan
Stan Allen	Food Business Network
Robert Jenkins	Wyndham City Council
Dick Copeman	Eco-Consumer
Sam Gordon	Fish Merchants Association
Phill Oorjithan	City of Melville
Bruce Boxer	Hepburn Shire Council
Betty Smith	Home Economics Institute of Australia Inc
Geoff Hogbin	Hogbin Ercole and Associates Pty Ltd
Rebecca Parker	
Stuart Horsman	Health Protection Service
Peter Williams	Dietitians Association of Australia
Kaye Linsdell	Food Bank Victoria
John Gilbert	Australian Institute of Environmental Health (SA Division)
John Pritchard	Australian Local Government Association
Adrian O'Loughlin	Australian Institute of Environment Health
Bob Tait	self-employed engineer
Scott Hansen	Pastoral Group of the Victorian Farmers Federation
Mike O'Donnell	Small Business Development Corporation
Bronwen Harvey	Public Health Division Department of Health and Family Services
Scott Crerar	Public Health Division Department of Health and Family Services
Doris Zonta	ACT Department of Health and Community Care
Geoff Lavender	Victorian Department of Human Services
Richard Madden	Australian Institute of Health and Welfare
Jan Bennett	National Public Health Planning Branch Department of Health and Family Services
Michelle Kosky	Health Consumers Council
Kate Moore	Consumers Health Forum
Dominic Wykanak	
Margaret Miller	Health Department of Western Australia
Cathy Campbell	Health Department of Western Australia
Mark Wahlqvist	Monash Medical Centre
Colin Sindall	Deakin University
Chris Russell	Local Government Association of SA
Karen Campbell	Deakin University
Patricia Carter	Women's and Children's Hospital
Gill Read	National Specialty Program in Public Health and Community Nutrition
Jenny Wills	Municipal Association of Victoria
Caroline Jones	Diabetes Australia, SA
Stephen Rix	Public Interest Advocacy Centre
Anna Salleh	Australian Consumer Association
Gae Pincus	

B Mackney	
C Papaggorge	
John Peryk	Grandma's Kitchen
John Creedon	CBG 5 Star
Richard Pascoe	Consolidated Buying Group
Franc Karagianois	
Sam Raslan	Top Shop Co-op
Jim Davis	Top Shop Co-op
Simon Molyneux	Shop Friendly Group
Max Baldock	Small Retailers Association
J M Leddra	Small Retailers Association
Michael Kovas	Food Retailers Association of NSW
Dave Jewry	Dave Jewry Marketing
Graham Parnell	Narga Australia Pty Ltd
Bernard Bettane	The Kosher Food Centre Pty Ltd
Tom Davis	City of Canning
David Fooks	Australian Spit Roast Professionals
Herbert Hogan	Hogan's Chilli Sauces
Marisa Brazzale	Banyule City Council
John Murrhiy	Bayside City Council
Lillias Bovell	Western Australian Municipal Association
John Ismael	Queensland Kebab Manufacturers
Warren Parker	Uncle Tony's Kebabs
Mr O'Brien	Meramist
Chris Dutre	Chutney Mary
Chris Orr	Chutney Mary
Noel Lyons	
Mr Carey	Carey Brothers
Matt Gleeson	
Gary Williamson	
C Whitehead	Pastoral Group of the Victorian Farmers' Federation
Ailsa Fox	Pastoral Group of the Victorian Farmers' Federation
Alan Burgess	United Dairyfarmers of Victoria
Tony Audley	United Dairyfarmers of Victoria
Chris Soames	Food Technology Services
Gabrielle Hutchinson	City of Melville
Frances Piggott	Murphy's Crisps Pty. Ltd.
Benjamin Piggott	Murphy's Crisps Pty Ltd
George Ritchie	Northside Quality Meats
Shirley Woods	Kyalla Yabbies
Paul Sheppard	Regal Paté
Rob Welsh	Honeywest
Judith Rylands	Home-Chef
Sherree Rylands	Home-Chef
Marisa Princi	Princi Smallgoods
Chung Dut Fan	Catacano Seafood

Tony Worsley	Dept. of Public Health, University of Adelaide
Madeleine Ball	Deakin University
David Briggs	Deakin University
Ann Cassar	Lower Hume Community Health Service
Ida Cattivera	Footscray City College
Robyn Charlwood	National Heart Foundation (Vic)
Ingrid Coles-Rutishauser	Deakin University
Catherine Cooper	Heart Foundation (Vic)
David Crawford	Deakin University
Bernard Crimmins	Australian Society for Study of Obesity
Helen Devereux	Deakin University
Peter Donovan	Surfcoast Shire Council
Helen Engel	Heart Foundation (Vic)
Angela Herd	St Vincents Hospital
Eileen Holbery	West Heidelberg Community Health Centre
Bridget Hsu-Hage	Monash Medical Centre
Claire James	
Sue Jeffreson	Department of Health and Family Services
Rick Kausman	Melbourne Weight Management and Eating Behaviour Clinic
Desleigh Kent	Swinburne University of Technology
Maggie Niall	Deakin University
Thea O'Connor	Body Image and Better Health Program
Kerry Renwick	Centre for Hospitality and Tourism Box Hill Institute of TAFE
Angela Vindigni	Banyule City Council
Max Watson	Royal Women's Hospital
Margaret Way	Austin and Repatriation Medical Centre
Kim Weston	Victorian Home Economics and Textiles Teachers Association
Lynden Wilkie	SSL Education Services
Robyn Wood-Bradley	East Bentleigh Community Health Centre
Ian Woodruff	Royal Melbourne Institute of Technology, Health Services Management Unit
Julie Woods	
Sharon Young	Eltham Community Health Centre
Eva Wiland	Food Read Magazine
Lyn Brown	ACT Health, Canberra Hospital
Ro Martin	Australian Institute of Health and Welfare
Eileen Jerga	Diabetes Australia, National Office
Nina Karen	Diabetes Australia, NSW
Craig Patterson	Royal Australasian College of Physician/Faculty PH Medicine
Kim Tikellis	Dieticians Association Australia
Suzanne Russell	Royal Melbourne Institute of Technology
Tom Heyhoe	Heyhoe and Associates Pty. Ltd.
Duncan Moore	City of Maroondah
Elizabeth Cannington	Foodbank Victoria

Jenny Graham	City of Melbourne Health Services
Derek Moore	Australian Nutrition Foundation (Vic Division)
Angela Malberg	National Speciality Program in PH and Community Nutrition
Chris Russell	Local Government Association (SA)
Maggie Niall	Deakin University/ANZFA
Colin Sindall	Deakin University
Denis Nelthorpe	Consumer Law Centre, Consumer Federation of Australia
Ian Henderson	Australian Institute of Environmental Health
Andrew Chen	Coles Myer Ltd.
Beverley Wood	Dieticians Association of Australia
<i>Participants in workshops</i>	
<b>Brisbane</b>	
Jim Dodds	Queensland Health
Bob Holmes	Queensland Health
Neil Smith	Queensland Primary Industries
Ron Boyle	Queensland Primary Industries
Denzil Scrivens	Queensland Premier and Cabinet
Rosemary Karas	Queensland Premier and Cabinet
Joanne Trienen	Queensland Department of Economic Development and Trade
Arthur Young	Queensland Department of Tourism, Small Business and Industry
Geoff Hawes	Queensland Department of Tourism, Small Business and Industry
Jackie Martin	Queensland Treasury
Martin Webb	Local Government Association, Logan City Council
Michael Adams	Australian Food Council
Laurie Murrie	Queensland Chamber of Commerce
Val Cocksedge	Consumers Federation of Australia
Anne Outram	Australian Institute of Environmental Health
Julie Weldon	United Graziers' Association
Lindsay Mullin	Queensland Dairy Farmers Association
John Stickens	Queensland Livestock and Meat Authority
Dominic Nolan	Cattlemen's Union of Australia
<b>Melbourne</b>	
Frank Greenhalgh	Department of Natural Resources and Environment
Margaret Darton	Department of Natural Resources and Environment
Terry Truscott	Department of Natural Resources and Environment
John Naughton	Department of Natural Resources and Environment
John Garnham	Department of Natural Resources and Environment

Anne Astin	Department of Natural Resources and Environment
Lesley Foster	Business Victoria
Shayne Daniels	City of Greater Dandenong
Tom Heyhoe	Heyhoe and Associates
Helen Dornom	Australian Dairy Industry Council
John Parrott	Victorian Dairy Industry Association
Jan Powning	Food Safety Victoria
William Hart	Department of Human Services
<b>Perth</b>	
Michael Jackson	Health Department of WA
Phil Oorjitham	City of Melville
Richard Stevens	WA Fishing Industry Council
Owen Ashby	Australian Institute of Environmental Health
Maurice Ferialdi	City of Belmont
Geraldine Pasqual	AGWEST Trade Development, AGWA
Andrea Michailidis	Department of Premier and Cabinet
Priscilla Dreghorn	Bakewell Foods
John Erceg	Shire of Swan
Ian Doughty	Health Department of WA
Rob Welsh	Dairy Industry Authority
Harvey Walkerden	City of Gosnells
Paul Carter	WA Farmers Federation
Mike O'Donnell	Small Business Development Corporation
Bruce Simpson	Department of Commerce and Trade
Lillias Bovell	WA Meat Authority
Murray Beros	Chamber of Commerce and Industry of WA
Peter Rutherford	Agriculture WA
Bob Heaperman	National Meat Association
Mark Fulton	George Weston Foods
Bala Murali	Department of Premier and Cabinet
Elizabeth Frankish	Microserve Laboratory
<b>Adelaide</b>	
Brian Delroy	South Australian Health Commission
Creina Stockley	Australian Wine Research Institute
Geoff Raven	Primary Industries and Resources
Ross Collins	Balfour Wauchope
Graham Gates	Riverland Development Corporation
Milan Rapp	SA Seafood Exporters
Roger Tilmouth	Dairy Authority of South Australia
Max Baldock	Small Retailers Association
Rosemary Ince	Department of Premier
Chris Russell	Local Government Association South Australia
<b>Darwin</b>	
Richard Mounsey	NT Hotels and Hospitality Association
Susan Webb	NT Hotels and Hospitality Association
Robert Atkinson	NT Hotels and Hospitality Association
Steve Sunk	Northern Territory University

Scott Evans	Cathay Pacific Catering
John Stacey	QUF Industries
Jenny Purdie	Department of Primary Industries and Fisheries
Steve Sell	Department of Primary Industries and Fisheries
John Alcock	Department of Primary Industries and Fisheries
Tony Egglinton	Department of Primary Industries and Fisheries
Steve O'Brien	Darwin Bakery
Tracy Ward	Territory Health Service
Pam Edwards	Territory Health Service
Paul Polotnianka	NT Fishing Industry Training Advisory Body
<b>Sydney</b>	
Stuart King	NSW Agriculture
Frank Lee	Goodman Fielder
Delia Dray	NSW Agriculture
John Scott	Department of Local Government
Allison David	NSW Dairy Corporation
Michael Hudson	NSW Health
John McMahon	NSW Health
Craig Suhlin	NSW Cabinet Office
Chris Chan	NSW Dairy Corporation
Steve Holroyd	Australian Institute of Environmental Health
Ross Peters	Food Operations
Kerry Chant	South West Sydney Public Health Unit
<b>National Safe Food Working Group (meeting in Canberra)</b>	
Helen Couper-Logan	Department of Health and Family Services
Rod Whiteway	Department of Industry, Science and Technology
Alex Schaap	Department of Primary Industry and Fisheries
Kirsten Pietzner	Grains Council of Australia
Rose Too	Australia New Zealand Food Authority
Peter Rutherford	Agriculture Western Australia
Tony Brown	Primary Industries, South Australia
Bob Calder	Department of Primary Industry and Energy
Barry Shay	Food Science Australia
Anne Astin	Department of Natural Resources and Energy, Victoria
Steve McCutcheon	Department of Primary Industry and Energy
Brian Ramsay	Pork Council of Australia
Jeff Fairbrother	Chicken Meat Federation
Hugh McMaster	Australian Egg Industry Association
David Adams	Bureau of Resource Sciences
Neil Smith	Department of Primary Industries, Queensland
Jim Dodds	Queensland Health
Jenny Ritchie	Department of Primary Industry and Energy
Helen McFarlane	Department of Health and Family Services
Lyall Howard	National Farmers' Federation
Stan Jarzynski	Department of Primary Industries and Energy
Bill Salter	Meat Industry Council

Scott Crerar	Bureau of Resource Sciences
Helen Scott-Orr	NSW Agriculture
Bob Biddle	Australian Quarantine and Inspection Service
Graham Peachey	Australia New Zealand Food Authority
Gordon Burch	Australia New Zealand Food Authority
<b>Hobart</b>	
Greg Robertson	Sorell Council
Andrew MacDonald	Glenorchy City Council
Linda Zehmeister	Brighton Council
Don Sandman	Tasmanian Dairy Industry Authority
Jim Stott	Tasman Council
Rod Haigh	Cascade Beverage Co
Wayne Davey	Local Government Association of Tasmania
Rachel Barron	Local Government Association of Tasmania
Terry Curtain	National Meat Association
Katrina Drake	Mundy and Son
Owen Carrington-Smith	AquaTas Pty Ltd
Adele Glidon	Australian Institute of Environment and Health
Ron Fry	TAFE Tasmania
Margaret Petrovic	Office of Consumer Affairs and Fair Trading
Rod Gabbey	Department of Primary Industries and Fisheries
Mick Middleton	Department of Primary Industries and Fisheries
Ray Ahern	Tasmanian Development Authority
Denita Harris	Australian Hotels Association
<b><i>Face-to-face meeting to discuss Draft Recommendations</i></b>	
<b>Adelaide</b>	
Australian Wine Research Institute	
Winemakers' Federation	
Australian Wine and Brandy Corporation	
Wine and Brandy Industry Association of SA	
SA Fishing Industry Council	
SA Farmers' Federation	
SA Dairy Industry	
<b>Perth</b>	
One combined meeting was held in Perth. Those present were:	
Micheal Jackson	WA Health
Peter Rutherford	WA Agriculture
Max Hipkins	City of Nedlands
Robert McFerran	The Western Australian Farmers' Federation
Elizabeth Cox	City of Stirling
Murray Beros	Chamber of Commerce and Industry
Ross Weaver	WA Department of Commerce and Trade
Elizabeth Frankish	Microserve
Bill Calder	Dairy Industry Authority of Western Australia
Rob Heapermann	National Meat Association
Tony Gibson	WA Fishing Industry Council
Mike O'Donnell	Small Business Development Corporation

Paul Psaila-Savona	WA Health
Phillip Swain	Australian Institute of Environmental Health
Ian Doughty	WA Health
Chris Soames	Food Technology Association of WA
Geraldine Pasqual	AG West/Trade and Commerce
Andrea Michidid	Premier and Cabinet
Ross Weaver	Department of Commerce and Trade
Priscilla Areghorn	Bakewell Foods
Iain MacGregor	Bakewell Foods

**Sydney**

Australian Business Chambers  
National Meat Association  
Australian Supermarket Institute  
Australian Consumers'  
Association  
NSW Dairy Farmers  
Australian Soft Drinks  
Manufacturers  
NSW Farmers' Association  
Australian Meat Council  
Caterers and Restaurant  
Association

**Melbourne**

Australian Dairy Industry Council  
Food and Beverage Importers  
Victorian Farmers' Federation  
Health Victoria  
Business Competitiveness Working  
Group  
North Victorian  
Fruitgrowers' Association  
Confectionery Manufacturers  
Association  
Flour Millers' Association  
Australian Dairy Farmers' Federation  
Ltd.

**New Zealand**

Two meetings were held in Auckland: one with many organisations represented; the other was with representatives of the Ministry of Commerce. As well, a meeting was held in Wellington with representatives of the Ministry of Health.

**Canberra**

Grains Council  
Sheepmeat Council  
Cattle Council  
Australian Seafood Council

**Hobart**

Australian Hotels Association

Tasmanian Department of Primary Industries and Fisheries

Cascade Brewery

**Brisbane**

Queensland Health and Agriculture held a combined meeting of stakeholders, including:

David Larkings	Queensland Health
Lynne Marshall	Queensland Health
Bob Holmes	Queensland Health
Mark Hansen	Queensland Health
Paula Seal	Logan City Council
Martin Webb	Logan City Council
Tim Strickland	Queensland University of Technology
Trevor Green	Redland Shire Council
Mark Rickard	Queensland Milk Authority
John Strickens	Queensland Livestock and Meat Authority
Corriem Girard	Demicorlse Pty Ltd
Rod Bower	Continental Biscuits
Bruce Hedditch	Queensland Chamber of Commerce and Industry
Peter Peterson	Queensland Department of Primary Industries (Fisheries)
Fiona Glanre	Queensland Hotels Association
John Madigan	Ipswich City Council
Brett Tanner	Ipswich City Council
Don Steele	Queensland Livestock Agents Association
Mac McArthur	Queensland Department of Primary Industries
Tina Scrine	RAQ
Stephen Booth	Coles Supermarkets
Sean Johnson	Queensland Dietitians Association
Ian Wade-Parker	Australian Culinary Federation
Graeme Bell	Sunny Queen Limited
Greg Francis	Caboolture Shire
John Bates	Queensland Health Scientific Services
Trudy Graham	Queensland Health Scientific Services
Geoff Hawes	Tourism, Small Business and Industry
Rob Morgan	Food Technology Association of Queensland
Ken Grice	Golden Circle Limited
Neil Smith	Department of Primary Industries (Qld)
Ian Baldock	QRTSA
James Visser	Restaurant and Catering Queensland
Anne Outram	Australian Institute of Environmental Health
Russel Sangster	Department of Primary Industries
Nick Delaney	Department of Primary Industries
Jim Pekin	Department of Primary Industries

Meetings were also held with:

Queensland Premiers and Cabinet

Queensland Primary Industries

Queensland Farmers Association

***Comments on the Draft Report were received from:***

**Commonwealth and New Zealand Government**

Mike Holthuyzen	Department of Industry Science and Tourism
Dr Cathy Mead	Dept of Health and Family Services
Hilary Cuerden-Clifford	Imported Food Control Act Review
Alison Turner	National Registration Authority
Paul Hickey	Australian Quarantine and Inspection Service
Sitesh Bhojani	Australian Competition and Consumer Commission
George Etrelezis	Small Business Development Corporation
Geoff Sanderson	New Zealand Government
Michael Mackellar	Australia New Zealand Food Authority
Leo Kennedy	Department of Workplace Relations and Small Business

**State and Territory Government**

David Rolfe	Department of Chief Minister (Northern Territory)
Irene Passaris	HPS
Kim Evans	Department of Primary Industry and Fisheries
R E Neiper	Queensland Department of Primary Industries
Vivian Linn	National Public Health Partnership
Petrice Judge	WA Government

**Local Government**

Alison Bray	Pine Rivers Shire Council
Ross Wells	City of Gosnells
Ned Beslagic	City of Ballarat
Alex Kiss	South Sydney Council
Neal Cawell	Public Health Unit, Sunshine Coast
Peter Jenkins	Wyndham City Council
Robert Van Hese	Wyong Shire Council
Graham Plumb	Ballina Shire Council
K Reid	Tamworth City Council
Neville Moriarty	City of Bunbury
W P Hannigan	Health and Building, Temora Shire Council
Greg Francis	Gaboolture Shire Council
Craig Darby	Hastings Council
G R Kellar	Logan City Council
C H Eves	Cairns City Council
Greg Jensen	Redland Shire Council
John Gabrielson	City of Mandurah
B Casselden	Kempsey Shire Council
Pets Jamieson	Local Government Association of Queensland

**Primary Producers**

Bob Hansen	Peanut Company of Australia
John E Kenez	Australian Walnut Industry Association
John Rogers	Northern Rivers NSW Farmers' Federation (Horticulture)
Richard Sims	Robern Menz Pty Ltd
Lyall Howard	National Farmers' Federation
Greg Seymour	Australian Mushroom Growers Association

Karen Mackenzie  
Rick Morgan  
Andrew Young  
Jim Pekin  
Hugh McMaster  
Richard Hitchins  
Greg Lennon

Mark Hancock  
Neil B Fisher  
Margie Milgate  
Graham Dalton  
Brett McCallum  
Peter Comensoli  
Helena Whitman  
Wally Shaw  
Gerry Garand

John Obst

**Meat and Dairy**

Frank Messiano  
Jeff Fairbrother  
Mrs Lynn Woodhead  
Mrs Marven  
Mark Rickard  
Justin Toohey  
Roy van Neocil  
Robin Bligh  
Peter Klein  
Geoff Jureidini  
Jeff Dobey  
Roger Tilmouth  
Winston Watts  
Joy Manners  
J H McQueen

**Manufacturers**

Daniel Presser  
Malcolm Gennoe  
John Gerrard  
Marky Makalanda  
Peter Swain  
Roy Andrade  
Gary Debridge  
Nick Begakis  
Dean Robson  
J Rutherford

Stahmann Farms Inc.  
Scarborough Fishing  
Brisbane Markets  
Horticulture Industry Development Council  
Australian Egg Industry Association  
Qualbro Pty Ltd  
NSW Chamber of Fruit and Vegetable Industries Inc.  
The Mildura Cooperative Fruit Co. Ltd.  
Grains Council of Australia Inc.  
Queensland Fruit and Vegetable Growers  
Queensland Farmers' Federation  
Western Australian Fishing Industry Council  
NSW Farmers' Association  
WA Farmers' Federation  
Victorian Farmers' Federation  
Australian Chamber of Fruit and Vegetable Industries Ltd  
Queensland Graingrowers' Association

Tender Plus Pty Ltd  
Australian Chicken Meat Federation  
Cattlemen's Union  
Australian Chicken Meat Association  
Queensland Livestock Meat Authority  
Cattle Council of Australia  
Thomas Borthwick and Sons (Australia)  
Meat Industry Council  
Sheep Meat Council  
National Meat Association of Australia  
United Milk Tasmania Ltd  
Dairy Authority of SA  
NSW Dairy Farmers Association Ltd  
Bonlac Foods Limited  
Australian Dairy Farmers' Federation

Sabrands  
Orlando Wyndham  
Packaged Ice Association of Australia  
The Original Juice Co Pty Ltd  
Golden Circle Ltd  
Just Squeezed Fruit Juices  
G C Han and Co (Australia) Pty Ltd  
Bellis Fruit Bars  
MAS Food Industries  
Maxims Ice Cream

Marisa Princi	Princi Smallgoods
Graeme Dray	Appledale Processors, Goldendale
Ashley Roff	Berri Limited
Robyn Banks	Nestle Australia Ltd
Andy Lee	Flour Millers Council
Peter Levinge	Kelco – NutraSweet
Natalie Saunders	Australian Soft Drink Association Ltd
<b>Retail and Catering</b>	
Ralph Rhind	Coast to Coast, The Golden Road (WA)
Robert O'Connor	Catering Concepts Australia
Scott Evans	Cathay Pacific Catering Services
Graham Page	TSV Larrikins
Robyn Schmidt	Victorian Bed and Breakfast Council
Roy Palmer	Fishy Business
Peter Hocking	Coles Myer Ltd
Warwick Hough	Restaurant and Catering Australia
<b>Members of the public</b>	
W G Spiels	
Peter Paroz	
Elaine J Attwood	
<b>Consumer Organisations</b>	
Cyril S Wyndham	Hunter Urban Network for Consumers of Healthcare
Dick Copeman	Consumers' Federation of Australia
Judith Gleeson	Soma Health Association of Aust (WA Branch)
Valerie Cocksedge	National Council of Women of Australia Inc Ltd
Ron Law	New Zealand NNFA
<b>Industry Associations</b>	
Don Kinnersley	Coop Federation of NSW Ltd
Don Cameron	QCCI
Tony Beaver	Food and Beverage Importers' Association
Harris Boulton	Australian Food Council
Anne Outram	Australian Institute of Environmental Health
John Martin	Australian Chamber of Commerce and Industry
P M Holt	Australian Business Chamber
<b>Academics/professionals</b>	
Amanda Higgerson	TAFE
Elizabeth Hare	Wodonga Institute of TAFE
Darryl Mason	Envirotechnics Pest Management
Bridget Hsu-Hage	Monash University
Brett Kerrison	Food Spectrum
Michael Redlich	Julius Redlich and Sons P/L
David Laboyrie	Microtech Labs (NSW)
John Birkbeck	NZ Nutrition Foundation
Marilyn Gender	Australian Nursing Council
Bill Beale	Beale Management Consultants
Gordon Hale	Gordon Hale and Associates
William Swallow	Enivronmental Science and Research Ltd
Ms Rosemary Cramp	Home Economics Institute of Australia

Elizabeth Frankish	Australian Institute of Food Science and Technology
John Fullard	Technical consultant to the food industry
Lynne Flemming	Public Health Association
Craig Kirkwood	Business East
Julie Woods	Food and Nutrition Special Interest Group
Paul Harmer	Heaven's Ridge
Bronwyn Ashton	National Heart Foundation (Qld)
Mareeta Grundy	Heart Foundation (National Office)
Peter Jurek	Catering Manager, Hills College
Diane Temple	Community Dietician
<b>Others</b>	
L C Meakin	Bev-Pak Australia Pty Ltd
Michael Laurence	Total Packages
John D C Flannagan	Foodbank Australia
Megan Shaw	Monsanto, Australia
Geoffrey Ravenscroft	3M Australia Pty Ltd
Geoff MacAlpine	AVCARE
Tom Bruynell	Roche Vitamins, Australia

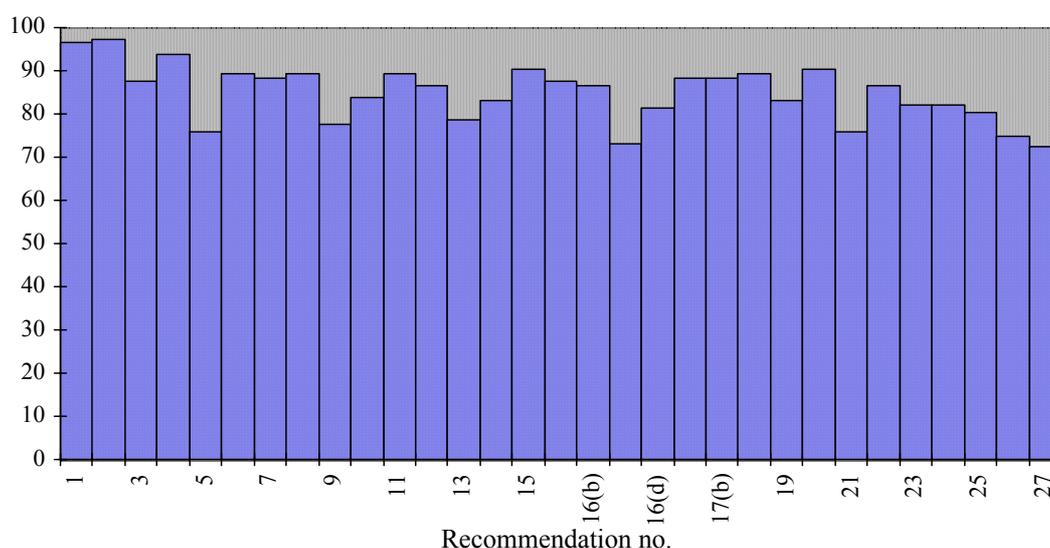
**Appendix C - Matrix of participants**

<b>Sector</b>	<b>Written submission</b>	<b>Public hearings</b>	<b>Focus groups</b>	<b>Workshops</b>	<b>Comments on draft report</b>
<b>Government</b>					
Commonwealth/New Zealand	10	14	6	14	10
State and Territory	13	24	8	51	6
Local Government	24	39	24	21	19
<b>Industry</b>					23
Primary producers	20	6	7	9	
Meat and Dairy	11	20	4	15	15
Manufacturers	23	26	8	10	21
Retail	15	17	18	7	10
<b>Members of public</b>	12	1			2
<b>Consumer organisations</b>	8	8	16	1	6
<b>Academics, professionals and consultants</b>	23	54	61	7	24
<b>Other</b>	15	18	25		7
<b>TOTAL</b>	176	227	177	135	143

## Appendix D - Summary of comments on the draft report

A Rapid Response Form enabled respondents to indicate their agreement or disagreement with each Draft Recommendation in the Draft Report as well as make comments on individual recommendation and general comments. Of the 145 replies to the request for comment, 112 consisted of, or included a completed Rapid Response Form.

The graph below shows the number of respondents, in relation to all who returned a Rapid Response Form, that indicated their agreement with a particular recommendation. The difference between those in agreement and the total consists of respondents who disagree and those that declined to comment. There was general support for the Draft Recommendations.



*Figure 3: Agreement with Draft Recommendations*

Recommendations dealing with matters of a technical nature such as the review of the ANZFA Act (Recommendations 24–7), MRL setting (Recommendation 16) and contestable service delivery (Recommendation 5) apparently received the lowest acceptance rate (82 out of 112 in the case of Recommendation 16(c)). A number of replies to the Draft Recommendations indicated either unwillingness or inability to provide comment rather than disagreement. In contrast, the recommendation best received (110 out of 112) was Recommendation 2 which outlined the principles on which the Review was based.

It should be noted that Draft Recommendations were changed in light of comments received. Controversial recommendations, such as Recommendation 10, that supports a National Hygiene Standard, attracted strongly polarised comment and was extensively reviewed between draft and final versions of the Report.

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**Appendix E - Current regulatory arrangements**
*National legislation regulating food*

<b>Australian Competition and Consumer Commission</b>	Trade Practices Act
<b>Australian New Zealand Food Authority</b>	Food Standards Code
<b>Australian Quarantine and Inspection Service</b>	Export Control Act (1982) Prescribed Goods General Orders AQIS Notices Quarantine Act (for imported grains, fruit and vegetables)
	Meat: Export Meat Orders Game Poultry and Rabbit Meat Orders
	Processed Foods: Export Control (Processed Food) Orders Export Control (Dried Fruit) Orders
	Grains: Grains, Plants & Plant Product Orders
	Organic Foods: Export Control (Organic Produce) Certification Orders (No 6, 1997)
	Imported Foods: Imported Foods Control Act (1992) Imported Foods Control Regulation (1993) Imported Foods Control Orders (as amended)
<b>National Registration Authority</b>	Agricultural and Veterinary Chemicals Act 1994, Agricultural and Veterinary Chemicals Code Act 1994, Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994, Agricultural and Veterinary Chemicals Code Regulations 1995 (As amended), Agricultural and Veterinary Chemicals (Administration) Regulations 1995, Veterinary Chemical Products (Excluded Stockfood Non-active Constituents) Order 1995,
<b>National Residue Survey</b>	National Residue Survey Act (1992)
<b>Australian Wine and Brandy Corporation</b>	Australian Wine and Brandy Act 1993

***Regulatory agencies***

<b>National</b>	Australian Competition and Consumer Commission Australia New Zealand Food Authority Therapeutic Goods Administration Department of Primary Industries and Energy Australian Quarantine and Inspection Service National Registration Authority National Residue Survey Australian Meat and Livestock Corporation Australian Wine and Brandy Corporation Australian Horticultural Corporation Australian Wheat Board Department of Industry Science and Tourism
<b>New South Wales</b>	Department of Health Department of Agriculture NSW Meat Industry Authority NSW Dairy Corporation Department of Fisheries Department Fair Trading Environmental Protection Agency
<b>Victoria</b>	Department of Human Services Food Safety Council of Victoria Department of Natural Resources and Environment, Victorian Meat Authority Victorian Dairy Industry Authority Department of Consumer Affairs-Office of Fair Trading Dried Fruits Board Australian Barley Board (also SA)
<b>Queensland</b>	Queensland Department of Health Department of Primary Industries Queensland Livestock and Meat Authority Queensland Dairy Authority Department of Premier and Cabinet Consumer Affairs Queensland Department of Environment Department of Local Government and Planning
<b>South Australia</b>	SA Health Commission Primary Industry Department of SA SA Dairy Authority SA Dried Fruits Board Office of Consumer and Business Affairs Australian Barley Board (also Vic)

<b>Western Australia</b>	Health Department of Western Australia Department of Agriculture Western Australian Meat Authority Dairy Industry Authority of Western Australia Consumer Affairs Office of Fair Trading
<b>Tasmania</b>	Department of Community Services and Health Department of Primary Industries and Fisheries Dairy Industry Authority Department of Environment and Lands Office of Consumer Affairs and Fair Trading
<b>Northern Territory</b>	NT Dept of Health and Community Services Dept of Primary Industries and Fisheries Department of Lands, Planning and Environment Office of Consumer Affairs and Fair Trading
<b>Australian Capital Territory</b>	ACT Department of Health and Community Services Environment ACT

*Number of local government authorities*

New South Wales	177
Victoria	78
Queensland	140
South Australia	70
Western Australia	143
Tasmania	29
Northern Territory	68

*Summary of State and Territory legislation regulating food***Primary Health and Agriculture Acts and Regulations (excludes fisheries, levy, marketing and quarantine)**

NSW	Qld	SA	Tas	Vic	WA	ACT	NT
Food Act 1989	Food Act 1981	Food Act 1985	Public Health Act 1962	Food Act (as amended 1997)	Health Act 1911	Food Act 1992	Food Act 1986
		Food Regulations 1986					Food Standards Regulations 1988
							Food Administration Regulations 1995
							Food (Interim Provisions) Regulations 1936
Food Standards Code Regulation 1995 (incorporations)	Food Hygiene Regulations 1989	Food Hygiene Regulations 1990	Public Health Food Bill 1997		Health (Food Hygiene) Regulations 1993	Public Health (Sale of Food and Drugs) Regulations (as amended) 1980	
Food (General) Regulation 1997	Food Standards Regulation 1994	Public and Environmental Health Act 1987			Health (Adoption of Food Standards Code) Regulations 1992		

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Meat Industry Act 1989 and Regulations	Meat Industry Act 1993	Meat Hygiene Act 1994	Meat Hygiene Act 1985	Meat Industry Act 1993 and associated Regulations	Meat Industry Authority Act and Regulations 1976–84	Meat Industries Act 1996
Meat Industry (Game Meat) Amendment Act 1992			Meat Hygiene Regulations 1986		Health (Game Meat) Regulations 1992	

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NSW	Qld	SA	Tas	Vic	WA	ACT	NT
Poultry Processing Act 1969		Poultry Meat Industry Act 1969		Broiler Chicken Industry Act 1978	Chicken Meat Industry Act 1977		
Poultry Meat Industry Act 1986		Poultry Meat Hygiene Act 1986		Egg Industry Act 1988	Egg Industry (Deregulation) Act 1993	Poultry Processing Establishment Regulations	
Dairy Industry Act 1997 and Associated Regulations	Dairy Industry Act 1993	Dairy Industry Act 1992	Dairy Industry Act 1994	Dairy Industry Act 1992 and associated Regulations	Dairy Industry Act 1973		

**Other State and Territory Health and Agriculture Acts and Regulations (excludes fisheries, levy, marketing and quarantine)**

NSW	Qld	SA	Tas	Vic	WA	ACT	NT
Agricultural and Veterinary Chemicals Act 1994	Agricultural and Veterinary Chemicals Act 1995		Agricultural and Veterinary Chemicals Act 1994				

Stock (Chemical Residues) Act 1975	Agricultural Standards Act 1994	Agricultural and Veterinary Chemicals (Control of Use) Act 1995	Agricultural and Veterinary Chemicals (Control of Use) Act 1992	Agricultural Produce (Chemical Residues) Act 1976
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Chemical Usage (Agricultural and Veterinary) Control 1988

NSW	Qld	SA	Tas	Vic	WA	ACT	NT
	Agricultural Chemicals Distribution Act 1966				Agricultural Products Act 1929		
Stock Diseases Act 1923	Stock Act 1915	Stock Act 1990	Animal Health Act 1995		Stock Diseases (Regulations) Act 1968	Stock Act 1991	
		Livestock Act 1997		Livestock Disease Control Act 1994	Exotic Diseases of Animals Act 1993	Animal Diseases Act 1993	Stock Diseases Act

## Glossary

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Stock Foods Act  
1940

Stock Foods  
Act 1941

Stock (Seller  
Liability and  
Declarations)  
Act 1993

Veterinary  
Preparations and  
Animal Feeding  
Stuffs Act 1976

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Seeds Act 1982

Seeds Act  
1979

Seeds Act 1981

Dried Fruits  
Act and  
Regulations  
1993

Dried Fruits Act  
1958

Dried Fruits Act  
1947

Sale of Fruit  
Act 1915

Canned Fruits  
Marketing Act  
1980

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Citrus Industry  
Act 1991

Murray Valley  
Citrus Act 1989

Fruit and  
Vegetables  
(Grading) Act  
1934

Farm Produce  
Wholesale Act  
1990

Plant Health and  
Plant Products  
Act 1995

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			Garden Produce (Regulation of Delivery) Act 1967					Poisons and Dangerous Drugs Act 1983
Pesticides Act 1978								
<b>NSW</b>	<b>Qld</b>	<b>SA</b>	<b>Tas</b>	<b>Vic</b>	<b>WA</b>	<b>ACT</b>	<b>NT</b>	
								Building Act 1993
								Building Regulations 1993
Banana Industry Act 1987								
			Margarine Act 1939					
Trade Measurement Act and Regulations 1989		Trade Measurement Act 1993	Weights and Measures Act 1934	Trade Measurement Act 1995		Trade Measurement Act 1991		NT Trade Measurement Act 1990
			Weights and Measures Regulations 1964	Trade Measurement Regulations 1995				

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Fair Trading Act 1987	Fair Trading Act 1987	Fair Trading Act	Fair Trading Act	Fair Trading Act 1987	Fair Trading Act 1992	Consumer Affairs and Fair Trading Act 1990
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## Appendix F - Monitoring and Surveillance

An outline is given below of the varied data-gathering activities undertaken in relation to food in Australia by a wide variety of agencies. These activities may be variously described as monitoring, surveillance and inspection/compliance activities. This outline is indicative and may not be complete.

- DPIE's major operating group, AQIS, is responsible for export certification for meat, dairy, fish, grains, fruit, vegetables, processed foods and for ensuring imported foods meet the *Food Standards Code*. As such, it provides inspection services for commodities for export and the imported foods program. AQIS discharges its responsibilities either through direct inspections or quality assurance programs such as HACCP.
- NRA operates under legislation administered by DPIE to control the registration of agricultural and veterinary chemicals. TGA, Worksafe Australia and Environment Australia provide specialist advice as part of this process. The NRA, recommends MRLs of chemicals in produce to ANZFA for inclusion in food standards. Consultation and review involves States, Territories, NHMRC, AQIS, the Genetic Manipulation Advisory Committee (GMAC), scientific experts, consumers and industry bodies. The NRA also undertakes compliance and surveillance activities to ensure products meet the registration requirements.
- NRS conducts monitoring programs for chemical residues in domestic and export agricultural commodities. The program is conducted in conjunction with industry. NRS also undertakes a comprehensive laboratory proficiency testing program.
- DHFS is involved in the surveillance of a nationally-agreed set of notifiable diseases, including a range of pathogens for which food is the major mode of transmission. Diseases include Salmonellosis, Campylobacteriosis, Botulism, Shigellosis, Typhoid and Yersiniosis. This information is gathered with the assistance of State and Territory health departments and published monthly in *Communicable Diseases Intelligence*.
- The National Salmonella Surveillance Scheme (NSSS) collects food-borne and other enteric pathogens from around the country and performs further characterisation at the Microbiological Diagnostic Unit at the University of Melbourne. It publishes trend data on a quarterly and annual basis.
- ANZFA undertakes surveillance of nutrient composition under the Food Composition Program, conducts surveillance on food contaminants such as pesticides and heavy metals as part of the Australian Market Basket Survey and occasional microbiological surveys as required. ANZFA also manages aggregate information on food recalls and may conduct surveys on labelling or other food related issues as needed.

At the State and Territory level health and agricultural departments play an important role in relation to human and animal and plant health.

- Health departments are generally responsible for enforcing food Acts and Regulations. These enforcement activities include inspections of premises and

food sampling activities undertaken either by State and Territory inspectors or EHOs employed by local government. Local government enforcement activities often link closely with the building approval function of councils.

- States agriculture departments also have authority to sample and survey the use of agricultural and veterinary chemicals under state legislation.
- States and Territories have generally vested inspection responsibilities to the State dairy and meat boards in relation to milk and meat. Inspection arrangements vary from State to State.

Industry also plays a role and conducts various industry and enterprise monitoring and surveillance programs and activities.

At the Commonwealth level linkages between human and animal surveillance are made through the Communicable Diseases Network of Australia and New Zealand. The Network meets fortnightly by teleconference and comprises representatives of Commonwealth and State and Territory health departments, DPIE, the Australian Institute of Health and Welfare, the Australian Defence Force, the Australian Society for Microbiology, the National Centre for Epidemiology and Population Health and the New Zealand health department as well as specialist epidemiologists.

DPIE's Animal Industry Public Health Committee, established in 1997, links livestock committees and health agencies.

The National Animal Health Information System (NAHIS) provides a national overview of Australia's animal health status and animal disease surveillance and control activities and capabilities. NAHIS provides quarterly reports on selected diseases and residue surveillance data. Potential food-borne illness reported include listeriosis, ovine brucellosis and salmonellosis.

While there is a variety of data collected across the country in relation to food there is no national comprehensive food-borne illness and food safety surveillance system, nor a coordinated process for identifying national surveillance priorities. A number of recent recommendations will go some way to improving this situation. For example:

- ANZFA has endorsed development of a nationally coordinated food surveillance and compliance strategy. Although the surveillance system will be primarily designed for food surveillance, the aim will be to develop linkages with both the human health surveillance and veterinary health surveillance systems. A working group of Commonwealth and State health and agriculture agencies, will work to identify all elements of an optimally effective surveillance system including:
  - defining uniform criteria for prioritising surveillance work;
  - developing a framework for gathering, reporting and consolidating information on surveillance;
  - developing a framework for minimum service agreements between participating government agencies;
  - developing benchmarking for best practice in surveillance; and

- identifying resource implications for participating agencies.
- The National Public Health Partnership (NPHP) Group has recently endorsed recommendations of a national Working Party on Food-borne Disease and, in consultation with the NCDC in DHFS and the Communicable Diseases Network of Australia and New Zealand (CDNANZ), has agreed to national implementation of the recommendations. These recommendations include developing best practice guidelines for food-borne illness and surveillance and control; developing a consistent national list of notifiable food-borne illness; developing a strategy for integrated purchasing of public health laboratory services; and promoting integration between food and disease surveillance.
- The Bureau of Resource Sciences, in conjunction with the Animal Industries Public Health Committee, is assessing the need for further surveillance of food-borne pathogens at the farm level to better inform the food supply chain of current and emerging food-borne hazards.

**Glossary**

agrifood	the whole food supply chain from farm, fishing boat or orchard to the kitchen, restaurant, cafe or to overseas customers
critical control point	a step, at which, control should be applied to prevent or eliminate a food safety hazard or reduce it to an acceptable level
competition policy principles	review of legislative restrictions on competition—see Appendix A for details
compliance	actions by business to meet the requirements of regulation
diet-related disease	disease that causes death, illness or disability thought to be linked to diet
food-borne illness	adverse affects to health attributable to food as a result of bacterial, viral, protozoan or helminth infection
food regulatory agencies	agencies responsible for administering and enforcing regulation that relates to food or agrifood businesses
food safety hazard	a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect
food safety risk	a function of the probability of an adverse effect and the severity of that effect of a grouping of biological, chemical or physical agents in, or condition of, food with the potential to cause an adverse health effect
hazard analysis and critical control point	a system that identifies, evaluates and controls hazards that are significant for food safety
haemolytic uraemic syndrome	a clinical manifestation of infection which can result, particularly in children, in acute kidney failure
hazard analysis	the process of collecting and evaluating information on hazards and conditions leading to their presence to decide which are significant for food safety and therefore should be addressed in the HACCP plan
hazard	the qualitative and/or quantitative evaluation characterisation: of the nature of the adverse effects associated with biological, chemical and physical agents which may be present in food

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hazard identification	the identification of biological, chemical and physical agents capable of causing health effects and which may be present in a particular food or group of foods
surveillance and monitoring	broadly described as ‘information for action’. Can include monitoring of foods for compliance with microbial, chemical and physical standards and surveillance for human, quarantine and plant disease
regulatory impact statements	the process of cost/benefit analysis applied to regulation or quasi-regulation in order to minimise the burden of such regulation and to consider alternatives to regulation
risk	a function of the probability of an adverse effect and the severity of that effect to the health or safety of the community or to other key interests of the community (in the context of this report the meaning of ‘risk’ is not intended to extent to commercial risk to businesses)
risk analysis	a process consisting of three components: risk assessment, risk management and risk communication
risk assessment	the scientifically-based process consisting of the following steps: hazard identification, hazard characterisation, exposure assessment, and risk characterisation
risk characterisation	the qualitative or quantitative estimation, including attendant uncertainties, of the probability of occurrence and severity of known potential adverse health effects in a given population based on hazard identification, hazard characterisation and exposure
risk communication	the interactive exchange of information and opinions concerning risk among risk assessors, risk managers, consumers and interested parties
risk management	the process of weighing policy alternatives in the light of the results of risk assessment and, if required, selecting and implementing appropriate control options, including regulatory measures
quality assurance	programs to ensure a specified level of quality in a product

quasi-regulation

the range of rules, instruments and standards where government influences business to comply, but which does not form part of explicit government regulations

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**Acronyms**

ACCC	Australian Competition and Consumer Commission
AFC	Australian Food Council
ANZFA	Australia New Zealand Food Authority
ANZFA Act	<i>Australia New Zealand Food Authority Act 1991</i>
ANZFAAC	Australia New Zealand Food Authority Advisory Committee
ANZFSC	Australia New Zealand Food Standards Council
APEC	Asia Pacific Economic Cooperation
AQIS	Australian Quarantine and Inspection Service
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
BEP	business entry point
BLIC	Business Licensing Information Centre
BRRU	Business Regulation Review Unit
BRS	Bureau of Resource Sciences
CDNANZ	Communicable Diseases Network of Australia and New Zealand
CEO	chief executive officer
CER	Australia New Zealand Closer Economic Relations Trade Agreement
COAG	Council of Australian Governments
DHFS	Commonwealth Department of Health and Family Services
DIST	Commonwealth Department of Industry, Science and Tourism
DPIE	Commonwealth Department of Primary Industries and Energy
EHO	environmental health officer
ERPIM	External Reference Panel for the Food Drug Interface Matters
EU	European Union
GMAC	Genetic Manipulation Advisory Committee
HACCP	hazard analysis critical control point

## Acronyms

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HUS	haemolytic-uraemic syndrome
IAC	Industries Assistance Commission
IFIP	Imported Food Inspection Program
IPM	integrated pest management
JAS–ANZ	Join Accreditation System of Australia and New Zealand
MRL	maximum residue limit
MPC	maximum permitted concentrations of contaminants
MSQA	??
NAHIS	National Animal Health Information System
NCDC	National Centre for Disease Control
NFA	National Food Authority (pre-ANZFA)
NFSC	National Food Standards Council (pre-ANZFSC)
NHMRC	National Health and Medical Research Council
NPHP	National Public Health Partnership
NRA	National Registration Authority
NRS	National Residue Survey
NSFWG	National Safe Food Working Group
NSSS	National Salmonella Surveillance Scheme
RRU	Regulation Review Unit
SAFHIC	South Australian Food Hygiene Implementation Committee
SCARM	Standing Committee on Agriculture Resource Management
SCFA	Standing Committee on Fisheries and Aquaculture
SPS	sanitary and phytosanitary
TBT	technical barriers to trade
TGA	Therapeutic Goods Administration
TPA	<i>Trade Practices Act 1974</i>
WTO	World Trade Organisation



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