

Simplifying the Menu:

Food Regulation in Victoria

A draft report for further consultation and input

April 2007



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Victorian Competition and Efficiency Commission
GPO Box 4379
MELBOURNE VICTORIA 3001
AUSTRALIA

Telephone: (03) 9092 5800

Facsimile: (03) 9092 5845

Website: www.vcec.vic.gov.au

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About the Victorian Competition and Efficiency Commission

The Victorian Competition and Efficiency Commission is the Victorian Government's principal body advising on business regulation reform and identifying opportunities for improving Victoria's competitive position. The Commission has three core functions:

- reviewing regulatory impact statements and advising on the economic impact of significant new legislation
- undertaking inquiries into matters referred to it by the Victorian Government
- improving the awareness of, and compliance with, competitive neutrality.

For further information on the Victorian Competition and Efficiency Commission, visit our website at: www.vcec.vic.gov.au

Opportunity for further comment

You are invited to examine this draft report and provide comment on it within the Commission's public inquiry process. The Commission will be accepting submissions commenting on this report and will be undertaking further consultation before delivering a final report to the Government.

Submissions may be sent by mail, fax, audio cassette or email.

By mail: Food Inquiry
 Victorian Competition and Efficiency Commission
 GPO Box 4379
 MELBOURNE VICTORIA 3001
 AUSTRALIA

By facsimile: (03) 9092 5845 By email: food@vcec.vic.gov.au

The Commission should receive all submissions by close of business **Friday 15 June 2007**.

Terms of reference

VCEC Inquiry into Food Regulation in Victoria

I, John Brumby MP, Treasurer, pursuant to section 4 of the State Owned Enterprises (State Body — Victorian Competition and Efficiency Commission) Order (“the Order”), hereby direct the Victorian Competition and Efficiency Commission (“the Commission”) to conduct an inquiry into food regulation in Victoria.

Background

The Victorian food industry is a major contributor to the economy in terms of manufacturing, employment and exports.

The food industry is currently subject to a complex and wide-ranging regulatory environment. Food regulation takes many forms, applying to the production, distribution, preparation, handling, labelling and selling of food. Food regulation is both state-based, and subject to a national framework.

The Victorian Government is committed to national standards and consistent implementation as documented in the COAG Food Regulation Agreement 2002. However, the continued and sustainable development of this important sector of the Victorian economy is dependent on a regulatory regime that yields efficient outcomes in terms of food safety and quality, whilst minimising the compliance and administrative burden on regulated parties and allowing industry to innovate to meet market demands.

The Victorian Government is committed to the development of best practice regulatory regimes. Through its recently-announced *Reducing the Regulatory Burden* initiative, the Government is seeking to reduce the regulatory burden by cutting red tape for the business and the not-for-profit sectors, and developing new approaches to lower regulatory compliance costs. A comprehensive review of food regulation in Victoria is the first of a series of hotspot reviews to achieve this objective.

The Commission’s inquiry into food regulation is expected to investigate ways to simplify the current regulatory environment, clarify roles and expectations for food industry participants at different stages of production, and provide recommendations for best practice enforcement of sound food regulation.

Scope of the inquiry

The Commission is to inquire and report upon:

1. the nature and magnitude of the compliance and administrative burdens of food regulation on business, consumers and not-for-profit sector, and whether the objectives of current food regulation are being met;
2. the impact of the current food regulation environment on the competitiveness and trade performance of Victorian industries (including an examination of the impact of inconsistencies between Victoria and other jurisdictions in implementing and enforcing national food standards, and fair trading in the area of misleading conduct);
3. opportunities for reducing or streamlining regulation (including harmonisation of national and state regulations), and the applicability of alternative regulatory models, to:
 - minimise compliance and administrative burdens;
 - improve international competitiveness; and
 - facilitate investmentwhilst still meeting the objectives of current regulation;
4. food regulation to support community activities and expectations (e.g. impact of food handling regulations on community fund-raising events, such as school fetes, cake stalls etc), and appropriate risk management strategies;
5. the flexibility of food standards and labelling regulations to adapt to emerging food technologies and products, and accurately reflect relevant health information; and
6. strategies to reduce the burden of regulation on small businesses operating in the food industry.

In undertaking this inquiry, the Commission should examine both state-based regulations and the coordinated national food regulatory system.

The Commission should take into account any substantive (current or previous) studies undertaken in Victoria and elsewhere — including by the Commonwealth and other States, and international best practice — that may help it provide advice on this reference.

Inquiry process

In undertaking this inquiry, the Commission is to have regard to the objectives and operating principles of the Commission, as set out in section 3 of the Order. The Commission must also conduct the inquiry in accordance with section 4 of the Order.

The Commission is to consult with key interest groups and affected parties, and may hold public hearings. The Commission should also draw on the knowledge and expertise of relevant Victorian Government departments and agencies.

The Commission is to produce a draft report for consultative purposes, and a final report is to be provided to me within twelve months of receipt of this reference.

JOHN BRUMBY MP

Treasurer

14 September 2006

Preface

The release of this draft report gives interested participants the opportunity to comment on the Commission’s analysis of the impact of Victorian food regulation on the food industry—a major contributor to the Victorian economy in terms of share of manufacturing, employment and exports—prior to the presentation of the final report to government.

In preparing this draft report, the Commission has consulted widely with a range of businesses, government departments, local governments and individuals with an interest in food regulation. Stakeholder input has greatly assisted the Commission in presenting draft recommendations to the Victorian Government on ways to simplify the current regulatory environment and provide best practice enforcement of sound regulations.

The Commission invites written submissions on the draft report. These submissions may address any of the issues covered. In light of the submissions received, the Commission will hold public hearings as necessary.

At the conclusion of consultation on the draft report, the Commission will produce a final report to be presented to the Victorian Government. The Order in Council establishing the Commission says that the Treasurer should publicly release the final report within six months of receiving it and that the Victorian Government should publicly release a response to the final report within six months of the Treasurer receiving it.

The Commission looks forward to receiving feedback on the draft report.

The Commissioners have declared to the Victorian Government all personal interests that could have a bearing on current and future work. Moreover, while the Commissioners confirm their belief that they have no personal conflicts of interest in regard to this inquiry, Alice Williams wishes to disclose that she has shares in Coles and Woolworths.

Graham Evans AO
Chair

Robert Kerr
Commissioner

Alice Williams
Commissioner

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Abbreviations

ABS	Australian Bureau of Statistics
ABWI	Australasian Bottled Water Institute
ACCC	Australian Competition and Consumer Commission
AFGC	Australian Food and Grocery Council
AFRG	Agriculture and Food Policy Reference Group
AGV	Auditor-General Victoria
AIEH	Australian Institute of Environmental Health
AMA	Australian Medical Association
ANZFA	Australia New Zealand Food Authority
ANZSIC	Australian and New Zealand Standard Industrial Classification
AQIS	Australian Quarantine and Inspection Service
AQS	average quantity system
CALD	culturally and linguistically diverse
CAV	Consumer Affairs Victoria
CFA	Country Fire Authority
CIE	Centre for International Economics
COAG	Council of Australian Governments
CoOL	Country of Origin Labelling
CWA	Country Women's Association
DAFF	Department of Agriculture, Fisheries and Forestry
DFSV	Dairy Food Safety Victoria
DHA	Department of Health and Ageing
DHS	Department of Human Services
DPI	Department of Primary Industries
DTF	Department of Treasury and Finance
EHO	environmental health officer
FRISC	Food Regulation Implementation Sub Committee

FRMC	Food Regulation Ministerial Council
FRSC	Food Regulation Standing Committee
FSANZ	Food Standards Australia New Zealand
FSC	Food Safety Council
	or
	Food Standards Code
FSP	food safety program
FSS	food safety supervisor
FSU	Food Safety Unit
GM	genetically modified
HACCP	Hazard Analysis and Critical Control Point system
ISC	Food Standards Implementation Sub-committee
MAV	Municipal Association of Victoria
MCCA	Ministerial Council on Consumer Affairs
MQS	minimum quantity system
MOU	memorandum of understanding
MRL	maximum residue limits
NIP	nutrition information panel
NTD	neural tube defects
NRIW	National Reform Initiative Working Group (COAG)
NSWFA	New South Wales Food Authority
NZIER	New Zealand Institute of Economic Research
OECD	Organisation for Economic Co-operation and Development
OPPC	Obesity Prevention Policy Coalition
ORR	Office of Regulation Review
OSISDC	Outer suburban/interface services and development committee
PC	Productivity Commission
R&D	research and development
RCV	Restaurant and Catering Victoria

RIS	regulatory impact statement
SES	State Emergency Service
TGA	Therapeutic Goods Administration
TMAC	Trade Measurement Advisory Committee
VCEC	Victorian Competition and Efficiency Commission
VFF	Victorian Farmers Federation
VPMP	Victorian Produce Monitoring Program

Glossary

Act	A Bill that has been passed by Parliament, received Royal Assent and become law
advisory body	A Victorian body providing independent and/or expert advice to ministers, regulators or departments to inform regulatory decision making and function as a standing consultative mechanism
business impact assessment (BIA)	A formal assessment of the impacts of a new or amended primary legislative proposal that is expected to have a significant effect on business and/or competition. A BIA is a Cabinet-in-confidence document that assesses the costs and benefits of a legislative proposal to address a clearly defined problem, compares these with feasible alternative solutions, and recommends the most effective and efficient option
codes of practice	Rules of practice and conduct that an industry or professional association adopts that may or may not be legally enforceable
competitive neutrality	A policy designed to offset or remove any net competitive advantages of publicly-owned businesses resulting from government ownership
cost recovery	Specific purpose charges used by government agencies to recoup some or all of the costs of particular government activities
food safety program	A written plan that shows how the business will manage the safety of food manufactured, prepared, served or sold
food safety scheme	Regulations, based around enterprise-level food safety programs, for specific industries in NSW, based on scientific risk analysis
hypothecation	Mechanism that uses the revenue collected from a particular tax to fund a specific type of expenditure. That is, the revenue is ‘earmarked’ for a specific purpose or use

legislation	Laws passed by Parliament, as distinct from statutory rules made under powers delegated by Parliament
notification	Informing the NSW Food Authority of basic details such as business type, nature of business, food types handled, physical address and contact details
regulation	The imposition of some rules, supported by government authority, intended to influence behaviour and outcomes. The Organisation for Economic Co-operation and Development defines the term as ‘the instruments by which governments place requirements on enterprises, citizens and government itself, including laws, orders and other rules issued by all levels of government and by bodies to which governments have delegated regulatory powers’
regulator	A government entity (either independent or within a department) in Victoria that draws from primary or subordinate legislation one or more of the following powers in relation to businesses and/or occupations—inspection, referral, advice to third parties, licensing and accreditation or enforcement
regulatory impact statement (RIS)	A public document that articulates the costs and benefits of a regulatory proposal to address a clearly defined problem, compares these with feasible alternative solutions, and recommends the most effective and efficient option. The <i>Subordinate Legislation Act 1994</i> (Vic.) requires such a statement to be prepared by the responsible government department or agency if the proposal is likely to impose ‘an appreciable economic or social burden on a sector of the public’
subordinate legislation	Statutory rules or regulations made under the authority of an Act
sunsetting	Automatic lapsing of a law or subordinate regulation after a fixed period, unless something happens to keep it in place

Key messages

- The Victorian Government has ambitious targets for reducing red tape and chose Victorian food regulation for its first ‘hotspot’ review of regulation.
- Victorian businesses and not-for-profit groups face strong incentives to provide safe food; many must meet stringent customer and export requirements that exceed regulated standards:
 - Reflecting this, regulatory costs are around \$138 million annually for the business sector (a small fraction of food sector turnover). For the not-for-profit sector (hospitals, aged care, child care and community activities) costs are between \$6–\$13 million.
 - These figures exclude the costs of meeting national food standards (such as labelling requirements), and of innovation constraints.
 - Paperwork costs are felt most keenly by Victoria’s small food businesses.
- To streamline regulatory requirements and encourage innovation, without undermining food safety, the Commission has proposed changes at the state and local government levels, and suggested Victoria pursue changes nationally.
- At the state level, regulatory costs can be reduced by at least \$38 million per year, while improving food safety by:
 - focusing regulatory effort on higher risk activities such as serving food to vulnerable groups, while lightening administrative burdens for lower risk activities such as many community events
 - strengthening ‘rewards’ for good performers with less paperwork and fewer council inspections
 - providing more ‘sticks’ such as on-the-spot fines, and also requiring training for businesses that fail to comply
 - improving monitoring and analysis to identify and target problem areas
 - implementing a statewide education and training program to promote community awareness of basic food safety, given that potentially one quarter of all cases of foodborne illness are caused in the home.
- Additional measures that will promote ongoing improvements in the implementation of food regulation at the state level include:
 - stronger accountability and coordination arrangements for Victoria’s food safety regulators (79 councils and the three state-based regulators)
 - giving clarity to food regulation objectives and implementing performance monitoring and reporting to ensure objectives are achieved.
- At the local government level, there is scope to improve the consistent implementation and enforcement of Victoria’s *Food Act 1984*, and sharpen councils’ focus on areas of high risk.
- At the national level there is scope to improve the flexibility, timeliness and quality of processes for setting national standards by:
 - considering non-regulatory approaches to labelling and health claims, underpinned by current consumer protection laws, to foster innovation
 - timely and better justified decisions on national standards.

Overview

Every year Victorians consume more than 5 billion meals, either at home or eating out. Even a simple sandwich involves a long and complex supply chain from grower, through manufacturer, distributor, wholesaler, retailer and service supplier. The food sector is crucial to the Victorian economy and particularly to rural and regional Victoria.

There are strong incentives to provide safe food at all stages of the supply chain. The loss of reputation in the event of an incident can devastate a business, particularly one that sells elsewhere in Australia or to overseas markets.

Food regulation sits along side these incentives. It is complex, applying right along the supply chain and at all three levels of government. The key challenge with food regulation is to ensure that it is focused on areas of highest risk, where incentives for food safety are weakest.

Simplifying regulation

In August 2006 the Victorian Government announced the ‘Reducing the regulatory burden’ initiative, through which it is seeking to cut red tape for the business and not-for profit sectors, and developing new approaches to lower regulatory costs. This inquiry is the first of a series of ‘hotspot’ reviews of regulation.

The Victorian Government referred food regulation to the Victorian Competition and Efficiency Commission because it wants to reduce the regulatory burden for business and the not-for-profit sectors without undermining the objectives of regulation. In particular, it has asked the Commission to develop strategies to reduce the regulatory burden on small food businesses and community activities such as cake stalls and fêtes. While the focus is on Victorian food regulation, the Government also directed the Commission to look at aspects of the national framework governing food safety regulation, to assess the capacity of food standards and labelling regulation to adapt to emerging food technologies.

Depending on expectations about risk, Victoria seems to be achieving reasonable food safety outcomes: major food illness outbreaks are rare; and some businesses operating across Australia say Victoria compares well with other states. The way in which markets combine trust and incentives to meet the requirements of the most demanding regulator—the consumer—contributes to this achievement.

However, a surprisingly small amount of information is collected on the benefits and costs of government intervention to promote food safety. The

Commission’s research into the costs of intervention suggests that these costs are not large relative to the turnover of the food sector, but may be significant for particular businesses (hampering, for example, the innovation of large businesses and the growth of small businesses and community activities). A key reason for this finding is that the majority of businesses would ensure food safety even without Victorian regulations and some choose to exceed regulatory requirements.

Nonetheless, regulatory costs may become more significant over time, as product and supply complexity increases and globalisation of food markets tests the competitiveness of Victorian businesses. The challenge for government is to focus food safety regulation on those relatively few areas and organisations where—through either ignorance or lack of diligence—safe practices are not being followed. The Commission considers there is scope to sharpen the risk focus of food regulation in Victoria, reduce red tape and improve accountability and reporting. Draft recommendations for achieving these outcomes are at the end of this overview.

Why food regulation may be justified

There are powerful commercial incentives to provide safe food. Food businesses thrive on repeat custom and consumers expect the food they buy to be safe. Firms whose products are not safe risk losing reputation, sales and profitability; being denied access to export markets, and being exposed to legal damages. Community organisations also have incentives to provide safe food. If consumers are well informed about the safety characteristics of food, then competitive markets will provide the food safety that consumers want.

Sometimes, however, consumers have less information than producers about the safety of the food they are consuming (that is, there may be an ‘information asymmetry’). If consumers cannot readily trace any food safety problem back to its source, commercial incentives to provide safe food will be muted. Government intervention aimed at correcting the information asymmetry may improve the situation, provided that the intervention’s benefits exceed its costs. Many different instruments can be used, and their advantages and disadvantages need to be compared.

While the data are poor, some estimates suggest that around one-quarter of all cases of foodborne illnesses are caused in the home, often by a failure to handle or store food safely. Food that is safe when purchased may become unsafe if handled inappropriately—for example, the two-day-old fried rice or the reheated pizza are not necessarily safe. Governments may have a role to provide information to help to reduce such illnesses.

But governments face a difficult task determining the level of foodborne safety to target. Foodborne illness costs Australians between \$1.3–\$2.6 billion per year, and the cost in Victoria is probably about one quarter of that amount. Improvements in food safety, however, are likely to cost progressively more, using up resources that might yield larger benefits if employed elsewhere. This implies that it is not sensible to target the elimination of foodborne illness. Rather, there is an acceptable and efficient level of food safety—in the sense that the costs of improving food safety beyond that level would exceed the benefits.

Historically, the main aim of regulation has been to achieve food that is safe for human consumption. There is increasing interest, however, in using food regulation to achieve public health objectives (for example, reducing obesity, diabetes and heart disease).

Who are the regulators?

All three levels of government share responsibility for food regulation. The Commonwealth and state governments develop national food standards, which are embodied in the Food Standards Code. These standards are given force through state legislation that allocates, in Victoria’s case, significant enforcement responsibility to local government.

Victoria has two principal streams of food safety regulation. The first applies to the handling of food intended for sale and the sale of food, which are governed by the *Food Act 1984* (Vic.). The second applies to the primary production, manufacture, transport and sale of meat, poultry, seafood and dairy products, which are regulated through specialised industry-focused Acts.

The 79 councils administer the Food Act and its objectives of securing food that is safe and suitable for human consumption, and of avoiding misleading conduct. The Food Safety Unit of the Department of Human Services also has some regulatory responsibilities, along with its policy advisory role. Dairy Food Safety Victoria (DFSV) regulates the dairy sector, and PrimeSafe regulates meat and seafood. Consumer Affairs Victoria regulates misleading conduct, as does the Australian Competition and Consumer Commission.

But these arrangements do not clearly allocate responsibility for food safety administration and for ‘bringing it all together’. Victoria has long had a decentralised approach to food safety regulation, but no-one monitors the extent to which local government can and does meet its obligations to regulate food safety. Further, DFSV and PrimeSafe reporting is not fully developed. And there does not seem to be a mechanism for generating and analysing statewide information on food safety so regulators learn from each other, resources can be shifted as priorities change, and policy and regulations can be altered to meet changing circumstances.

Managing food safety is about managing risk, where risk relates to the type of food as well as the strength of market and other incentives to ensure businesses provide safe food. At present regulation in Victoria is only partially differentiated according to the level of risk:

- All food premises (except certain retailers of pre-packaged low risk food), irrespective of the level of risk, must have a documented food safety program that identifies potential food safety risks and strategies for managing these hazards, and must maintain records on the program's implementation.
- All registered food premises (except certain retailers of pre-packaged low risk food and certain fund raising activities) must appoint a food safety supervisor who has undertaken approved training.
- Third party audits are required for higher risk activities such as food service to vulnerable people in hospitals, nursing homes, aged care facilities and child care centres, and for licensed dairy, seafood and meat businesses.
- Councils must inspect all food premises at least annually, irrespective of risk.

A further issue for this inquiry is whether Victoria, in step with national efforts, could develop a finer risk classification and introduce more flexibility to sharpen the focus of regulatory effort and to reduce the burden on areas where risks are demonstrably lower.

A large and varied food sector

The regulatory framework is applied to a food sector that employs about 370 000 people in Victoria (14 per cent of the workforce) and generates \$6.8 billion in exports (36 per cent of Victoria's total exports). Food reaches consumers through supply chains—from primary production, manufacturing and wholesaling, through to retailing and cafés, bars and restaurants. The length and complexity of these supply chains, and the points at which food safety hazards can enter the chain, differ widely across the sector. Regulatory systems thus need to be designed to account for these differences in complexity and risk. And where more than one regulator is involved in supply chains, coordination is important.

The food sector is continually changing. Structural change is common, with consolidation occurring in food manufacturing and retailing, and even in some parts of primary production. Ownership of small businesses often changes. Further, consumers are demanding different types of products, with an increasing focus on 'healthy' foods. Innovation is thus crucial for commercial success in many parts of the sector; for example, 75 per cent of the many thousands of packaged products on Australian supermarket shelves were new in the five years to 2000.

Food exporters must produce food that is safe in order to secure access to global markets. And there are many different types of business arrangement in the food sector that directly or indirectly contribute to managing food safety, regardless of their reason for evolving. Major supermarkets, for example, closely monitor safety. There is less need for regulation to promote food safety when these arrangements are working effectively.

Regulators of the food sector have to deal with businesses of vastly different sizes and levels of sophistication. With such a large number of participants, from many cultural and ethnic backgrounds, a ‘one size fits all’ approach to regulation is unlikely to be effective in encouraging compliance. Further, fixed costs of regulation could increase the unit cost of regulation for the sector’s many small businesses relative to large businesses. And many regulations apply to a large number of businesses, so even small costs of regulation per firm can add up to a large amount for the sector as a whole.

Regulated food businesses are likely to be found in every region of Victoria. Given that many of these businesses are small, and that over 45 000 premises are registered with councils, regulators face a considerable challenge in enforcing a licensing framework that requires contact with all of these businesses. Strategies that focus regulatory effort on areas where it is most effective are likely to be particularly important in such a complex and evolving environment.

Is regulation achieving its objectives?

The Commission faced two challenges in assessing whether food regulation is achieving its objectives: (1) ambiguity over what food regulation is intended to achieve and (2) poor data. To focus the discussion, the Commission analysed the data on the role of regulation in reducing foodborne illness and reducing misleading conduct. Progress against these objectives was assessed based on the views of inquiry participants, aggregate data provided by the Department of Human Services, and performance information provided by Victorian regulators about their contributions to the objectives.

There are no clear trends in aggregate foodborne illness data in Victoria, although the number of reported outbreaks is not particularly high, with some four or five outbreaks per million Victorians per year. (An outbreak is defined as a situation in which two or more people experience a similar illness after eating a common food or meal.) Councils, PrimeSafe and DFSV provide little public information about their food safety achievements or even their activities. Councils have legal obligations to inspect all registered premises (around 45 000) and to undertake food sampling programs. Despite the opportunities these obligations present for collecting information to guide regulatory effort, the

Commission is unaware of any information on how councils target their enforcement activities or on their outcomes.

With little information collected, it is difficult to judge whether regulatory effort is being directed where the risks (and associated potential costs in terms of adverse food events) are largest. The Commission made a similar point about food regulation in its 2005 inquiry into 'Regulation and regional Victoria', following on from the Auditor-General's comments in 2002 about the absence of performance reporting by councils. In a follow-up report in 2005, the Auditor-General noted progress in this area since 2002 has been limited. This is a disappointing situation.

In general, however, the limited aggregate data do not suggest a need for wholesale change to the regulatory arrangements. And the disaggregated data do not provide a clear picture of how regulatory effort might be focused more sharply. The Commission has thus had to rely on more general evidence of the extent of food safety risk and of costs in particular areas.

Without data on the benefits of regulation, the Commission also undertook research into the costs of regulation. If the costs are well understood, government has a benchmark for judging how large the benefits would need to be for intervention to be warranted, and it can better assess the savings that could be achieved from more sharply focusing regulation on areas where there is a lack of awareness about food safety skills or where there is resistance to compliance.

What are the costs of regulation?

Businesses incur costs in administering and complying with food regulations. The Commission is unaware of any previous attempts to estimate the aggregate costs that Victorian food regulation imposes on businesses. The lack of estimates is probably due to (1) the cost of undertaking such an analysis for a sector with 45 000 registered premises, and (2) the difficulties in estimating the *additional* costs caused by regulation, given that most firms would undertake safe food practices even if there were no regulation. The Commission contracted a survey of 29 firms across the sector, as well as reviewing relevant Australian and overseas reports, to provide an 'order of magnitude' estimate of the costs. This research identified costs to business (from paying licence and registration fees, red tape and complying with regulation) of about \$138 million, although much of this cost would be passed on to consumers or back to suppliers or employees (table 1).

State and local government agencies incur costs to implement and enforce regulation: their expenditure totals \$32 million per year, of which around \$24 million is spent by local government. Accounting for revenue from licensing and other fees, the net cost to state and local governments is just over \$12 million.

Table 1 Estimated costs of Victorian food regulation

Net costs to government	\$12 million
Costs to business	
Financial costs	\$19 million
Administrative costs	\$85 million
Compliance costs	\$34 million
Total costs to business	\$138 million
Total costs	\$150 million

There are caveats on these results. First, the data are based on a small sample. Second, many companies had difficulty isolating their food safety costs from other aspects of their operations. And third, the survey covered only the costs arising from Victorian Government regulations, so did not include costs imposed by national food safety standards such as labelling requirements. Nevertheless, the results indicate that the costs of food regulation are small relative to industry turnover. This is partly due to estimated compliance costs being relatively low, because regulation has little effect on the behaviour of many businesses whose food safety practices are driven by international standards, ‘business as usual practices’ and market disciplines. The administrative cost of regulation is thus the single largest cost component. To the extent that firms’ normal commercial practices meet or exceed regulatory requirements, the administrative costs of regulation are harder to justify.

The Commission has been unable to quantify the indirect costs of regulation, such as its impact on innovation or its impact on the willingness of volunteers to become involved in the community sector. But the cost of food regulation is likely to be proportionately larger for small firms and community groups than for larger firms.

Possible improvements

Because the food regulation system is integrated across three levels of government, the Commission proposes changes:

- at the national level, to encourage the adoption of non-regulatory approaches and to improve the timeliness and quality of decisions about national food standards
- at the state level, to increase the clarity of objectives and the accountability between levels of government, and to establish a more focused risk framework
- at the local government level, to achieve more consistent enforcement of Victoria’s Food Act and a stronger focus on the higher risk activities.

Improving the national framework

As noted earlier, Victoria's food regulatory arrangements operate within a national framework. While Victoria does not control these arrangements, it can use its influence to bring about change and the Commission considers that it should do so in four areas, by advocating:

- considering non regulatory alternatives to mandatory food standards relating to labelling, health claims and new foods. (Some standards have taken four years to approve.) This would open up new market opportunities in Australia and overseas, and meet consumer demand for healthier foods. Health claims should continue to be supported by robust scientific evidence
- improvements to the process for amending food standards. The national Food Regulation Standing Committee has reviewed the process and made useful suggestions for reform. The Commission considers there is scope to go further by refining the role of the Food Regulation Ministerial Council and streamlining the review process
- expansion of the forthcoming review of country of origin labelling requirements, to include a broad ranging and independent national review of the labelling provisions of the Food Standards Code. Labelling is increasingly being used to promote public health objectives. It may not be an effective instrument for this purpose, and its use might crowd out cost-effective industry initiatives
- a more flexible and integrated approach by the Australian Competition and Consumer Commission to enforcing the misleading conduct provisions of the *Trade Practices Act 1974* (Cwlth.) with respect to food. To achieve this approach, the Victorian Government should press Food Standards Australia New Zealand to issue scientific guidelines.

Improving the state regulatory framework

The framework of food safety regulation in Victoria would be improved by:

- clarifying the food safety objectives for which the responsible ministers are accountable
- the responsible ministers approving a strategic plan that outlines food safety priorities for all food safety regulators, and issuing guidelines on how to achieve these priorities
- enhancing the role of the Department of Human Services in monitoring the extent to which local governments satisfy their responsibilities under the Food Act. (The Department of Primary Industries performs this role for the other industry Acts.)

- markedly improving performance reporting by all food safety regulators, to reveal the extent to which regulators are achieving the priorities set for them by ministers
- re-designing the organisational arrangements to deliver food safety outcomes.

Clearer objectives

There is some ambiguity about whether the objective of the Food Act is to promote public health or reduce the incidence of foodborne illness. The Commission considers that the latter should be the key priority, and suggests the Victorian Government make this clear by incorporating it as a guiding principle in the Food Act, along with five other principles specifying that regulation should be:

- the minimum necessary to address the problem
- risk based
- efficiently administered
- nationally consistent
- evidence based.

Moreover, the Food Act should give the Minister power to issue guidelines to regulators administering the Act. The dairy, meat and seafood Acts should be aligned as far as possible with the amended Food Act, by incorporating similar objectives, key principles and capacity for ministerial guidelines.

Responsibility and accountability matters

The Commission has searched for evidence that the current institutional arrangements establish clear lines of responsibility and encourage regulators to focus on areas of greatest risk, where regulation could generate the greatest benefit. But public performance reporting is not well developed and strategies for allocating resources between and within regulators have not been published, despite the Auditor-General recommending improvements in this area almost five years ago. The Commission has not received explanations of why progress in making improvements in this area has been so slow. But it seems that guidance and incentives are weak.

The Commission has considered, therefore, whether improvements are needed, in support of the clearer objectives discussed above. The first requirement is to correct the gap in the responsibility arrangements that was noted by the Auditor-General in 2002—namely, that ‘the legislation does not specifically address how or which government agency is responsible for overseeing the performance of the local government sector with respect to meeting its food safety responsibilities’ (AGV 2002, p. 75.) The Commission considers this

responsibility should be assigned to the Department of Human Services (with accountability resting with the responsible Minister). In addition to monitoring the performance of local government, the department should be responsible for providing regular advice to the Minister about whether regulatory effort is being directed across the state to the areas and activities where it can generate the largest benefits. To do this, strategic planning would need to be further developed to indicate how the Victorian Government's food safety priorities will be achieved. A marked improvement in performance reporting arrangements is also needed, so progress against these priorities can be monitored.

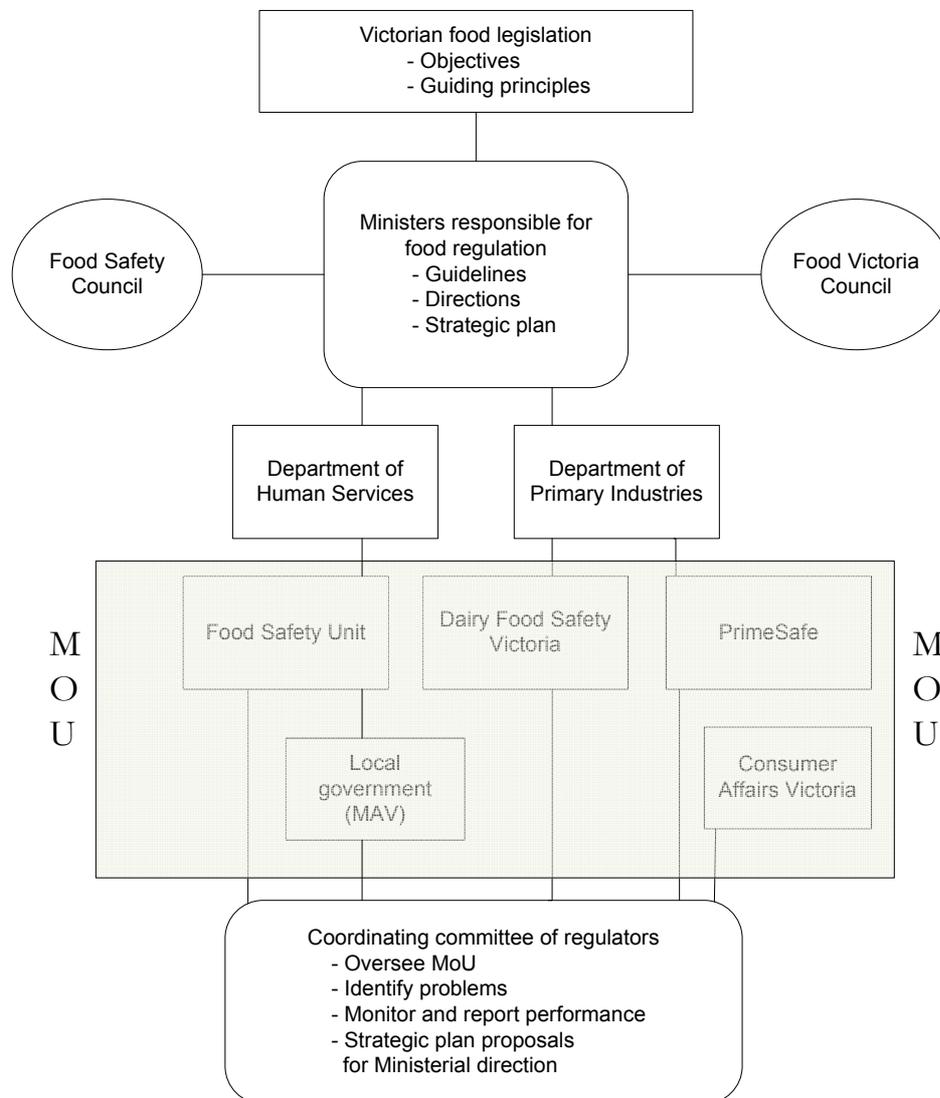
Within this improved framework, the Commission has compared three different organisational arrangements (not necessarily mutually exclusive) for achieving the Victorian Government's food safety objectives:

- (1) merging all food safety regulators into a single entity, which may then enter into service agreements with councils
- (2) setting up service agreements directly between the Victorian Government and local governments, under which councils deliver outputs prescribed by the Victorian Government
- (3) reviewing the memorandum of understanding (MoU) between regulators and, as depicted in figure 1, enhancing the role of the existing committee of regulators to monitor food safety performance and report problems to the responsible ministers, who would have the power to issue directions to local government.

At this stage, the Commission leans towards the third approach, which it expects could be achieved with the lowest transition costs. There is also strong support from industry representatives for maintaining DFSV and PrimeSafe, while councils are best placed to judge local food safety performance, which is central to the more risk based proposed regulatory arrangements. The third option (outlined in figure 1) relies on cooperation by regulators to coordinate their roles effectively when inconsistencies or gaps arise, and to reallocate resources for changing priorities, backed up by a new power for ministers to direct regulators where cooperation is ineffective. The relative merits of this option would be influenced by a range of factors, including the effectiveness of the proposed new power for the Minister to issue directions to councils, and the strength of the incentives for regulators to operate cooperatively. The Commission welcomes inquiry participants' comments on the advantages and disadvantages of these three options.

Figure 1

Accountability and the food safety framework



How can we deal better with risks?

The Commission proposes the following changes to lighten the regulatory burden by sharpening the focus on high risk areas, without compromising food safety:

- The current risk classification system should be expanded from two to three classes, having regard to recent work on a national risk classification. A new class 3 would initially include identified low risk retailers of fresh and packaged foods such as green grocers, milk bars and convenience stores selling packaged foods (including milk products), food vending machines

and most community activities such as fêtes, cake stalls and sausage sizzles. A significant number of class 2 businesses would migrate into class 3, based on whether businesses have separate accreditation or quality assurance processes as well as their track record of complying with regulation. Local government environmental health officers, drawing on guidelines provided by the Department of Human Services, would be empowered to ‘reward’ good performers in class 2 by reallocating them to class 3.

- Businesses should continue to register food premises annually but with simpler paperwork requirements—for example, businesses would provide detailed information only if there were a change in business details or in their food safety program.
- While all class 1 and 2 food businesses should continue to implement food safety programs, the Department of Human Services should significantly simplify and shorten templates for class 2 businesses. Class 3 businesses should have the option of completing a food safety program template or merely certifying that they have taken appropriate steps to identify and manage food safety risks.
- A single registration system should be established. This would enable mobile food businesses (such as caterers and food vans) to register once, rather than in multiple council areas.
- Food safety supervisor requirements should be replaced with a more targeted regime of training for food businesses that have failed to comply with food safety standards. Additional reliance would be placed on the provision of information and training for businesses that lack knowledge and skills in food safety.
- The requirement for annual council inspections before registration renewal should be removed, replaced by a program of inspections structured around the results of councils’ food sampling programs and other data.
- Mandatory record keeping requirements should be streamlined so businesses have more flexibility in how they meet the national food standards, such as reporting equipment breakdowns and problems encountered (that is, exception reporting).

The Commission considers that the proposed changes to food regulation will reduce the administrative burden of Victorian food regulation by around \$38 million per year, while strengthening overall compliance with food safety standards. The changes seek to achieve greater targeting of regulatory resources at areas where risks to food safety are highest—that is, where food is served to vulnerable groups in the community and where incentives are insufficient to ensure that risks are appropriately addressed, given a lack of knowledge or resistance to meeting food safety standards. Table 2 summarises the proposed model.

Table 2 Proposed approach to food safety regulation

Instruments	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	<i>Class 3 food premises</i>
Food safety risk (broadly defined)	High	Medium	Low
Registration	Yes, but with simple paperwork	Yes, but with simple paperwork	Yes, but with simple paperwork
Food Safety Program (FSP)	Yes, customised	Yes, customised or simple templates	Certification
Food Safety supervisor	No	No	No
Training for food handlers	Councils can impose training orders	Councils can impose training orders	Councils can impose training orders
Record keeping requirements	Yes	More flexibility	More flexibility
Council inspection or compliance check	Capacity to inspect	Regular inspection (e.g. annual minimum)	Occasional inspections
Third-party audit	(Compulsory) Performance based	(Voluntary) Performance based	(Voluntary) Performance based
Food sampling	High frequency	Moderate frequency	Very low frequency

Are penalties and rewards sufficient?

Councils in particular suggested to the Commission that the range of penalties open to them for enforcing food safety regulation is limited, and should be extended—for example, by giving councils the power to impose on-the-spot fines. There is no substantial evidence that this would improve food safety outcomes, although some councils have experimented in this area by using more frequent inspections and ‘revisit’ fees to encourage compliance. Best practice principles suggest, however, that regulatory bodies should have a graduated range of enforcement options to encourage compliance. The Commission therefore believes that councils should be given the power to impose on-the-spot fines, subject to adequate guidelines and review procedures being established.

Some submissions favoured ‘naming and shaming’ businesses that fail regulatory inspections. This approach could improve incentives to comply with safe food objectives, and would be consistent with the improvements in transparency and performance reporting intended by the Commission’s draft recommendations. On the other hand, privacy considerations are also important, and drastic

commercial consequences from minor infringements would be inappropriate. The Commission is seeking further input on this issue, including comparisons with other areas of regulation.

Some councils already use a star award system for the good safety performance of cafes and restaurants, and some inquiry participants advocated increased use of this approach. There is already no barrier to using this approach, either by councils or industry associations. Risks of inconsistent application and misinterpretation by consumers are issues to be considered. Accordingly, the Commission is not disposed to recommend that such a scheme be made compulsory, but invites feedback from participants.

Raising awareness

The experience of Victorian regulators and international research support a view that targeting business behaviours most likely to limit foodborne illness, such as satisfactory hand-washing, adequate cooking, and avoiding cross-contamination, is an important component of food safety policy. Indeed, given that a proportion of foodborne illness is caused by food handling in the home, such strategies may yield a wider range of benefits.

The Commission also considers more effort should be made to raise awareness among both businesses and consumers by developing targeted campaigns that address identified problem areas. Better identifying the food safety issues to target would help focus resources in these areas. This would be facilitated by the development of systems for statewide food sampling, analysis of sampling results, assessment of queries and complaints to the food safety hotline, and the examination of relevant international experience. Given that councils have already developed consumer education materials, the Department of Human Services could take a lead in streamlining, strengthening and coordinating these materials.

Helping local government to fulfil its role

Several inquiry participants were concerned about the consistency of local government's approach to registration and enforcement, and the determination of fees and charges.

The Commission considers that the Department of Human Services could improve the consistency of councils' implementation of food regulation by improving guidance on risk assessment and inspection frequency, and by developing a standard compliance check template for environmental health officers. This would be supported by a more centralised system for gathering information about food companies and food regulation implementation. Providing improved training for environmental health officers and mentoring of new employees by more experienced staff would also help. These initiatives are vital to achieving the intent of the Commission's proposed changes to food regulation.

In addition, councils can encourage food safety through running education campaigns, working one on one with businesses, varying the frequency of inspections, holding food safety business awards, and undertaking prosecution and deregistration. The frequency of inspections should be guided by risk assessments, and the Department of Human Services should assist councils to develop and publish their inspection strategies.

The community sector

Victoria's community sector comprises a wide variety of not-for-profit organisations and makes an important contribution to the economy and to community welfare and social capital more generally. Most community organisations are quite small, but they range from large welfare groups (such as St. Vincent de Paul) that operate nationally through to small local church and sporting groups. The community sector is also extremely diverse in the types of activity undertaken and customers served. Given this diversity, food plays a much more important role in some groups than in others.

Several characteristics of the community sector could mean the impacts of food regulation are greater than in the commercial sector. For example, many community organisations' small size and their reliance on occasional volunteers, combined with the fixed costs of meeting food regulations, means their activities may be sensitive to regulatory costs. Overall, the capacity of many community groups to identify, understand and comply with food regulations may be much more limited than that of most businesses, depending on the background and experience of their volunteers.

Some exemptions and exceptions for the community sector reduce food regulation compliance obligations for some activities. Relief is not risk based, however, and Victoria's regulations are heavy handed compared with those in other states and territories. Information in this area is sparse, but council figures suggest around 17 000 events each year must meet Victorian food regulations, with an unknown number operating outside the regulatory requirements. Anecdotal information suggests some councils are more active than others in raising awareness of and enforcing Victorian food regulation.

The Commission is unaware of previous attempts to quantify the costs of food regulation of the community sector. Based on a survey that the Commission co-sponsored, the costs to Victorian community groups of Victorian food regulations are estimated at \$5.6–\$13.1 million per year. As well, there may be indirect costs, because community groups react to regulation by doing things differently, dropping regulated activities or being less able to respond quickly to pressing community needs. Having to cope with regulation may also discourage

people from volunteering, or community groups may even choose to ignore the regulatory requirements if they judge the risk is low.

Consistent with the general principle that regulation should focus on areas of high risk to health and safety, the Commission has not put forward specific changes to food regulations that would apply only to community activities (table 3). It has suggested, however, that the more risk based proposed regulatory framework would assign most low risk activities by community groups (such as school fêtes, sausage sizzles and catering by community sporting clubs) to class 3, so those groups would face minimal regulatory requirements. Higher risk food activities undertaken by community groups (such as catering to vulnerable populations) would continue as class 1. Medium risk activities (such as food festivals drawing large crowds) would be assigned, at least initially, to class 2. The proposals outlined earlier for reducing the administrative burden of food regulation would significantly benefit the community sector.

Table 3 Proposed approach for community activities

<i>Instruments</i>	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	<i>Class 3 food premises</i>
Food safety risk	High	Medium	Low
Examples	Hospitals, aged care facilities, child care centres	Food festivals	Cake stalls, sausage sizzles, school fêtes, school canteens
Registration	Yes, but with simple paperwork	Yes, but with simple paperwork	Yes, but with simple paperwork
FSP	Yes, customised	Yes, simple templates	Certification
FSS	No	No	No
Training for food handlers	Councils can impose training orders	Councils can impose training orders	Councils can impose training orders
Record keeping requirements	Yes	More flexibility	More flexibility
Council inspection or compliance check	Capacity to inspect	Regular inspection (e.g. annual minimum)	Occasional inspection
Third party audit	(Compulsory) performance based	No	No
Food sampling	High frequency	Moderate frequency	Very low frequency
Information and education	Basic	Event specific resources	Basic safe food handling information

The Commission considers that the Victorian Government should also develop an education and information strategy for the community sector drawing on areas of local government expertise, and outline arrangements for funding educational activities.

The Commission anticipates that these changes would reduce the time spent by community groups on complying with regulatory requirements. Based on a saving of around one-half of the current cost, the saving for the community sector could total \$2.8–\$6.5 million per year. There would be an additional advantage resulting from greater certainty about the intended application of the regulations.

Conclusion

The Commission considers that the changes to food regulation outlined in this report offer a number of potential benefits to consumers and businesses.

Consistent with the Victorian Government’s ambitious targets for reducing the regulatory burden, the Commission estimates that the proposed changes to the regulatory framework would reduce administrative costs by at least \$38 million per year, while strengthening overall compliance with food safety standards.

Perhaps more importantly, the changes are designed to promote ongoing improvements in the implementation of regulation that, over time, will stimulate innovation and yield improvements in food safety and public health. Introducing more flexibility, for example, in relation to labelling, health claims and approving new foods, underpinned by protections for consumers, can assist in opening up new market opportunities for Victorian food businesses and meet consumer demand for healthier foods. Better targeting of regulation at businesses that lack sufficient knowledge of food safety or that resist meeting food safety standards, combined with more emphasis on raising awareness about safe food practices, will reduce the incidence of foodborne illness, albeit at a cost to those businesses that have unsafe practices.

Additional measures outlined in this report seek to promote ongoing improvements in the implementation of food regulation at the state and local levels. Key among these are the need to (1) ensure stronger accountability by, and coordination among, Victoria’s food safety regulators, (2) clarify food regulation objectives and (3) implement performance monitoring and reporting to ensure these objectives are achieved. At the local government level, there is also scope to improve the consistent implementation and enforcement of Victoria’s Food Act, and sharpen councils’ focus on areas of high risk. The cost savings to business and the improvements in food safety arising from these measures have not been quantified but could be substantial.

Implementing some of the changes proposed by the Commission would impose upfront and recurrent costs on the Victorian Government and councils. It could cost several hundred thousand dollars, for example, to establish a single registration system for food businesses. If a new risk classification system is implemented, there will be a need to devote resources to developing and explaining the new arrangements to business and community groups. And councils will need to devote additional resources to data gathering (sampling) and performance reporting. The proposals developed by the Commission also provide, however, for some savings to councils—for example, removing the requirement for councils to inspect every registered food premises in Victoria would reduce costs. The Commission has not formed a view in this draft report on whether cost savings to councils should be used to fund additional food safety services or lower registration fees. It has also not formed a view here on whether additional costs to the Victorian Government should be met through reprioritising existing spending, budget supplementation or a combination. The Commission has instead focused on the steps to be taken by the Victorian Government and councils to ensure food safety objectives are achieved in the most efficient manner. The Commission looks forward to obtaining stakeholders' views on its proposals and the anticipated outcomes.

Draft recommendations

The recommendations are listed in the order that they appear in the report, and they need to be understood in the context of the discussion in respective chapters.

National issues

- 7.1 That the Victorian Government support greater consideration of alternatives to the regulation of health claims and labelling, so innovation is not unnecessarily restricted. The Victorian Government should do this by:
- supporting a relaxation of national standards prohibiting food businesses from making certain types of health claims, provided those claims are supported by scientific evidence
 - pressing for greater consideration of nonregulatory approaches to managing health claims and a trial of the nutritional information proposal developed by the Australian Food and Grocery Council
 - expanding the forthcoming review of country of origin labelling requirements to include a broad ranging and independent national review of the labelling provisions of the Food Standards Code. Options should address the ongoing issue of the use of and difference between ‘made in’ and ‘product of’ Australia
 - actively supporting the rigorous consideration of nonregulatory alternatives to mandatory food standards in relation to labelling, health claims and new foods. Options could include alternative, cost-effective methods for delivering product information to consumers.
- 7.2 That the Victorian Government support improvements in the governance arrangements for the Australia New Zealand Food Regulation Ministerial Council to increase the timeliness of decision making and the scope for Australian business to capture the benefits of innovation. Improvements could be achieved by:
- the ministerial council focusing on providing policy guidance and ratification of standards, leaving technical decision making and proposals on standards to Food Standards Australia New Zealand
 - two or more jurisdictions agreeing to a review of the Food Standards Code before it can proceed. Those jurisdictions requesting a review must also publicly release their reasons and meet the cost of the resources used in undertaking the review.

- 7.3 In relation to the use of national food standards to achieve public health objectives, that the Victorian Government support more rigorous regulatory impact assessments. A comprehensive investigation of all costs and benefits associated with a proposal, and alternative approaches, should be undertaken.
- 7.4 That the Victorian Government update the management of its approach to addressing misleading and deceptive conduct in Victoria by:
- pressing for the development of guidelines outlining the scientific information that Food Standards Australia New Zealand can provide to the Australian Competition and Consumer Commission (ACCC) to assist it to pursue its legislative objectives
 - Consumer Affairs Victoria updating its memorandum of understanding with the ACCC for misleading and deceptive conduct, including communication and enforcement protocols
 - Consumer Affairs Victoria developing (in the revised memorandum of understanding for Victorian regulators) protocols to help local government enforce that part of the *Food Act 1984* (Vic.) relating to misleading and deceptive conduct.
- 7.5 That the Victorian Government support the adoption by Food Standards Australia New Zealand and the Australian Pesticides and Veterinary Medicines Authority of a more risk based approach to maximum residue limit requirements and the harmonisation between the various maximum residue limit requirements.
- 7.6 That through the Ministerial Council on Consumer Affairs, the Victorian Government support greater progress on the average quantity system and possible amendment to the uniform trade measurement legislation to align Australia with overseas trading partners, within six months of the release of the Victorian Competition and Efficiency Commission’s final report.

State issues

8.1 That the *Food Act 1984* (Vic.) be amended to incorporate principles to help regulators interpret and administer food regulation in Victoria. These principles should state that regulators give priority to reducing the incidence of foodborne illness resulting from the sale of food. This priority should be supported by food regulation that is:

- the minimum necessary to address the problem
- risk based
- efficiently administered
- nationally consistent
- evidence based.

The Act should also provide for ministerial guidelines that interpret the principles to be issued and gazetted.

8.2 That the *Dairy Act 2000* (Vic.), *Meat Industry Act 1993* (Vic.), and *Seafood Safety Act 2003* (Vic.) be aligned as far as possible with the amended *Food Act 1984* (Vic.), by incorporating similar objectives, key principles and capacity for ministerial guidelines.

8.3 Given the accountability of the Minister responsible for the *Food Act 1984* (Vic.) for achieving the overall objectives of that Act, that the Victorian Government clearly establish within six months that the Department of Human Services is responsible for overseeing the performance of local government in meeting its obligations under the Food Act.

8.4 That the planned review in late 2007 of the memorandum of understanding between food regulators in Victoria identify, examine and address unclear responsibilities. The review should examine responsibilities described in this report relating to:

- the provision of a single contact point for businesses in food regulation
- mixed food businesses
- waste management
- complaints and investigations
- misleading and deceptive conduct.

In conducting the review, the coordinating committee of regulators should consult with the Food Safety Council and the Food Victoria Council. The review should be completed within six months of commencement, and have a timetable for the implementation of its recommendations.

8.5 That the Ministers for Health and Agriculture agree to implement a food safety framework for Victoria, and that the Food Safety Unit develop a statewide strategic plan in collaboration with Dairy Food Safety Victoria, the Municipal Association of Victoria, PrimeSafe and Consumer Affairs Victoria, whose own strategic plans and operation should be consistent. This would involve a new form and wider mandate for the existing committee of regulators. The committee would:

- oversee the memorandum of understanding and its ongoing operation
- regularly monitor performance of the food safety strategic plan and coordinate reports to responsible ministers
- oversee a common food safety performance reporting system
- identify and address any significant problems that require a coordinated or statewide response, with regulators to seek ministerial decisions when required
- examine the scope to use coordinated education and information strategies to balance regulation
- consult with the Food Safety Council and the Food Victoria Council on matters as appropriate
- serve as a forum to share knowledge, information and lessons.

The Victorian Government should review the operation of the food safety framework in 2012, re-examining other options, including a single food regulator for Victoria.

8.6 That the *Food Act 1984* (Vic.) incorporate a new section that allows the Minister to issue directions to local councils on food safety matters, and that the section require ministerial directions to be published in the *Government Gazette*.

8.7 That the Minister for Health issue a direction under the new section in the *Food Act 1984* (Vic.) to require local councils to report their food safety performance to the Department of Human Services, based on the performance reporting system developed by the department's Food Safety Unit in consultation with the committee of regulators.

9.1 That the Victorian Government focus food regulation where food safety risks are greatest, and lessen the regulatory burden on food businesses with a good track record by:

- introducing a new risk class and strengthening incentives for food businesses to maintain a good food safety track record
- streamlining registration processes for premises that are low risk, have accreditation under quality assurance processes, or have a good food safety track record
- simplifying food safety program templates

- streamlining record keeping requirements for lower risk businesses
 - introducing more targeted and effective support for food safety training for food businesses and removing the requirement for food safety supervisors
 - establishing a central register covering all food premises that would also enable mobile food businesses to register once, rather than in multiple council areas.
- 9.2 That the Victorian Government amend s39 of the *Food Act 1984* (Vic.) to remove the requirement for councils to inspect premises before annual renewal of registration and make inspections discretionary under s39.
- 9.3 That the Department of Human Services work with councils to strengthen the risk based approach to food regulation by:
- implementing a more flexible system of audit frequencies for food businesses that is consistent with national guidelines such as Food Standards Australia New Zealand’s audit frequency model
 - including further guidance in its *Food safety auditor’s handbook* on risk and performance compliance to determining audit frequencies.
- The new arrangements should be implemented within six months.
- 9.4 To provide a basis for assessing the effectiveness of food regulation in Victoria, that the Department of Human Services:
- establish and maintain a database of food sampling results from across the state
 - analyse food sampling results and prepare reports at least annually
 - seek input and advice from the Victorian Food Sampling Committee in undertaking these tasks.
- 9.5 That the Victorian Government amend the *Food Act 1984* (Vic.) to provide councils with the power to issue on-the-spot fines for specified breaches of the Act, together with adequate safeguards.
- 9.6 That the Department of Human Services place increased emphasis on raising consumer awareness of food safety issues. This would involve better identifying specific food safety issues by:
- analysing the results of statewide food sampling programs
 - assessing queries and complaints to the food safety hotline
 - developing approaches based on international assessments of effective education and information campaigns.

Local government issues

- 10.1 That the Department of Human Services improve consistency in local government implementation of the *Food Act 1984* (Vic.) by:
- updating the guidelines for local government in administering the Food Act. The guidelines should reflect any changes in regulatory arrangements since 2002 and any changes to the Food Act emerging from this inquiry
 - developing, in consultation with the Municipal Association of Victoria and the Australian Institute of Environmental Health, a standard compliance check template for environmental health officers.
- 10.2 That an environmental health officer training and professional development program be developed to increase consistency in the implementation of the *Food Act 1984* (Vic.). This outcome could be achieved by:
- the department further developing guidance material, including ‘questions and answers’, for use by environmental health officers
 - drawing on the outcomes of the Pathways project and the New South Wales approach to environmental health officer training
 - using new platforms of delivery, including the increased use of new technology to maximise the coverage and effectiveness of the training and professional development program
 - developing a mentoring program that would provide experienced environmental health officers with an opportunity to share their skills and knowledge with less experienced officers. This program could be financed through state based salary supplementation, thereby providing improved career development opportunities for experienced environmental health officers.
- 10.3 That the Department of Human Services provide greater leadership to Victorian councils by:
- assisting councils to develop and publish consistent council inspection strategies to increase understanding of and confidence in the administration of food regulation. To achieve more focused coverage and better, more efficient outcomes, regular food business inspections should be guided by risk assessment
 - providing robust guidance and training within one year to councils on the interpretation and application of food safety regulation and risk management strategies. Such guidance and training should also address ongoing environmental health officer constraints, including recruitment, career progression and job design.

Community groups

- 11.1 That the Victorian Government address concerns within the community sector about the lack of clarity and inconsistent council approaches to administering regulations, by applying the recommendations outlined in chapter 9 to streamline and reduce regulatory hurdles for community groups. The proposed approach is set out in table 3 of the overview and table 11.3 in chapter 11.
- 11.2 That the Victorian Government develop an education and information strategy for the community sector, and particularly for high risk food events:
- outlining the roles and responsibilities of the Department of Human Services, councils and relevant community sector bodies
 - identifying main areas in which education and information can aid more informed organisation and management of community events involving the sale of food
 - identifying the types of material and delivery mechanisms to be developed for community events, with an emphasis on them being accessible and user friendly
 - outlining arrangements for funding these activities.

Requests for comment and further information

The regulatory and institutional framework

- The focus of the Commission in this report is on the *Food Act 1984* (Vic.) and three industry specific Acts, namely, the *Meat Industry Act 1993* (Vic.), the *Seafood Safety Act 2003* (Vic.) and the *Dairy Act 2000* (Vic.). There are other industry-specific Victorian Acts—for example, the *Bread Industry Act 1959* (Vic.). If inquiry participants believe the Commission should extend its focus to include any of these Acts, they are invited to provide reasons and evidence for it to do so. (see section 3.2.3)

Costs of food regulation in Victoria

- The Commission invites interested parties to provide evidence to substantiate or refute the claim that Victorian seafood operations are moving to other states to avoid Victorian food regulations. (see section 6.4)

State issues

- The Commission has insufficient information to judge the suitability of service agreements, but invites comments about the advantages and disadvantages of using this approach to achieve food safety outcomes in Victoria. (see section 8.4.3)

- The Commission welcomes inquiry participants' comments on the advantages and disadvantages of the three organisational options for administering Victorian food safety regulation (merging all regulators, service agreements between state and local governments, enhancing the memorandum of understanding). (see section 8.5)
- The Commission invites comment from inquiry participants on proposals to expand the current risk classification system to three classes, to remove the requirement for food safety programs for low risk food premises, and to maintain the (streamlined) food safety program requirement for food service sector premises, but allowing good performers to migrate to class 3. (see section 9.3.2)
- The Commission invites comment on specific ways to streamline record keeping requirements associated with food safety programs. (see section 9.3.3)
- The Commission invites comments from inquiry participants on its assessment that the current requirement for annual registration of food premises be retained. (see section 9.4.1)
- The Commission invites comments about the proposal to better coordinate the provision of information and training support to businesses that, due to a lack of awareness or for cultural, language or other reasons, find it difficult to understand and comply with food regulations. (see section 9.5.1)
- The Commission invites feedback from inquiry participants on the costs and benefits of establishing a rating scheme for the Victorian food service sector and on the likely effects of increased publicity of offences. (see section 9.9.2)
- The Commission invites comments from interested parties on its assessment of the effects of the proposed changes on Victorian food regulation (on businesses, councils, the Victorian Government and the broader community). (see section 9.11)

Local government issues

- The Commission would welcome further examples of any inconsistent implementation of food regulation by local government imposing unnecessary costs on Victorian businesses. (see section 10.2)
- The Commission welcomes views on the implications of a new low risk class of food businesses, especially with regard to the skills and experience of environmental health officers, record keeping, appeals provisions and the use of a standard compliance check list by environmental health officers during inspections. (see section 10.3.1)

Community group issues

- These Commission's preliminary estimates of the costs to community groups of Victorian food regulations are based on a range of simplifying assumptions. The Commission encourages feedback from participants on the reasonableness of both the individual and aggregate estimates. (see section 11.4.1)

1 Introduction

This chapter provides the background to the inquiry and outlines the inquiry process and approach taken by the Victorian Competition and Efficiency Commission in preparing this report. It also outlines the structure of the report.

1.1 Background to the inquiry

The food industry is a major contributor to the Victorian economy in terms of its share of manufacturing, employment and exports.

Regulations affect the operation of all aspects of the food industry—its production, distribution, preparation, handling, labelling and selling. Food regulation aims to benefit the community by ensuring that food is safe for consumers, providing information to facilitate consumer choice and to help prevent misleading behaviour by food suppliers. However, regulation also imposes costs on businesses and consumers and can dampen incentives to innovate. Accordingly, it is important that the impact of regulation is kept to the minimum consistent with achieving its purpose. It is also important that any regulation delivers efficient outcomes while minimising the compliance and administrative burden on regulated parties and allowing industry the flexibility to innovate to meet changing market conditions.

The community sector is an important part of Victoria’s social fabric, and many of its activities in one way or another revolve around the consumption or provision of food. There are concerns that regulation of this sector could reduce its contribution.

The Victorian Government has announced a Reducing the Regulatory Burden initiative (Government of Victoria 2006), through which it is seeking to reduce the regulatory burden by cutting red tape for the business and not-for profit sectors, and developing new approaches to lower regulatory compliance costs. As the first of a series of ‘hotspot reviews’ to achieve this objective, the Treasurer directed the Commission to undertake a comprehensive review of food regulation in Victoria, covering:

- the compliance and administrative burdens of food regulation and whether the objectives of current food regulation are being met
- the impact of the current food regulation environment on the competitiveness and trade performance of Victorian industries
- opportunities for reducing or streamlining regulations and the applicability of alternative regulatory models

- food regulation to support community activities and expectations and appropriate risk management strategies
- the flexibility of food standards and labelling regulations to adapt to emerging food technologies and products, and accurately reflect relevant health information
- strategies to reduce the burden of regulation on small businesses operating in the food industry.

In reviewing these matters, the inquiry is required to examine both state-based regulations and the coordinated national food regulatory system. The inquiry thus encompasses a comprehensive review of food regulation applying in Victoria, with a view to identifying where the development and implementation of those regulations might be improved and how such improvements might be made.

The Commission has interpreted food regulation to mean:

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. (Blair 1998, p. 26)

Accordingly, the main focus of the inquiry is on food regulation under the *Food Act 1984* (Vic.). Other areas of legislation relevant to the inquiry are the *Meat Industry Act 1993* (Vic), the *Seafood Safety Act 2003* (Vic.) and the *Dairy Act 2000* (Vic.), to the extent that they involve food regulation.

While this focus means that beverages, including water, are within the scope of the inquiry, the Commission has treated tap water as outside the scope. Similarly, the Commission views general regulation that affects establishments selling food or beverages, such as occupational health and safety, liquor licensing and smoking in eating places, as out of scope.

1.1.1 Recent reports

The terms of reference direct the Commission to take account of previous studies. A particularly important review of the national system (Blair 1998), found that food regulation was characterised by a:

- lack of uniform legislation
- lack of clarity and consistency in agency roles and responsibilities
- overlap and duplication of agency responsibilities
- lack of coordination between government agencies
- inadequate and uncoordinated enforcement effort

- multiple audits by industry and governments
- inefficient food standard setting processes (Blair 1998, p. 14).

That report triggered a series of reforms that are described in chapter 3, and which affected the operations of all levels of government. In a 2002 review of how well the new framework was operating in Victoria, the Auditor-General Victoria found inadequacies in the administration of the institutional framework for food regulation and made recommendations to address them (AGV 2002). Findings included:

- the framework is appropriate in principle, but may not achieve its purpose as a result of the inadequacy of the compliance activities of councils
- only a few councils were fulfilling all of their legislative responsibilities. For the majority, there was poor compliance with key elements of the regulatory framework
- roles and responsibilities and priorities of food safety stakeholders are not clearly defined. The Food Act 1984 does not address which government agency is responsible for overseeing the performance of local government with respect to food safety and the extent to which councils meet their legislative responsibilities is not known by the Department of Human services.

A follow up study released in October 2005 found some of the audit recommendations made in 2002 had been implemented and there had been some improvement in performance since the 2002 audit, but found:

continuing inadequacies in the administration of the food safety regulatory framework, particularly in the areas of leadership, collaboration between DHS and councils, and the quality of internal and external reporting.

If food safety in Victoria continues to be managed under legislation that does not require the key agencies to better account for their performance, it is unlikely that any system-wide change for the better will occur (AGV 2005a, p. 10).

The Commission's own 2005 report on regulation and regional Victoria identified scope for reducing the number of food safety regulators, reducing overlap with AQIS requirements, reducing overlap with private food safety requirements and increasing the transparency of audit decisions (VCEC 2005, pp. 263–69). The Commission also identified concerns about inconsistencies between councils in the ways in which they interpret and enforce the Food Act as an important issue (VCEC 2005a, p. 249). The Commission made recommendations to address these areas and help deliver food regulatory services at lower cost (box 1.1)

Box 1.1 Recommendations in the Commission's report: Regulation and Regional Victoria: Challenges and Opportunities

1. That councils should periodically report their performances against their obligations under the Food Act 1984, using performance indicators developed by the Food Safety Unit and local government, represented by the Municipal Association of Victoria. The results should be published. Performance reporting should be made mandatory after two years if negotiations have not achieved an acceptable outcome. The Department of Human Services should contribute to any additional costs incurred by councils to provide performance information in the first year.
2. That PrimeSafe and Dairy Food Safety Victoria publish a timetable within 12 months, outlining the steps that they will take towards recognising private food safety audit systems, where this can be achieved without compromising food safety outcomes. Reports on achievements against the timetable should be published in its annual report.
3. That, to assist with consultation and decisions about future audit regimes, PrimeSafe publish discussion papers on the scope and frequency of audits for the seafood industry, following the initial audits.
4. That fees for licences administered by PrimeSafe and Dairy Food Safety Victoria be prescribed by Regulations to be statutory rules and consequently potentially subject to regulatory impact statements.
5. That the Food Safety Unit of the Department of Human Services, in conjunction with the Municipal Association of Victoria, work with councils to develop guidelines for setting registration fees. These guidelines and the fees charged should be reported publicly.

Source: VCEC 2005a, pp.248-268

The Government supported or supported-in-principle recommendations 2, 3 and 5. While it supported the first recommendation, that councils should report against their obligations under the Food Act, it did not agree that reporting should be made mandatory after two years if negotiations have by then not achieved an acceptable outcome. The Government did not accept the fourth recommendation, because it believes the current framework for setting these fees is consistent with the spirit of the regulatory impact statement process (Government of Victoria 2005b, pp. 12–15).

In January 2007, the Commonwealth Government commissioned Mr Mark Bethwaite to identify how the food regulatory framework can be streamlined and made nationally consistent to improve the competitiveness of the Australian food industry.

1.2 Conduct of the inquiry

The Commission advertised the inquiry in the daily press and by circular to those whom its preliminary analysis suggested would be interested parties. In doing so, it invited any interested party to make a submission to the inquiry. The terms of reference and inquiry particulars were also listed on the Commission's website at www.vcec.vic.gov.au.

The Commission received a total of 63 submissions from regulators, consumers and suppliers of food. In addition, the Commission had discussions with a wide range of interested parties to help identify and assess issues relevant to the inquiry. The Commission also held roundtables with representatives of community groups, business and government. The Commission engaged three consultancies to assist with different aspects of the inquiry. Appendix A contains a list of those with whom the Commission met, and the consultancies.

1.2.1 The Commission's approach

As regulation generates costs as well as benefits, governments should only introduce regulation where it is necessary and in a way designed to achieve the highest net benefit to the community. In assessing regulatory arrangements covered by the terms of reference and how they might better achieve the purpose of government, the Commission used the following principles which it has used for previous inquiries to guide its thinking:

- Regulatory effort should be the minimum needed to achieve the objective, consistent with the scale of the problem.
- Regulations should be understandable and introduced only after proper consultation.
- Regulations should not be unduly prescriptive.
- Regulations should be consistent with other laws and regulations.
- Regulations should be enforceable.
- Regulators should be accountable.
- There should be pressures for continual improvement.

The Commission approached this inquiry by:

- considering why and when regulation of the food sector may be justified (chapter 2)
- reviewing current regulatory arrangements (chapter 3)
- analysing characteristics of the food sector relevant to regulatory design and implementation (chapter 4)
- assessing whether regulation is currently meeting its objectives (chapter 5)
- estimating the costs of Victorian food regulation (chapter 6)

- suggesting ways in which national, state and local regulation of the food sector could be streamlined and simplified (chapters 7, 8, 9 and 10)
- considering specific improvements to regulation of food-related activities in the community sector (chapter 11).

Supporting appendices provide:

- information on parties consulted during the course of the inquiry (via meetings, roundtable discussions, submissions and public hearings)
- a description of the regulatory arrangements
- a review of the overseas studies of the costs of food regulation
- details of the savings from the Commission's proposals.

Further appendices are available on the Commission's website:

- A discussion paper prepared by Inquit Pty Ltd on the impact of international regulation in the food industry.
- A paper prepared by Dench McClean Carlson on the impact of food regulation on the dairy industry.
- A report by KPMG on estimating the cost to business of food regulation in Victoria.
- A description of the approach to food safety regulation in New South Wales.
- A bibliography of relevant references.

2 Rationales and instruments for food regulation

2.1 Introduction

This chapter assesses the arguments for government intervention to improve food safety and prevent misleading conduct in the sale of food—the two most important objectives of relevant food legislation in Victoria. Chapter 3 notes the debate about whether providing food safety means ensuring the level of foodborne disease is acceptable or actively promoting health. This chapter focuses on the former narrower interpretation; it does not cover many other forms of intervention in the food sector (for example, regulations regarding occupational health and safety, the environment and the labour market) because they apply generally rather than specifically to food.

Foodborne illness costs Australians around \$1.3 billion to \$2.6 billion per year (chapter 5), but it is difficult to assess whether and to what extent the community's resources should be used to reduce this cost. It is likely to cost progressively more to achieve further improvements in food safety, using up resources that may yield larger benefits if employed elsewhere, given that the marginal benefits from improving food safety are also likely to fall once the sources of serious illness are eliminated. This implies there is an efficient level of food safety (albeit one that may change as public concern and awareness of food safety increases), in the sense that the cost of improving food safety beyond that level would exceed the benefits, while a lower level would incur excessive costs from foodborne illness.¹ But is government intervention needed to move the community towards the efficient level? If so, what form should the intervention take?

Section 2.2 outlines powerful commercial incentives to provide safe food, yet acknowledges that markets may sometimes provide less safety than is efficient. Section 2.3 explains that this can happen in the community sector too. Whether government intervention is justified, however, depends on whether its benefits exceed its costs (section 2.4), recognising governments may choose to intervene in different ways, with different advantages and disadvantages (section 2.5).

¹ As well as varying over time, the optimal level of food safety may also vary across regions at any particular time, because people in some areas may value food safety more highly than it is valued elsewhere.

While the language of economics applied to risk can seem arcane, it is quite close to more commonplace understanding:

- Well informed consumers acting in their own interests are always a central feature.
- Consumers exercise risk judgements all the time, including with food.
- Food companies have strong incentives to maintain quality and safety.

2.2 Incentives to provide safe food in the commercial sector

2.2.1 Characteristics of food safety

Factors influencing food safety include:

- the quality of soil and water used in crop production
- pathogens such as *Salmonella* and *Escherichia coli*, which can become serious health risks
- the use of chemical preservatives and additives
- food processing, distribution and handling in retail businesses and in the home.

In the United States at least, some experts attribute most foodborne illnesses to food handling errors by consumers, but others argue there is ample evidence that firms also make food handling errors resulting in foodborne illness (Buzby, Frenzen & Rasco 2001, pp. 3–4).² Data on foodborne illnesses originating in the home are difficult to collect, but while this report focuses on food production within firms and community groups, the contribution of poor household practices to foodborne illness should not be overlooked.

² Potential errors include:

- the use of contaminated raw food
- cross-contamination of prepared food by contaminated raw food
- poor personal hygiene by infected food handlers
- inadequate cleaning of equipment
- inadequate cleaning or reheating
- improper holding temperatures
- cooling food too slowly after heating
- eating food too long after preparation
- insufficient fermentation, acidification, salting or sweetening during processing (Bryan, Guzewich & Todd 1997, cited in Buzby, Frenzen & Rasco 2001, p. 4).

When consumers purchase an item of food, they pay for a bundle of attributes contained in that food, including safety and other attributes such as nutrition, taste, packaging and aspects of its production process.^{3,4} There may be tradeoffs between attributes: for any given price, more of one attribute may be available only if less of others is provided. A more hygienic production process, for example, may cost more, so a producer looking for a certain profit would have to either increase the food's price or use cheaper ingredients.

In principle, it is possible to find the value that consumers attach to various food attributes (including safety), by examining products with different combinations of attributes. Unsafe food creates a *risk* of illness (morbidity) and death (mortality). These risks may differ among groups (for example, old versus young, ill versus healthy people). And within a particular group, both the capacity to manage risks and the willingness to bear risks can differ among individuals. Consumers value food safety because it reduces health risk and most would have experienced foodborne illness. The amount they would be willing to pay to reduce this risk would depend on several factors, including their susceptibility to the risks of unsafe food.⁵

Among the population as a whole, the market demand for a food varies inversely with that food's perceived health risk in the population and its actual risk (Antle 1998 pp. 16–17). In principle, food safety 'can be regarded as a good like any other, with supply and demand interacting to determine a market clearing price' (Henson et al. 1999, p. 3). In a perfectly informed, competitive market, firms would produce as much safety as consumers are willing to pay for, in the sense that the marginal cost of food safety is equated with its marginal benefit (Antle 1995, p. 44). The policy issue is how close 'real world' markets are to this ideal and whether government intervention can improve on market outcomes.

2.2.2 Market incentives to provide safe food

Consumers have incentives to seek food that is safe and to follow safe food storage and handling practices. They can manage food safety in many ways, including selecting safe suppliers, avoiding products that may damage their health and averting risk by cleaning or cooking to reduce food contaminants, for example (Ravenswaay & Hoehn 1996, p. 1291).⁶ Some consumers (such as those

³ Consumers may be interested in aspects of the production process, such as whether eggs were laid by free range hens, whether dolphins were caught along with tuna, or whether stock feed contains antibiotics.

⁴ The price may also include any above normal profits gathered by sellers in markets where competition is limited.

⁵ Antle (1998, pp. 11–15) showed the price premium a consumer will pay for a safe food (for example, pesticide free food), if other attributes of the food are held constant, is determined by their perceived susceptibility to the risk, which depends on the marginal utility of health, the marginal health effect of exposure, the marginal effect of risk on exposure and the marginal effect of food consumption on health risk.

⁶ Ravenswaay and Hoehn (1996, p. 1292) noted a fourth action that consumers can take: treating the consequences of illness, which they call 'mitigation'.

with allergies, and the elderly and frail) pay more attention to food safety than others do. Such different attitudes towards risk may be rational responses to factors such as the different consequences of eating ‘unsafe’ food. In summary, while recognising food suppliers are responsible for ensuring food is safe, consumers have a responsibility to manage their own health and, via their food choices, to influence the behaviour of suppliers.

Firms also have strong incentives to respond to consumers’ demand for safe food, as the rest of this section will show.

Maintaining or expanding profitability

Firms selling unsafe food risk a loss of reputation, sales and profitability that could exceed any benefits to them from any food safety cost cutting. Moreover, it may cost more to rectify the problem than if processes were safe from the outset.

Firms may also perceive opportunities to increase profitability by improving food safety—for example, by offering a pesticide free product. For this to be an effective marketing strategy, the claim needs to be verifiable. Approaches to verification include accepting third party accreditation (for example, the National Heart Foundation ‘tick’), following industry codes of practice, and allowing customers to inspect their premises. Some restaurants, for example, make their kitchens visible to clients, to demonstrate their food preparation is safe.

Corporate structures can influence the strength of reputation protection as an incentive to provide safe food. Jin and Leslie (2004, p. 6) found that chain restaurants in Los Angeles have stronger incentives to maintain hygiene than have independent restaurants, because a failure by one damages the reputation of the chain as a whole. In Australia, major retailers such as Woolworths and Coles seem likely to have strong reputation incentives, given the serious national consequences if one of their stores is found to have sold unsafe food. The Victorian Farmers’ Federation noted that the major supermarkets require their suppliers to comply with the supermarkets’ food safety plans (sub. 16, p. 2). The Australian Industry Group commented:

... the very high standards demanded by the large retail food chains are such that the need for government regulation was becoming somewhat secondary. (sub. 32, p. 1)

The extent of competition in an industry may also affect food safety, when consumers can distinguish the level of safety provided by different firms. Jin and Leslie described how competition among restaurants can affect quality:

There are at least a couple of ways that competition may impact hygiene quality. It may be that in areas with a high degree of competition, restaurants seek to differentiate themselves in hygiene quality, leading to greater variance in hygiene. Alternatively, increased competition may cause all competing restaurants to raise quality as an alternative (or complement) to lowering price. (Jin & Leslie 2004, p. 6)

General law

Reputational and competitive incentives are reinforced by the incentive to avoid being held liable for damages. Shavell (1987) showed the tort system can induce firms to take the socially optimal level of precaution:

(1) when harm to an individual or a well defined group is sufficient for the individual or group to have an incentive to sue the injurer for damages; (2) when injurers have sufficient resources to pay for the harm they cause; and (3) when individuals have information sufficient to demonstrate harm on an individual basis. (cited in Antle 1998, p. 38)

Penalties for legal infringements may supplement or replace damages, provided the penalties are not small in relation to the damage caused, or not so large that they are not enforced.

Business arrangements

Food producers typically sell to other firms further down the supply chain. These other firms are often sophisticated judges of food safety, with strong incentives to monitor the quality of their inputs, so as to avoid the loss of reputation from using unsafe inputs in their own products. A supplier of unsafe food thus risks loss of revenue much larger than that of the unsafe consignment. And if large sales revenues are involved, the costs of using the legal system for recompense is less prohibitive than it is for households. In summary, firms along the supply chain are often capable of monitoring safety, have an incentive to do so, and have many ways to enforce safe practices by their suppliers. If the transaction costs involved in addressing quality issues through contracts become excessive, vertical integration of activities within the one firm may become attractive. Chapter 4 describes business arrangements in the food sector.

Insurance markets

Finally, the insurance market can provide incentives to produce safe food. Damien Alexander, a risk manager from Vero Corporate Liability, described how Vero assesses premiums for providing product and public liability insurance to food manufacturers:

When analysing a liability risk, Vero will apply a defined, systematic approach to determine what liability exposures exist and the commensurate premium to be charged.

Through this analysis Vero will develop a comprehensive understanding of the business operations, including the type of manufacturing process, end use of the product, and the level of control the company has over potential hazards to adequately cover the business.

An assessment is then made as to how well a company controls potential risks, as well as determining the likelihood and severity of any potential claim arising. Based on this, when it is seen that a business has sound controls in place, the business is allocated a premium that is 'better' than the allocated average for that industry sector. Conversely, the opposite will apply for a business that has inadequate, few or no controls in place. (Alexander 2004, p. 2)

Moreland City Council suggested 'the insurance sector could be utilised as a market lever, through legislative amendment, to promote increased levels of food safety' (sub. 51, p. 9).

In summary, reputational incentives, competitive pressures, legal liability and insurance markets encourage firms to provide food that is safe. Restaurant and Catering Victoria commented:

Current regulation does not recognise or acknowledge that a restaurant business owner has a great incentive to produce, and/or have staff produce, safe food. Instances of unsafe food provide not only damage (short and long term) to reputation, but also potential financial ruin, exposure to penalties that exist under legislation and extensive legal action. All of these factors provide a major incentive for restaurant businesses to produce safe food. (sub. 36, p. 9)

Moreover, the hurdle should not be set too high when assessing how well markets perform in this area. Markets will not remove risk entirely, because consumers will not be willing to pay for this approach. Further, markets cannot be expected to provide each person with exactly the amount of food safety they want. As noted, attitudes towards food safety may differ substantially among people, depending on factors such as their health, age, income and appetite for risk. If the costs of providing different levels of safety are high, the market may appear incomplete, in the sense that it will not cater for some consumers' preferences.

This need not indicate inefficiency:

... is an 'incomplete' market an indication of an inefficiently functioning market? Clearly, when firms are supplying the variety of products that are profitable to supply, and there are no externalities in production or consumption that cause firms to undersupply, then the answer to this question must be no. In other words, the market is providing as much variety in safety as is economical, and the market is therefore functioning efficiently. (Antle 1998, p. 46)

2.2.3 How incentives may be incomplete

With such strong incentives, why might markets provide less safety than consumers would be willing to pay for?

Information asymmetries

Consumers may be less well informed than producers about safety characteristics of food: there may be an information asymmetry between them. Consumers can discern some characteristics of food (such as smell and appearance) before purchase, but detect others (such as taste) only by consuming the product. Whenever the attribute becomes evident, consumers can quickly correct their actions if they have made a bad decision. These characteristics are consistent with *experience goods*, and traceable unsafe food that causes illness quickly after consumption arguably falls into this category. Some safety consequences, however, do not become evident until a long time after purchase and consumption, or ever, because it may be prohibitively costly for consumers to trace a problem to its source. Goods with this safety issue are known as *credence goods*.⁷

There is a spectrum of possibilities, depending on the length of time before a food safety problem arises after consumption and the ease with which a problem can be traced to its source. Where a particular case sits on this spectrum has a significant impact on market incentives to provide food safety. In the case of experience goods, for which consumers realise the safety of the food after purchase, if consumers buy the product repeatedly, potential loss of reputation gives firms strong incentives to provide the amount of safety that consumers want. Even when repeat purchases are not involved, food safety can still be efficiently provided as long as consumers can exchange product information or otherwise obtain product information at low cost (Antle 1998, p. 42). In other cases, it may not be possible to trace a foodborne illness to its source, perhaps because lead times are long and links may not be scientifically proven.

⁷ The capacity to measure cause and effect may be reduced in cases where the way in which food is used affects its safety. If, for example, someone suffers food poisoning after using the same knife to cut up raw meat and to prepare a salad, is the food poisoning due to a problem with the meat or to unhygienic preparation?

Unless producers of higher quality (and priced) products can differentiate themselves from the average and lower quality producers (perhaps through an accreditation scheme), they may have an incentive to cut costs by using unsafe production methods while passing off the food as safe. This could lead to a ‘race to the bottom’. It occurs because buyers, if they cannot assess food safety, have to assume sellers are offering an average level of food safety. Sellers of foods with higher than average food safety (and thus higher production costs, other factors being equal) will be unwilling to sell at the average price, so will either not offer their services or will lower the safety of their offering. The withdrawal of safer foods also reduces the average level of food safety and, therefore, consumer assumptions about safety. In extreme cases, the result is a downward spiral in quality and a decline in the size of the market as consumer confidence deteriorates and buyers and sellers withdraw.⁸

In practice, the market features outlined in the previous section may prevent this extreme situation—for example, some consumers are sophisticated enough to judge food safety. Klein and Leffler (1981) showed that as long as a substantial number of knowledgeable consumers demand a high quality product and are willing to pay for it, the higher price is sufficient to ensure nonperformance (supplying an inferior product) results in a loss greater than the gain from non-performance. This mechanism could even operate to some extent for the safety issues affecting credence goods.⁹ Further, Antle (1998) noted some firms may invest in quality control technologies even when consumers cannot discern quality, even after purchase:

... firms may still be able to establish high quality reputations by identifying their products with the use of quality control processes. An example of this is the recent adoption by a prominent seafood firm (legal seafood) in the United States that advertises its use of HACCP. By identifying its product with a quality control process, a firm may be able to convey product quality information to consumers and a separating equilibrium may be attained that efficiently sorts consumers and producers into markets for different qualities with corresponding prices. (Antle 1998, p. 37)

⁸ The structure of the market may influence the outcome: ‘In competitive markets it is likely that sellers will divulge a great deal of this information in the marketing of their food products and asymmetries will be lowered. However, when suppliers possess a degree of market power the asymmetries will be maintained’ (Henson et al. 1999, p. 8).

⁹ For example, in a strange city, customers gravitate towards well patronised restaurants, relying on the judgement of others.

Symmetric imperfect information

While imperfect asymmetric information (information imperfect for consumers but not firms) characterises some food safety issues, symmetric imperfect information (for both consumers and firms) may feature in others. If the links between a food attribute and health impact have not been proven, then firms may be no better informed than consumers. But, in this case, regulators too will be poorly informed,¹⁰ raising doubts about the capacity of regulation to improve outcomes until scientific knowledge has progressed. In such instances, government needs to consider whether to sponsor research to increase information. In the case of information asymmetries, a wider range of policy instruments is available (see below).

Tort law limitations

The extent to which legal liability encourages firms to produce safe food may be diminished when it is difficult to trace a problem to its source. An analysis of how product liability law in the United States treats personal injuries attributed to contaminated food products found that plaintiffs are unlikely to receive awards in foodborne injury trials. Incubation periods, the absence of physical evidence of contamination, and difficulties in identifying the particular food item that caused the problem¹¹ make it difficult for plaintiffs to mount a convincing case. Awards in successful cases were not large, and legal fees and court costs usually absorbed one third or more of the award. Given most foodborne illnesses are relatively mild, and the costs are often shared (through insurance and other mechanisms) among the individuals concerned, their employers and the broader community, monetary incentives to pursue damages are frequently weak (although stronger for a mass outbreak of foodborne illness). The study concluded that the direct impact of litigation on firms is small, although the small proportion of trials resolved in public may have an ‘indirect, possibly significant’ impact on firms’ behaviour (Buzby, Frenzen & Rasco 2001, pp. 24–7).¹²

Regulatory arrangements can diminish the incentives provided by legal liability. The Municipal Association of Victoria noted that a council that allows a business to trade while knowing food standards are not being met would bear the liability for a food poisoning outbreak (sub. 41, p. 9).

¹⁰ If the regulator has access to better information than have firms or consumers, it can make that information generally available.

¹¹ Problems with demonstrating cause and effect include the following: most food items are likely to have been eaten or thrown out before the symptoms develop; the implicated pathogen may be associated with multiple foods or spread via other routes (for example, person-to-person contact); and many processed foods include ingredients from a variety of sources (Buzby, Frenzen & Rasco 2001, p. 24).

¹² In Victoria, the incentive for plaintiffs to pursue damages is reduced because a person is not entitled to recover damages for non-economic loss (covering pain and suffering, loss of amenities of life and loss of enjoyment of life) unless the person has suffered significant injury (*Wrongs Act 1958* (Vic.), s28LE).

Consumers' knowledge about food safety

Understanding risk

Even scientists cannot estimate the probability of some hazards associated with food.¹³ And even when probabilities are known, consumers may have difficulty understanding them:

- People have difficulty distinguishing between, for example, parts per million and parts per trillion, making it hard to explain certain risks associated with very small concentrations of contaminants in food.
- Experts often use the risk of dying from a variety of causes to communicate risk, but people have difficulty interpreting those risks in context.
- Many risks are multidimensional, so their estimates involve differing levels of uncertainty (Robertson 2006, p. 368).

In such cases, consumers may have the relevant information (as distinct from the information asymmetry situation described above) but have difficulty interpreting it, so their risk assessments may not align with reality. The Productivity Commission, commenting on consumers' attitudes towards risk in general, noted:

The literature suggests that, in general, consumers will often underestimate product risks, which in turn can result in an under-demand for product safety ... Even where consumers have access to sufficient information about product risks, they may not be able to competently interpret and apply the information. ... A wide range of studies show that people, when faced with risky decisions, make inconsistent and seemingly irrational choices. ... Hence the level of product safety demanded in the marketplace may to some extent diverge from consumers' true preferences for safety. (PC 2006b, p. 19)

Some studies (Bray 2004, p. 18) have found consumers are less concerned about risks when they feel they are in control—for example, consumers may impose lower standards when preparing food at home than they would expect when others prepare the food. A literature review focusing on food implied that misperceptions of risk may not result in an underdemand for safety:

The survey showed a systematic primary bias with high risks tending to be underestimated and low risks overestimated. In the case of food this would suggest that consumers would tend to underestimate the risk of certain diet related cancers or coronary heart disease while overestimating the risk of botulism or food additives. (Henson et al. 1999, p. 6)

¹³ Knight (1921) explained the difference between risk and uncertainty: 'If you don't know for sure what will happen, but you know the odds, that's risk, and if you don't even know the odds, that's uncertainty' (cited in Robertson 2006, p. 368).

Consumers may also overestimate the extent to which products reduce risk, demanding more than the efficient amount of such products. Producers of ‘healthy’ foods (such as organics, low fat/cholesterol foods and free range eggs) may have an incentive to ‘talk up’ the health benefits, which could lead to overprovision of safety if producers can exaggerate and misinform consumers. Profits might even rise for the producers making these claims. Other firms then have an incentive to correct the claims, to protect their own profits: the Department of Human Services told the Victorian Competition and Efficiency Commission that most labelling complaints come from competitors, not consumers (sub. 48, p. 19). When such market constraints fail, legal prohibitions on misleading conduct in the sale of food (chapter 3) are designed to limit misinformation.

Understanding other information

In addition to these risk related issues, some consumers lack information about safe food handling practices and the meaning of information on food labels (for example, the distinction between the ‘best before’ date and ‘use by’ date). Chapter 7 provides evidence from submissions that suggests this is a common problem.

Public goods

A slightly different perspective on the availability of information about food safety draws on its ‘public good’ characteristic:

Directly information is published it yields benefits to society as a whole in addition to the private benefits accruing to the individual who pays for it. These social benefits, which result from the public good characteristics of information, are not adequately taken into account in the marketplace. As a consequence, the market for food safety information is likely to be undersupplied. (Henson et al. 1999, p. 8)

The large amount of information available on safety, however, raises doubts about the severity of this problem in practice. There are many suppliers of such information, as indicated by the plethora of food articles in magazines, cookery books, charitable organisations such as the National Heart Foundation, and the internet. A Google search for ‘food safety’, for example, provides 126 million hits.

Spillover effects

Spillover effects, which can occur when high transaction costs or poor government policy prevent such effects from being ‘internalised’ through market transactions, are sometimes said to justify government intervention. An example is when the discovery of unsafe food produced by one firm damages the reputation of other producers. If firms do not account for the effects on other firms when deciding how much to spend on food safety, they may spend less than is optimal from a communitywide perspective. The size and distribution of any third party impacts, however, depend on the circumstances (box 2.1).

Box 2.1 **Food safety externalities in the Mexican green onion industry**

Calvin, Avendano and Schwentesius (2004) analysed the impact on the Mexican green onion industry of a hepatitis A outbreak in the United States. Following an announcement by the US Food and Drug Administration (FDA) that onion farms in Mexico were the source of the outbreak, the free on board price of green onions dropped from US\$18.30 per box to US\$7.23. Estimated losses for Mexican growers in the two weeks after the announcement totalled US\$10.5 million.

While all growers suffered lower prices, the impact on sales volumes varied across growers. Before the outbreak, five out of seven respondents to a survey reported that they were voluntarily either compliant or becoming compliant with US good agricultural practices (GAPs) and good manufacturing practices (GMPs), at a cost of between \$700 000 and \$2 500 000 per farm. After the hepatitis A outbreak, GAP compliant farms experienced little ongoing loss of sales; farms that were not GAP compliant experienced a 50 per cent drop in sales; and those without GAPs and that were named by the FDA had no sales and had to plough under their crops. Farms that were partly GAP compliant had to undertake investments in response to pressure from their buyers. That is, while the spillover impacts caused by the poor practices of a few farms were significant, most of the costs were borne by the farms that had caused the problem, suggesting there were powerful incentives for firms to produce food that is safe.

Source: Based on Calvin, Avendano & Schwentesius (2004)

In addition to production externalities, there may be spillovers in the consumption of unsafe food—for example, medical insurance arrangements require others to bear part of the health care costs of people who become ill, while sick leave arrangements require employers to bear part of the lost productivity when employees have to take time off work. Whether this materially affects consumers' incentives is an empirical matter. Buzby, Frenzen and Rasco, however, argued that in the United States:

... although both health care insurance and liability insurance benefit foodborne illness victims with compensation, they both distort incentives for firms to produce safer food ... health insurance limits the extent to which food firms receive signals to produce safer food. (Buzby, Frenzen & Rasco 2001, pp. 10-11)

Access to international markets

Securing access to international markets is sometimes advanced as a reason for government intervention to encourage food safety. In another manifestation of the information asymmetry noted above, overseas purchasers of Australian products may have less information than their suppliers have about product safety. In addition, a firm that exports unsafe products may damage the market for other exporters—an example of the spillovers noted above. The policy issue

is whether net benefits arise from government intervention to help Australian exporters convince customers that their products are safe.

2.3 Incentives to provide food safety in the not-for-profit sector

2.3.1 Defining the sector

The inquiry terms of reference require the Commission to report on the magnitude and nature of the regulatory burden on the not-for-profit sector, and also on food regulation to support community activities and expectations. As outlined in chapter 11, this sector is diverse, including:

- not-for profit entities such as (some) hospitals, schools and aged-care facilities
- fund raising activities where volunteers sell prepared or donated food to raise money
- charities that provide food to disadvantaged groups at no charge.

The characteristics of suppliers, consumers and transactions differ considerably within and between these sectors:

- While many of those in hospitals, schools and aged care facilities are particularly at risk from unsafe food, they may not purchase food directly from the supplier. Rather, a relatively sophisticated purchaser, such as a hospital, will often arrange food on their behalf.
- The suppliers in fund raising activities are usually volunteers, but engaged in a commercial transaction like any other between a supplier and purchaser, and there seems little reason for their customer group to have different characteristics from those of the population in general.
- Charities sometimes give rather than sell food to their customers, who are typically poor, not well informed and, in some cases, not able to process information to make rational decisions.

These differences suggest that incentives to provide food safety may differ between different parts of the not-for-profit and community sector.

2.3.2 Incentives in the not-for-profit sector

When catering firms provide food in the not-for-profit sector on a commercial 'arms length' basis, this provision is for profit and influenced by incentives such as those outlined above. The arguments for whether there may be a market failure should thus be similar.

2.3.3 Incentives in fund raising activities

There is no obvious reason consumers would be less concerned about food safety when purchasing from a fund raiser rather than from elsewhere. Research prepared for the Department of Human Services suggests Victorians have particularly low confidence in food retail outlets such as community events and fêtes (Campbell Research & Consulting 2005a, p.1). While information asymmetries also exist in this area, it is not obvious why they would differ substantially from those in the commercial sector.

As noted, when information asymmetries exist and legal remedies are limited, firms may underprovide safety. Would the situation be any different for fund raisers? People who prepare food for fund raising do so only occasionally, so may have less knowledge of food safety requirements. Further, they may need to recover the fixed costs of implementing safe production processes from a small volume of sales. If this would substantially reduce their ‘profit margin’ (because they are competing with commercial producers that can recover the fixed costs over a larger volume of sales), they may be tempted to cut corners. On the other hand, fund raising often takes place within a local school, church or sporting community, so the person supplying the food often knows the people who buy it, which seems a likely strong incentive for safe practices. Moreover, most community organisations hope to be in business for the long term, which provides an incentive to protect their reputation.

On balance, it is not clear why the arguments around ‘market failure’ in the not-for-profit sector should differ substantially from those in the commercial sector.

2.3.4 Incentives in charities

The charitable sector is diverse. To make the discussion amenable, it is limited here to two types of organisations:

- large, well known and long established organisations (such as the Salvation Army and the Brotherhood of St Laurence)
- small groups of volunteers who join together for a short time.

Client groups of both types may be poorer, less informed and more vulnerable to illness than the population in general, and have little capacity to switch food supplier. Charities typically have limited resources, and meeting the fixed costs of learning about and implementing safe food practices could reduce the amount of food aid they can dispense. This combination of powerless consumers and limited resources might lessen the attention paid to food safety. But there are incentives working in the other direction:

- Large and small charities exist to improve the wellbeing of their clients, which is inconsistent with supplying them unsafe food.

- Large charities compete for the philanthropic dollar, and their capacity to raise money would be compromised if they were found to be making their clients ill.
- Large charities may feel exposed to legal action, perhaps through a class action.

The way in which these incentives work in practice will vary. Broadly, however, larger organisations seem likely to be more sensitive to reputation risk than are small ones (particularly if they have short time horizons), and the fixed costs of complying with safe practices may be proportionately larger for small charities.

2.4 What role for government?

If markets underprovide food safety, government may have a role to find solutions where the marginal benefit of improved food safety equals or exceeds the marginal cost.¹⁴ If regulation pushes food safety beyond the efficient level, however, it will impose higher costs than the community would willingly bear if well informed. Government intervention is thus justified only when it will improve the situation, and when:

- the total benefits of the intervention exceed its costs
- the intervention will be effective in changing the regulated activity in the desired way
- the distribution of the costs and benefits is acceptable.

2.4.1 Benefits of intervention

The benefits of intervention need to be considered in the context of the problem that the intervention is intended to correct. To the extent that intervention is intended to reduce foodborne illness, the benefits are essentially the reduction in costs associated with those illnesses.¹⁵ Chapter 5 discusses difficulties in assessing such benefits, including the following:

- Information is required about the effectiveness of an intervention in achieving its objective, such as lowering the costs of foodborne illness. Often, little information is available on the proportion of people who behaved in a way consistent with the regulation before it was introduced and also the proportion who do not comply after the regulation is introduced. For this reason, in its initial analysis of the benefits and costs of applying Hazard Analysis and Critical Control Point (HACCP) in the US meat and poultry industry, the US Food Safety and Inspection Service used effectiveness estimates ranging from 10 per cent to 100 per cent reduction in pathogen levels (Crutchfield et al. 1997, p. 9).

¹⁴ In Australia, the role of government is complicated by the involvement of all three levels of government in regulating to provide food safety. Chapter 3 describes these roles.

¹⁵ The objectives may be more complicated, as discussed in chapters 3 and 8.

- It may be difficult to disentangle the effects of a regulation from other factors. Ravenswaay and Hoehn (1996, p. 1295) discussed a case in which the government wishes to reduce foodborne illnesses from a particular source. In addition to introducing a regulation to address the problem, the government publishes information about the illness source. Simply publishing the information encourages consumers to undertake avoiding, brand switching and averting activities. Estimates of the effects of the regulation will thus overstate its benefits, unless accounting for the effects of the additional information on consumer behaviour.
- Information is required about the value that consumers place on the outcome of the intervention. Successful food safety regulation should reduce loss of life and the health costs that individuals and businesses would otherwise bear (including loss of workplace and household productivity, medical costs and the costs of workplace disruption.) It should also reduce pain and suffering. Some studies (for example, Abelson, Forbes & Hall 2006) estimated these costs and, by implication, the benefits that intervention may create. They included estimates of the amount consumers would be willing to pay to avoid the pain and suffering associated with foodborne illness.

2.4.2 Costs of intervention

Intervention can impose direct, indirect and dynamic costs. As with benefits, the relevant measurement from a policy perspective is the change in costs associated with a government intervention.

Direct costs

These costs include:

- costs to government
- administrative and compliance costs.

The *costs to government* include the costs of implementing regulation (for example, drafting the regulation and preparing regulatory impact statements) and the costs of enforcement. Data about these costs should often be readily available. *Administrative costs*—often referred to as red tape—are costs that firms or individuals incur to demonstrate compliance with the regulation or to allow government to administer the regulation. They include costs associated with familiarisation, record keeping and reporting, including inspection and enforcement of regulation.

The Organisation for Economic Cooperation and Development (OECD) defines *compliance costs* as ‘The *additional costs necessarily* incurred by businesses in meeting the requirements laid upon them in complying with a regulation. (OECD 1997, p. 19) (emphasis added). Compliance costs may be the largest cost of intervention, involving the costs of changing production processes to make

them consistent with the requirements of the intervention. The critical question (as with benefits) is how to estimate the cost of intervention compared with a situation in which there is no intervention. In principle, *additional costs* could be assessed against quite different baselines, leading to very different cost estimates. These baselines include:

- the market remaining in ‘perpetual status quo’ unless a regulation is introduced
- the market creating incentives to move in the direction intended by the regulation
- the market naturally implementing all of the changes required by the regulation (OECD 1997, p. 21).

With no clear ‘best’ baseline, analysis should at least consistently apply the same baseline.

In relation to whether costs are *necessarily* incurred, the issue is whether to assess compliance costs according to what firms actually do or what the most efficient firm would do (OECD 1997, p. 21). A further complication is that some costs of complying with a regulation may be unavoidable, while for others, firms may choose whether to incur them in complying with the regulation. Compliance costs can also differ substantially among firms, depending on factors such as firm size, the production processes employed, the scope and stringency of the regulation and the existing level of compliance (OECD 1997, p. 22). Antle (1998, pp. 65–7) described the strengths and weaknesses of accounting and economic engineering approaches to measuring compliance costs. The former is simpler but has methodological shortcomings.

Given such an array of considerations and factors that may influence compliance costs, estimation is problematic. The OECD noted that ‘the measurement of compliance costs is generally conducted in a rather simplistic fashion, on the assumption that these costs are additive to the costs of production’ (1997, p. 26).¹⁶

¹⁶ Two studies illustrate approaches to measuring compliance costs: (1) Antle (2000) developed theoretical and econometric cost functions for the US meat industry to test the hypothesis that product safety does not affect productive efficiency. He found that the impacts of regulation on costs could be between US\$500 million and US\$5 billion (in 1995 dollars), with the range depending on the assumed range of base safety that existed before the regulations were implemented. (2) Crutchfield et al. (1997) assessed the costs of implementing HACCP in the US meat and poultry industry. This study differentiated costs by size of firm but does not appear to discuss the extent to which firms would have implemented these procedures in the absence of regulation.

Indirect effects

Regulation can have indirect effects too:

- It may affect variables other than the one being targeted.
- It may reduce consumers' incentives to protect themselves:
If the government creates a sense of complacency by making consumers believe that the government processes are better at discovery than they actually are, then consumers may lack the incentives to be more diligent in consumption choice and food preparation. (Skees, Botts & Zeuli 1996, p. 105)
- It may discourage private provision of activities that promote food safety. Government provision of food safety information, for example, could reduce incentives for firms to provide such information.
- It may change consumption patterns, because some consumers may be unable to afford some foods that they would otherwise have purchased.
- It may affect industry structure—for example, regulation could reduce the average level of food safety in parts of the food sector if it increases the proportion of food produced by less safety conscious providers. This could happen if some providers that would otherwise produce at close to required standards decide that the costs of achieving the standards are less than the benefits, while other providers that are well short of meeting the standard continue producing because they anticipate a sufficiently low likelihood of the regulation being enforced. This could be why, as the inquiry was told, some of the major charities are no longer providing food while smaller groups are filling the gap.

Dynamic costs

Food markets are always changing, in response to changes in consumers' tastes, changes in the availability and price of different inputs, and developments in technology. Regulation can affect this flexibility of markets by, for example, altering incentives to introduce new products and processes. Prescriptive regulation that specifies production processes discourages the search for new ways of doing things. And regulation that increases the cost of introducing new products or processes may discourage or delay their introduction.

Regulation may also affect market structure. If, for example, some fixed costs of regulation do not vary with firm size, relatively large firms may be favoured. This situation could lead to more concentration and less competition, with consequently less pressure on firms to minimise their costs.

The dynamic effects of regulation may not always increase costs. The OECD (1997, p. 24) noted the following (although it pointed out that some economists dispute these arguments):

- Compliance induced innovation can allow a firm to produce products at lower costs than its overseas competitors.
- Firms can create an early mover advantage by implementing a regulation before competitors.
- Regulation can create demand pressures to lower costs.

Chapter 6 provides estimates of the direct costs of regulation in Victoria.

2.4.3 Distributional issues

Individuals, not firms, ultimately bear the costs of regulation, and both the costs and benefits of regulation can be spread in complex ways, not necessarily how the government intends:

- Taxpayers may bear (all or part) of the costs on government.
- Consumers may bear higher product costs, depending on the availability of substitute products or sources, for example. (Regulation that increases the domestic cost of producing beef, for example, may shift demand to locally produced chicken and/or imported beef. In this case, consumers may not face higher costs, which local beef producers, their employees and their suppliers would largely bear.)
- The initial impacts of higher food prices on consumers will depend on factors such as the proportion of consumers' income that they spend on the food products whose price has increased and the extent to which they consume foods that intervention has made safer.
- Shareholders will bear a larger part of the cost when there are alternatives to the regulated product and the costs of regulation thus cannot be passed on.
- The more elastic the supply of labour, the higher is the employees' share of the regulation costs likely to be.
- There can be regional impacts if regulation forces an industry to move or leads to the expansion of a substitute food from another region.

There will be further effects too as, for example, those who bear the initial costs of a regulation alter their spending patterns on other goods and services. General equilibrium models of the economy can trace through these effects.

2.5 Framework for analysis

The discussion in this chapter suggests the elements of a framework (summarised in table 2.1) for analysing when intervention may be warranted to improve food safety in Victoria, along with the best form of intervention. In summary, intervention is warranted when market forces cannot adequately deal with information failures and externalities, and when the benefits of intervention exceed its costs. It should focus on directly addressing information failures; if this is not possible, other forms of intervention may be warranted.

Table 2.1 **Efficient policy tools in the market for food safety**

<i>Information: available before consumption or purchase (1)</i>	<i>Asymmetric information: realisation after purchase (2)</i>		<i>Lack of safety information for both producers and consumers (3)</i>
	<i>Low tracing costs</i>	<i>High tracing costs</i>	
Market, legal liability	Market, legal liability	Measures to reduce information asymmetry before purchase, reduce tracing costs and facilitate liability	Research, education and minimum/maximum standards

Where consumers are well informed before consumption or purchase (because safety issues are discernible by sight, touch and/or smell), market forces should provide an efficient level of food safety and no government intervention is necessary (column 1). Where there is asymmetric information (column 2) before consumption or purchase, market outcomes should still be efficient if safety problems can be traced back to their source and if the information can be spread quickly among consumers at low cost. Consumers will desert firms that provide unsafe food.

A small number of very well informed ‘consumers’ may also exert a powerful influence on the provision of food safety, even if some other consumers are not well informed. Large retailers, for example, would face a major loss of reputation and profitability in the event of a foodborne illness, so have strong incentives to monitor the safety performance of their suppliers. Similarly, a franchised fast food outlet, which could face statewide or national consequences from a food incident, would have strong incentives to avoid such a problem. Another example is a small country town, in which word of mouth is likely to more be powerful than in a large city.

If information cannot be spread at low cost but a food problem can be traced back to its source at relatively low cost, legal liability can encourage good performance as firms risk being sued for damages caused by poor performance. For instance, food contamination that causes severe immediate illness and affects

a number of parties should be traced back to its source at relatively low cost in relation to the damage caused.

In some cases, there may be asymmetric information, and problems can be traced back to their source only at high cost relative to the damage caused (the right hand side of column 2). Contaminated food that causes health problems many years later may be difficult to trace, for example. And consumers may not find it worth tracing a foodborne illness if their illness is not severe. Government intervention is justified in such cases, provided it yields demonstrable net benefits relative to no intervention.

Interventions in such cases are more likely to be effective if aimed at directly reducing information asymmetries and tracing costs:

- Labelling information about product content and characteristics can assist consumers to make informed choices.
- Requiring manufacturers and retailers to print their details on products, and collecting and publicising information about food safety breaches can improve traceability.
- Policies to facilitate the use of liability, such as reducing the costs of legal action (for example, the costs of gathering evidence or reducing the burden of proof in relation to negligence), could also be pursued.

If these measures cannot reduce safety risks to an efficient level, government may decide to intervene in the production and preparation of food. As discussed in the next section, this kind of intervention can take different forms, with varying degrees of prescription.

In some cases, both producers and consumers may lack sufficient safety information (column 3 in table 2.1). The safety effects of new products, for example, may not be fully known. For example, products that are less processed or have longer shelf lives can involve new processing technologies and new risks. In such cases, governments may undertake research to improve knowledge, if commercial research is inadequate, or even impose minimum or maximum standards on certain inputs when information about their effects is not yet available and there are safety risks.

Table 2.1 does not capture situations in which illnesses occur because households are poorly informed about safe food handling procedures. Food that is safe when purchased may become unsafe if handled inappropriately. While households would appear to have strong incentives to inform themselves about safe food handling, evidence that many foodborne illnesses are caused at home (see chapter 5) may encourage governments to provide information to help to reduce such illnesses.

To conclude, if poor information and the high costs of tracing a food problem to its source create a potential market failure, government intervention is warranted so long as it can be shown to lead to net benefits compared with the status quo. If a case for intervention has been made, the choice of the most efficient and effective approach to intervention will depend on the problem that needs to be addressed.

2.6 Mechanisms to promote food safety

This section describes different forms of government intervention to promote food safety and when they are best suited. (Chapter 3 describes the regulatory approaches used in Victoria.) They range from command and control specification of production processes to attempts to alter incentives faced by firms and households. The costs of achieving a given outcome can be higher with more prescriptive approaches, which give firms less flexibility to design better ways to achieve outcomes. On the other hand, if firms have more freedom in how they comply with a requirement, compliance may be more difficult to monitor and enforce, thus imposing higher costs on enforcement agencies (OECD 1997, p. 27).

2.6.1 Nonregulatory measures

Information and education

Antle (1995, p. 54) argued that if a sufficient number of consumers is informed, they will create a demand for safety that is representative of what the larger population wants. He also pointed out that providing information to enable consumers to make their own choices has advantages over prescribing standards:

One of the most basic principles of economics is that imposing constraints on people's opportunities can only make them worse off. Thus, whenever there is substantial heterogeneity in risk preferences and people are informed about safety and health consequences of their choices, people will generally be better off choosing the level of safety they prefer rather than having to accept a level of safety mandated by law. (Antle 1995, p. 62)

As noted, however, consumer and businesses may be poorly informed about safe food handling practices, and consumers may also have difficulty interpreting information about risks. Conducting research, providing information to businesses and/or consumers and running educational programs may help to address these information gaps.¹⁷ The provision of information may be particularly useful for households, given that many food safety problems originate within the home and

¹⁷ Providing information is less extensive than education. A policy of providing information would involve, for example, making food safety information available on a website or in a brochure. Education implies that the recipient goes through a process to encourage them to understand that information.

thus are beyond the reach of some other forms of intervention. It can also help consumers to understand mandatory food labels (see below).

Because regulators typically collect information from a large number of businesses, they may have information—and the capacity to analyse patterns in that information—that is not available to anyone else. This information may provide insights into food handling practices that work well, for example, which the regulator can publish. It does not necessarily follow, however, that the regulator should deliver information or education programs.

For education policies to be effective, consumers must pay attention to the information, understand its relevance to them, and apply it in accordance with the recommendation. They may not follow these steps if, for example, they do not think they are at risk, perhaps because they believe regulation makes the risks minimal, or they have ingrained practices or they feel that the recommended cooking makes food less appealing. Equally, some information may be too complicated for consumers to understand—for example, the health implications of different concentrations of pesticides. These considerations suggest education policies (discussed in chapter 9) may need to be supplemented by other approaches to improving food safety (Crutchfield et al. 1997, pp. 16–17).

Legal liability

Earlier sections described how legal liability encourages food safety and how its potency is reduced by high transaction costs and difficulties in tracing a food event to its source. Law reform is beyond the scope of this inquiry, but Skees, Botts and Zeuli (2001, p. 101) noted that emerging technologies may increase the scope to trace contamination to its source.¹⁸ Reports by government inspectors could be made available to inform court proceedings. Further, penalties that are enforceable and provide sufficient incentives for legal behaviour are an important contributor to well functioning legal liability. Chapter 9 discusses penalties imposed under the *Food Act 1984* (Vic.).

Facilitation of markets

Governments may have opportunities to build on market incentives for consumers and producers to identify and practise cost-effective methods to improve food safety. An example provided earlier is the provision of information to businesses and consumers; product recall insurance is another example. Skees, Botts and Zeuli argued that government regulation, on its own, creates incentives for firms to achieve the minimum standards required by regulation. Product recall insurance, by contrast, creates incentives to exceed the minimum standards, to reduce premiums:

¹⁸ Skees, Botts and Zeuli (2001, p. 101) cited a US government report (USDA/FDA 2000) that stated that a new technology, pulsed field gel electrophoresis, will provide a new tool for promptly finding the source of a foodborne outbreak.

Under the right conditions, an insurance underwriter could be more effective than a government meat inspector in getting a processor to change their behaviour in the desired fashion. (Skees, Botts & Zeuli 2001, p. 100)

While insurance might appear to be completely market driven and independent of regulation, it will be more effective if it works within a regulatory framework. Skees, Botts and Zeuli (2001) noted that adverse selection and moral hazard could undermine the operation of insurance.¹⁹ They argued, however, that this is less likely to happen if insurance companies undertake diligent underwriting and monitoring, and that the costs of this activity would be reduced if the companies had access to firms' safety performance information from government inspectors.

Industries may also develop their own product accreditation schemes to promote food safety. The Victorian Farmers' Federation describes how such a scheme operates in the red meat industry:

- In 2005, the red meat industry launched Livestock Production Assurance (LPA). This program has 2 levels. The first, LPA Food Safety (level 1), relates to meeting requirements to guarantee the safety of red meat products. It is voluntary but the majority of producers have signed up. This program essentially packages up a number of industry systems into one program.
- LPA QA (level 2) includes additional accreditations such as CattleCare, FlockCare and will eventually include modules for Animal Welfare, Environment and potential OH&S. Any producer accredited for LPA QA will have already achieved LPA Food Safety accreditation; i.e. by obtaining LPA QA status producers will have already met the more basic requirements of LPA Food Safety. (sub. 40, p. 5)

If governments ensure there are no unnecessary impediments to such private sector activities, they can focus their attention on areas in which market failures are evident.

¹⁹ Adverse selection is a situation in which firms with the highest food contamination risk decide to purchase insurance. Moral hazard occurs when firm practices become riskier after the insurance is purchased (Skees, Botts & Zeuli 2001, p. 109).

Market instruments

Governments may alter relative prices to achieve policy outcomes—for example, the application of the Goods and Services Tax (GST) to restaurant food but not other food affects consumption patterns. The application of differential excise to low alcohol beer is another example. The Commission is not aware of market instruments being used to achieve food safety outcomes.

2.6.2 Regulatory measures

Information measures

Information measures include labelling requirements, legal prohibitions on providing misleading information, and controls over advertising. They range in their level of prescription. Law against misleading consumers focuses on outcomes, while labelling requirements can mandate the disclosure of food characteristics such as weight, volume, ingredients and name of manufacturer/distributor, and prescribe the size and location of this information on the label. Caswell and Padberg (1992, p. 462) described this form of regulation as ‘shopping aids’, which help to guide buying decisions when there are limits on consumers’ information processing abilities.²⁰ As well as influencing the information provided to consumers, such regulation can affect product design—for example, a requirement to disclose product ingredients can influence the manufacturer’s choice of ingredients.

Provided that consumers are capable of interpreting labels, information labelling requirements can reduce information asymmetries by helping consumers to make more informed judgements about risks and to adjust their behaviour accordingly. Rather than microbiological levels of pathogens, for example, being set for the most vulnerable consumers, different standards could be set and reflected in labels. Such products could be labelled as, for example, ‘not suitable for infants and the elderly’.

The proviso that consumers are well enough informed to interpret the labels is important. Fung et al. (2004, p. 4) pointed out that ‘nutritional labelling has encouraged food companies to create brand extensions of healthy products but sometimes labels have also led dieters to buy “low fat” but high calorie products’. They also argued that using labelling to change consumers’ and subsequently firms’ behaviour requires an ‘exceedingly complex chain of events’. They noted too that consumers face costs in processing information, and that labelling information will be effective only if it is made available at a time and place, and in a format, that fits the way people make their choices (Fung et al. 2004, p. 4).

²⁰ Consumers in the United States, for example, spend about one hour in a supermarket each week and evaluate over 15 000 products during that time (Caswell & Padberg 1992, p. 462).

Self-regulation and co-regulation

Self-regulation occurs when an industry develops and enforces a voluntary code of practice. Co-regulation occurs when an industry develops the regulatory arrangements (such as a code of practice) in consultation with a government. The industry administers the arrangements, which have legislative backing that enable them to be enforced (Government of Victoria 2005a pp. 2–5). The National Packaging Covenant—designed to minimise environmental impacts from the disposal of used packaging, conserve resources through design and production processes and facilitate the re-use and recycling of used packaging materials—is an example of a co-regulatory regime that affects the food sector.²¹

Licensing and registration

Governments may control entry into the food sector by requiring participants to be either licensed or registered. Conditions are typically attached, to enforce behaviour consistent with the government’s objectives.²² A policy challenge is to design licensing and regulation arrangements that do not exclude effective competitors, yet strengthen incentives for good performance. Chapter 3 explains that licensing and registration are the cornerstone of food safety regulation in Victoria.

Performance standards

Performance standards establish allowable levels of bacterial and chemical contamination, for example, but do not prescribe how the levels should be achieved. Standards relating to maximum residue limits and allowed additives under the Food Standards Code fall into this category.

An advantage of performance standards is that they do not require regulators, who have limited information about firms’ production processes or technologies, to try to manage what firms do. However, given that even small changes in standards can result in large changes in compliance costs, unless standards pass a cost–benefit test they are likely to be set too high (Antle 1995, p. 69).

Design standards

Design standards prescribe how a production process should be designed and managed. As discussed in chapter 3, food regulation in Australia is based on a HACCP approach to production. This approach is intended to ensure firms adopt a systematic approach to identification, assessment and control of health risks in a food production system. The requirement to have such an approach may not, however, extend to a regulator specifying exactly what the firm must do.

²¹ See www.environment.gov.au/settlements/waste/covenant/index.html.

²² An alternative approach is negative licensing, under which poor performers are excluded from an industry.

Antle (1996, pp. 1245-1247) noted the considerable efficiency differences between a HACCP that firms adopt voluntarily and tailor to their needs, and one that governments mandate and enforce. The latter approach can become a form of command and control regulation, prescribing how the production process should be designed and managed. It is impossible, however, to tailor design standards that would be efficient for every firm, while inflexible design standards discourage innovation. Antle (1995, p. 91) thus proposed that HACCP systems be defined as performance standards at each stage of production, rather than as design standards.

Deighton-Smith made similar observations about food safety programs in Victoria, noting that this:

... effectively applied process regulation to all corner cafés and the like. This implied a massive paperwork burden in a context in which risks were few and well defined, as were the appropriate controls. Small businesses saw the requirement to develop the plans as a massive compliance burden. (Deighton-Smith 2006, p. 8)

The subsequent development of template food safety programs in Victoria reduced this burden.

2.6.3 Choosing among instruments

Some forms of intervention—for example, consumer education and some forms of product labelling—can expand consumers' capacity to make choices that meet their requirements for food safety. Other forms of intervention—for example, those that prescribe uniform standards or how firms should operate—can constrain consumer choices and firms' capacity to innovate respectively. This suggests such approaches should be used only after careful cost-benefit analysis of all available options. It is thus necessary to identify the nature of the problem and then consider whether a proposed approach is the most efficient and effective available to deal with that problem.

3 The regulatory and institutional framework

3.1 Introduction

This chapter outlines the framework for food regulation in Australia, focusing on Victoria and those aspects of the framework relevant to this inquiry. (Appendix B describes this framework in detail.) The three levels of government, as well as specialised regulatory bodies, are involved in food regulation in Australia.¹ Section 3.2 outlines the regulatory framework and section 3.3 highlights important features, drawing on previous reports and inquiry participants' comments.

3.2 The framework

3.2.1 The context

During the 1990s, a number of:

... imperatives created an urgent need to develop a national food safety regulatory system for Australia that would reduce foodborne illness without unnecessarily burdening the food industry and would be consistent with international standards in food safety to remain competitive in the international market. (Martin et al. 2003, pp. 429–30)

These imperatives included:

- indications that foodborne illness was increasing around the world, combined with widely reported outbreaks in Australia between 1996 and 1999
- the development of franchised food outlets and national retail chains, which had to comply with different requirements in different states and territories
- the Commonwealth Government's desire to reduce the cost of regulation
- a view that replacing prescriptive regulation with performance based regulation would increase its effectiveness
- a desire for Australia's approach to regulation to be consistent with international standards, to assist access to international markets (Martin et al. 2003, pp. 431–3).

In 1998, the Blair review of the national food regulatory system found that approximately 150 Acts and regulations control food in Australia, and concluded that the regulatory framework for food was 'complicated, fragmented,

¹ A useful website for accessing food Acts passed by the Commonwealth and state and territory governments is <http://ausfoodnews.com.au/flapa/ActsRegulation.php?>. This site gives other information on food regulation across Australia.

inconsistent and wasteful' at that time. The review recommended an integrated and coordinated national food regulatory system with nationally uniform laws. It proposed a co-regulatory approach, whereby governments set minimum performance based standards through consultation, and business has greater flexibility in how it meets the standards but without less responsibility for meeting them (Blair 1998, pp. 14–15).

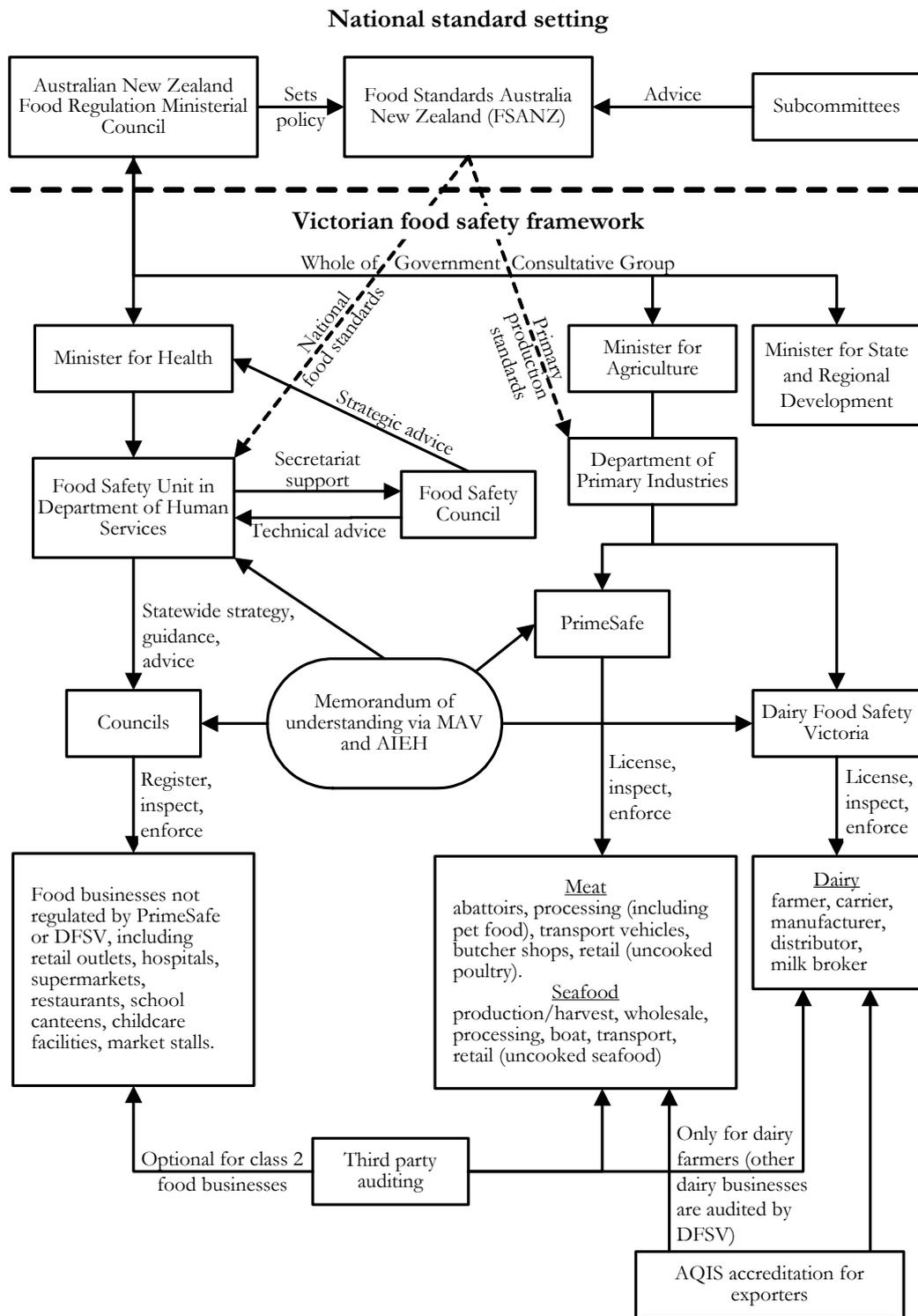
Following this review, the Commonwealth, state and territory governments developed a national model Food Act, and in 2002 each government agreed to move towards a national system of food regulation (COAG 2002). The agreement seeks the protection of public health and safety, while reducing the burden of regulation, providing cost-effective compliance and enforcement, harmonising domestic and export food standards and providing a consistent approach to regulation across Australia. In late 2006, the Commonwealth Government commissioned another independent review, the Bethwaite review, to identify how the food regulatory framework can be streamlined and made nationally consistent to improve the competitiveness of the Australian food industry. Today, despite the differences in some requirements across Australia (for example, only Victoria requires declared food premises to have food safety programs), Victoria's Department of Human Services considers that there are not 'any major inconsistencies (with food regulation) between Victoria and the other states/territories that are having an adverse effect on Victorian consumers and businesses' (DHS 2007a, p. 12).

3.2.2 National regulators and advisory bodies

Food Standards Australia New Zealand (FSANZ), a bi-national statutory authority, develops uniform food standards, which the Australia New Zealand Food Regulation Ministerial Council approves (figure 3.1). The ministerial council decides on policy guidelines, which FSANZ must consider when setting food standards. It promotes harmonisation with global food standards (principally derived from Codex Alimentarius, a global reference body committed to achieving streamlined standards of food regulation).² The three Victorian representatives on the council are the Minister for Health, the Minister for Primary Industries and the Minister for State and Regional Development (DHA 2006c).

² The Food Regulation Ministerial Council is not required by the agreement or the *Food Standards Australia New Zealand Act 1991* (Cwlth.) to adopt Codex Alimentarius standards in the development of Australian standards. Section 7(1)(d) of the FSANZ Act provides that the functions of the ministerial council include promoting 'consistency between standards in Australia and New Zealand with those used internationally, based on the best available scientific evidence'. The concluding words indicate that the Codex standards may be varied where there is good evidence for doing so.

Figure 3.1 Food safety regulatory framework



Sources: AGV 2002; FSANZ 2004e; DFSV 2004a; DHS 2004c; PrimeSafe 2004a.

FSANZ receives advice from a range of advisory bodies, including the Implementation Subcommittee and the Food Regulation Standing Committee. A joint arrangement between Australia and New Zealand has been in place since 1996 to help remove regulatory barriers to trade in food.

Food standards provide legally enforceable requirements relating to the composition, production, handling and labelling of food. It is an offence to supply food that does not comply with the relevant standards. Collectively, the standards are known as the Food Standards Code. They are detailed and, in many cases, prescriptive, and they are implemented by legislation in each state and territory. (Appendix B lists the issues covered in the standards.) In Victoria, the Food Standards Code is adopted through the *Food Act 1984* (Vic.) (s16).

The Australian Quarantine and Inspection Service (AQIS) is responsible under the *Export Control Act 1982* (Cwlth.)—and its associated Regulations and Orders—for certifying specific commodities (including meat, dairy products, fish and eggs) for export from Australia. National standards (set by FSANZ) apply to goods regulated under the Export Control Act. AQIS may also apply additional requirements to exported goods. It is responsible too for monitoring imported foods under the *Imported Food Control Act 1992* (Cwlth.). Imported foods are also required to meet Australian national standards.

The Australian Competition and Consumer Commission (ACCC) administers the *Trade Practices Act 1974* (Cwlth.), which extends to food regulation in terms of both business competition (such as price fixing agreements) and consumer protection (such as misleading and deceptive conduct in food advertising). A Memorandum of Understanding between FSANZ and the ACCC sets out their respective roles and responsibilities for enforcing the Food Standards Code and the misleading and deceptive conduct provisions of the Trade Practices Act in connection with the sale of food.

3.2.3 Victorian legislation

Victoria has two principal streams of food safety regulation, as shown in figure 3.1. The first applies to the handling of food intended for sale and the sale of food, which are governed by the Food Act. The second applies to the primary production, manufacture, transport and sale of meat, poultry, seafood and dairy products, regulated through industry focused Acts—namely, the *Meat Industry Act 1993* (Vic.), the *Seafood Safety Act 2003* (Vic.) and the *Dairy Act 2000* (Vic.). Each Act establishes a key regulatory agency, empowers a code of practice and establishes licensing powers. In addition, other Acts (listed in appendix B) have a limited impact on food regulation.

Although the Food Act regulates conduct in relation to food for sale—and not for food that is handled in the home, for example—it adopts a broad definition

of ‘sale’. Sale includes not only transactions involving food where consideration is provided, but also other transactions, such as giving away food as advertisement or to further trade or business, and supplying food to hospital patients (s4). Nevertheless, this definition excludes food that is provided charitably; the donation of food by charities is thus excluded from food regulation in Victoria, while the sale of food in fund raising activities is included.³

Some requirements of the Food Act apply generally to persons involved in the handling of food for sale—for example, the requirement that a person must not handle food intended for sale in a manner that they know will render the food unsafe (s8(1)). Other requirements, such as the requirement that declared food premises⁴ must have food safety programs (s19C), do not apply to businesses involved in ‘primary food production’,⁵ which are regulated through the Dairy Act, Meat Industry Act and Seafood Safety Act (discussed below). Exceptions from the application of the Food Act may also arise under s5, which provides that the minister may declare any premises not to be food premises for the purposes of the Act (s5(3)) and exempt specified food premises from some or all provisions of the Act (s5(3A)).

The focus of the Commission in this report is on the Food Act 1984 (Vic.) and three industry specific Acts, namely, the Meat Industry Act 1993 (Vic.), the Seafood Safety Act 2003 (Vic.) and the Dairy Act 2000 (Vic.). There are other industry specific Victorian Acts, for example, the Bread Industry Act 1959 (Vic.).⁶ If inquiry participants believe the Commission should extend its focus to include any of these Acts, they are invited to provide reasons and evidence for it to do so.

In addition to the food-specific legislation, the *Fair Trading Act 1999* (Vic.) prohibits false, misleading and deceptive conduct, while the *Trade Measurement Act 1995* (Vic.) is intended to create ‘consumer and business confidence about the accuracy of measuring instruments used in trade, transactions by measurement, and pre-packaged articles’ (sub. 53, p. 7).

³ Restricting the coverage of regulation to food that is for sale avoids difficult definitional issues that would otherwise be faced to avoid, for example, regulation extending into homes.

⁴ Section 19C(1) of the Food Act provides that classes of food premises declared by the Secretary of the Department of Human Services must have a food safety program. Under a declaration made by the Secretary in 2001, food premises at which only pre-packaged low risk food is handled or sold are exempt from the requirement.

⁵ The Food Act defines primary production as ‘growing, raising, cultivating, picking, harvesting, collecting or catching food’ (s4C).

⁶ The Bread Industry Act makes it an offence for bread industry suppliers to refuse to supply any bread manufacturer or persons proposing to commence business as a manufacturer with supplies necessary to manufacture bread. The Act also makes it an offence for any persons to enter into agreements which would preclude or hinder compliance with the Act. The Act, which is industry specific, is likely to be redundant given that restrictions on trade and issues dealing with suppliers will be covered by the more general provisions of the Trade Practices Act.

3.2.4 Key Victorian regulators and advisory bodies

The Victorian food safety framework has two streams of food safety regulators (figure 3.1). The Minister for Agriculture, through the Department of Primary Industries and two regulators—PrimeSafe and Dairy Food Safety Victoria (DFSV)—is responsible for regulating the primary production, manufacture and transport of meat, poultry, seafood and dairy food, as well as seafood retailers and butcher shops. The other regulatory stream applies to food businesses, which come within the responsibility of the Minister for Health, through the Department of Human Services. Local government administers and enforces the requirements of the Food Act.

Department of Primary Industries

This department monitors primary industries in Victoria. It supports the development of existing and new primary industries, and:

... has a responsibility to ensure systems are in place to manage the safety of food ‘on farm’ and for processing in the meat, seafood and dairy sectors. DPI does this through the delivery of services by statutory authorities—PrimeSafe and Dairy Food Safe Victoria (DFSV)—which report to the Minister for Agriculture, as well as through its own programs.’ (sub. 56, p. 1)

PrimeSafe

PrimeSafe, formerly the Victorian Meat Authority, was established under the Meat Industry Act. It regulates meat, poultry and pet food, from the point of primary production on the farm through processing (an abattoir or poultry processor) and the supply chain, to retail sales. PrimeSafe also regulates seafood from primary production through the supply chain to retail sales, except those through supermarkets. All meat and seafood businesses covered by the Meat Industry Act and the Seafood Safety Act are required to be licensed and to have a food safety management program (table 3.1).

Dairy Food Safety Victoria

DFSV was established under the Dairy Act (replacing the Victorian Dairy Industry Authority) as the regulator of the dairy sector. Under the Dairy Act, all dairy farmers, manufacturers, carriers and distributors are required to be licensed and to operate under a code of practice, which requires a food safety management plan. DFSV officers conduct audits on behalf of AQIS, to ensure audits are not duplicated for exporting businesses.

Food Safety Unit of the Department of Human Services

The Food Safety Unit, in conjunction with other units within the Department of Human Services, coordinates and manages the statewide strategy for ensuring the provision of safe food supply in Victoria by food businesses not regulated by DFSV and PrimeSafe (such as restaurants and supermarkets). With an annual budget of about \$2.7 million (DHS 2006c, p. 8), the unit is involved in food recalls and closure of unclean food premises,⁷ investigates foodborne illnesses and provides education on food safety issues (DHS 2004c). It is involved in developing regulation, policies and strategies for food safety at the state and national levels, and coordinating a whole of government group (including the departments of Human Services, Primary Industries, Innovation, and Industry and Regional Development, and Consumer Affairs Victoria (CAV) (sub. 48, p. 13).

The unit provides secretariat services to the Food Safety Council, which comprises science experts and industry representatives who advise the Minister for Health on food safety issues, including the implementation of regulations, standards proposed by FSANZ, and the operation of the Food Act. The council also provides technical advice to the Food Safety Unit.

Consumer Affairs Victoria

CAV enforces the Fair Trading Act and liaises with the ACCC on issues relating to misleading conduct. Recent action has included issuing enforceable undertakings relating to underweight pre-packed poultry products and, during 2005-06, inspecting more than 49 000 pre-packed articles, of which about 90 per cent were food products (sub. 53, p. 7).

Local government

Local government administers and enforces the Food Act. All food premises in municipal districts—excluding primary food production—must register with councils and, in most cases, have a food safety program. Councils register more than 45 000 fixed food premises in Victoria each year. Under the Food Act, they are responsible for:

- inspecting food premises before registering, renewing or transferring the registration
- obtaining food samples for analysis and investigating noncompliance with food standards

⁷ The Chief Health Officer, with the authority of the Secretary of the Department of Human Services, is the only person who may make closure orders under s19(2) of the Food Act. The Food Safety Unit has advised the Commission that closure orders, in urgent cases, may be made within 24 hours of the receipt of the request for closure from a council.

- monitoring commercial food preparation, hygiene and safety standards, and taking preventative and remedial action in the event of noncompliance with the legislation
- investigating reported noncompliance detected by Department of Human Services approved third party auditors and ensuring businesses are audited with the set audit frequency (AGV 2002, p. 31).

Environmental health officers in councils undertake most of these functions.

3.2.5 The approach to regulation—a summary

Table 3.1 summarises the approaches of the various regulators. Food businesses are responsible for food safety. Food premises are required to be registered and generally to have food safety programs, which are (or will be) required to be audited, sometimes by a third party auditor. (The exceptions are class 2 food businesses that choose to use a standard food safety program, which are required to be inspected by council environmental health officers).⁸ Regulators check whether the measures implemented by the businesses to maintain food safety are adequate, and enforce compliance with food legislation. Businesses in the meat, dairy and seafood industries face a similar approach to licensing, auditing and the requirement for food safety programs.

3.3 Features of the regulatory arrangements

This section describes features of the regulatory arrangements, using a checklist for assessing regulatory quality that draws on previous reports by the Victorian Competition and Efficiency Commission and the recent *Report of the Taskforce on Reducing Regulatory Burdens on Business* (Banks 2006). Features examined in sections 3.3.1–3.3.12 are:

- the consistency and clarity of objectives
- roles and responsibilities
- subsidiarity
- integration with other legislation
- whether the approach is prescriptive or outcome oriented
- whether the approach is risk based
- whether unnecessary costs are avoided
- flexibility

⁸ Section 19HA provides that council environmental health officers may inspect food premises to determine whether a food business is operating in accordance with the food safety program for that premises. A food safety program audit, on the other hand, is conducted by an approved food safety auditor to determine whether the food business has complied with a food safety program during the period covered by the audit and whether the program is still adequate (s19J).

- simplicity
- compliance and enforceability
- performance reporting
- education.

This section reports inquiry participants' views on the performance of the framework in these areas, to identify potential areas for improvement. Chapters 7–11 assess options for making improvements.

Table 3.1 Food safety requirements for Victorian businesses

Business	<i>Licence or registration</i>	<i>Food safety program</i>	<i>Third party audit</i>	<i>Additional requirements^a</i>
Food business class 1 ^b	✓	✓	✓	Annual inspection by local council. Must have a food safety supervisor
Food business class 2 ^c	✓	✓ ^d	^e	Annual inspection by local council. Must have a food safety supervisor
Butcher shops, abattoirs, meat processors and transporters	✓	✓	✓	Compliance with meat standards
Wildcatch and aquaculture	✓			Compliance with national standard for seafood
Seafood processing (inc. retail and wholesale)	✓	✓	✓	As above
Dairy business	✓	✓	✓ ^f	Compliance with Dairy Code of Practice

^a All businesses must comply with the national Food Standards Code. ^b Class 1 food businesses serving food that is high risk and consumed by vulnerable people (the elderly, young children, patients). ^c All food businesses other than class 1 and retail food premises at which only pre-packaged low risk food is handled or sold. ^d Can choose to use a standard template registered by the Food Safety Unit or develop their own food safety program. ^e Audits are not required if the business uses a standard template developed by the Food Safety Unit. A compliance check by councils is conducted instead. ^f Third party audits are required only for dairy farms. DFSV officers conduct audits for other dairy businesses on behalf of AQIS, to ensure audits are not duplicated for exporting businesses.

Source: VCEC 2005a, p.245

3.3.1 Consistent and clearly defined objectives

The recent inquiry into food regulation in New South Wales suggested that:

... the ideal vision for a food safety system in the 21st century begins with clearly enunciated public health goals set by government and offering an achievable level of protection. Scientific information provided through sound risk assessments will translate the general goals into food safety objectives articulated for specific food and hazard combinations. Performance criteria along the food chain will give operational guidance to HACCP (Hazard Analysis and Critical Control Point) based industry systems. The bottom line performance of the operator can thus be linked to an overall public health outcome for the through chain system. The public health outcome will be monitored through foodborne disease surveillance. (Kerin 2002, p. 11)

With all three levels of government (and their regulators) involved in food regulation, realising this ideal vision requires *clearly defined* goals that are *consistently held* across governments. That way, all those involved will be focusing on the same well defined objectives.

Consistency

Box 3.1 lists the objectives of the national Food Regulation Agreement between the Commonwealth, state and territory governments. Some of these objectives carry through to the national model Food Act and to the Victorian Food Act, which have objectives to:

- ensure food for sale is both safe and suitable for human consumption
- prevent misleading conduct in connection with the sale of food
- provide for the application of the Food Standards Code in Victoria (s3).

The emphasis on safe food in the Victorian legislation is consistent with the emphasis on 'safe food controls' in the Food Regulation Agreement (COAG 2002). The Food Act does not expressly provide for other objectives in the agreement, such as reducing regulatory burden and providing cost-effective compliance and enforcement arrangements. But it includes the objective of preventing misleading conduct in connection with the sale of food.

In its submission to the Commission, the Department of Human Services stated that it:

... is firmly of the belief that ensuring public health and safety must be seen as the primary objective of food legislation, with other objectives clearly having a subordinate role a regulatory agency whose key role was simply the protection of public health and safety would be likely to perform more effectively in this regard than would one which is required to balance these responsibilities against others such as industry development. (sub. 48, p. 12)

Box 3.1 Objectives of the Food Regulation Agreement

The objectives of the Food Regulation Agreement are to:

- provide safe food controls for the purpose of protecting public health and safety
- reduce the regulatory burden on the food sector
- facilitate the harmonisation of Australia's domestic and export food standards and their harmonisation with international food standards
- provide cost-effective compliance and enforcement arrangements for industry, government and consumers
- provide a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures
- recognise that responsibility for food safety encompasses all levels of government and a variety of portfolios
- support the joint Australia and New Zealand efforts to harmonise food standards.

Source: COAG 2002.

The Dairy Act specifies objectives for DFSV, including ensuring the Victorian dairy industry retains standards that maintain public health. The Seafood Safety Act specifies that the objective of PrimeSafe is to ensure all sectors in the seafood supply chain manage food safety risks in accordance with the relevant applicable standards (s6(1)). And the purposes of the Meat Industry Act include 'to set standards for meat production for human consumption and pet food' (s1(a)) and to undertake activities to ensure those standards are met (s1(b)).

The national Food Regulation Agreement and the various Victorian food Acts thus appear broadly consistent in their focus on food safety. That said, the objectives in the Meat Industry Act and Seafood Safety Act specify the enforcement of standards, rather than the outcomes that these standards should achieve. And, as noted, the objectives of the Food Act are broadly consistent with the Food Regulation Agreement in terms of food safety, but do not expressly include other references in the agreement (for example, reducing the regulatory burden on the food sector).

Clarity

Debate has arisen over the objectives that food regulation should seek to achieve, and over the interface between food regulation and other regulatory areas. It seems to concern the meaning of food that is 'safe and suitable for human consumption' (as in the Food Act) and 'protecting public health' (as in the Food Regulation Agreement). The Australian Food and Grocery Council, for example, commented:

More and more, consumers are demanding benefits from the foods they purchase beyond that of simple nutrition. The health conscious consumer wishes to take control of their health and expects to take on some ‘do it yourself doctoring’ for diet related chronic disease ... (This) has an indirect impact on government(s) health care dollar... (sub. 17, p. 5)

Some governments have also recognised the potential benefits of food fortification, considering, for example, the addition of folate to bread. Noting this trend, a Food Policy Stakeholder Forum in 2006—attended by representatives of government, industry, public health and consumer groups and educational institutions—concluded that an ideal food regulatory system of the future would have:

- clarity about who is responsible for regulation at the food and medicines interface, and about the principles that guide regulation in this area
- a single, unified health and nutrition policy that recognises and handles the interface between food and nutrition policy (Stakeholder Consultation Forum 2006, p. 7).

The objectives of the Food Regulation Agreement provide little guidance on whether food regulation should aim only to protect public health or also to pursue nutritional and medicinal outcomes. It is difficult, however, to draw a clear boundary between these areas.

Victoria’s Food Act does not define food that is ‘safe and suitable for human consumption’, although s4D provides guidance by defining ‘unsafe’ food as food that would be likely to cause physical harm to a person who might later consume it, assuming it was properly processed and used as intended. Section 4E provides that food is ‘unsuitable’ if it is damaged, deteriorated or perished to an extent that affects its reasonable intended use.

The Australian Medical Association (Victoria) commented that the definition of unsafe food focuses on avoiding physical harm caused by damage, deterioration or the presence of foreign biological or chemical agents, and does not acknowledge the damage caused by foods and beverages with low nutritional and/or high calorific value. It also questions whether the fortification of food and beverages of high calorific value is promoting consumption patterns inconsistent with the national dietary guidelines, thus contributing to the obesity epidemic (sub. 22, p. 2). These comments highlight potential tensions between different views on the meaning of food safety. Without a clear statement of desired outcomes, the Food Act presents the same doubt noted in relation to the Food Regulation Agreement about the interface between food safety regulation and medicinal and nutritional objectives, and about whether the objective is to protect the public from harm or to promote better health.

There is no clear line, however, between regulating food to avoid disease and to promote health:

Suppose that average life expectancy is 80 years. Government might intervene in the food industry to prevent food practices that reduce longevity below 80 years of age. On the other hand, it could intervene to promote food consumption that is believed to extend longevity. The former aim might be thought of as ‘food safety’; the latter as ‘promoting health’. But if we extend the life benchmark aim to 85 years, then what was a health promotion strategy becomes a food safety policy—to prevent an earlier death! (Abelson 2007)

It is thus important to define the problem to be addressed in particular cases and assign an appropriate instrument to that problem. The Department of Human Services pointed out, for example, that a disadvantage with using the Food Standards Code as a vehicle to support public health initiatives is that ‘the code was essentially designed to deal with short term acute issues in relation to food safety rather than long term chronic issues’ (DHS 2007b, p. 9). Chapter 8 further discusses the objectives of the Food Act.

A related issue is the priority that regulators should devote to achieving each objective when there is more than one, as with the Food Act. CHOICE noted that issues unrelated to food safety (such as food labelling) are often assigned a lower priority, and that differing priorities (for example, between states) can lead to inconsistencies in how a regulation is enforced (sub. 49, p. 3). Further, while preventing misleading conduct can contribute to food that is safe and suitable for human consumption, this is not always the case. Regulators thus require guidance on how to allocate their resources across these objectives.

3.3.2 Roles and responsibilities

Victoria’s Auditor-General argued that:

Clearly defined roles responsibilities and priorities that are understood by all key stakeholders assist an organisation to achieve efficient and affective service provision and meet its legislative priorities. (AGV 2002, p. 74)

The Auditor-General found in 2002 that no readily accessible documents clearly outlined the roles and responsibilities of all key stakeholders (AGV 2002, p. 74). The Food Safety Unit has since prepared *Strategic directions 2004–07*, in which it described its functions as:

- facilitating key provisions of the Food Act
- registering food safety program templates and food safety auditors
- facilitating (in conjunction with other parts of the department) food recalls and investigations of foodborne illnesses
- monitoring food safety developments
- developing risk management tools and systems

- facilitating whole of government input into development of national food safety and regulation policies
- informing and educating businesses and the community about food safety matters (FSU 2004b, p. 1).

A notable omission is a role for the unit in coordinating the other food regulators and local governments in their food regulation. The Auditor-General pointed out that the Food Act does not identify which agency is responsible for overseeing the performance of local government in meeting its food safety responsibilities, and that the Food Safety Unit does not consider that it has the legislative power to monitor councils' performance (AGV 2002, p. 75). This suggests that no agency is responsible for correcting a situation in which a council does not meet its food safety responsibilities. In addition, responsibility does not appear to have been assigned to any particular agency for encouraging regulators' resources to shift across the state, in response to changing circumstances, activities or safety risks.

Given the multiple Victorian Government departments, regulators and Acts involved, overlaps, inconsistencies and poor resource allocation are possible. But ensuring agencies have clearly defined roles and responsibilities will help these agencies to take a more coordinated approach. Also helping is the drafting of legislation to reduce the risk of overlapping responsibilities. The Dairy Act, for example, requires dairy farmers, manufacturers, transporters, food carriers or distributors (such as a milk bar) to be licensed unless an exemption applies to reduce overlaps with other regulators. Exemptions apply to food businesses registered under the Food Act and to licensees under the Meat Industry Act and the Seafood Safety Act, which must have quality assurance programs or food safety programs that adequately cover dairy food (s22A).

The regulators have negotiated agreements to reduce risks of overlap. In the case of a mixed business, which manufactures, packs or distributes dairy and non-dairy products along with other business lines, DFSV negotiates with the responsible council to determine the appropriate licensing authority (PrimeSafe 2004b, p. 5). In the meat industry, PrimeSafe licenses operators of meat processing facilities⁹ that satisfy specified criteria—in particular, that the applicant is a fit and proper person (s16). The Food Act requires local

⁹ Meat processing facilities include all abattoirs, poultry and game processing facilities, further meat processing facilities (that is, where meat is processed, packed or stored), retail butcher shops, pet meat and food processing facilities, and vehicles used for transportation of meat for sale for human consumption (s3). A place is not a meat processing facility if it sells more manufactured meat, or products that contain some or no meat, than unmixed meat. Consequently, supermarkets, which sell many other products as well as meat, are not required to be licensed or subject to certain other obligations under the Act. In addition, places that sell meat to be consumed at those places are not meat processing facilities (s3). Consequently, restaurants that serve meat dishes are not licensed by PrimeSafe.

government to register and supervise meat and seafood preparation areas in supermarkets. If a food business's principal activity is uncertain, PrimeSafe and local government negotiate the most appropriate authority to register it or license the proprietor (PrimeSafe 2004b, p. 10).

Inquiry participants commented on how such arrangements are working. The City of Whittlesea noted confusion about which authority should register mixed food businesses (sub. 31, p. 2). Notwithstanding the agreements between regulators, the City of Moreland's view is that:

The current approach to food safety management in Victoria lacks a coordinated, holistic focus. For instance, the registration of meat processing premises by PrimeSafe and dairy product manufacture by Dairy Food Safe Victoria has led to differing compliance processes, standards and costs ... the current fragmented and inconsistent approach has resulted in increased costs to councils. (sub. 51, p. 8)

3.3.3 Subsidiarity

Responsibilities should be allocated to the levels of government most able to deliver them (the subsidiarity principle). According to the Productivity Commission, responsibility for a particular function should, *where practicable*, be allocated to the lowest level of government. Nevertheless, there is broad support for assigning responsibility to the highest level of government when there are:

- interjurisdictional spillovers from a function being allocated to a lower level of government
- economies of scale or scope from central provision
- high transaction costs without offsetting benefits from a diversity of rules and regulations
- risks that mobility across jurisdictions could undermine the fiscal strength of sub-national government (PC 2005c, p. 4).

Given that the Food Act incorporates the Food Standards Code, councils in Victoria enforce labelling requirements and maximum residue limits, for example, even though the firms involved typically do not confine their operations within particular municipalities. If councils adopt different approaches or have varying commitment to enforcement, different outcomes could result, which may not be desirable given that the standards are national in scope.

Role allocation between levels of government is not uniform across the country. Woolworths pointed out that the NSW Food Authority initiated recent investigations into *Salmonella* Saintpaul affecting rockmelons, but several Victorian councils also tested samples, in what appeared to Woolworths to be a disjointed process between jurisdictions (sub. 50, p. 5).

3.3.4 Integration with other legislation

To reduce risks of overlap and inconsistency, legislation should not address problems covered by other legislation. The role of the Food Regulation Ministerial Council is to develop and implement consistent food policy, standards and enforcement procedures throughout Australia and New Zealand, and to promote harmonisation with international food standards. Further, as noted, the Food Act has been drafted to make it complementary with the industry-specific meat, seafood and dairy Acts. And the Department of Human Services considered that ‘there is no overlap between the responsibilities of [the Food Safety Unit], PrimeSafe, DFSV and local government’ (DHS 2007a, p. 14).

Nevertheless, some areas are covered by more than one Act:

- The administration of the Trade Practices Act may extend into areas that could be covered under Victorian food legislation—for example, successful applications for damages for food poisoning have been made under sections of the Trade Practices Act relating to a product not being fit for purpose (s74B), not being of merchantable quality (s74D) and having a defect (75AD).¹⁰
- The Trade Practices Act and Victoria’s Fair Trading Act could address some issues addressed in provisions of the Food Act relating to misleading conduct.

CAV argued that the Food Act’s and Fair Trading Act’s duplicated provisions on misleading and deceptive conduct could ‘cause confusion about which agency is responsible’, although the provisions in the Food Act are ‘never used’, because more specific provisions suitable for safety issues are available.¹¹ To avoid confusion, it argued that ‘all claims on food products could be efficiently dealt with by one organisation’ (sub. 53, p. 17). George Weston Foods was also concerned about duplication:

... a food company could well find itself having to deal with the ACCC, the state Fair Trading agency and also local government officers. Our experience is that each will approach the basic issues of whether or not something is misleading from a totally different perspective with little consistency shown between them. (sub. 52, p. 4)

¹⁰ For example, the case of *Harry Georgiou v Old England Hotel Pty Ltd* in the Federal Court of Australia, Victoria District Registry, 2004.

¹¹ The Department of Human Services confirmed this, noting that it is ‘not aware of any cases prosecuted under the Food Act for deceptive and misleading conduct’ (DHS 2007b, p. 10). For contraventions, it explained that a staged approach is taken, and that businesses are not prosecuted for misleading and deceptive conduct when they take acceptable remedial action.

George Weston Foods noted ‘considerable inconsistency’ between the approaches of food and nonspecific food regulators such as the ACCC and CAV—for example, their approaches to when a product recall is warranted and to the required accuracy of food contents and claims such as ‘fat free’ (sub. 52, p. 4).

3.3.5 Prescriptive or outcome oriented approach

The Food Act gives effect to the food standards, which are often prescriptive. Chapter 1 of the standards, for example, lists permitted additives; specific and detailed requirements for labelling and naming ingredients, and legibility; and maximum residue limits.¹² Chapter 2 is similarly prescriptive, defining and setting out compositional requirements for cereals; meat, eggs and fish; fruit and vegetable; edible oils; dairy products; non-alcoholic beverages; alcoholic beverages; sugars and honey; and special purpose foods. For some of these products, it specifies special labelling requirements. Standard 2.1.1 requires the mandatory fortification of bread making flour with thiamin. George Weston Foods commented that there has been no review of whether this standard is achieving the outcomes intended when it was introduced in the early 1990s (sub. 52, p. 7).

Inquiry participants had contrasting views about labelling. The Department of Human Services considered that current food labelling requirements ‘are not hugely different to those in place for the past 16 years’, apart from the mandatory introduction of nutrition information panels on labels in 2000 (DHS 2006c, p.5). CHOICE had a different perspective, arguing that labelling requirements are less prescriptive than the previous approach, which prescribed the content of many food products (sub. 49, p. 5).¹³ By contrast, the City of Moonee Valley commented that labelling legislation is ‘extremely complex’ (sub. 18, p. 2), the City of Stonnington referred to ‘the complex, highly technical nature of the labelling and compositional standards’ and the City of Yarra similarly noted that labelling ‘requirements are very prescriptive and detailed’ (sub. 43, p. 3).

Other parts of the Food Act are oriented towards self-regulation and prevention, with outcome based provisions; in these areas, the law becomes less clear about what is required to comply with the Act. Section 11(1), for example, provides that ‘a person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsafe’. While this provision sets out a desired outcome in relation to the safe handling of food, it does not clarify what

¹² The majority of these standards have an impact on public health, although country of origin labelling appears to be an exception.

¹³ ‘For example, where the Food Standards Code once required canned fish products to have a minimum of 51 per cent fish, the new standard allows any amount of fish to be added but requires the percentage of fish to be stated in the ingredients list’ (sub. 49, p. 5).

is required for safe handling, although standard 3.2.2 provides some guidance. Another example of the orientation towards self-regulation is that the Food Act allows most businesses to choose between writing a food safety program specific to their business or using a government approved template.

The Department of Human Services noted that the regulatory framework permits councils to innovate—for example:

- the cities of Glen Eira and Whitehorse use food hygiene star ratings and provide certificates that premises may display
- Monash Council has a Golden Plate award program that recognises business that achieve benchmarks in food hygiene and nutrition, for example (DHS 2007b, p. 16)

Inquiry participants also held different views on food safety programs. The Department of Human Services perceived them as preventative, involving:

... the adoption of ‘process based’ regulatory arrangements, based on risk identification, assessment and controls being developed systematically as part of the management process. (sub. 48, p. 5)

Infocus Management Group, a public health consultancy, noted that the Australia New Zealand Food Authority (the predecessor to FSANZ), had argued that the food safety program approach embodied a change in approach to food regulation. The previous approach—involving the registration of food premises, random hygiene inspections, the investigation of consumer food safety and quality complaints, and the acquisition of food samples for analysis—was perceived as more prescriptive and less preventative than a Hazard Analysis and Critical Control Point (HACCP) based approach (sub. 38, p. 3).

Restaurant and Catering Victoria, on the other hand, argued that ‘current food safety regulation is prescriptive and cumbersome’ and that many food safety requirements are ‘directed towards unnecessary areas and focused upon record keeping’ (sub. 36, p. 10). And Roger Pierotti argued that food safety programs are ‘still very much prescriptive’ (sub. 30, p. 1). Infocus Management similarly argued that:

One particular element missing in the current legislative provisions is that the provisions are not performance based. Well performing businesses are generally not rewarded for achieving standards above the minimum set by legislation. In fact, businesses that opt for developing their own food safety programs and voluntarily incur additional costs end up having to pay additional costs for an independent audit of their program, and every year thereafter. (sub. 38, p. 7)

3.3.6 Focus on risks

Chapter 2 noted that focusing on risks would direct regulatory effort where it can have the most effect. The Food Regulation Ministerial Council, which oversees the development of national food standards, must account for standards having to be based on risk analysis using the best available scientific evidence (Australia New Zealand Food Standards Code 2006). Victoria has the following elements of a risk based approach:

- Food safety programs are based on the principle that:
... food safety is best ensured through the identification and control of hazards in the production, manufacturing and handling of food as described in the Hazard Analysis and Critical Control Point (HACCP) system...(Food Standards Code, standard 3.2.1, p. 1).
- As shown in table 3.1, most Victorian food premises are allocated a class (class 1 or 2) according to the degree of risk associated with the food type or persons for whom the food is being prepared.¹⁴
- PrimeSafe has a risk based approach to its audit policy, setting its audit frequency according to inherent food safety risks. Audit frequencies are consistent across industries for similar categories of risk (DPI 2007a, p. 9). DFSV also bases its audit frequency on the inherent risks of a category of businesses (DPI 2007a, p. 12).
- DFSV and PrimeSafe can vary the frequency of audits, enabling them to ‘reward’ compliant businesses with less frequent audits.

Woolworths commented that:

Victoria has one of the better food regulatory systems nationally which provides an option for low to medium risk businesses between Third Party Auditing or the submission of approved Food Safety Plans or Templates to Local Government for EHO Inspections. (sub. 50, p.1)

Many inquiry participants, however, questioned whether the legislation is sufficiently risk based. The Victorian Branch of the Australian Institute of Environmental Health argued that the Food Act ‘does not embrace fully the concept of risk management’ (sub. 10, p. 4). Infocus Management Group commented that:

Much of the legislation is not based on risk management and the current Food Act provisions are a conglomeration of long standing prescriptive requirements and hastily adopted amendments. (sub. 38. p.6)

¹⁴ The Department of Human Service pointed out that between 1998 and 2000 Victoria had seven classes of food business for the purpose of implementing food safety programs. The system, however, demonstrated the complexity of defining which businesses should be included in each category (DHS 2006c, p. 6).

The City of Dandenong suggested the current approaches may not change behaviour in the areas where risks are largest:

In general terms it would be fair to say small to medium sized food businesses in Dandenong do not have the time or resources to be burdened with such a complex way of managing their food safety (i.e. through a basic FSP [food safety program] template). The good food operators do not need such a system and would develop something similar internally to manage food safety. Our experience is that poor operators are generally not going to change practices through any kind of influence provided by the procedures and processes offered by a (self-regulating) food safety program. (sub. 12, p. 1)

The following aspects of the regulatory approach do not appear risk focused:

- The division of classes of business into just two risk classes is not finely tuned.
- Councils have a legal obligation to register and inspect all food businesses each year, unless the premises comes within a class for which the Minister has declared that the registration is to be for a longer period (s40B). Several councils argued that this discourages risk based enforcement; for example, a newsagent selling packaged milk is meant to have a food safety program in the same way as is a restaurant or takeaway outlet (sub.43, p. 1), although the content of the programs may differ.
- The regulatory structure does not seem to reflect differences across business areas in the intensity of their commercial incentives to provide safe food.

3.3.7 Avoidance of unnecessary costs

Generally, regulatory arrangements are less likely to impose unnecessary costs when roles and responsibilities are clearly defined; when resources are targeted where they yield the largest benefits; when the selection of regulatory approaches is balanced, coordinated, effective and efficient; and when the arrangement integrate with other legislation. Aspects of Victoria’s regulatory framework are designed to avoid unnecessary costs—for example:

- The Food Act permits recognition of food safety or quality assurance programs developed by industry, provided that the auditor is approved under the Food Act (sub. 48, p. 6).¹⁵ The Department of Human Services argued that this recognition ‘demonstrates the positive orientation within the regulatory structure towards minimising compliance costs’ (sub. 48, p. 6). Woolworths commented that third party auditing also:

¹⁵ If the food safety auditor forms the opinion that a food business has not complied with its food safety program, or the program is not adequate, they must advise the proprietor of the remedial action to be taken (s19M).

... provides consistency of interpretation of the Food Act and regulations because the same auditors review all supermarkets and petrol sites within the State of Victoria. (sub. 50, p. 2)

- The Department of Human Services has registered a food safety program template that retail food service businesses can adopt instead of writing their own program.
- The department has also developed a less onerous template for community groups, and food safety supervisor requirements do not apply to community groups selling food (sub. 48, p. 16).
- To streamline regulation, PrimeSafe can supervise, under a Memorandum of Understanding (MOU) the retail and wholesale operations of a business under a single licence, applying provisions of the Food Act to retail operations in addition to applying the Meat Industry Act (PrimeSafe 2004b, p. 10). The MOU also applies to other mixed businesses—for example, a butcher who sells grocery items in addition to meat and meat products.

Despite these initiatives, inquiry participants identified costs they consider unnecessary. First, some questioned how well the recognition of private sector audits is working. The Australian Food and Grocery Council pointed out that ‘food manufacturers are subject to multiple audits, by their customers and by government’ (sub. 17, p.8). Woolworths noted that some council environmental health officers continue to request changes to food safety programs, operations and/or building structure, even though Woolworths has chosen third party auditing. Woolworths suggested that a business using a third party audit has no need for audits or inspections by environmental health officers (sub. 50, pp. 3–4).

Second, the City of Stonnington noted that template programs reduce the costs faced by businesses implementing programs, but that ‘the lack of proprietor involvement in the development of their own FSP has resulted in a failure of many businesses to take ownership of the food safety program’, resulting in poor implementation (sub. 25, p. 3). If this view is correct, the templates are not so much adding unnecessary costs as not leading to the intended cost savings.

Third, the Australian Food and Grocery Council, Woolworths, the Australian Institute of Environmental Health, Coles Myer, Ms Sue McGorlick and the City of Moreland noted that businesses located in several municipalities have to lodge registrations with several councils, rather than a single agency as in New South Wales (subs 2, 7, 10, 17, 50 and 51). A further issue with registration, as noted by the City of Wyndham, is that the Food Act does not provide for temporary registrations:

Registration of ‘temporary premises’ is dubious as the Food Act (the ‘Act’) enables only annual registration. In circumstances where operations want only one day or a series of consecutive days, conditional annual registration appears the only means and the legal standing of this approach is uncertain. The issue of a ‘permit’ as mentioned in the Department of Human services (‘DHS’) Events Food Safety Template has no basis in law. (sub. 37, p. 2)

The Victorian Branch of the Australian Institute of Environmental Health noted that the Food Safety Unit has produced a guideline:

... that states a food operator may be permitted to operate a temporary food premises once a month with a maximum of 12 times a year. If they operate more than 12 times a year, they are then required to be registered under the Food Act 1984. This guideline has been interpreted many ways and led to councils applying inconsistent approaches. (sub. 10, p. 7)

Many inquiry participants argued that requiring temporary and mobile businesses to register in every municipality in which they operate leads to duplication and extra costs for both councils and businesses.

Fourth, businesses operating in more than one state may face additional costs in complying with different regulatory requirements. The varying costs may arise from jurisdictions adopting different parts of the Food Standards Code. State and territory authorities determine which businesses must have food safety programs. Victoria was the first Australian jurisdiction to implement these programs (sub. 38, p.4), following ‘a substantial number of outbreaks of foodborne illness in relation to the smallgoods industry and certain other manufactured food sectors within a very short period of time (approximately several months)’ (DHS 2007b, p. 11). Victoria is the only jurisdiction to require all food businesses to prepare food safety programs, and the only state imposing food safety programs on charitable groups (DHS 2006c, p. 2).¹⁶

The Department of Human Services indicated that an analysis conducted when the food safety reforms were introduced in 1997 showed ‘food prepared by the voluntary sector was no less risky than that prepared in the commercial sector’ (DHS 2007b, p. 12). It did not think that other parties to the Food Regulation Agreement intend to adopt similar requirements (sub. 48, p. 5), although it noted that all jurisdictions have agreed ‘that requirements for FSPs to be developed by all “high risk” food businesses by 2011 or 2012 will be adopted via the Food Standards Code’ (sub. 48, p. 6).

¹⁶ Victoria has not adopted standard 3.2.1 of the Food Standards Code, which is the standard that imposes the requirement for types of business to implement food safety programs. The Victorian Government’s decision in 1997, reaffirmed in 2001, to introduce food safety programs was made before the Food Standards Code was introduced. The Department of Human Services noted that the Food Act would need to be amended to adopt standard 3.2.1 (DHS 2006c, p. 2).

Fund raising events, which raise funds from food sold at community or charitable events and not for personal financial gain, do not have to prepare a food safety program under the Food Standards Code. In Victoria, however, such events must have food safety programs.¹⁷ The different requirements in Victoria need not imply that the state government is imposing unnecessary costs; the additional costs of more extensive requirements may be less than their additional benefits. A regulatory impact statement would have indicated whether this is so, but the Commission understands that one was not prepared.¹⁸ If data limitations (see chapter 5 and 6) prevented the quantification of costs and benefits, an incremental approach might have generated information on whether applying food safety programs more extensively was subsequently justified.

Fifth, variations among states in how they apply the Food Standards Code may increase compliance costs. The Food Regulation Agreement permits states to have individual provisions where the Food Regulation Ministerial Council is satisfied that a provision is necessary (given exceptional conditions) and would not risk public health or safety, or contravene Australia's international treaty obligations. Further, a state or territory can develop a temporary (12 month duration) new standard or variation when an immediate issue is affecting public health and there is no time to apply to the ministerial council for the amendment.

Sixth, inquiry participants noted that differing council interpretations of legal requirements add to the costs of businesses operating in more than one municipality. Councils generate their own food safety guidelines on what is needed to comply with the outcome based provisions of the Food Act. The relevant council may, for example, issue a guideline on the minimum temperature requirements for frozen foods, set out personal hygiene practices required of food handlers (for example, to tie back or cover long hair) or establish minimum cleaning procedures (such as washing surfaces with hot water of at least 45°C).¹⁹ In addition, many councils have made local laws relating to food under the *Local Government Act 1989* (Vic.). Port Phillip City Council, for example, has passed a local law²⁰ to regulate and control footpath activities, including footpath trading. The City of Yarra argued that some councils have introduced local laws to overcome perceived difficulties with administering the Food Act. While councils are legally constrained in making local laws relating to food (s63B), the City of Yarra considered that the Department of Human Services does not enforce this constraint (sub. 43, p. 4).

¹⁷ Providers can elect to develop their own program or use a template developed by the Department of Human Services.

¹⁸ A regulatory impact statement was not required under the *Subordinate Legislation Act 1994* (Vic.) because changing the businesses covered by food safety programs does not require a statutory rule.

¹⁹ See council information at www.vicnet.net.au/government/localgovt/.

²⁰ Local law no. 7, Footpath Activities.

3.3.8 Flexibility

Some inquiry participants suggested that the system for approving new food products under the Food Standards Code (box 3.2) is insufficiently flexible. The Australian Industry Group commented that the process for approving new activities can be protracted and take a number of years (sub. 32, p. 2). The Australian Food and Grocery Council noted that the health benefits of food are a key driver for innovation, but that the regulatory process—including the ‘cumbersome legislative process for developing or amending a standard’—works against effective innovation (sub. 17, p. 5). On the other hand, CHOICE submitted that proposed changes to the process would remove public consultation, threaten the integrity of the process and undermine its primary objectives (sub. 49, p. 3).

BOX 3.2 Process for seeking a food standard

A person (such as a food manufacturer) seeking a food standard for a particular food they wish to supply must lodge an application with FSANZ. The application triggers a three stage process: first, FSANZ prepares an initial assessment report, to stimulate stakeholder discussion and comment. Second, a report is prepared for the FSANZ board using information collected from the consultation process, as well as risk analysis, scientific studies and regulatory impact statements. The board makes a draft assessment and releases the report for public comment on the FSANZ website. Third, further comments received during the draft assessment consultation process are integrated into a final report prepared for the FSANZ board. If the proposal is approved, the board notifies the Food Regulation Ministerial Council, which considers the report and decides whether the new standard should be incorporated into the Food Standards Code.

Source: Based on the Commission's understanding of the processes under the FSANZ Act.

Cadbury Schweppes and others pointed out that only a single state or territory needs to reject an application or proposal to force FSANZ to do a review. And a recent review of FSANZ's assessment and approval process revealed the need to improve the standards development process. Amendments to the FSANZ Act (likely to occur in early 2007) are expected to expedite standards development. According to FSANZ:

With the help of amendments to the FSANZ Act, we intend to adopt new timeframes and more rigorous guidelines for our standard setting work, to speed up our processes. (FSANZ 2007b, p. 1)

3.3.9 Simplicity

Unnecessarily complicated regulation adds costs and reduces compliance. The Department of Human Services, noting a general ‘lack of understanding of the Food Standards Code, particularly by small business’, commented:

As the Food Standards Code regulates so many matters, and is so complex, it is not possible for regulators to enforce the majority of requirements of the code in a proactive manner. (DHS 2007b, p. 13)

George Weston Foods noted that the increasing number of Acts and Regulations make it hard for businesses to identify relevant laws, understand their practical application and know whom to deal with (sub. 52, p. 5). While the introduction of template food safety programs helps, the Commission was advised of small firms and community groups that found templates long and complicated (see chapter 11).

3.3.10 Compliance and enforceability

The Department of Primary Industries defines compliance as activities to check whether a business is complying with the legislation, whereas enforcement is ‘action taken where a person/business...has been found or is suspected of being in breach of that legislation’ (DPI 2007a, p. 4). Four issues regarding enforceability are whether:

- there are mechanisms to ensure those who should be regulated are regulated
- penalties encourage reasonable compliance
- enforcement is applied consistently
- those who are responsible for enforcement have sufficient resources to undertake the task.

In relation to the first issue, the Food Act requires that all premises from which a food business is conducted—excluding a primary food production business—register with the local council. While businesses are responsible for registering, councils need a monitoring process to ensure it happens. An audit of councils in 2002 found that only four councils had adopted sound monitoring practices (AGV 2002, p. 34). The courts cannot impose sanctions if a council fails to meet its registration obligations under the Food Act (sub. 48, p. 15).

Second, under the Food Act, penalties for knowingly handling food in an unsafe manner, knowingly selling unsafe food or knowingly falsely describing food include imprisonment and fines of \$100 000 and \$500 000 for individuals and corporations respectively. Other offences attract smaller but still substantial fines. Magistrates set penalties, which the City of Wyndham argued leads to variable outcomes that can send mixed messages to the industry and public, and that can discourage councils from pursuing compliance through the court (sub. 37, pp. 4–5).

The City of Greater Dandenong pointed out that there is no specific offence under the Food Act or the Food Standards Code regarding compliance with food safety programs (sub. 12, p. 3). If food premises or a food vending machine is found to be unclean, then it can be closed until the problem is rectified. If a declared premises does not have or does not comply with a food safety program, or the business fails to comply with a direction from the Secretary or the council, then registration can be revoked or not renewed. This would effectively close the business. Some councils argued that an intermediate penalty is required, because revoking registration is too large a penalty to be enforceable in many cases (chapter 10). The City of Moreland claimed that the procedure for securing closure is ‘convoluted’ (sub. 51, p. 3). Similarly, the Australian Institute of Environmental Health claimed that the process to be followed before a council can order closure is too difficult to be implemented (sub. 10, p. 6). The Food Safety Unit, on the other hand, claimed that the Chief Health Officer could (and had on a number of occasions) issue a closure order under s19(2) of the Food Act within 24 hours of being requested to do so.

For the other regulators, the Department of Primary Industries indicated that both PrimeSafe and DFSV ‘have policies in place which guide enforcement action and the escalation of action from increased audits through to licence cancellation or prosecution’ (DPI 2007a, p. 7). It noted that offences and penalties differ between the Food Act and primary industries legislation, and that there are numerous minor differences across primary industries legislation. No action is proposed to address these differences (DPI 2007a, p. 8).

Third, many submissions supported the Department of Human Services’ view that:

... there appear to be significant differences between local governments in terms of both the nature and extent of enforcement activity undertaken... (sub. 48, p. 14)

Coles Myer pointed out that non-uniform enforcement of labelling requirements can cause distortions between food businesses (sub. 7, p. 3). While a key task in enforcing the Food Act is to ensure all food businesses understand their obligations and responsibilities, the Commission’s review of council websites revealed significant differences in councils’ approach to food safety compliance education. The Casey City Council, for example, provided relatively specific, user friendly guidelines for complying with regulatory obligations, whereas the City of Port Phillip appeared to provide only more general guidelines on specialised areas (mobile food vehicles, footpath trading and temporary food premises)

(City of Casey 2007; City of Port Phillip 2007).²¹ This issue is particularly significant for food businesses operating in several municipalities.

Fourth, when comparing local government with PrimeSafe and DFSV, the Australian Institute of Environmental Health commented that there are ‘disproportional resources in other co-regulator authorities’ (sub. 10, p. 10). While councils are responsible for determining how they allocate their resources, they have difficulty attracting and retaining environmental health officers (see chapter 10). The City of Yarra argued that the issue of resourcing needs to be considered in the context of environmental health officers’ other responsibilities:

Food safety is one of many issues handled by LG (local government) health departments. This can lead to some LGs not having resources and time to understand and apply regulatory requirements in a uniform manner as the priority may not be as high as others roles ... (sub. 43, p. 4)

Although the Food Act enables councils to recover food regulation costs, the Municipal Association of Victoria found that councils in aggregate recovered only 60 per cent of their costs in 2002. The proportion of costs recovered by individual councils varied from 30 per cent to 91 per cent, with rural councils in particular ‘subsidising’ business (sub. 41, pp. 5,8). Many inquiry participants noted differences in fees between councils. And the City of Moreland submitted that the range of fees and fee structures has been a ‘constant source of complaint from some food business operators, especially those that have multiple food outlets across various municipal boundaries’ (sub. 51, p. 4). It also argued that some food safety activities provide benefits across municipal boundaries and should attract state government funding (sub. 51, p. 5).

3.3.11 Performance reporting

Reporting the effectiveness of laws in achieving desired outcomes both enhances regulators’ accountability and provides information to help improve regulation. The Department of Human Services noted that ‘one of the best measures to ensure food regulation is effective is through reporting’, and it is ‘committed to identifying framework options and suitable performance indicators’ (DHS 2006c, p. 4). Performance reporting is particularly important for measuring the effectiveness of outcome based regulation and encouraging accountability. Provided there are ‘feedback’ arrangements to ensure information is acted on, it permits resources to be allocated where they can provide the largest benefits, and it provides information that can help improve the regulatory arrangements.

The Department of Human Services’ performance measures include the number of food recalls, the number of complaints resolved, food safety confidence surveys and the number of food safety programs registered. The department

²¹ This observation is based on a search for ‘food safety’ on the websites of the relevant local councils.

does not measure performance against objects of the Food Act, for which local government is responsible (DHS 2006c, p. 2). It advises councils on performing their obligations under the Food Act, but it does not collect data on council activities (for example, data on the number of registered premises in each municipality, the number of inspections or particulars of enforcement action). Further, the department does not normally publish information about food contamination incidents and has no legal obligation to report the outcomes of regulatory activities to promote public health. And it does not normally report breaches of the Food Act, even when such reporting might assist compensation claims regarding losses caused by the consumption of contaminated food. In the view of Restaurant and Catering Victoria (sub. 36, p. 7), ‘how well the system is delivering its desired outcomes is not placed on the public record at any stage’.

Notwithstanding their considerable obligations, councils have no commensurate legal requirements to report their performance against their obligations. The VicFin database has been set up to provide information, but its initiator, Mr John Ward, noted that it has significant deficiencies:

My main aim in initiating the establishment of VicFin was to:-

1. Provide the Food Safety Unit with details of all food businesses registered by the 80 LGAs [local government authorities] and to subsequently log inspection/audit conformance.
2. To have all laboratories conducting analyses under the Food Act for LGAs to also upload that data into VicFin to enable trend analysis to occur and surveillance direction to be established.
3. To act as a forum for geographically separated EHOs [environmental health officers], to assist in uniform enforcement and to inform the Food Safety Unit as to where direction may be required.
4. To be the communication tool for FSU to local government.
5. As the final module, to incorporate high level data from the other enforcement agencies such as DFSV, AQIS, PrimeSafe etc.

While the intent and scope were valid, the IT development made implementation almost impossible and some six years down the track, I maintain that it is critical that Victoria establish a central database of all food businesses and all food surveillance activities. If done correctly that same database would also include all the information required to generate the reports that recent reviews and audits have identified.

The current incarnation of VicFin is not fit for purpose. (sub. 59, p.4)

Restaurant and Catering Victoria pointed out that the current situation:

... means that [the Department of Human Services] has no capacity to aggregate data that is accurate and complete on food safety compliance. In turn this must impact on the ability of the department to make informed and appropriate decisions across a range of matters. (sub. 36, p. 7)

PrimeSafe and DFSV do not publish details of compliance and enforcement activity. The Department of Primary Industries argued that because the regulatory approach is preventative, ‘compliance failures should be identified before there is a problem that would impact on public health and safety’ (DPI 2007a, p. 10).

3.3.12 Education

As discussed in chapter 2, education can reduce information asymmetries and lessen the need for regulation. It may even be the only avenue available for improving food handling practices within households. Education can also improve food businesses’ awareness of regulatory obligations, which may be particularly important for food traders from other cultures. As noted, the Food Safety Unit recognises that it has an educational role. Its activities include:

- developing modules on health services evaluation for Victorian undergraduate and postgraduate courses in environmental and public health (DHS 2006c, p. 4)
- developing answers in 12 languages to standard questions about reforms to food safety laws, along with a video in eight languages explaining how to use a food safety program (DHS 2006c, p. 8)
- funding training seminars for council environmental health officers (DHS 2006c p. 1).

The Department of Human Services undertakes surveys to assess businesses’ awareness of food safety issues, and concluded that knowledge (as measured by the proportion of questions answered correctly by at least 90 per cent of food handlers) is improving (sub. 48, p. 9).

3.4 Conclusion

The regulatory framework in Australia is still evolving, following a significant review in the late 1990s. Inquiry participants have identified areas in which there is scope to improve the framework, and later chapters discuss possible improvements. The chapters are organised by tier of government—national, state and local—although the regulatory arrangements are interlinked. At the national level, comments are made on possible improvements to the operation of the Food Regulation Ministerial Council (chapter 7). At the state level, an important issue remains one that Victoria’s Auditor-General identified in 2002:

namely, because the Food Act does not assign responsibility for overseeing the performance of local government, the extent to which councils and the sector as a whole meet their legislative responsibilities is not known (AGV 2002, p. 75). Chapters 8 and 9 discuss suggestions for improving this and other aspects of the state regulatory framework. Chapter 10 discusses local government issues and chapter 11 examines the effects of food regulation on the community sector.

4 The food sector

Chapter 2 described the commercial incentives to provide safe food and argued that the costs and benefits of government interventions to improve market outcomes will vary depending on market characteristics and the instruments chosen. This chapter highlights characteristics of Victoria's food sector that influence the costs and benefits of intervention.

It describes the food sector in Victoria (section 4.1) and then focuses on sector characteristics that may influence policy development relating to food regulation:

- consumption trends within Victoria (section 4.2) and in export markets (section 4.3), and the consequent importance of innovation (section 4.4)
- the diversity of business types (section 4.5), supply chains (section 4.6) and business relationships across these supply chains (section 4.7)
- widespread distribution of business locations (section 4.8).

Implications for the design and implementation of regulation nationally and in Victoria, are highlighted throughout the chapter.

4.1 Victoria's food sector

The food sector in Victoria employs about 370 000 people (14 per cent of the workforce) and generates \$6.8 billion in exports (36 per cent of Victoria's total exports)¹ (ABS 2006a, 2006b). Food reaches consumers through supply chains, from primary production, manufacturing and wholesaling, through to retailing and cafés, bars and restaurants. Each stage includes many different types of products and businesses. Figure 4.1 is a simplified description of the aggregate supply chain. (Section 4.5 provides more specific examples.) Figure 4.1 provides an indication of the value of output at each stage of the supply chain, although

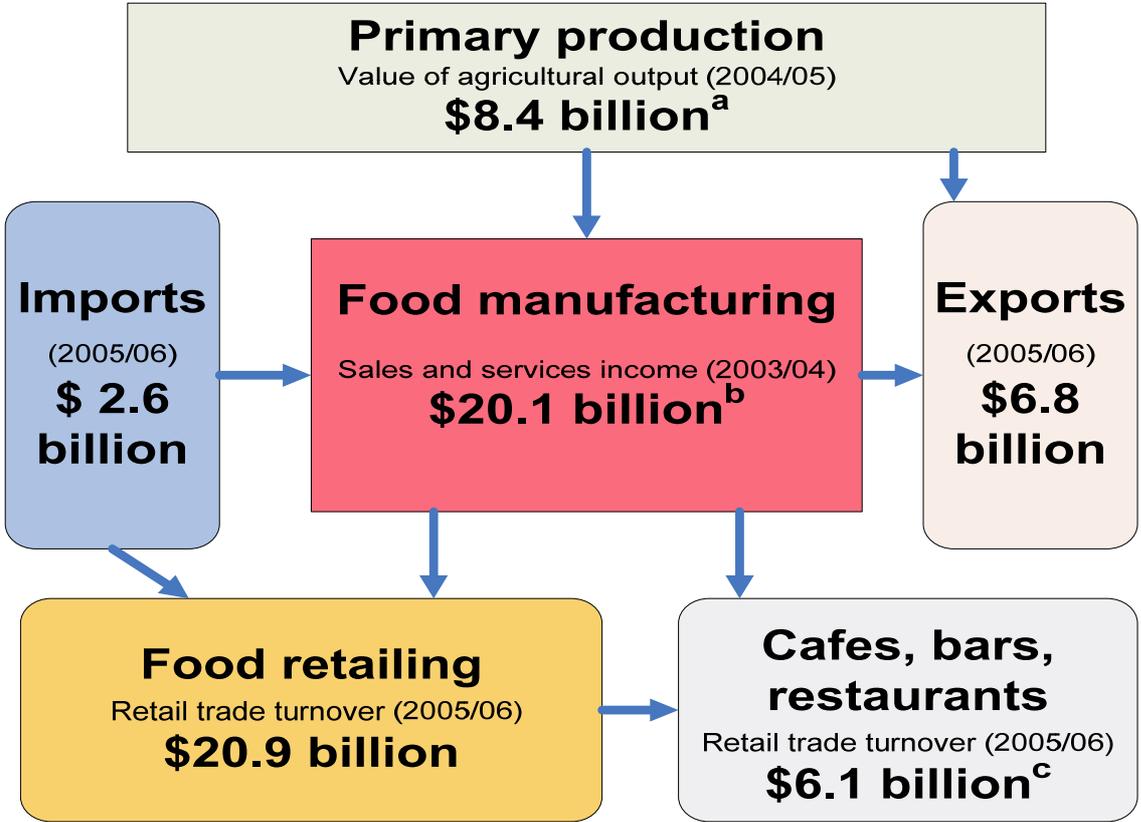
¹ The food sector is defined as:

- primary production: ANZSIC subdivisions 01 (agriculture) and 04 (commercial fishing)
- manufacturing: ANZSIC subdivision 21 (food, beverage and tobacco manufacturing) excluding group 219 (tobacco manufacturing group).
- wholesale: ANZSIC group 451 (farm produce wholesaling) and group 471 (food, drink and tobacco wholesaling)
- retail: ANZSIC subdivision 51 (food retailing)
- cafés, bars, restaurants: ANZSIC groups 572 (pubs, taverns and bars) and 573 (cafés and restaurants)

The industries defined above include some activities that are not food related. 'Agriculture', for example, includes cut flower and cotton growing. Analysis is kept at a broad level, however, to ensure the availability and reliability of data used here. Any statistics referred to in this chapter align with the definitions above, unless noted otherwise.

the numbers are not entirely comparable and should not be taken to reflect the value that is added at each stage of the supply chain.²

Figure 4.1 **The Victorian food supply chain**



^a Includes some non food items such as cotton and wool. ^b Excludes tobacco manufacturing turnover, which is estimated to account for 3 per cent of food, beverage and tobacco turnover, based on 1999-2000 figures. ^c Includes turnover by hotels and clubs.

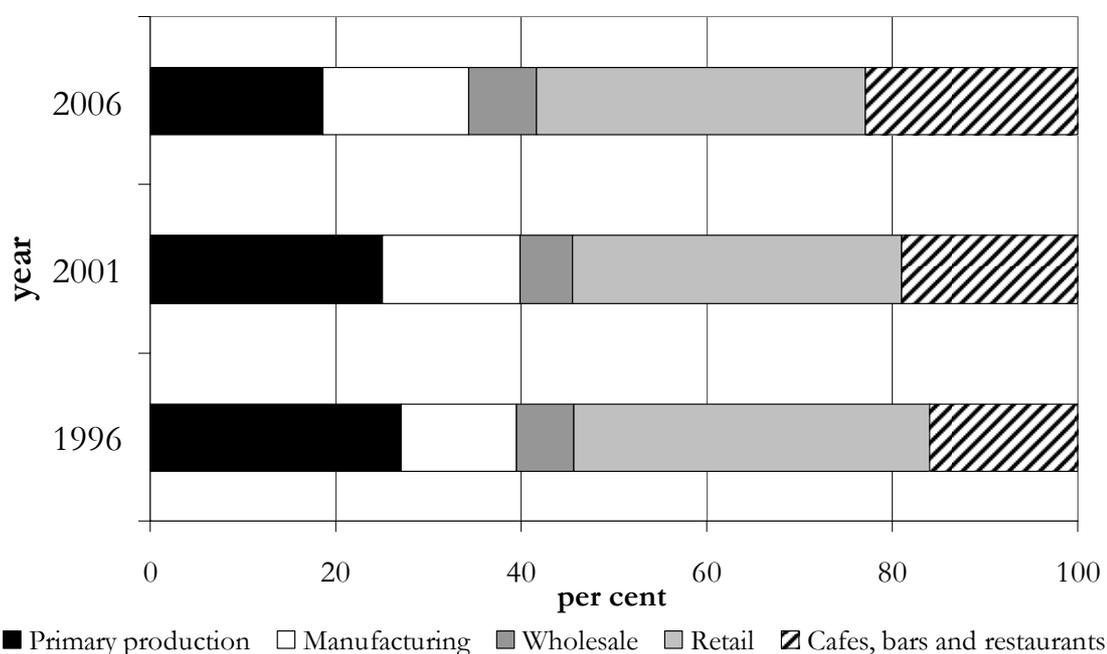
Sources: ABS 2001a, 2006b, 2006c, 2006d, 2006e.

² This figure presents the major components of the domestic food supply chain, along with measures of output (not value added) that each component generates, and the value of imports and exports for Victoria. The output measures are not entirely comparable, however, and without value added data, figure 4.1 should be used with caution. The gross value of agricultural output is the value placed on recorded production at the wholesale prices realised in the marketplace. This represents sales revenue generated by farmers and intermediaries involved in the supply chain up to wholesale markets (in the case of fresh produce) and the sale of goods to manufacturers. Manufacturing sales and service income and retail trade turnover represent the accrued revenue to the respective segments from the sale of goods, but also the provision of services, and income from other sources such as rent.

Figure 4.2 illustrates how the shares of total sector employment in the various stages of the supply chain have changed over the past 10 years³. Food retailing currently provides over 35 per cent of total food sector employment. The next largest employer is cafés, bars and restaurants at 23 per cent, up from 16 per cent in 1996. The share of primary production fell from 27 per cent in 1996 to under 19 per cent in 2006.

Overall growth in food sector employment has been slow—5 per cent between 1996 and 2006, compared with 20.5 per cent in overall Victorian employment over the same period (ABS 2006a).

Figure 4.2 Victorian food sector employment, shares by industry

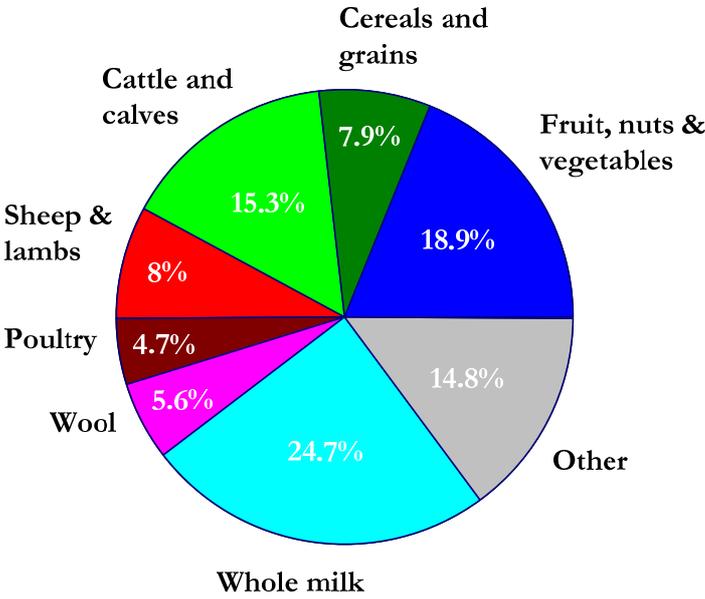


Source: ABS 2006a.

Each stage in the supply chain involves a wide range of activities and varies greatly in its relative size. Whole milk and meat production make up 53 per cent of Victoria’s gross agricultural output (figure 4.3) and dairy and meat together contribute 32 per cent of food manufacturing value added (figure 4.4). Beverage and malt manufacturing is the other large contributor to food manufacturing industry value added.

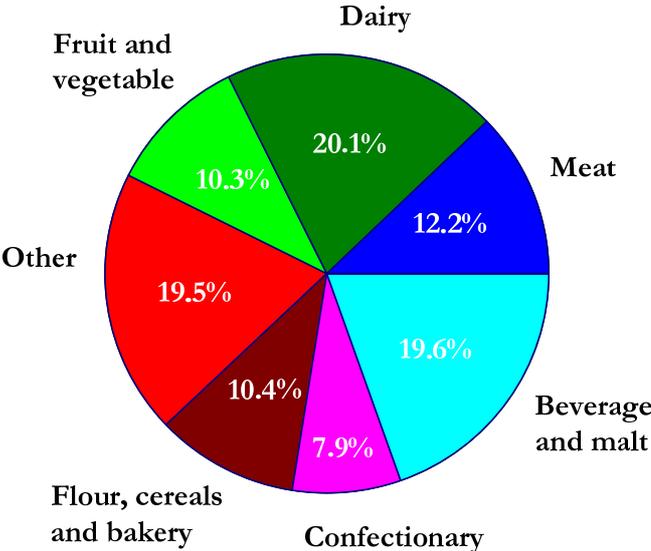
³ The time period referred to is December 1996 to December 2006.

Figure 4.3 **Victorian gross value of agricultural output, shares by commodity, 2004-05**



Source: ABS 2006c.

Figure 4.4 **Victorian food, beverage and tobacco manufacturing industry value added, shares by industry segment, 2001-02**

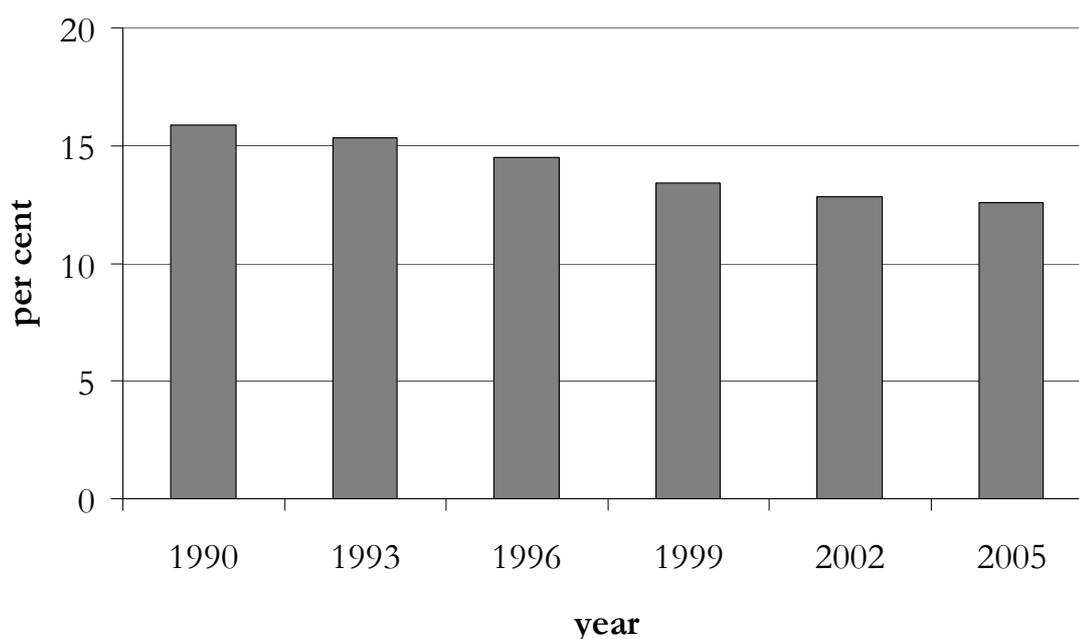


Source: ABS 2005a.

4.2 Changing consumer preferences

Consumer spending on food and beverages⁴ in Victoria grew at an average annual rate of 1.8 per cent (constant prices) between 1990 and 2005—a low rate relative to that for gross state product (3 per cent) and overall household spending (3.4 per cent) over the same period (ABS 2006f, 2006g). As household income grows, the rate of growth in food consumption declines because people are increasingly able to meet their nutritional needs. Consequently, food and beverages' share of total household consumption expenditure declined from 15.9 per cent in 1990 to 12.6 per cent in 2005 (figure 4.5). On the other hand, however, Victorians have been eating out more in recent years, as illustrated by an increase in per household spending (expressed in 1989-90 dollars) on meals out and takeaways between 1994-95 and 2003-04 (though spending has fallen between 1998-99 and 2003-04) (figure 4.6).

Figure 4.5 **Food and beverages^a as a proportion of Victorian household consumption expenditure**

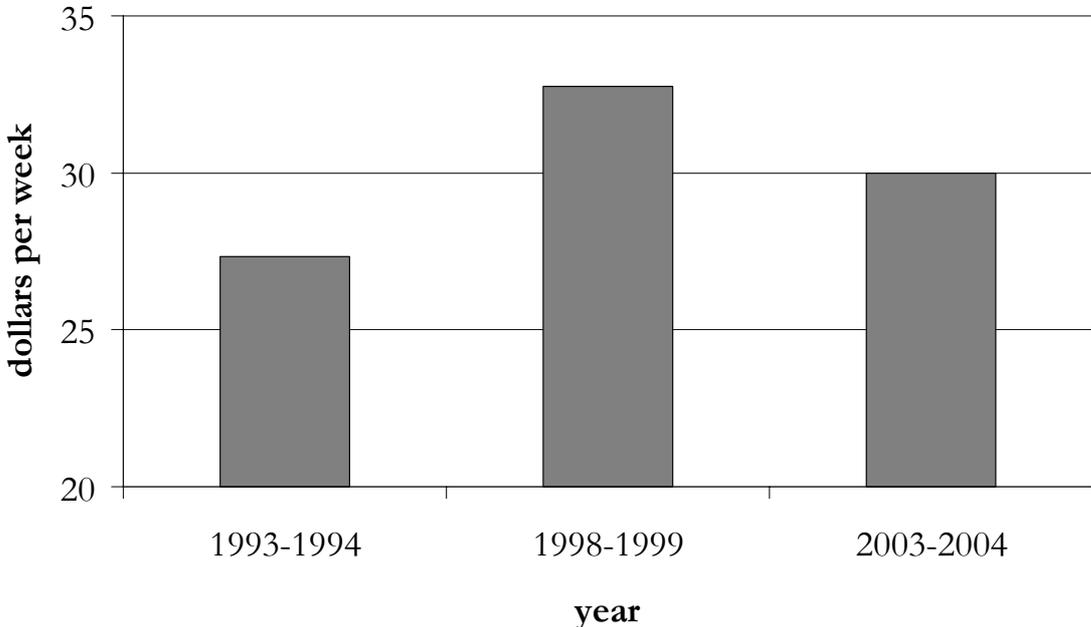


^a Excludes household spending on food and beverages outdoors (for example, bars and restaurants).

Source: ABS 2006f.

⁴ Household spending on food and beverages comprises food and beverages purchased for the purposes of own consumption, and excludes spending on food and beverages at hotels, cafes and restaurants.

Figure 4.6 **Victorian per household expenditure on meals out and fast food/takeaway^a**



^aAdjusted for consumer price index growth. Expressed in 1989-1990 dollars.

Source: ABS 2006h.

While growth in food spending has been modest, preferences for different types of food have been changing:

Consumption has shifted away from meat, eggs, grains and sugar, and increased for poultry, seafood, and fresh fruit and vegetables. Consumption of dairy products has remained relatively stable since 1948-49. The trend suggests that consumers may be including a higher proportion of high value foodstuffs in their diets, such as seafood, and fresh fruit and vegetables. (Short, Chester & Berry 2006, p. 11)

And, as noted in chapter 3, health conscious consumers are increasingly demanding 'healthy' foods. Australian governments are also becoming involved in the health debate, particularly in the areas of chronic disease prevention. The National Reform Initiative Working Group for the Council of Australian Governments noted the dangers of obesity and diabetes in limiting labour force participation and productivity (NRIW 2006).

Table 4.1 reports changing Australian preferences for food over the second half of the twentieth century.

Table 4.1 Apparent per person consumption of selected foods

	<i>Average three years ended</i>					
	<i>1948-49</i>	<i>1958-59</i>	<i>1968-69</i>	<i>1978-79</i>	<i>1988-89</i>	<i>1998-99</i>
Meat ^a (kg)	84.6	97.2	85.9	96.1	79.8	71.6
Poultry (kg)	na	na	8.3	17.1	24.1	30.8
Seafood (kg)	4.1	4.5	5.6	6.4	8.3	10.9
Dairy ^b (kg)	22.3	22.1	25.4	22.1	23.8	23.3
Fruit and nuts ^c (kg)	86.9	78.7	95.1	96	117.7	142.1
Vegetables ^c (kg)	129.7	117.1	124.3	122.5	148.1	162.0
Oil and fats ^d (kg)	14	na	14.3	21.6	20.4	18.5
Eggs (no.)	255	206	222	220	146	137
Grain products (kg)	162.1	157.6	145.6	127.5	130.9	138.1

^a Excludes canned meat, bacon and ham. ^b Expressed as milk solids fat and non-fat equivalent
^c Fruit and vegetables expressed as fresh product equivalent. ^d Expressed as fat content equivalent.
na Not available.

Source: ABS 2000c.

Implications for regulation

Australians are eating more fruit and nuts, and vegetables, and also more of some products that have high nutritional value but can also entail relatively high risks of food contamination—for example, poultry and some types of seafood (OzFoodNet 2006, p. 293). There has also been a shift towards eating out, where consumers may be more sensitive to food safety risks because they are less in control than when eating at home (DHS 2005a).

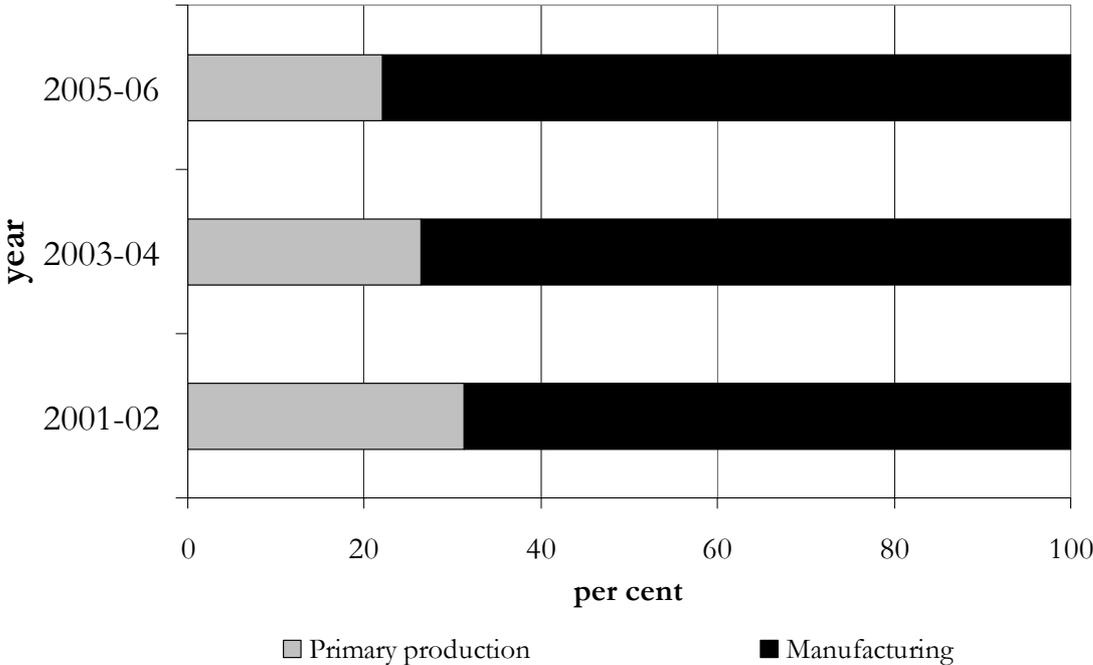
4.3 International trade opportunities

Victoria is a net exporter of food. In the year to June 2006, Victoria's food and beverage exports were worth \$6.8 billion—\$1.5 billion in primary produce and \$5.3 billion in manufactured products. The share of food manufacturing in Victoria's food exports has increased in recent years (figure 4.7). Dairy products contribute over 40 per cent of food manufacturing exports.⁵ Export growth in

⁵ Victoria contributes 84 per cent of Australia's dairy exports and has 13 per cent of the world trade in dairy products (Business Victoria 2007).

the beverage and malt manufacturing segment has been particularly significant (driven by wine), increasing by over 70 per cent (in nominal terms) between 2001-02 and 2005-06 (ABS 2006b).

Figure 4.7 Relative contributions by manufacturing and primary production to Victorian food exports



Source: ABS 2006b.

As income and education levels increase in Victoria’s food export markets (particularly Asia), the demand for safe and high nutrition food is likely to rise. Short, Chester and Berry (2006) noted that exporters need to differentiate their products and thus can look at attributes such as health benefits and safety guarantees to achieve this. The Commonwealth Department of Agriculture, Fisheries and Forestry (DAFF) also noted that consumers in many countries are becoming more discerning:

Food safety has always been the basic market price of market entry and is simply not negotiable. However, consumers now also expect convenience, health and nutritional benefits, increased choice, flavour, consistency and reliable functional properties. At the same time, consumers are demanding food tailored to meet their individual requirements and lifestyle expectations. Traditional elements such as freshness, naturalness, brand and price remain key factors in choice. (AFFA 2002, p. 11)

A survey of 280 respondents⁶ in 21 of Victoria's export markets demonstrated the importance of food safety to these markets. Key findings included:

- 18 per cent of the survey respondents nominated food safety as the most important attribute of food products (ranked third after price and quality)
- food safety ranks as the most important of the 'credence' attributes of food products
- high importance is attached to the ability to handle food safety incidents. (DPI 2004, pp. 3-5)

Victoria's attractiveness as a business location is not guaranteed, particularly in parts of the sector where there is extensive transformation of raw agricultural produce into prepared food products. Short, Chester and Berry (2006) pointed out that food processing plants involving minimal transformation (such as meat cuts and flour) are often located close to agricultural production, particularly if the agricultural good is perishable. But for elaborately transformed products (such as cakes, pastries, stuffed pasta, beer and confectionary), being located close to the final market minimises distribution costs, and assists firms to manage customer inventories and to tailor output to local or regional tastes:

As a result of these factors, there is substantial scope to produce elaborately transformed manufactures in any country around the world. That is, there is no reason, based on economic principles, to expect that countries that have a comparative advantage in producing agricultural goods that are raw inputs will also have a comparative advantage in producing manufactured goods for export to other countries. (Short, Chester & Berry 2006, p. 31)

MasterFoods Australia New Zealand noted that the significant improvement in food manufacturing capability in Australia's export markets is presenting challenges in maintaining export markets:

Food safety, convenience or cost are no longer advantages necessarily held by Australian food manufacturers over offshore competitors, many of whom are now themselves penetrating the Australian market with their products. (sub. 55, p. 3)

Implications for regulation

Many firms in Victoria's food sector are exposed to global markets and have incentives to produce food that is safe, so as to secure access to these markets. Chapter 2 noted, however, that a poor performer can damage the export market for other firms, and that regulation can reduce this risk. This benefit of regulation needs to be balanced against its costs, bearing in mind that some food businesses are internationally mobile and could shift location if regulation (or other factors) adds unnecessarily to their costs. As globalisation increases

⁶ Respondents included retailers, wholesalers, food service managers, distributors and representatives of government, industry bodies and non government organisations.

competition in food markets, businesses will become increasingly sensitive to the cost consequences of regulation.

4.4 The importance of innovation

Given the slow growth in domestic demand for food products, and the growing pressure in export markets, firms seeking growth need to develop new products, differentiate their existing ones and/or expand exports. This highlights the importance of innovation, which is so significant that of the many thousands of packaged food products on Australian supermarket shelves, 75 per cent were new in the five years to 2000 (AFFA 2002, p. 11). MasterFoods Australia New Zealand, one of Australia's largest food companies, commented that:

In an environment where instant imitators are ready to grasp supply opportunities, and to manufacture house brands, the Australian branded food manufacturer today must have improved capability to innovate with relevance, and to bring these innovations to market quickly with the support of retail partners. (sub. 55, p. 4)

Box 4.1 provides examples of successful innovations, demonstrating the long lead times and large expenditures that can be involved, while box 4.2 illustrates how regulation can delay innovation.

Developing genuinely new food products can require significant expenditure on basic research and development (R&D) and involve considerable risk. Product innovation, however, often involves incremental change, which may not need large R&D spending (AFFA 2002, p. 15). As well, R&D may be undertaken overseas. Consequently, food manufacturing tends to be less R&D intensive than other manufacturing industries. Expenditure on R&D by Victorian food, beverage and tobacco manufacturers was \$111 million in 2004-05, compared with \$297 million by petroleum, coal, chemical and associated product manufacturers and \$608 million by motor vehicle and part manufacturers. Reflecting their dominance in food manufacturing,⁷ New South Wales and Victoria accounted for over 70 per cent of national R&D expenditure in the food sector in 2004-05 (ABS 2006i).

⁷ Victoria (29 per cent) and New South Wales (35 per cent) between them accounted for 64 per cent of food manufacturing value added in 2002-03 (Short, Chester and Berry 2006, p.8)

Box 4.1 Innovation in the food sector

Fonterra

Fonterra Co-operative Group spends up to NZ\$100 million a year on research and development. Some products developed by Fonterra include diabetic friendly milk, yoghurt containing lactic acid bacteria that improves immunity, and yoghurt with 70 per cent less carbohydrates than standard yoghurts. Fonterra will continue its innovation efforts by opening a dairy innovation facility in Melbourne in April 2007 that will 'support research into food safety, processing and packaging' by taking 'emerging science and technology and create products that meet specific market needs' (Invest Australia 2006).

Buttercup Wonder White

Goodman Fielder Milling and Baking launched the Wonder White bread brand in 1994, after years of research aimed at increasing the amylose component of starch. Research resulted in the development of the 'Hi-maize' starch with an amylose content of up to 82 per cent (up from the usual 25 per cent). High amylose 'resistant starch', which acts in a similar way to fibre, can promote bowel health and reduce the risk of colon diseases.

Consumer interest in white bread with Hi-maize was established through a national dietary survey and consumer research. Product development was based on the concept of 'soft and fluffy' bread, and television advertising stressed the 'Great Taste. Invisible Fibre.' The Wonder White product was a success and led to the development of the high fibre white bread market.

Whey protein isolate

In 1991, the Murray Goulburn Cooperative was using only 10–15 per cent of its whey residue from 35 000 tonnes of cheese production, mainly for pig food. Waste disposal of the unused whey raised environmental concerns. Murray Goulburn later recognised the potential health benefits of whey and produced the whey protein isolate (WPI) food ingredient using ion exchange technology acquired from the United States. WPI has a protein content of 90 per cent and 'provides benefits ranging from general to clinical nutrition and assists functional performance in the areas of emulsification, aeration, foaming, water binding and whipping' (AFFA 2001, p. 34).

Production of WPI began in 2000 (using 90 per cent of the whey residue from 100 000 tonnes of cheese production) and customers have responded favourably. The largest use for WPI is in powdered form in health beverages.

Sources: AFFA 2001; Invest Australia 2006.

Box 4.2 Innovation and regulation

Plant sterols

In 2003, a number of food businesses, supported by MasterFoods, applied to Food Standards Australia and New Zealand (FSANZ) to broaden the range of foods that could contain plant sterols, an ingredient that can lower blood cholesterol. Product forms suggested included milk, yoghurt, juices, breakfast cereals and cereal bars. Approval would have enabled MasterFoods to market in Australia its cereal bar product range, which ‘combines real taste with ingredients formulated to promote a healthy heart’. The product range has been available for sale in the United States for three years. MasterFoods believes that there has been no material progress since the application was made, with an interim decision not allowing the cereal bar format because it could be inadvertently consumed by non-target consumers, perhaps children.

Cadbury Schweppes

In its submission to the Commission, Cadbury Schweppes noted two examples where FSANZ approval processes delayed the introduction of new food products (chapter 7 discusses FSANZ processes). First, an application for fortification of fruit juices with calcium was finalised only after two reviews over five years, due to some states and territories not favouring the application. Cadbury Schweppes claimed that ‘specific industry organisations in some states appeared to have been able to influence some Ministers’ (sub. 20, p. 2). The second application was in relation to formulated beverages, which similarly was opposed by some states, and was finalised in four years after a number of reviews.

Sources: MasterFoods Australia New Zealand (sub. 55); Cadbury Schweppes (sub. 20).

Implications for regulation

The introduction of new products is an important form of competition in the food sector and can improve food safety and health outcomes. This helps to explain why a number of inquiry participants raised the issue of regulation’s impact on innovation. MasterFoods, for example, argued that the regulatory regime should encourage business ‘to deploy capital to innovation products’ (sub. 55, p. 4). Ensuring that regulation does not unduly delay innovation will be particularly significant for Victoria, given its dominance (along with New South Wales) in food manufacturing in Australia. Having an effective national process for amending food standards and considering health claims for new products is therefore likely to be important for these states. The ways in which these processes operate are discussed in chapter 7.

4.5 Diverse firm sizes

Victoria's food sector comprises more than 86 000 firms, of widely different types and sizes (table 4.2). More than 50 000 of these businesses are operated by the business proprietor with no employees; at the other extreme, only 193 businesses employ more than 200 people.

Table 4.2 **Distribution of Victorian food businesses by number of employees**

	<i><19 employees</i>	<i>20-199 employees</i>	<i>200+ employees</i>	<i>Total employing</i>	<i>Non employing</i>	<i>Total</i>
Primary production						
Agriculture	13890	1081	34	15005	33621	48626
Commercial fishing	np	np	0	342	570	912
				Sub total		49538
Manufacturing						
Meat	126	74	19	219	158	377
Dairy	66	35	7	108	114	222
Fruit and vegetable	48	23	7	78	88	166
Oil and fat	np	np	np	27	58	85
Flour mill and cereals	44	27	0	71	49	120
Beverage and malt	126	np	np	172	277	449
Bakery products	148	np	np	229	155	384
Other	239	101	11	351	319	670
				Sub total		2473
Wholesale						
Farm produce	816	np	np	917	1517	2434
Food, drink tobacco	1437	259	13	1709	1579	3288
				Sub total		5722
Retail						
Supermarkets and grocery stores	836	280	18	1134	901	2035
Specialised food retailers	6794	958	30	7782	7025	14807
				Sub total		16842
Cafes, bars and restaurants						
Cafes and restaurants	4712	1026	38	5776	3870	9646
Pubs, taverns and bars	825	475	8	1308	654	1962
				Sub total		11608
TOTAL (all Victorian food businesses)						86183

np: not published

Source: ABS 2005d.

Primary production

In Australia, there were around 132 000 farms in 2002-03. The sector has been undergoing considerable structural change, with the number of farms declining by about a quarter in the past 20 years, while the average physical size of farms has increased by around the same proportion. In spite of this trend, Australia continues to be dominated by small farms, with around 20 per cent of farms comprising less than 50 hectares and with 41 000 having a value of operations below \$50 000 (PC 2005a, p. 31).

Victoria has over 48 000 farms, of which almost 34 000 are run by the farmer, with no employees. There are 912 commercial fishing operations, of which 570 are run by the proprietor. Of the almost 50 000 businesses in primary production, only 6200 (dairy farms and aquaculture/wildcatch harvest businesses) are required to register under Victoria's food legislation (DFSV 2006b, p. 19; PrimeSafe 2006, p. 51).

Food manufacturing

There are almost 2500 food manufacturing businesses in Victoria, with only 52 employing more than 200 people and more than 800 employing fewer than 20. This sector, like primary production, has been consolidating, but on a substantially larger scale, with the largest 50 food processing companies in Australia accounting for almost three quarters of total industry revenue in 2003. Of the 50 largest food and beverage corporations in Australia, 15 were located in Victoria in 2002, accounting for 33 per cent of the Australian revenues of the top 50 firms (IBIS World 2003, cited in Short, Chester & Berry 2006, pp. 19–21).

It is common for one or two of the largest suppliers to share over 50 per cent of the domestic market for a particular product (AFFA 2002, p. 9). The revenue shares held by the largest 50 firms vary considerably across the different segments, ranging from 7 per cent for seafood to 94 per cent for milk and cream processing. Industry segments in which these large firms had 75 per cent or more of revenue, in 2003, were fruit and vegetable manufacturing, poultry processing, wine manufacturing, spirit manufacturing, bread manufacturing, sugar manufacturing, soft drink, cordial and syrup manufacturing, beer and malt manufacturing, confectionary manufacturing, and milk and cream processing. Foreign owned companies make up almost half of the largest 50 firms, producing 47 per cent of domestic revenue (IBIS World 2003, cited in Short, Chester & Berry 2006, pp. 19–21).

The chairman of the Australian Competition and Consumer Commission (ACCC) in 2000 described how consolidation followed deregulation in areas such as the dairy industry. He also pointed out, however, the importance of food processors' key customers wanting to deal with as few suppliers as possible, which, among other benefits, may lead to improved product quality:

Consolidated processors provide retailers with lower transaction costs, more significant volume discounts, improved brand recognition and promotions, improved service and product support, uniformity in store layout and stock, and greater control/accountability regarding supply chains and product quality. In these circumstances, processors and distributors see advantages to establishing a presence in multiple state markets such that they can provide national coverage to these retailers. (Fels 2000, p. 153)

The Meat Research Corporation (cited in PC 1998, p. 20) suggested that, for example, the imposition of stricter hygiene and slaughter standards contributed to rationalisation of meat processing plants.

Food wholesaling

Food wholesalers are businesses whose primary activity is to purchase food products for resale. While employment is small in the Victorian food wholesale industry compared with manufacturing, it is more fragmented, with many more businesses. Over 5700 food and farm produce wholesalers⁸ operate in Victoria, and most have fewer than 20 employees.

Food retailing

There are almost 17 000 businesses in the Victorian food retailing industry, but the industry is highly concentrated, with over half of all food, liquor and grocery sales occurring through the two major retailers: Coles and Woolworths (AFRG 2006, p. 68). In Victoria, Woolworths operates 184 supermarkets (and 154 liquor stores), while Coles operates 185 supermarkets (sub. 7, p. 1; sub. 50, p. 1). But their share of total retail food sales is 'declining at the expense of restaurants and takeaways as more consumers are eating away from home' (AFFA 2005, p. 10).

Increased concentration in food retailing has been a contentious matter in recent years, with farmers and manufacturers having to deal with powerful retailers. While the issue of market power is outside the scope of this inquiry, it is relevant where it has potential to affect food safety outcomes.

Cafés, bars and restaurants

More than 10 000 of the 11 600 Victorian cafés, bars and restaurants are either run by the proprietor, or employing businesses with fewer than 20 employees. Some consolidation has also been evident in this industry. While data are not available for Victoria, Restaurant and Catering Australia reported business size data for Australia that showed the share of small restaurant and catering businesses falling in recent years (2003, p. 18).

⁸ This figure includes tobacco product wholesalers.

Implications for regulation

Food regulators have to deal with businesses of vastly different sizes and levels of sophistication, both within each part of the sector and across the sector as a whole. With such a large number of participants, a ‘one size fits all’ approach to regulation is unlikely to be an effective way to encourage compliance. If regulation involves large fixed costs, the unit cost of that regulation could be expected to be higher for small firms in the food sector relative to the large ones. Many regulations will apply to a large number of firms, and aggregate estimates of the costs of regulation need to take this into account.

In chapter 9, the Commission discusses proposals for a more risk focused approach to regulation, which would lighten the regulatory burden on many small firms.

4.6 Diverse supply chains

The characteristics of supply chains vary significantly within Victoria, sometimes even for the same food source. The supply chain for rump steak, for example, is simpler than that for salami (box 4.3). Other products may have more complex supply chains, involving more points at which food safety hazards can develop—for example, the National Risk Validation Project applies the highest risk ratings to ‘raw ready to eat seafood’ businesses, given the potential for multiplication of harmful organisms at any point of the supply chain (FSA & MEC 2002). DAFF noted:

Establishing efficient and well linked supply chains has become integral to lowering production costs for food and beverage manufacturers and securing contracts with leading food retailers. (AFFA 2005, p. 16)

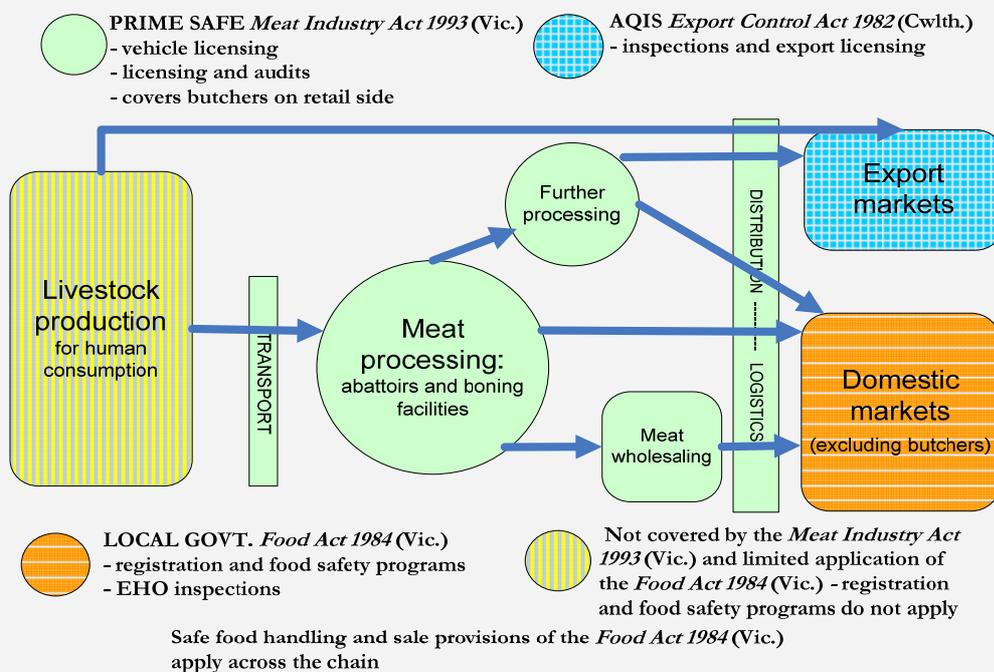
The examples of supply chains in boxes 4.3, 4.4 and 4.5 illustrate the general activities that result in a food product reaching the end consumer, and how regulators are involved at different stages in these supply chains. These examples cover three leading food manufacturing segments (meat, dairy and beverages) in terms of value added (figure 4.4). The next section describes business arrangements to manage risks through the supply chain.

Box 4.3 Case study: the supply chain for processed meat products

Meat processing can involve several stages, depending on the type of product. If, for example, the product is rump steak, the processing stage involves the abattoir and the boning facility. If the product is salami, then processing includes further stages that involve other meat and nonmeat inputs. Meat processors then supply a range of sectors, including other food manufacturers, chain retailers, cafés and restaurants, and export markets. Increasing vertical integration in the meat supply chain, however, has been reducing the separate role of meat wholesalers.

Regulation of the meat supply chain (Victoria)

The provisions of the *Food Act 1984* (Vic.) on safe food handling and sale apply across the food chain (chapter 3). Livestock producers are exempt from registration and food safety program requirements under the Act, and are not subject to routine inspections by local government. However, they are regulated under the *Livestock Disease Control Act 1994* (Vic.) and are required to tag individual animals prior to sale to ensure traceability to the farm. As soon as livestock leaves the farm gate, the *Meat Industry Act 1993* (Vic.) and the *Meat Industry Regulations 2005* (Vic.) (enforced by PrimeSafe) apply. Under these instruments, meat processors (which include butchers) and meat transport vehicles require licences and are subject to PrimeSafe inspections. Meat processors that export also require export licences from the Australian Quarantine and Inspection Service (AQIS), under the *Export Control Act 1982* (Cwlth.). Once meat reaches supermarkets and other outlets (excluding butchers), local government is responsible under the Food Act. These businesses need to be registered, have food safety programs and undergo local government inspections.



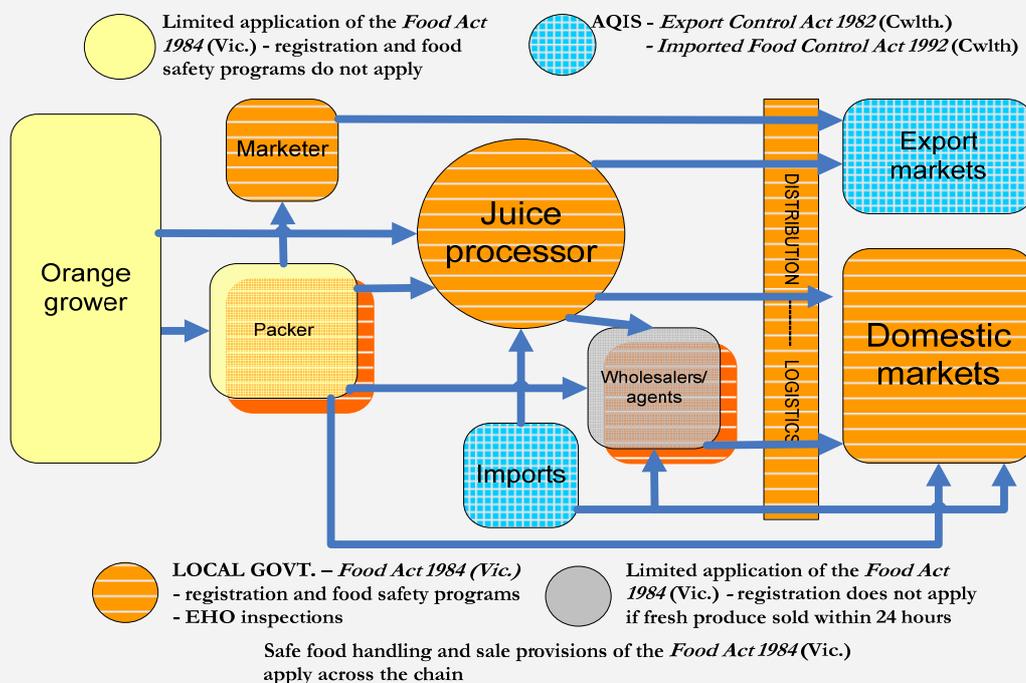
Sources: Short, Chester & Berry 2006; Spencer 2004.

Box 4.4 Case study: the supply chain for fresh and juiced oranges

The orange farmer grows and harvests oranges, and enters into agreements with packers, who sort, grade and store packed oranges. Packers store oranges for a short period and coordinate transport for further movement. Oranges that are to be transformed to fruit juice are supplied to juice processors, who provide wholesalers, chain retailers or export markets with packaged orange juice products. Oranges that are to be consumed fresh in domestic markets are passed on to wholesalers or to chain retailers directly. Fresh oranges for export markets (the main markets of the United States, South East Asia, Japan and New Zealand) go through export marketers. Domestic orange growers also compete with expanding orange and orange juice concentrate imports (particularly from South America).

Regulation of the orange supply chain (Victoria)

The provisions of the *Food Act 1984* (Vic.) on safe food handling and sale apply across the food chain. The orange farmer, the packer (if operating on farm premises) and vehicles transporting oranges are not required to register or have a food safety program under the Act. Juice processors, retailers, cafés and restaurants, and other players in the chain are subject to the business registration and food safety requirements under the Act, and thus are subject to routine inspections by local government. A limited exception exists for growers who store fresh produce at wholesale markets for less than 24 hours before sale: they are not required to be registered. Imports and exports of oranges are subject to the *Imported Food Control Act 1992* (Cwlth.) and the *Export Control Act 1982* (Cwlth.) respectively, which AQIS enforces.



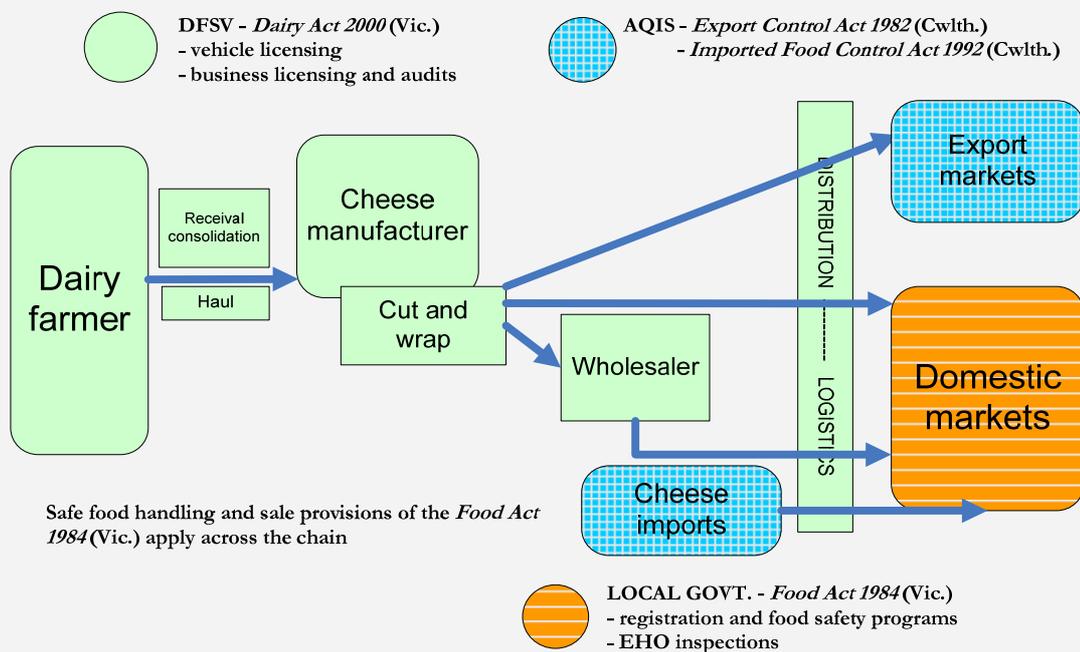
Sources: Parliament of NSW 2005; Retailworks 2001; Spencer 2004.

Box 4.5 Case study: the supply chain for cheddar cheese

Cheese manufacturers consume 38 per cent of all milk production in Australia. Most cheese manufacturing plants are located close to low cost production milk areas. Farming and manufacturing are frequently integrated, with four Victorian farmer cooperatives dominating dairy manufacturing in Victoria. Following the packaging of cheese products (cut and wrap), the distribution and logistics component of the supply chain can involve direct sale of products to chain retailers, delivery to domestic markets through wholesalers, or export. Of all Australian cheddar cheese sales, 75 per cent occur at chain retailers. Imports play a big role in the Australian cheese market, with 25 per cent of cheese being imported, mostly from New Zealand.

Regulation of the cheese supply chain (Victoria)

The provisions of the *Food Act 1984* (Vic.) on safe food handling and sale apply across the food chain. Dairy farms, milk transportation and consolidation, cheese manufacturing facilities, cheese distribution and wholesaling are all regulated by Dairy Food Safety Victoria (DFSV) under the *Dairy Act 2000* (Vic.). These businesses are required to be licensed with DFSV and are subject to audits. Imports and exports of cheese are subject to the *Imported Food Control Act 1992* (Cwlth.) and the *Export Control Act 1982* (Cwlth.) respectively, which AQIS enforces. DFSV and AQIS have arrangements in place to allow single audits that meet domestic and export requirements. Once cheese products reach retailers and other players in the domestic market, businesses are required to register with local government, have a food safety program and undergo routine inspections.



Sources: Business Victoria 2007; Spencer 2004.

Implications for regulation

The length and complexity of food supply chains, and the points at which food safety hazards can enter the chain, differ across industries. Regulatory systems need to account for these differences in complexity and risk. Regulation could be more effective if it targets the points of food supply chains where food safety hazards are most likely to be prevalent. Where more than one regulator is involved in supply chains, coordination is important. Chapter 3 described the arrangements that already exist for focusing regulation on areas where risk is greatest and for improving coordination among regulators. Chapters 8 and 9 discuss possible ways to increase the focus of regulation on areas where the risks are largest and to improve coordination.

4.7 Trends in business structures, governance and contracts

Chapter 2 noted the incentives for firms to provide safe food. This section outlines some arrangements that encourage this provision in Victoria, while recognising that particular arrangements usually evolve for different reasons, where food safety may not be the only factor. The first three arrangements (vertical integration, contracts and purchaser audits) handle relationships between different stages in the supply chain. Horizontal integration across firms at the same stage in the supply chain may be encouraged by a desire to spread the fixed costs (including the costs of managing food safety), while foreign ownership can facilitate the diffusion of technology. Industries may also develop accreditation programs or codes of practice to demonstrate that their processes are safe. Insurance markets may also provide incentives for food safety.

Vertical integration

Sexton and Lavoie noted the global trend towards vertical market arrangements governing the flow of product from farms to consumers:

Driven jointly by the market's demand for quality and by technical innovations in food processing and marketing, these changes are designed to improve coordination and flow of information among participants. (Sexton & Lavoie 2001, p. 874)

The following are examples of vertical integration in Victoria's food sector:

- Many businesses in the pigmeat industry are vertically integrated, in some cases extending from pig production to secondary processing of pigmeat into bacon, ham and smallgoods. In Victoria, KR Castlemaine Foods is involved throughout the supply chain, while Gumby is involved in pig farm operations, abattoirs and boning rooms (PC 2005b, p. 192).

- Victoria is the second largest producer of chicken meat, most of which is sold through retail outlets. The Australian industry is dominated by two large, vertically integrated companies (Inghams Enterprises and Bartter Enterprises), which own breeding farms, multiplication farms, hatcheries, feed mills, some growing farms and processing plants. Vertical integration permits control over the costs and timing of all operations in the supply chain (ACCC 2004b, pp. 3–5).

Contracts

Supply contracts between participants in the food supply chain are another way to provide predictable arrangements and encourage commitment and investment. Stable arrangements between food suppliers can contribute significantly to food safety. Contracts may include specifications to encourage food safety—for example:

- While much of the chicken meat industry is vertically integrated, growing services are typically outsourced, although the processors control the inputs and rearing specifications. Contracts between chicken growers and processors cover safety issues such as temperature monitoring and veterinary product use (sub. 40, p. 7).
- The supply of vegetables to processors of beans, peas and potatoes is made under contracts between growers and processors. These contracts specify yield performance, product specifications, timing, area, price and terms. There are strict penalties for not meeting product specifications to avoid wastage (Spencer 2004, p. 69).
- Between 50 per cent and 70 per cent of fresh fruit and vegetables sold by major retailers is sourced through direct contracts with growers, which can ‘influence the adoption of better farm level production processes that produce a more sustainable, higher quality output (AFRG 2006, p. 71).

Purchaser audits

Locally, Woolworths requires its suppliers to implement a quality management system that meets the Woolworths Quality Assurance Standard, and to be regularly audited by a Woolworths certified auditor (Woolworths 2005). Coles also imposes requirements on its suppliers. Proprietary brand suppliers⁹ must adhere to general standards, such as compliance with all relevant government regulation, appropriate temperature requirements in food transportation and operational product recall procedures. Coles’ housebrand suppliers¹⁰ must comply with more specific, internationally recognised standards (such as the

⁹ Proprietary brand suppliers are ‘those who manufacture or supply products, which are labelled with a brand, owned by businesses other than Coles Myer’ (Coles Myer 2007).

¹⁰ Housebrand food suppliers are suppliers that provide products that are manufactured and packed with a brand owned by Coles, including bulk products that are sold loose, such as fresh produce (Coles Myer 2007).

British Retail Consortium Global Standard for Food) backed by independent third party audits. Coles requires, for example, that all suppliers of fresh produce (such as fruit, vegetables and nuts) have a Hazard Analysis and Critical Control Points (HACCP) food safety program that is audited and certified by an accredited third party (Coles Myer 2007).

DAFF noted:

... leading retailers are also developing proprietary safety certification standards that exceed government requirements for food safety. An example is the EUREPGAP standard, which is becoming a requirement for entry to some important, high value markets in Europe. (AFFA 2005, p. 12)

Foreign ownership

As noted, almost half of the top 50 food processing firms are foreign owned, so they have direct access to food safety management techniques developed in their operations overseas, as well as in Australia. Kraft Foods, for example, recently advertised for a quality assurance manager in its processed cheese manufacturing facility in Strathmerton in northern Victoria, who will be:

... involved in the ongoing implementation and development of a leading quality assurance model which is being rolled out through Kraft facilities globally ... Your prime objective will be to ensure high quality and food safety compliance of finished goods. (Kraft advertisement, *The Age*, 19 January 2007, p. 5)

Commenting on rationalisation in food manufacturing, DAFF noted the role of foreign investment in transferring technologies to Australia:

A large part of this rationalisation and restructuring is achieved through direct foreign investment in own facilities or joint ventures. Direct investment facilitates the flow of management expertise and technology transfers that generate positive spillovers for the rest of the industry. Improved industry wide skill levels, productivity and performance are often the result of exposure to international best practice and experience. It is for these reasons that national governments around the world are competing for a share of this investment. (AFFA 2002, p. 13)

Horizontal integration

Chapter 2 noted that larger businesses may achieve lower unit costs by spreading the fixed costs of food safety across larger sales volumes. Chapter 6 indicates that the cost of food regulation—as a proportion of turnover—is substantially higher for small firms than for larger firms. Firms may integrate horizontally for many reasons (for example, as a counter to the bargaining power of firms in other parts of the supply chain), but having to meet food safety obligations may contribute in some cases. The Meat Research Corporation (cited in PC 1998, p. 2)

suggested, for example, that the imposition of stricter hygiene and slaughter standards contributed to the rationalisation of meat processing plants.

Industry codes of practice

Codes of practice are another arrangement that may encourage food safety. In rejecting a request for it to authorise a franchise and marketing farm agreement proposed by Farm Pride Foods Pty Ltd—a buyer, manufacturer and seller of eggs, egg pulp and other egg byproducts—the ACCC argued that such an agreement was not warranted because quality control was available through other mechanisms, including a code of practice:

The maintenance of high quality standards in production, supply and marketing of eggs is now prescribed by the Victorian Egg Industry's Shell Egg Code of Production. In addition, both FPF (Farm Pride Foods Limited) and other participants in the industry have Hazard Analysis Critical Control Point (HACCP) based food safety programs. These programs are proactive approaches to food safety, which essentially aim to ensure food is safe before distribution. The Commission does not accept that standards required by the FPF agreement are any higher than those required by other industry participants. Furthermore, the Commission is of the view that quality control is one of the avenues of gaining a competitive advantage in the industry, and as such, there is a strong incentive to producers to maintain and improve the quality of their product. Therefore, the Commission believe that the agreement is not necessary to obtain or maintain high quality control. (ACCC 2000, p. 10)

The Australasian Bottled Water Institute (ABWI) has a voluntary 'model code' that sets minimum standards for its members in the bottled water business, in areas such as sanitary operations, hygienic design and source water monitoring. Requirements set out in the model code 'exceed those of mandatory food law as set out in the Australian and New Zealand Food Standards Code' (ABWI 2005, p. 4). Compliance with the model code is a condition of ABWI membership, and it is enforced through a plant inspection program. Members must achieve a certain score from inspections: those who pass can use the 'Certified Bottler' logo, and those who achieve high scores are also advertised by ABWI as achieving 'standards of excellence'.

External accreditation

Food businesses can strengthen their reputation for safe food products by voluntarily seeking external accreditation. Dairy company Murray Goulburn's processing plants are accredited to ISO 9001:2000 and NSF HACCP 9000 standards, for example. The company states that 'quality and safety are the foundation of Murray Goulburn's reputation' (Murray Goulburn 2007). Another dairy company, Parmalat, has ISO 9001 Quality Management Systems at its plants, and operates internal audits for all its manufacturing and laboratory operations (Parmalat Australia 2007).

Radford & Son Pty Ltd (meat processors) told the Commission that it had chosen to adopt ISO 9001, even though this was not required by their existing customers, to enable the business to penetrate the export market. In addition, having ISO 9001 accreditation has enabled the company to secure new customers in both Sydney and Melbourne (Radford & Son Pty Ltd 2007).

Insurance

As noted in chapter 2, insurance can protect firms against some food safety risks, and also provides, through premium differentiation, incentives to produce safer food. A wide range of businesses can obtain insurance cover in case of a food safety incident. (Chapter 2 discusses liability cover for food manufacturers.) The ‘business pack’ of Allianz Australia Insurance, for example, offers a range of insurance products, including cover for business interruption insurance (covers income loss) and product liability (covers compensation payouts). Income loss caused by ‘poisoning directly caused by the consumption of food or drink provided on the premises’ (Allianz nd, p. 26) is covered as part of business interruption insurance. This policy would cover hospitality businesses such as restaurants and accommodation businesses against the provision of unsafe food.

Implications for regulation

Many different types of business arrangements in the food sector, while having evolved for many reasons, either directly or indirectly contribute to managing food safety. There may be less need for regulation to promote food safety when, for example, firms are already complying with internationally recognised standards as part of their commercial arrangements. In such cases, regulation may add costs while providing few if any benefits. In addition to imposing unnecessary costs on the businesses concerned, regulating such businesses may reduce regulators’ capability to focus on areas where regulation is needed. Ways to focus regulatory effort are discussed in chapter 9.

4.8 The location of food businesses throughout Victoria

Table 4.3 shows where people in the agriculture, food manufacturing and accommodation, café and restaurant industries work in Victoria. It shows the proportions of the total labour force in each region of Victoria that work in the specified industries—for example, 0.7 per cent of the total workforce in Melbourne works in agriculture and 5.3 per cent works in food retailing. The table indicates:

- agriculture is a significant employer across Victoria
- the food, beverages and tobacco manufacturing industry is also a significant employer across the state, but particularly in the Goulburn and Ovens–Murray regions
- more than 5 per cent of the workforce works in food retailing in every region in Victoria
- more than 4 per cent of the workforce works in accommodation, cafés and restaurants in every region in Victoria.

Table 4.3 Food sector labour force; distribution by selected industries across Victoria, 2001

<i>Statistical division</i>	<i>% of total labour force</i>			
	<i>Agriculture</i>	<i>Food, beverage and tobacco manufacturing</i>	<i>Food retailing</i>	<i>Accommodation, cafés and restaurants</i>
Melbourne	0.7	1.8	5.3	4.2
Barwon	3.7	2.0	6.8	5.8
Western District	19.9	4.5	6.3	5.0
Central Highlands	6.1	4.3	6.9	5.5
Wimmera	22.4	2.6	5.8	4.5
Mallee	22.2	4.1	5.9	4.1
Loddon	6.9	4.5	6.9	4.6
Goulburn	15.4	7.4	6.4	5.1
Ovens–Murray	8.5	7.1	6.4	6.8
East Gippsland	12.8	2.1	6.5	6.4
Gippsland	10.3	2.1	6.5	4.9
Victoria	3.2%	2.3%	5.4%	4.3%

Source: ACIL Tasman 2004.

Implications for regulation

Regulated food businesses are likely to be located in every region of Victoria. Given that many of these businesses will be small, and that there are over 40 000 businesses across Victoria in the food sector to which the licensing framework applies, regulators face a considerable enforcement challenge. Strategies for focusing regulatory effort on high risk industry segments are likely to be particularly important in such a complex environment involving such a large

number of firms spread across Victoria. Chapter 9 describes the development of such strategies.

4.9 Conclusion

The food sector is a complex, continually evolving network of businesses of widely divergent types and sizes, interconnected through a multitude of business relationships and arrangements. Innovation is often a prerequisite for commercial success in both domestic and export food markets. Food safety risks are not uniform across businesses, but a significant array of commercial practices and arrangements promote food safety. In such a large and complex sector, it is important that regulators focus on higher risk food safety issues. If they do so, they are less likely to impede innovation and competition in areas where little or no regulation is justified. Chapters 8 to 11 provide suggestions for more sharply focusing regulatory effort.

5 Are the objectives of Victorian food regulation being met?

5.1 Introduction

The terms of reference require the Victorian Competition and Efficiency Commission to assess whether the objectives of current food regulation are being met. Difficulties in knowing what would have happened in the absence of regulation, and in isolating the impact of regulation from other determinants of food safety, make this a hard task. Adding to the challenge are ambiguity about the meaning of the objectives in Victoria's food legislation, and the absence of clear priorities for differing objectives.

Chapter 3 noted that the *Food Act 1984* (Vic.) specifies objectives relating to providing food that is safe and suitable for human consumption, and to preventing misleading conduct. It noted ambiguity about whether the first objective extends beyond reducing foodborne illness to promoting good health. Indicators of whether food regulation promotes public health could include longevity and trends in conditions linked to food consumption (for example, trends in obesity, diabetes and heart disease). If the legislation's objective is to reduce foodborne illness, different indicators are required. This chapter presents information on only whether food regulation reduces foodborne illness and increases consumer confidence in food safety. It demonstrates the difficulties involved in such an assessment—difficulties that would be magnified if the wider definition of the objective was being assessed. The chapter also describes the information available on the effectiveness of regulation in reducing misleading conduct.

The Commission assessed whether these two objectives of regulation are being met in five ways. First, it drew on the views in submissions to the inquiry. Second, it reviewed aggregate data. Third, it reviewed the impacts of specific regulations. Fourth, it reviewed information provided by Victorian regulators on their contributions to the objectives. Fifth, it reviewed information on the value of improvements in outcomes that can be attributed to regulation. Section 5.2 discusses these five approaches in relation to the objective of reducing foodborne illness, and section 5.3 discusses them in relation to reducing misleading conduct. Section 5.4 notes some implications.

5.2 Reducing foodborne illness

5.2.1 Inquiry participants' views

Inquiry participants—most of whom have considerable experience with government intervention in the food sector—had a range of views on how well food regulation is working. These views are divided as to whether the regulations are effective in reducing foodborne illness. Nearly all of the comments related to inquiry participants' perceptions; few submissions provided specific evidence.

On the positive side, Dairy Australia supported the 'outcome based framework' of regulation of the dairy industry (sub. 23, p. 1) and the Australian Dairy Products Federation was similarly supportive (sub. 26, p. 1). The Australian Beverages Council considered that Australia has made considerable progress since the Blair review (sub. 47, p. 5).

Mr Roger Pierotti, while noting a number of ways in which the regulatory arrangements could be improved, commented:

It can be argued the introduction of legislative and regulatory changes in 2001 requiring mandatory Food Safety Programs and Food Safety Supervisors has led to a reduction of significant food poisoning outbreaks in Victoria. It can also be argued that these mandatory requirements have led to more food handlers being trained, providing not only benefits to consumers but improving skills and competencies of the foodhandling workforce. (sub. 30, p. 1)

The President of the Parents Association of St Bede's Primary School (North Balwyn) argued:

... food regulations in their current form have had a significant impact in reducing the outbreak of food poisoning and any legal liability arising therefrom and have made people more health and safety conscious when preparing food. (sub. 15, p. 2)

Several councils made positive comments:

- Moonee Valley City Council noted 'the current food legislation in Victoria generally provides for an effective way of regulating an industry' (sub. 18, p. 1).
- Maroondah City Council noted 'overall, there has been improvement in premises standards' (sub. 33, p. 1).
- The City of Whittlesea noted the introduction of food safety programs has had a 'positive effect' on the food sector (sub. 31, p. 1).
- Brimbank City Council was not aware of 'any negative impacts on consumer confidence as a result of current food regulation' (sub. 5, p. 2).

- The Municipal Association of Victoria commented that '[the Department of Human Services] indicates there has been a fall in the number of serious outbreaks of food related illness in the last few years, which we would like to think is a result of greater community and business awareness about safe food handling' (sub. 41, p. 9).

Other inquiry participants were less positive, particularly about the role of food safety programs, which were introduced in 1998 and subsequently refined in 2001. The Australian Institute of Environmental Health commented that 'food safety programs have generally not evolved improvements in Victoria's food safety, considering the input efforts of both Victorian food retailers and local government regulators' (sub. 10, p. 1). Restaurants and Catering Victoria's view was that 'there is no evidence to suggest that the introduction of mandatory FSP [food safety programs] has led to an increase in food safety in Victoria' (sub. 36, p. 7).

The City of Melbourne suggested:

The introduction of FSPs has yet to demonstrate a significant improvement in the food safety standards within the City of Melbourne. We have maintained detailed records of food safety performance. Our data indicate that for the last three years there has been a constant 40–41% of premises found to be less than satisfactory. A similar situation is shared by many, if not all, of the municipalities across the state. Although the majority of food businesses comply with the initial requirement of having an FSP, only a relatively small proportion of these are effectively implementing their programs. (sub. 16, p. 1)

Several other councils raised concerns:

- Moreland City Council considered that food safety programs have been partly successful in Victoria, working well in larger business, but 'on the whole Council does not believe FSPs have been effective in reducing food safety risks in smaller food manufacturers and suppliers' (sub. 51, p. 2).
- The City of Greater Dandenong commented that 'whilst food businesses might have a FSP, they appear meaningless in the daily management of food and food safety within 50% or more of food operations' (sub. 12, p. 3).
- The City of Port Philip argued that 'the system is failing and the objectives are not being met for a number of reasons' (sub. 13, p. 1).
- The City of Stonnington found the 'rationale behind food safety programs is sound ... However, finding a workable method to introduce FSPs to small business has proved problematic' (sub. 25, p. 3).

5.2.2 Trends in foodborne illness

Given the lack of consensus among those who made submissions to the inquiry, the Commission reviewed three sets of data about foodborne illness, to assess

whether improvement has occurred since the current regulatory framework was introduced in 2001 on:

- notifications of foodborne illness
- outbreaks of foodborne illness
- food safety recalls.

Trends in foodborne illness are a significant indicator of regulatory effectiveness. The Food Standards Agency in the United Kingdom established as its ‘key aim to reduce the incidence of foodborne disease in the UK by 20% by April 2006’ (Bell 2006, p. 4). Before the agency adopted this target, it determined a baseline measure of foodborne disease in the United Kingdom for five pathogens. It has recorded comparable data for each subsequent year to monitor changes against the baseline (Bell 2006, pp. 10–11).

Notifications of foodborne illness

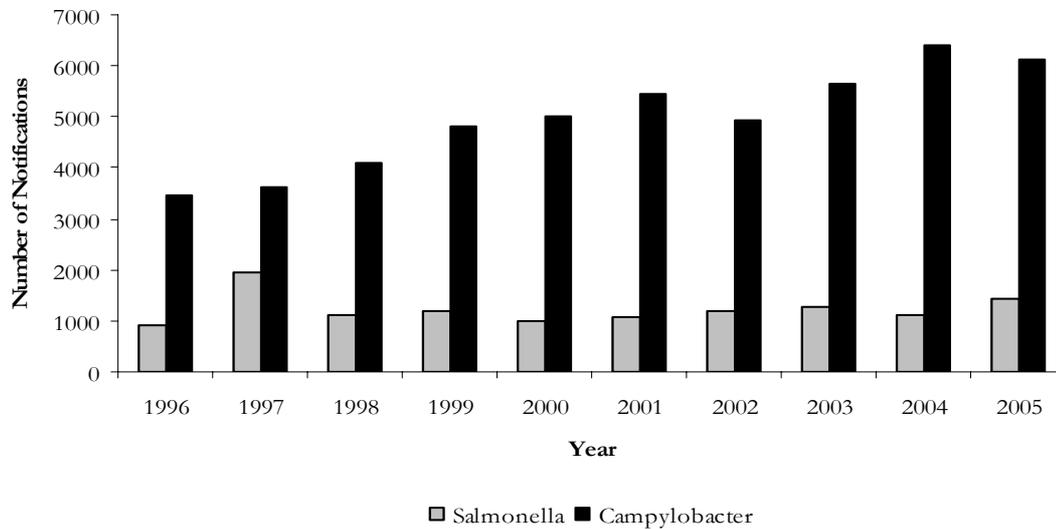
Medical practitioners have a legal obligation to notify Victoria’s Department of Human Services of cases of specified diseases, including various pathogens. Figure 5.1 illustrates notifications of *Campylobacter* and *Salmonella* infections—the most commonly notified foodborne pathogens in Victoria—between 1996 and 2005.¹ OzFoodNet,² a national network of epidemiologists established in 2000 and funded by the Commonwealth Government Department of Health and Ageing, estimated that about 87 per cent of *Salmonella* and 75 per cent of *Campylobacter* infections respectively are acquired through foodborne transmission (DHS 2007b, p. 1). Figure 5.1 suggests a steady increase in notifications of *Campylobacter* in Victoria since 1996, while notifications of *Salmonella* are reasonably stable.

Notifications data do, however, have limitations. In the United Kingdom, the regulator does not consider that notifications are a reliable indicator, because they are based on the opinion of the notifying physician and require neither microbiological demonstration of a foodborne pathogen nor epidemiological evidence to support the attribution (Food Standards Agency (UK) 2001, para 91).

¹ Other notifiable diseases are potentially foodborne but are rare, not commonly acquired in Australia or not commonly acquired through foodborne transmission in Australia (DHS 2007b, p. 2).

² The OzFoodNet network consists of epidemiologists employed by each state and territory health department to conduct investigations and applied research into foodborne disease (OzFoodNet 2006).

Figure 5.1 **Notifications of *Salmonella* and *Campylobacter*, Victoria**



Source: DHS 2007b, p. 2.

Outbreaks of foodborne illness

Outbreaks, defined as a situation in which two or more people experience a similar illness after a common food or meal, are another measure of the prevalence of foodborne illness. Nationally the number of reported outbreaks per million people has varied from year to year, with no clear trend (table 5.1). The number of reported outbreaks and people affected in Victoria has also been quite volatile: relatively low in 2003 and 2004, but up in 2005. These data do not indicate a decline in outbreaks in the years since the introduction of food safety programs.

The Department of Human Services has provided a longer time series of information, covering 186 outbreaks³ in Victoria that affected 5608 people between 1997 and 2006 (DHS 2007b, p. 5). This time series does not reveal a clear trend (figure 5.2).⁴

³ An additional three multi-state outbreaks occurred in 1996, 1997 and 1998 (DHS 2007b, p. 3).

⁴ The number of outbreaks per million in figure 5.2 is calculated using the number provided by the Department of Human Services, divided by the Victorian population from 1996 to 2005. While that rate has been quite stable, the actual number of outbreaks has been volatile since 1999. Also, the numbers of outbreaks/cases per million in 2001 to 2005 in figure 5.2 slightly differ from the numbers in table 5.1, because the OzFoodNet numbers capture some waterborne illness outbreaks/cases whereas the department excluded these outbreaks/cases.

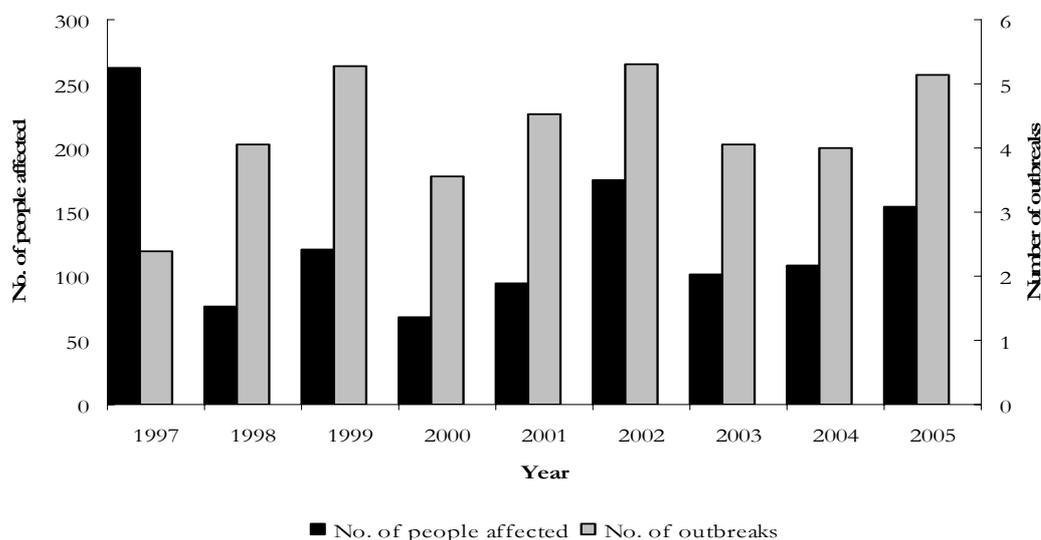
Table 5.1 Food related illness, Australia and Victoria (rate per million population)^a

		2001	2001	2003	2004	2005
Outbreaks	Australia	4.39	4.65	4.95	5.83	4.99
	Victoria	4.74	5.30	4.04	4.20	5.34
People affected	Australia	99.11	91.93	84.26	102.62	96.42
	Victoria	163.78	175.20	100.85	109.95	159.92
Hospitalisations	Australia	3.57	5.21	5.25	5.73	9.14
	Victoria	3.91	5.91	5.46	7.40	7.92

^a The number of outbreaks in Australia is based on the number reported in OzFoodNet's annual reports between 2001 and 2005, divided by Australia's population from 2001 to 2005 as reported by ABS (2001b, 2002b, 2003, 2004, 2005b). The number of Victorian outbreaks is based on the number reported in OzFoodNet's annual reports between 2001 and 2005, divided by Victoria's population from 2001 to 2005 as reported by ABS (2001b, 2002b, 2003, 2004, 2005b). Outbreaks reported by OzFoodNet are from site epidemiologists in the seven states and territories, and may underreport the true number (OzFoodNet 2006, pp. 293-4).

Source: OzFoodNet (2002, 2003, 2004, 2005, 2006).

Figure 5.2 Number of outbreaks and people affected by food related illness, Victoria (rate per million population)^a



^a The number of outbreaks and number of people affected per million is calculated by dividing the data provided by the Department of Human Services by Victoria's population accessed from ABS.

Source: DHS (2007b), ABS (1997, 1998, 1999b, 2000b, 2001b, 2002b, 2003, 2004, 2005b).

Implications for the effectiveness of regulation

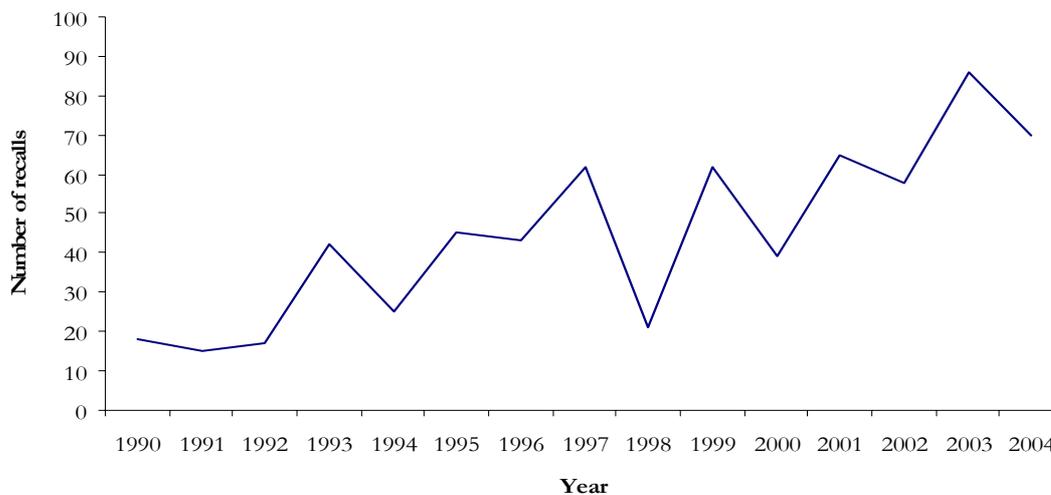
It is difficult to draw strong conclusions from notification or outbreak data about the effectiveness of regulation in reducing foodborne illness. The data on the number of notifications and outbreaks is difficult to interpret. Given factors such as the rising proportion of the population aged over 65 (up from 12.8 per cent to 13.5 per cent between 2000 and 2005), the number of reported notifications and outbreaks might have been expected to increase. Cultural shifts in food preferences and warmer weather are also contextual changes that might influence foodborne illness. In addition, the Department of Human Services noted that an increasing proportion of foodborne illnesses are being reported, suggesting the data in figure 5.2 may underestimate the effectiveness of regulation (sub. 48, p. 7). On the other hand, spending on restaurant meals and takeaway foods fell by 9 per cent in real terms between 1998-99 and 2003-04 (ABS 1999a, 2006h), which might be expected to reduce the number of food outbreaks, given that food prepared in restaurants is the largest source of food outbreaks (table 5.3). Also, the proportion of the population under 4 years old—another vulnerable group—fell from 6.5 per cent to 6.1 per cent between 2000 and 2005 (ABS 2000a, 2005c).

Even a nine year period time series—given only annual observations are available for key variables—is too short to rule out natural variability in the data and to permit econometric analysis of the determinants of foodborne illness. It is difficult to assess, therefore, whether the pattern of food related outbreaks has shifted following the introduction of the current regulatory framework. Nevertheless, once a longer time series is available, outbreak and notification data could indicate whether the frequency or source of outbreaks has changed.

National recalls

The total number of food recalls (imported and domestically produced food recalls) is another set of data for which a time series is available, beginning in 1990 (figure 5.3), although no Victorian data are available for this series. The upward trend in the number of national recalls could, however, be interpreted in a number of ways. The increase in recalls may indicate worsening food safety performance. It could also show increased reporting or preventative behaviour among food companies, or that more stringent food safety standards or labelling requirements have increased the likelihood of recalls. Analysis of two of the six major causes of recalls (figures 5.4 and 5.5) somewhat indicates the relative merits of these different explanations, but does not resolve the issue.

Figure 5.3 Number of food recalls, Australia^a



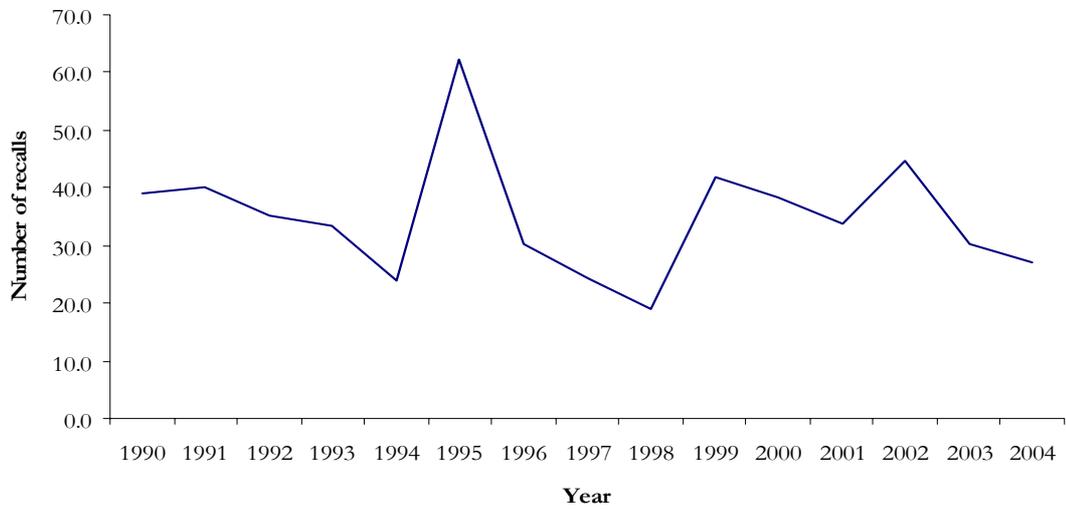
^a A food recall is defined as 'an action taken to remove from sale, distribution and consumption foods which may pose an unacceptable safety risk to consumers' (FSANZ 2004f). It may be initiated from a variety of sources: manufacturers, wholesalers, retailers, medical practitioners, government agencies and consumers. Most recalls are precautionary and initiated by the food companies as part of a national food safety strategy to ensure potentially hazardous or unsafe foods do not end up in the food supply.

Source: FSANZ 2004f.

Figure 5.4 shows that the proportion of recalls due to microbiological hazards was reasonably stable, so does not explain the increasing number of recalls between 1990 and 2004. For this reason, the increase in recalls is probably not due to worsening food safety performance. Three other causes of recalls (foreign matter, processing faults/product deterioration and 'other') appear to be declining over the long term, while recalls due to chemical contamination show a slight increase. On the other hand, since December 2002, when mandatory food allergen warnings on labels were introduced, the proportion of recalls caused by labelling problems has risen sharply (figure 5.5). The increase in total recall numbers in recent years can thus be largely attributed to failure to meet new labelling requirements. Overall, however, it is difficult to draw conclusions from recall data about the effectiveness of food safety regulation.⁵

⁵ Three causes of recalls (foreign matter, processing faults/product deterioration and 'other') appear to be declining over the long term, while recalls due to chemical contamination show a slight increase. The increase in total recall numbers in recent years can thus be largely attributed to failure to meet new labelling requirements.

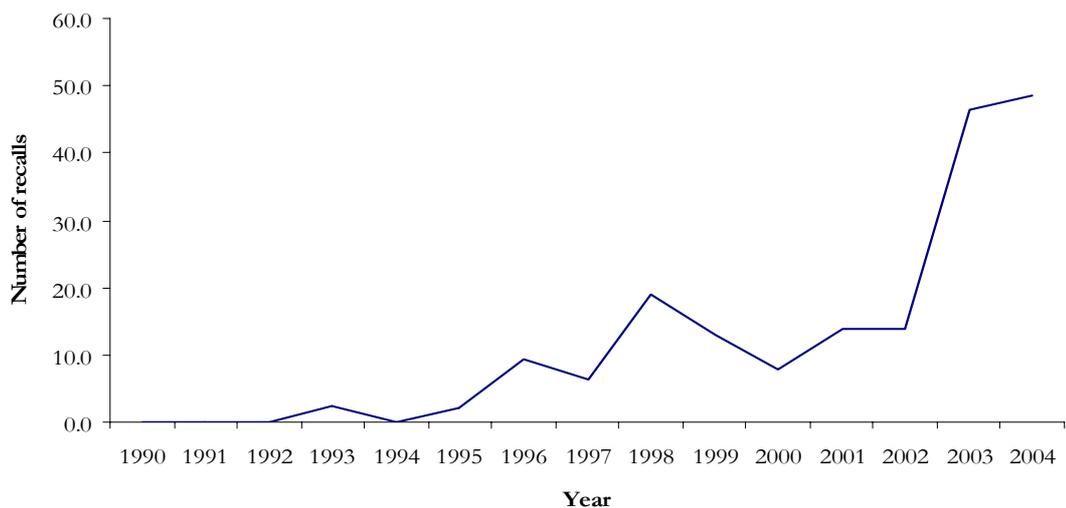
Figure 5.4 Percentage of food recalls due to microbiological contamination, Australia^a



^a Microbiological contaminations include *Listeria monocytogene*, *Salmonella*, *Escherichia coli*, yeasts, coliforms, standard plate count (SPC), viral contaminations and contaminations by other organisms not specified by the company.

Source: FSANZ 2004f.

Figure 5.5 Percentage of food recalls due to labelling errors, Australia



Source: FSANZ 2004f.

5.2.3 The contribution of specific regulations to reducing foodborne illness

Assessment of aggregate indicators of desired food safety outcomes (such as those described in the previous section) can be supplemented by evaluating the impacts of particular regulations on intermediate and more specific indicators, as a proxy for reductions in foodborne illness. This approach assumes that the intermediate indicators contribute to improved outcomes and that specific interventions support each other rather than conflict,⁶ so if each specific regulation meets its intermediate objective, then food regulation as a whole should reduce foodborne illness.

Nationally, FSANZ has designed evaluation projects to assess the impact of various food standards.⁷ In Victoria, the Department of Human Services assesses the impact of regulation through regular surveys (box 5.1). In 2002, it collected baseline data on 300 businesses from across Victoria. A follow-up study in 2004 assessed changes in food safety practices, and the department expects to complete the results of a 2006 study in April 2007 (sub. 48, p. 8). Like the FSANZ work, these studies have examined the impacts of food regulations on intermediate indicators rather than on actual food safety. They indicate that consumers are moderately confident about the safety of food from restaurants, that food businesses are better equipped to prepare safe food and that food safety knowledge has improved significantly among staff handling food.

While the impact on foodborne illness of these intermediate indicators remains unclear, direct measures of the effectiveness of regulation in reducing foodborne illness are inherently difficult to develop, given the many factors that can influence outcomes. Intermediate indicators, although imperfect, are informative about whether food regulation has encouraged intended changes in behaviour that could reduce foodborne illness.

⁶ Deighton-Smith (2006, pp. 12–15) gave examples from food and other regulation of a ‘failure of regulators to produce logical, mutually supportive combinations of process, performance and/or prescriptive regulation’.

⁷ Food Standards Australia New Zealand is studying the impact of food standards on food businesses’ awareness of safe food handling practices, a revised food additive standard on the population’s intake of intense sweeteners, warning standards on the behaviour of ‘at risk’ consumers, labelling standards and pre-market approval standards on consumer and stakeholder knowledge and behaviour, a survey to assess compliance of food labels with new labelling requirements and composition standards (ANZFA 2002c). It has collected benchmark data for the six activities over 2001–03 and is collecting comparative data beginning in 2004 and continuing to 2008. It will compare results from the baseline research with those from the follow-up research. In each case, it has developed performance measures to assess whether interim objectives are achieved, rather than measuring the impacts on food safety itself, which will be affected by factors other than the regulation. Over time, these measures will provide useful information about the effects of these regulations.

Box 5.1 Surveys by the Department of Human Services

A 2005 survey indicated that consumer confidence in the safety of food had not changed between 2002 and 2005. Victorians continue to be almost unanimously confident in the complete safety of food prepared in their homes, moderately confident in the safety of food from restaurants, and without confidence in the safety of food prepared at takeaways and community events. In 2005, 94 per cent of Victorians indicated they were extremely confident, very confident or confident that the food they buy and eat in Victoria is safe. Demographic differences in the level of confidence have also remained unchanged. Older, blue collar and female demographic groups continue to be less confident in the safety of food from most sources, compared with younger, white collar males.

Results from the Food Safety Practices in Victorian Businesses research series indicated, overall, that many food safety practices by the businesses surveyed remained unchanged between 2002 and 2004. Since the introduction of food safety programs, staff's knowledge in using equipment (for example, knowledge of probe thermometer use increased from 50 per cent to 94 per cent), the adequacy of their equipment for food preparation purposes (rising from 75 per cent to 95 per cent) and their cleaning practices have significantly improved. The 2004 survey demonstrated substantial improvements in aspects of food safety practices and understanding, but the change overall is relatively slow. Given that the 2004 survey was undertaken less than two years after the food safety program requirements came into effect, this result was unsurprising. Initial findings from the 2006 survey confirm the 2004 finding of improved food safety knowledge since 2002, but the rate of improvement may be diminishing.

Surveys suggest food handlers' awareness of food safety practices increased significantly between 2002 and 2004, although this could have resulted from an increase in the number of food safety supervisors qualified with diploma/TAFE certificates in full time employment. Knowledge of food safety among junior and casual staff declined between 2002 and 2004, but had improved by the 2006 survey. The proportion of food safety questions answered correctly by junior handlers improved from 18 per cent in 2002 to 50 per cent in 2006, while the performance of food safety supervisors improved from 32 per cent in 2002 to 55 per cent in 2006.

Sources: DHS 2002a, 2002b, 2004a, 2004b, 2005a, sub. 48, pp. 8-9.

5.2.4 Performance reporting by regulators

The regulators responsible for enforcing food safety regulation are a potential source of information on the impacts of their efforts on legislated objectives. Notwithstanding recommendations by Victoria's Auditor-General (AGV 2002) and the Commission (2005a) that regulators should improve performance reporting, progress appears to be slow.⁸

Food Safety Unit

The Department of Human Services indicated that it monitors and reports the Food Safety Unit's performance against internal reviews and plans (DHS 2007b, p. 14). The unit's 2004–07 strategic plan indicates that it will be developing a performance monitoring framework and benchmarks to enable it to monitor the effectiveness of the Food Act (FSU 2004b, pp. 11–13). The unit has not yet published this framework or indicators, although it provided the notification and outbreak data reported earlier in this chapter, and it told the Commission it:

... has been developing a suite of further performance measures and key performance indicators. This work will be influenced by the recently established DHS/[Municipal Association of Victoria] Food Safety Coordination Project which will be identifying performance measures that Local Government should report on (and since data will need to be collected by DHS from local government—what DHS will report on).

An additional project is underway to identify the food safety framework and subsequent Strategic Plan (to replace the existing plan which is 2004–07) under which performance indicators will be developed. This project is expected to be completed by June 2007. (DHS 2006a, p. 2)

Given the Food Safety Unit's comments on its progress, the Commission has not sought further performance information from the unit; rather, the final inquiry report will include the information made available from the unit's project to be completed in June 2007.

⁸ In its 2005 review of responses to recommendations in its 2002 report, the Auditor-General reported that:

- most councils they visited have developed a basic set of performance indicators, but in isolation and with no effort (at that time) for the Department of Human Services and councils to work together
- reporting against performance indicators by some environmental health units is misleading
- the Department of Human Services has not established protocols for monitoring local government's fulfilment of its legislative obligations
- the Department of Human Services should review the regulatory framework in Victoria, to improve public accountability for the effectiveness of food safety regulation (AGV 2005b, pp. 27–9).

Local government

There is no consolidated report on local government's effectiveness in encouraging food safety, so the Commission undertook an online search of 25 (out of 79) local councils' 2005-06 annual reports (approximately 32 per cent of all local councils). This research revealed local government reports little information on food safety issues to the public (table 5.2).⁹ Eight councils did not provide any information on food safety issues. When information is provided, local councils generally report inspections of food premises, investigations into food complaints and the collection of food samples. Twelve councils provided some quantitative data, but only Bass Coast Shire Council provided data for a sequence of years. Of those reporting food safety figures, all used different reporting formats and none reported its contribution to the two objectives of the Food Act.

PrimeSafe and Dairy Food Safety Victoria

In regard to PrimeSafe and Dairy Food Safety Victoria (DFSV):

- PrimeSafe's corporate plan and annual report do not specify performance indicators on the extent to which its activities have reduced foodborne illness. The organisation comments on some activities, but not in a way that readily permits assessment of its success.¹⁰ Detail on activities (for example, the number of audits and inspections, and the number of complaints handled) is not provided. PrimeSafe has committed, however, to develop and apply a 'comprehensive set of performance benchmarks which measure the effectiveness, efficiency and impact of the PrimeSafe system to ensure its integrity and capacity for control' (PrimeSafe 2005b, p. 3).
- DFSV also does not specify performance indicators on foodborne illness. Its corporate plan (2004–07) specifies measures for some intermediate indicators, such as 'improved awareness and understanding of the Dairy Food Safety Scheme' (DFSV 2004c, p. 1), but DFSV does not report against such indicators in its annual report.

⁹ This result is similar to that obtained by the Auditor-General (AGV 2005b, p. 29).

¹⁰ For example: 'since introducing this surveillance program PrimeSafe has not had any business previously closed by PrimeSafe re-offending. This, coupled with the very low incidence of improper use of preservatives, clearly indicates the sanctions are working.' During the year PrimeSafe visited all seafood processing and retail businesses to advise on arrangements for introducing third party audits (PrimeSafe 2005a, p. 22).

Table 5.2 **Reporting by local government in annual reports, Victoria**

Category	Council	Food safety related information		
		Not provided	Qualitative information	Quantitative information
Uncategorised, small ^a	Queenscliffe	✓		
	Docklands ^b	✓		
Very small rural ^c	Pyrenees Shire	✓		
	Towong Shire	✓		
	West Wimmera ^d	na	na	na
Small rural	Buloke			✓
	Hepburn			✓
	Northern Grampians			✓
Medium rural	Bass Coast			✓
	Mitchell		✓	
	Moorabool			✓
Large rural / small metropolitan	Baw Baw	✓		
	Warrnambool			✓
	Wellington	✓		
Regional / medium metropolitan	Ballarat			✓
	Melton			✓
	Wyndham		✓	
Large metropolitan	Frankston		✓	
	Moonee Valley			✓
	Whittlesea		✓	
Very large metropolitan	Darebin			✓
	Moreland	✓		
	Whitehorse			✓
Uncategorised, large ^e	Geelong			✓
	Melbourne ^f	✓		

^a Only two councils are listed under this category. ^b Docklands Authority's latest annual report made available online was 2002-03. ^c Only three councils are listed under this category. ^d Annual report unavailable online; a hard copy can be obtained. ^e Only two councils are listed under this category. ^f Melbourne City Council's latest annual report made available online was 2004-05. **na** Not available.

Sources: Borough of Queenscliffe 2006; Docklands Authority 2003; Pyrenees Shire 2006; Towong Shire 2006; West Wimmera Shire 2006; Buloke Shire 2006; Hepburn Shire 2006; Northern Grampians Shire 2006; Bass Coast Shire 2006; Mitchell Shire 2006; Moorabool Shire 2006; Baw Baw Shire 2006; Warrnambool Shire 2006; Wellington Shire 2006; Ballarat City 2006; Melton Shire 2006; Wyndham City 2006; Frankston City 2006; Moonee Valley City 2006; Whittlesea City 2006; Darebin City 2006; Moreland City 2006; Whitehorse City 2006; City of Greater Geelong 2006; Melbourne City Council 2005.

In conclusion, Victorian regulators do not appear to publish information that would permit an assessment of whether their regulatory activity is reducing foodborne illness. There are, however, processes in place to improve reporting. These need to be coordinated, given that different regulators affect different parts of the food supply chain.¹¹ Performance reporting by the NSW Food Authority (box 5.2) and the UK Food Standards Agency (box 5.3) illustrates a more comprehensive approach than has been developed in Victoria.

Box 5.2 Performance reporting by the NSW Food Authority

The NSW Food Authority has seven key service groups, and each reports its performance in the past year in the state annual reports. In particular, the Compliance and Enforcement service group reports in five areas: audit and verification, compliance and inspection, enforcement, foodborne illness investigation and the NSW shellfish program. Measures reported include the number of audits/inspections, failed audits/inspections, complaints, foodborne disease incidents (single and multiple), licence cancellations, convictions and penalty infringement notices issued. While these are intermediate indicators that do not directly inform on the effects on foodborne illness, they provide information about whether food regulation has encouraged intended behaviour changes that could reduce foodborne illness.

Source: NSW Food Authority 2006a.

5.2.5 Valuing improvements in foodborne illness

The indicators reported thus far have been about changes in foodborne illness. But given there are costs involved in reducing illness, an important perspective is whether the value to consumers from less foodborne illness exceeds the costs of delivering the reductions. (Chapter 6 outlines these costs.) One technique for measuring the value of increases in food safety is to assess consumers' 'willingness to pay' for the reduced risk of illness, morbidity or mortality. This is, however, difficult to measure.¹²

¹¹ The safety of meat sold through supermarkets, for example, is influenced by both PrimeSafe and by local government.

¹² Empirical approaches to quantifying 'willingness to pay' include contingent valuation, experimental markets, conjoint analysis and prices paid in markets. The main difference between these approaches is that some use realised data while others do not. The validity of estimates from approaches that do not use realised data is often questioned, while approaches that use realised data are plagued with experimental design issues. It is doubtful whether the valuations extracted (even if they are from realised data) accurately estimate consumers' willingness to pay. For this reason, these approaches have not been used to value reductions in morbidity in government cost-benefit analyses overseas or in Australia.

Box 5.3 **Performance reporting by the United Kingdom Food Standards Agency**

In 2001, the UK Food Standards Agency set itself the target of reducing foodborne illness by 20 per cent by April 2006. It set a strategy for achieving this objective, based on analysis of the pathogens causing significant morbidity and mortality; the main food vehicles and organisms involved; and measures to control pathogens in specific foods and to improve food handling and preparation, focusing on high risk areas. The agency decided not to use notifications to measure progress against the 20 per cent target, but instead chose to rely on UK laboratory reports of major bacterial reports of foodborne disease. A detailed review in 2006:

- examined each project area to assess whether they delivered what was expected
- examined evaluation activities of each project area and summarised findings and conclusions
- assessed how each activity contributed to the foodborne disease reduction target
- identified any lessons learned from each project area's activities, along with their application to future activities
- identified areas for analysis in future evaluation activities.

Sources: Bell 2006; UK Food Standards Agency 2001.

An alternative approach is to value any deaths or illness avoided as a result of regulation, building on measures such as discounted future earnings to value lives and avoided medical and health care costs to value reduced illnesses. This approach has been used in Australia not to measure the incremental benefits of regulation, but rather to measure the total costs of foodborne illness. Using different assumptions and values:

- FSANZ estimated the total cost of foodborne illness was \$2.6 billion in 1999 (ANZFA 1999)
- Food Science Australia and Minter Ellison Consulting (FSA & MEC 2002) estimated the aggregate cost was above \$1.67 billion^{13,14}
- Abelson, Forbes and Hall (2006) estimated the cost is about \$1.25 billion a year.

¹³ This figure comprised: direct medical costs (including consultations, prescriptions, hospitalisation and salary lost), nonmedical costs, the cost of fatalities, and costs to government and industry incurred in responding to foodborne illness, including medical and health care costs and legal costs.

¹⁴ The study estimated that a little over \$1 billion of the costs could be attributed to the following industries: food service to sensitive populations (\$75 million), raw, ready to eat seafood (\$181 million), catering for the general population (\$540 million), and eating establishment (\$169 million).

The Centre for International Economics suggested this approach to valuation is ‘more simple and transparent to implement than the willingness to pay approach’ but omits several components of total willingness to pay, especially that of the patient and others to avoid pain and suffering (CIE 2002, p. 23).

5.3 Preventing misleading conduct

The discussion has focused on food regulation’s contribution to reducing foodborne illness. But preventing misleading conduct is also an objective of Victorian legislation, where it is covered in the *Fair Trading Act 1999* (Vic.), the *Trade Measurement Act 1995* (Vic.) and the Food Act. Section 52 of the *Trade Practices Act 1974* (Cwlth.) also addresses deceptive and misleading conduct. Inquiry participants suggested, however, that the Department of Human Services and local government give this area a low priority, leaving enforcement to the Australian Competition and Consumer Commission (ACCC) and Consumer Affairs Victoria (CAV). As with foodborne illness, the Commission considered the views of inquiry participants and other sources of information.

5.3.1 Inquiry participants’ views

Most inquiry participants’ comments on misleading conduct focused on the application of labelling requirements rather than the outcomes they achieve. CHOICE argued that labelling is an important source of information:

CHOICE supports all the mandatory information requirements on food labels. Information such as date marking, storage suggestions, allergen labelling, ingredient lists and nutrition information panels protect the health and safety of consumers and allow them to make informed choices about the content of the foods they eat and the impact it may have on their health. With consumers increasingly interested in how and where their food is produced, labelling GM status, country of origin information and terms such as ‘organic’ and free range’ also require regulation to ensure that consumers know what they are getting and get what they pay for. (sub. 49, pp. 4–5)

Mrs N Chapman supported the labelling of preservatives, to protect people with allergies, and argued labelling should be extended to pre-cooked meals at delicatessens (sub. 1, p. 2). The president of the Parents Association at St Bede’s primary school, while noting that regulation including labelling had reduced the use of fund raising through cake stalls to an ‘absolute minimum’, noted:

On the positive side, purchasers of baked goods can check labels to see when items were baked, if there are any ingredients which will trip allergies and they also have a greater assurance that the items were prepared in hygienic conditions. Of course an honesty system applies in this regard which the Parents Association cannot always guarantee. (sub. 15, p. 1)

Other inquiry participants were, however, sceptical of the benefits of food labelling. The City of Yarra noted that labelling ‘requirements are very prescriptive and detailed’ and that many are ‘probably not important to most people and are not always related to food safety issues’ (sub. 43, p. 3). The Australian Medical Association Victoria noted that most participants in a survey conducted by FSANZ in 2003 ‘were not confident that they could use the available information to make healthy dietary choices’ (sub. 22, p. 2). The Association also noted:

A recent study conducted by the NSW Food Authority revealed that a considerable discrepancy exists between the stated and actual composition of certain packaged foods. This clearly defeats the purpose of the labelling system and presumably constitutes false, misleading and deceptive behaviour. (sub. 22, p. 3)

The Department of Human Services commented that its:

...experience in relation to labelling complaints indicates that such complaints generally arise from competitors of the manufacturer against whom the complaint is made, rather than from consumer associations or other sources. This is strongly suggestive that the requirements are essentially functioning as a means of attempting to secure competitive advantage, rather than providing significant consumer benefits. (sub. 48, p. 19)

George Weston Foods noted:

We have long been concerned about the mandatory requirements for labelling of food under the code. Frankly, we believe most of this information is not read by consumers and even if it is, much of it would probably still be of little relevance in terms of allowing them to make informed decisions regarding products. Additionally, we have seen a number of cases lately where information that food companies are required to put on their labels (such as percentage labelling of characterising ingredients) has either confused or misled consumers. Additionally, according [to] the ACCC, information contained in the ingredient list and/or in the nutritional information panel (NIP) is seen as a fine print qualifier of any claims made on the front of the packaging and is not regarded as being effective to overcome any specific claims made on the front of the pack. (sub. 52, p. 5)

Several inquiry participants considered that food labelling is given a low priority by those responsible for enforcement. The Victorian Farmers Federation argued:

The Victorian Government has provided insufficient funding for enforcement of Food Standards Australia and New Zealand regulations. ... Department of Human Services has indicated that because the labelling requirements do not pose a threat to public health, limited resources are allocated to labelling enforcement. (sub. 40, p. 11)

The Department of Human Services confirmed this view:

Provisions regulating the making of health claims, which are currently under consideration, can be seen as being more properly the concern of the competition authorities (i.e. the Australian Competition and Consumer Commission), as the essential concern underlying regulatory proposals in this area appears to be with the prevention of false and misleading statements being made which undermine consumers' ability to make informed choices. (sub. 48, p. 19)

The City of Stonnington pointed out that:

The [labelling] regulations... are extensive, of a complex and highly technical nature, and are at times ambiguous and open to different interpretations.... The average EHO [environmental health officer] has neither the technical expertise, nor the time to determine whether a food business was fully complying with these regulations.... Labelling compliance... [but the] cost of assessing all labelling in this manner would be prohibitive. Because of the lack of resources and expertise in this area, local government has not placed a great deal of emphasis on enforcing these requirements for small business, beyond the bare minimum. (sub. 25, pp. 6–7)

The City of Whittlesea raised the issue of labelling of imported foods, which is enforced by the Australian Government:

Food labelling deficiencies especially with regards to imported foods [are] a constant and ongoing problem to council. With a large multicultural population Whittlesea has a significant number of importers and grocery stores that sell imported goods. Council also received complaints from other councils as well. It appears that AQIS [the Australian Quarantine and Inspection Service] doesn't have the resources to properly police these requirements. It is the federal government's role to ensure imported foods comply with food standards, not local government. (sub. 31, p. 2)

5.3.2 Performance indicators

The Commission has not found specific indicators of the accuracy of food safety information. As for food safety, the indicators are often about a reduction in something that is 'bad' (such as complaints), rather than measures of a desired outcome. Consumer Affairs Victoria indicated that it has:

... researched and commissioned a survey, carried out in March 2006, of the types of problems consumers encounter in Victoria and how much this 'consumer detriment' is costing individuals and the economy (CAV Research Report, forthcoming; IPSOS 2006). Information of such detail has never before been carried out in Australia. The research showed that of all the categories of goods and services, 'food and drink' is where the highest number of problems occur, costing a total per annum of approximately \$46 million. However, the

average unit cost of each problem is relatively low (\$38), compared with problems in industries such as building (\$1600) and transport (\$540). Unit costs include following up and resolving problems; repairing and replacing items; and personal time. (sub. 53, p. 9)

The number of cases prosecuted under Victorian legislation for deceptive and misleading conduct could be informative. The Department of Human Services indicated, however, that it is not aware of any cases and that no data are available to indicate how often regulators request corrections to deceptive and misleading conduct or information, rather than proceeding to prosecution (DHS 2007b, p. 10).

CAV reported that it inspected more than 49 000 pre-packed food products in 2005-06, finding 8 per cent to be noncompliant for reasons including incorrect marking and short measure (sub. 53, p. 9). It also publishes enforcement actions and enforceable undertakings in its annual report, and provided food related examples in its inquiry submission (sub. 53, p. 9). It does not, however, publish any trend information on these indicators.

At the national level, the ACCC does not appear to report in its annual report or website any trend statistics on misleading conduct specific to food regulation. It provides a brief summary of enforcement activities, including prosecution of food businesses (ACCC 2006). The Commission understands that the number of food cases is small; for example, only one food business was prosecuted in 2006 (ACCC 2006).

5.4 Implications

There are challenges in measuring whether any regulation is achieving its objectives, but these are accentuated in the case of food safety by the limited data and information available. Evaluation studies will provide useful information about the effectiveness of specific regulations, but will not be available for some years.

Challenges in assessing the benefits of regulation are common in regulatory analysis. In 2005-06, none of the regulatory impact statements (RISs) reviewed by the Commission rigorously quantified all direct and indirect benefits of the proposed regulations, and only a little over half had some quantification of the benefits. The Commission's normal response is to indicate its expectation that the RIS articulate the regulatory objective and specify the problem that it is addressing and to ask the proponent to explore all possible ways of collecting information on benefits. Where this effort provides no or little information, the Commission urges the proponent to develop estimates (as detailed as possible) of the costs of regulation. The proponent then needs to be confident that the benefits—even if not quantifiable—exceed the costs for there to be confidence

that the regulation should be introduced. Chapter 6 presents estimates of the costs of food regulation.

In the meantime, the following actions would help:

- Clarification of the objectives of regulation, in a form that lends itself to measurement, is critical. The objectives should be a clear statement of the end to be achieved, so as to help identify the best approach to achieve the objective and ‘enable more effective monitoring to assess the success of the regulation in achieving its stated aim’ (Government of Victoria 2005a, pp. 3–5). For this chapter, the assumed principal objectives of food safety regulation are to reduce foodborne illness and to prevent misleading conduct. As noted, however, if the government’s broader aim is to promote public health and nutrition, this would need to be evaluated using different indicators than discussed in this chapter. If the government wishes to achieve more than one objective through the legislation, clarifying the priority that it attaches to each would enable regulators to focus their efforts accordingly. Chapter 8 further discusses the issue of objectives for food safety regulation.
- Clearer overarching objectives in Victoria’s food legislation that ‘cascade down’ to specific regulations would enable regulators to develop performance indicators that demonstrate each regulator’s contribution to the common objectives (be it reducing foodborne illness, preventing misleading conduct or promoting public health). In addition, a common set of statewide performance measures across regulators would make it easier to compare each regulator’s performance and assist them to learn from each other. Currently, regulators develop their performance indicators in isolation. A set of statewide performance indicators would also allow the public to evaluate local councils’ performance.¹⁵ External reporting of such performance measures is important for transparency and accountability reasons.
- Clarifying the source of the problem that regulation is intended to address will facilitate the mix of regulatory and nonregulatory instruments that make up the best solution. Further, a more precisely defined instrument is likely to have more specific objectives that are more capable of measurement. Targeted regulatory instruments aimed at achieving clearly defined objectives are also likely to be easier to enforce and consequently more effective in achieving the objectives.
- Performing baseline research before introducing new regulations would provide a benchmark against which comparisons can be made, to permit an

¹⁵ The follow-up Auditor-General report in 2005 (AGV 2005b, p. 29) made the same comment. Little progress has since been made in developing a statewide set of indicators for both regulators and local government.

indicative assessment of a regulation's impact. Where RISs are required, an evaluation strategy could include the baseline data. Victoria's *Guide to regulation* already indicates that it is good practice for RISs to include an evaluation strategy.

Finally, to the extent that regulation is aimed at reducing foodborne illness, the net benefits of regulation may be greatest when the risks of illness are greatest.¹⁶ Data on the location of outbreaks can be useful in identifying where to target resources. Table 5.3 shows that 57 per cent of the outbreaks occurring in 1996–2005 were sourced to restaurants, commercial caterers or aged care facilities. Only 2.6 per cent were sourced to community groups. These data, while revealing, are only part indicators of risk because they do not show either the severity of the illnesses or the number of meals served in each setting.

Overseas studies suggest the proportion of outbreaks resulting from food produced at home is much higher in other countries than the 10 per cent in Victoria. In the Netherlands, Germany and Spain, more than 50 per cent of reported foodborne outbreaks occur in the home (Beumer et al. 1998; Scott 1996). Households have also been implicated in 32 per cent of outbreaks in Denmark, 77 per cent in Hungary, 46 per cent in Romania, 44 per cent in Yugoslavia, 24 per cent in Finland and 52 per cent in Poland (Todd 1996).

The data in table 5.3 are for outbreaks rather than illnesses, and may not reveal the true contribution of home made food to the incidence of foodborne illness. Many cases of illness caused in the home may either not be outbreak related (if only one person is involved) or not reported. Up to date data on the proportion of foodborne illnesses caused in homes in Victoria are not available. However, the NSW Food Authority indicated in discussions with the Commission that around one quarter of foodborne illness in NSW is linked to unsafe food handling and preparation in the home.

The focus of the NSW Food Authority (2006a) and the UK Food Standards Agency (2001) on educating consumers on safe food handling is further recognition that home prepared food is not only a significant contributor to foodborne illness but is also perceived to be preventable through education. Educating the public is thus an important consideration, because it has the potential to correct market failures such as information asymmetry, as well as target a large portion of foodborne illness that regulation alone cannot prevent.

¹⁶ This would be incorrect if either the costs of regulation were higher or regulation's effectiveness was lower in such areas.

Table 5.3 **Settings of outbreaks of foodborne illness, Victoria, 1996–2005**

<i>Setting where food was prepared</i>	<i>Outbreaks</i>		<i>Cases</i>	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
Restaurant	51	27.13	1586	27.94
Commercial caterer ^a	36	19.15	1013	17.84
Aged care facility	20	10.64	351	6.18
Private residence	19	10.11	224	3.95
Contaminated primary produce ^b	13	6.91	138	2.43
Takeaway food premises	7	3.72	215	3.79
Bakery	6	3.19	93	1.64
Asian bakery	5	2.66	1262	22.23
Community	5	2.66	34	0.60
Camp	4	2.13	66	1.16
Festival	4	2.13	385	6.78
Hospital	4	2.13	59	1.04
Commercially manufactured Food	3	1.60	51	0.90
Private residence and takeaway food	3	1.60	85	1.50
Delicatessen	2	1.06	18	0.32
School	2	1.06	37	0.65
Child care centre	1	0.53	7	0.12
Cruise	1	0.53	18	0.32
Imported food	1	0.53	23	0.41
Fish shop	1	0.53	12	0.21
Total	188	100^c	5677	100^d

^a Commercial caterer includes food prepared by a commercial company or business for a specific group of people—for example, wedding, conference, meeting, party etc. ^b Contaminated primary produce includes outbreaks where the contaminated food is not usually consumed cooked (for example, oranges, oysters) or the cooking process has no effect on the product to destroy toxins (for example, fish containing ciguatoxin) or the natural component of the raw product causes diarrhoea (for example, fish wax ester). ^c Percentages of outbreaks should sum to 100 per cent but rounding off means they sum to 99.76 per cent. ^d Percentages of cases should sum to 100 per cent but rounding off means they sum to 100.01 per cent.

Source: DHS 2007b.

As discussed in chapters 8 and 9, a great deal of information is already collected in Victoria. But no councils report their food safety activities or performance to the Department of Human Services, which does not know how many councils include food safety performance in their annual reports (DHS 2006a, p. 4). And, as noted, neither PrimeSafe nor DFSV report information that helps external assessment of (a) resource allocation by these regulators and (b) whether regulatory effort across the state and all food safety regulators is being allocated where it will yield the largest benefit. More focused and disaggregated analysis of the available information, to identify where the risks are largest, could make it easier to review whether proposed interventions are targeted where they might have the largest impact.

Even if all these actions were implemented, assessing the benefits of food safety regulation would remain challenging, because the many influences on outcomes make it difficult to isolate cause and effect. Estimating the marginal costs of regulation is thus even more important; in itself, it is challenging (as chapter 6 shows), but probably less so than estimating the benefits. If the costs are well understood, they provide a benchmark for judging how large the benefits would need to be to warrant the intervention. A rigorous discussion of the regulatory costs also evidences whether those costs are larger than necessary.

6 Cost of food regulation in Victoria

The Victorian Competition and Efficiency Commission's terms of reference require it to report on the costs of food regulation and the impact of that regulation on the competitiveness and trade performance of Victorian industries. This chapter describes the nature and magnitude of the costs to Victoria's major food industries of the food regulation over which Victoria has unilateral control. It draws on (a) earlier attempts to identify and measure these costs, internationally and within Australia, and (b) information on current costs of food regulation from participants and a survey conducted for the Commission. Finally, the chapter discusses the significance of such costs to competitiveness and trade for businesses in Victoria.

6.1 What are the various costs of regulation?

The costs of food regulation may be broadly categorised as those incurred by government and those incurred by food 'businesses'. Further, the costs incurred by food businesses—of particular interest for this inquiry—may be grouped under four main areas: financial costs, administrative costs, substantive compliance costs, and indirect or market costs (figure 6.1). The nature of these costs is outlined below.

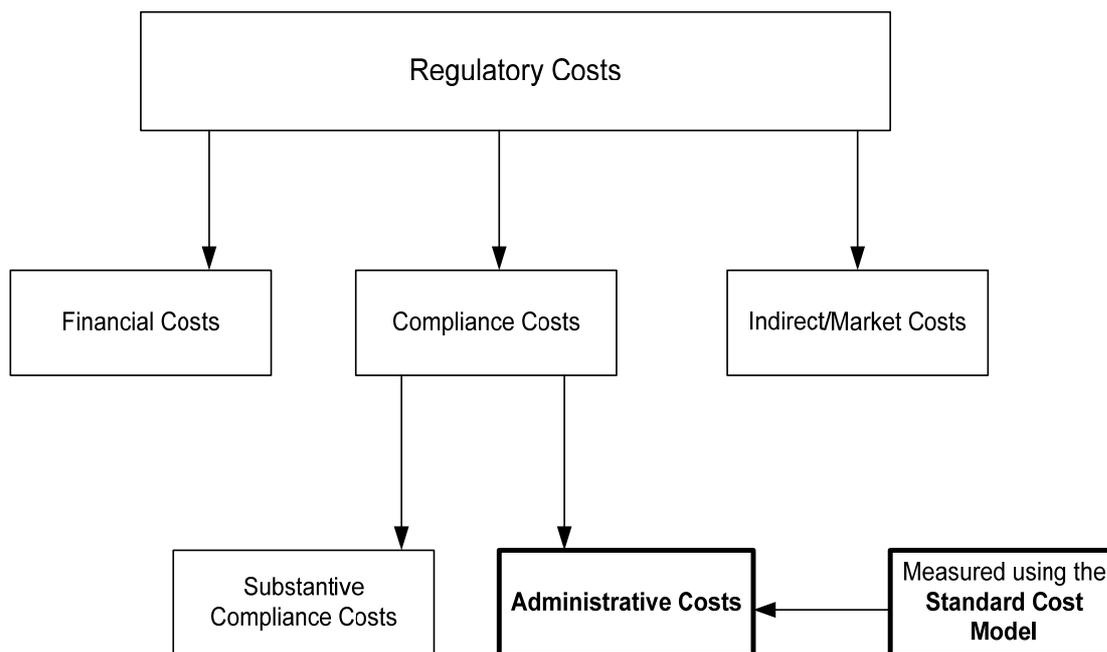
6.1.1 Government costs

Government costs include the costs of developing and implementing food regulation. At the state level, these costs would be mainly the cost of operating the agencies responsible for implementing/enforcing food regulation. Where regulatory agencies recover some or all of their costs from fees and charges, this affects the economic incidence of the costs (that is, who bears them). Care is needed, therefore, to avoid double counting these costs to both government (which incurs them but may also recoup them) and food 'businesses' (which pay them and thus incur a financial cost).

6.1.2 Financial costs

Financial costs are the result of a concrete and direct obligation to transfer a sum of money to the government or relevant authority. Such costs include, for example, the fees levied by local government to register a food business.

Figure 6.1 **Framework of regulatory costs to businesses^a**



^a To assist in reducing the cost of regulation, the Victorian Government is introducing a standard cost model to provide a framework method for measuring the administrative costs of regulation. The model is not intended to be used to measure substantive compliance costs, financial costs, or indirect and market costs.

Source: VCEC 2006b, p. 18.

6.1.3 Administrative costs

These costs—often referred to as ‘red tape’—are those incurred by firms or individuals to demonstrate compliance with government regulation or to allow government to administer the regulation. They include the costs associated with familiarisation, record keeping and reporting, including inspection and enforcement of regulation (box 6.1).

6.1.4 Substantive compliance costs

Substantive compliance costs (hereafter referred to as compliance costs) are those capital and operating costs that directly lead to the regulated outcomes being sought. These costs are usually associated with content specific regulation and include buying new equipment, ensuring the equipment is in good working order and undertaking specified training. The compliance costs of regulation relate, however, only to any additional costs caused by that regulation. If, for example, there were no food regulation, commercial incentives would still lead many businesses to install similar equipment or undertake certain practices to maintain or expand their market. In this regard, the Organisation for Economic Cooperation and Development defines compliance costs as:

The *additional* costs necessarily incurred by businesses in meeting the requirements laid upon them in complying with a given regulation. (OECD 1997, p. 19) [emphasis added]

Box 6.1 **What is an administrative cost?**

Determining whether a company cost is an administrative burden requires a clear definition of the following two points:

- What is an information obligation?
- How is government legislation defined?

Information obligation

An information obligation is a duty to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation you cannot decline without coming into conflict with the law. Information obligations do not necessarily imply that enterprises have to send information to a public authority and/or a third party. Sometimes enterprises are required to keep information in stock so that it can be sent or presented upon request.

Government legislation

Government legislation is defined as all legislative Acts, ministerial Orders and regulation that contain information obligations for enterprises.

Source: Dutch Ministry of Finance 2004, p. 4.

6.1.5 Indirect/market costs

Indirect or market costs are those that arise from the impact of regulation on market structure or consumption patterns. If, for example, businesses cannot pass on costs associated with regulation, then fewer businesses will provide the good or service (or each will produce less) and fewer people will be employed in those activities. If regulation creates barriers to entry or stifles innovation, then it can allow incumbents to charge higher prices, or result in reduced product offerings to consumers. Regulation related costs that are passed on to consumers in the form of higher prices might also mean some people cannot afford the amount or quality of food they would like. Further, regulation that mandates various industry practices and capital equipment is likely to reduce productivity and flexibility to accommodate changes in technology and consumer preferences over time (VCEC 2006b, p. 19).

6.2 Lessons from previous studies

Previous international and Australian studies of regulation generally and food regulation specifically provide insights into the nature and magnitude of the burden of food regulation in Victoria. International studies indicate:

- most of the cost of food regulation is likely to derive from a small subset of regulations
- regulation derived from or aligned with international standards (in addition to state based regulation) is often important in driving costs
- in aggregate, the administrative cost of food regulation is likely to be small as a proportion of turnover and value added
- the obligations for record keeping and statutory labelling are likely to constitute the majority of administrative costs (PwC 2006, p. 49, Commission for European Communities 2006, p. 4).

Australian studies indicate:

- the difficulty of quantifying the cost of food regulation, other than the cost of licence and inspection fees (Blair 1998, p. 51)
- for small businesses, an average cost of compliance of about 0.28 per cent of annual turnover (ranging across an average of 0.2 per cent for manufacturing firms, 0.1 per cent for retail firms, 0.35 per cent for exporters and 0.25 per cent for non-exporters) (Office of Small Business cited in Blair 1998, p. 52)
- the dominant role of the Commonwealth Government in the regulation of food imports and exports, and the commensurately minor role of state government agencies in generating financial costs on food import and export businesses (Blair 1998, p. 56)
- for small firms, aggregate costs of implementing regulations (akin to Victoria's requirement for food safety programs or their equivalent) of about \$1440 in one-off development costs and about \$1700 in ongoing annual costs (in 2001 prices) (ACG 2002, p. 2)
- for food businesses in a high risk category, the possibility of considerably higher aggregate development costs—for example, \$10 700 for a hospital and \$18 435 for a cook/chill operation (in 2001 prices) (ACG 2002, p. 33)
- an average cost to councils of meeting their food regulation responsibilities of \$469 per business (in 2001 prices) (MAV 2002, p. 6).

Appendix C summarises the relevant studies.

6.3 Current costs of food regulation in Victoria

Inquiry participants provided current information on the nature and magnitude of costs, although usually by way of firm-specific examples rather than industry aggregates. The annual reports of regulatory agencies provided government costs and the associated financial cost that those agencies impose on Victorian businesses. To augment these sources, the Commission has drawn on past studies and engaged a consultant to survey food businesses to identify and measure the cost of food regulation they incur (box 6.2).

Box 6.2 Survey of the cost of food regulation

To better understand the costs of food regulation in Victoria, the Commission engaged a consultant to survey food businesses operating in Victoria and report the findings. The Commission selected a sample of 29 businesses from the food manufacturing, food wholesaling, food retailing, and cafés/bars/restaurants industries. The industry groups surveyed accord with the Australian and New Zealand Industrial Classification system.

The number of businesses selected in each industry was broadly proportional to the industry group's contribution to the Victorian economy, measured by industry turnover and employment. Sample selection was also mindful of the level of market concentration within each industry group. The sample comprised 10 businesses from the manufacturing industry, three wholesalers, eight retailers and eight from the cafés/bars/restaurants industry.

Survey participants were selected to provide a mix of business size, location and market orientation. They ranged from proprietor operated businesses to large multinational food companies, and represented regional and metropolitan areas. The small number of companies surveyed meant it was not possible to obtain a group fully representative of each industry composition. Accordingly, while results for the sample group may be cited with a high degree of confidence, extrapolating beyond the sample group incurs a lesser degree of confidence in proportion to the extent of aggregation involved.

6.3.1 Government costs

Within Victoria, Commonwealth, Victorian and local government agencies conduct food regulation. The cost of Commonwealth agencies is not considered here, because the focus of this inquiry is on Victorian food regulation. The costs of Victorian and local government agencies derive from their responsibility for a regulatory system that embodies regulation that is both Victorian in origin and drawn from 'national' standards. It is not practical, however, to identify separately the costs associated with each. Accordingly, costs are presented as representing a broad construction of the 'Victorian' regulation cost component.

Victorian Government food regulatory agencies

The main state agencies involved in regulating food safety in Victoria are:

- Dairy Food Safety Victoria (DFSV)
- PrimeSafe
- the Food Safety Unit of the Department of Human Services.

Dairy Food Safety Victoria

DFSV was established under the *Dairy Act 2000* (Vic.) and is responsible for overseeing the licensing and quality control (safety and hygiene in plant and

equipment, transport vehicles and the manufacturing premises) of dairy producers, manufacturers and carriers. Under the Act, all dairy farmers, manufacturers and carriers are required to be licensed and to operate under a code of practice, which requires the development and implementation of a food safety management plan (VCEC 2005a, p. 243).

Table 6.1 shows the cost of operating DFSV for financial years 2003-04 to 2005-06. This cost is recovered from the industries it regulates. (Cost recovery and charges are set by DFSV’s governing body, on which industry representatives sit.) Table 6.1 also shows the revenue received by DFSV, including that from investments.

Table 6.1 DFSV costs and revenue

	2005-06	2004-05	2003-04
	\$	\$	\$
Total expenses	3 690 962	3 616 053	3 291 107
Revenue from ordinary activities	3 894 866	3 820 526	3 271 432

Source: DFSV (2005, p. 29, 2006b, p. 26)

PrimeSafe

PrimeSafe (formerly the Meat Industry Authority) was established as regulator under the both the *Meat Industry Act 1993* (Vic.) and the *Seafood Safety Act 2003* (Vic.). PrimeSafe regulates meat, poultry, seafood and pet food processing standards in Victoria. Its functions include the control and review of standards for the construction and hygiene of meat and seafood processing plants and equipment. It does so through a licensing and inspection system and audited quality assurance programs. PrimeSafe also regulates meat transport vehicles in terms of their construction, hygiene, cleanliness and maintenance (PrimeSafe 2006, p. 23).

The cost of operating PrimeSafe for the financial years from 2003-04 to 2005-06 is shown in table 6.2. PrimeSafe recovers these costs from the industries they regulate. (Charging and governance arrangements are similar to DFSV). Revenue for each financial year, including other income, is also shown in table 6.2.

Food Safety Unit of the Department of Human Services

The Food Safety Unit is the main food safety and compliance body within Victoria (with functions as described in chapter 3). The estimated cost of operating the unit is not available. The Department of Human Services has advised the Commission, however, that the annual budget for the unit’s operations is approximately \$2.7 million. The unit is funded from an allocation

within the public health budget, not from fees or charges levied on businesses (DHS 2006c, p. 8).

Table 6.2 PrimeSafe operating costs and revenue ^a

	<i>2005-06</i>	<i>2004-05</i>	<i>2003-04</i>
	\$	\$	\$
Total operating expenditure	1 528 923	1 448 403	1 530 851
Total revenue	1 196 660	2 113 344	1 454 245

^a On 1 July 2003, PrimeSafe introduced the seafood industry into its regulatory framework. Consistent with the government's commitment to the red meat, poultry and pet meat industries, the food safety regulatory management system for seafood is to be self-funded by the seafood industry and will impose no cost burden on the other industries licensed by PrimeSafe.

Source: PrimeSafe 2006, p. 26.

Local government

Local government enforces the Food Act, mainly via the registration and inspection of food businesses. Food businesses (as defined in the Act) must register with local councils and have a food safety program. Generally, councils do not license food businesses in the dairy, meat or seafood industries because DFSV and PrimeSafe carry out these functions.

Environmental health officers (EHOs) conduct the regulatory function of local government. Patrick Garry (sub. 14, p. 3) observed that environmental health officers are responsible for a range of other functions too, citing an environmental health officer workforce review (Windsor & Associates 2005) to illustrate:

EHOs have many responsibilities as well as septic tank regulation. For example food safety, nuisance abatement, immunisation programs, communicable disease investigations, neighbourhood dispute resolution, personal care and body art industries, prevention of selling cigarettes to minors, no smoking and health warnings in licensed premises and restaurants and now enforcing smoking bans in enclosed workplaces. (sub. 14, p. 3)

Accordingly, he considered only a portion of the cost of environmental health officers could be reasonably attributed to food safety regulation. The same review noted, however, 'the EHO's role covers a range of functions, but their main activity is administration of the Food Act' (Windsor & Associates 2005, p. i).

A 2002 Municipal Association of Victoria report on the costing of local government food safety services accounted for this issue in estimating the council costs of food regulation. It thus provides a reasonable basis for deriving aggregate costs for local government. The study found the cost of food

regulation to councils (under amended legislation), for all premises it regulated, averaged \$469 per registered food premise in 1999-2000 (MAV 2002, p. 6). The Municipal Association of Victoria's submission noted that local government registers about 40 000 food premises each year across the state (sub. 41, p. 1). More recent information from a survey of 48 councils in January 2007 indicates the number of registered food premises is more likely to be around 45 000 (DHS 2007d). Applying a \$469 average cost to 45 000 registered premises implies a cost to local government in 2005-06 of about \$24.5 million (allowing for compound inflation of 2.5 per cent a year).¹

From the above discussion, the Commission estimated the total cost to state and local government agencies for 2005-06 (table 6.3). It found that the cost of food regulation implemented at local government level under obligations of the Food Act on behalf of the State government is many times that of state agencies combined. There may be scope for reducing these costs by addressing the way in which implementation obligations arise through the framework of food regulation.

Table 6.3 State/local government costs of food regulation

	<i>2005-06</i>
	\$
Dairy Food Safety Victoria	3 690 962
PrimeSafe	1 528 923
Food Safety Unit	2 700 000
Local government	24 500 000
Total	32 419 885

Sources: DFSV 2006b, PrimeSafe 2006, DHS 2006c, VCEC estimates 2007.

6.3.2 Business costs

Costs to business from food regulation may derive from financial, administrative, compliance and/or indirect/market costs (see the framework of regulatory costs in figure 6.1).

¹ The average cost for the 2002 study was derived by dividing the total cost to councils of their entire food regulatory functions (e.g. for both registered food premises and temporary premises) by the number of registered food premises. Applying this average to the 2005-06 registered premises, to derive a total cost for that year, assumes a constant ratio of the aggregate cost of registered premises to temporary premises.

Financial costs

Submissions provided examples of the scale of financial costs borne by individual businesses. Infocus Management Group, for example, stated that ‘Food premises registration fees vary between \$200 and \$800 for “normal sized” cafés, restaurants and takeaway premises’ (sub. 38, p. 4). The Australian Institute of Environmental Health (sub. 10, p. 17) illustrated the variation in average registration fees for six councils for different types of food business. Table 1 in appendix 1 of that submission showed a range of registration fees, for example, from \$205 to \$507 per business for class 1 businesses. Coles Myer cited the registration fees that its stores face in different municipalities, ranging from \$210 (Mornington Council) to approximately \$3500 (Latrobe Council) (sub. 7, p. 2).

Submissions did not provide estimates of the total financial cost borne by businesses throughout Victoria. The Commission is able, however, to derive such estimates from the annual reports of state regulators and from the local government costs described above. DFSV and PrimeSafe operate on a full cost recovery basis; their annual reports list total revenue collected from businesses and the share of licence and audit and inspection fees in that total. In 2005-06, DFSV licence fees (\$3 271 131) and audit and inspection fees (\$201 293) accounted for 89 per cent of total revenue² (DFSV 2006b, p. 34); for PrimeSafe, licence and registration fees (\$1 074 939) accounted for about 90 per cent (PrimeSafe 2006, p. 26).

Local government also operates on a cost recovery basis. But unlike the state agencies, its cost recovery averages around 60 per cent—although the proportion varies considerably across councils and the types of food business/activity registered (see AIEH, sub. 10, pp. 17–18). On this basis, the Commission estimates local government imposes a financial cost on business of about \$14.7 million. The Food Safety Unit does not charge for its activities, so its operations impose no direct financial cost on businesses.

Aggregating total annual licence and registration fees of these regulators indicates the annual financial cost to Victorian business is about \$19.2 million (table 6.4). This figure would be no more than 0.04 per cent of the \$47 billion turnover of the food manufacturing, wholesaling, retailing and cafés/bars/restaurants industries in 2004-05 (chapter 4).³

² Includes licence/registration fees for dairy farms (of which there were 5929 at 30 June 2006). Other income (\$422 000) included payment for the Australian Milk Residue survey, interest received and other income.

³ This financial cost relates to all registered or licensed premises (for example, food premises of hospitals, aged care facilities, school canteens etc., which are not included in the Australian Bureau of Statistics classification of food manufacturing, wholesaling, retailing and cafés/bars/restaurants). Accordingly, it will overstate the financial cost incurred by those four main industries.

Table 6.4 Annual financial cost to business from fees and charges of state and local government regulators

	<i>2005-06</i>
	\$
Dairy Food Safety Victoria ^a	3 472 424
PrimeSafe	1 074 939
Food Safety Unit	na
Local government ^b	14 700 000
Total	19 247 363

^a Includes dairy farm licence fees. ^b Derived from 60 per cent of the local government cost in table 6.3. **na** Not available.

Source: VCEC estimates 2007.

Some inquiry participants suggested the level of financial cost imposed by state government agencies is inappropriate in some circumstances. The Victorian Government expects industry to pay for the delivery of food regulatory management. And in the case of dairy, red meat, poultry and seafood, it also expects each industry segment to be responsible for the costs of regulating that segment without cross-subsidisation from another industry (DPI 2007a). But the Victorian Rock Lobster Association argued this approach imposes a disproportionate burden on their industry:

The level of fees charged to the rock lobster wildcatch sector has caused considerable angst in the industry. The main issue is that the level of fees bears no relationship to the level of food safety risk. ... The current PrimeSafe fee schedule generally charges the rock lobster wildcatch sector the highest fees on a per kilo basis of any licensed Victorian wild catch sector, when it actually has the lowest food safety risk. FSANZ could not even find evidence of food poisoning from the consumption of locally caught lobster. (sub. 24, pp. 1–2)

Graham Grant similarly argued that the fee levied on him as a nominated diver in the abalone industry was totally inappropriate, and an unnecessary cost imposed on the industry (sub. 4, pp. 1–2).

Submissions also drew attention to inappropriate financial costs imposed by local government. The City of Melbourne (sub. 16, p. 4) and the City of Yarra (sub. 43, p. 2) considered that the annual inspection of low risk premises is an unwarranted impost on businesses. The City of Melbourne considered other registration costs are also unnecessary and could be reduced, referring to the registration and inspection of temporary premises in every municipality in which they sell food (sub. 16, p. 4). Chapter 9 discusses possible regulatory reforms to address these ‘unnecessary’ costs.

In a 2002 review of local government food regulation, the Victorian Auditor-General expressed concern that some proportion of food businesses may be avoiding council registration/licensing fees: ‘The 2002 audit found that many councils failed to systematically identify and register all food businesses’ (AGV 2005a, p. 11). This finding implies that a more rigorous approach by councils might materially increase the cost to (local) government and the financial cost to businesses, relative to that indicated in tables 6.3 and 6.4.

Results of a follow-up study in 2005, however, suggest councils’ approach to identifying food businesses, while still not universally systematic, was unlikely to result in a significant number of omissions overall (AGV 2005a, pp. 12–14). Moreover, the Municipal Association of Victoria submission (drawing on results of a 2006 workshop of councils and responses to a questionnaire it circulated to councils) noted ‘Council officers report that the process of registering businesses under the Food Act generally works well’ (sub. 41, p. 6). Accordingly, the Commission considers the costs associated with local government regulation would not materially understate potential financial costs from under-registrations, because nearly all food businesses appear to be registered.

Administrative costs

Information from inquiry participants on the administrative burden of food regulation in Victoria was generally qualitative and did not estimate the magnitude of that cost (on either a firm or an industry basis). Coles Myer stated that the licensing and approvals processes is complex, and often requires a large amount of paperwork and documentation. This effort is time consuming and costly, especially when specialist advice is required (sub. 7, p. 2). The City of Port Phillip also acknowledged that the time commitment to complete food safety program records is taxing, particularly for small businesses with limited resources (sub. 13, p. 1). Similarly, Moonee Valley City Council noted that the level of record keeping required for the ongoing maintenance of food safety program records is particularly onerous for small businesses (sub. 18, p. 1). More generally, the Victorian Farmers Federation observed that record keeping can be administratively complex and time consuming, particularly in relation to process temperature logs, goods receiving and goods storage temperature (sub. 40, p. 14). And Restaurant & Catering Victoria claimed restaurant businesses require substantial resources to satisfy the record keeping requirements of food safety programs (sub. 36, p. 7).

Not all submissions claimed the administrative burden is significant:

There are administrative costs to business ... While the [Municipal Association of Victoria] is aware that some businesses find these requirements onerous, the experience of environmental health officers undertaking inspections is that those

businesses which fully embrace the intent of the food safety programs and have a food safety supervisor do not find them onerous. (MAV, sub. 41, p. 8)

Without estimates from inquiry participants, the Commission used findings from previous studies and its survey of businesses to estimate the magnitude of administrative costs. Of previous studies, The Allen Consulting Group's report (2002) on the introduction of food safety management systems is most useful. It identified (one-off) implementation and ongoing administrative costs of a food safety program for small businesses across industry categories (table 6.5). This program requirement is akin to that for food safety programs or a quality assurance program as a condition for licensing or registration in the four main food Acts in Victoria. Although the costs in table 6.5 are average estimates for Australia, the Allen Consulting Group study found no significant variation across businesses in different jurisdictions. Accordingly, the results may be assumed to be representative for Victoria.

Table 6.5 Median cost to business of food safety programs ^a

<i>Industry category</i>	<i>Implementation cost of training and development per business premise (\$)</i>	<i>Ongoing [administrative] cost of record keeping and review per business premise (\$ per year)</i>	
		<i>Record keeping</i>	<i>Review</i>
Manufacturing	1 280	2 640	53
Retail	1 510	1 170	60
Supermarket	1 450	1 140	60
Specialised food store	1 550	1 180	80
Food service	1 500	1 540	60
Takeaway	1 440	1 370	60
Restaurant	1 600	1 550	100
Hotel	2 000	1 900	150
Primary industry	2 100	1 800	100

^a Data were mostly collected in 2001. Median costs have been used because the study did not report mean (average) costs.

Source: ACG 2002, pp. 136–7.

An indication of the administrative costs associated with food regulation in Victoria can be obtained by applying these median ongoing costs to the number of businesses in each of the main food industries (table 6.6). Given this estimate is based on the administrative costs of small businesses (for which the average revenue was generally between \$500 000 and \$600 000 in 2001) and for ongoing costs only (that is, excluding one-off implementation costs), it is a lower bound

of likely costs (ACG 2002, p. 103). This approach tends to understate likely costs for the first four industries because it is based on the number of businesses, not the number of business premises. The registered premises identified in the Department of Human Services survey suggest the number of premises in these four industries could be about 10 per cent higher (DHS 2007d).

Table 6.6 Annual ongoing administrative costs for major food industries

<i>Industry</i>	<i>Ongoing admin cost (\$ per year)</i>	<i>Number of businesses</i>	<i>Estimated admin. cost (\$)</i>	<i>Likely number of premises (+10%)</i>
Manufacturing/processing ^a	2 693	2 362	6 361 000	6 997 000
Food wholesaling ^{b, c}	1 230	3 271	4 023 000	4 426 000
Food retailing ^d	1 230	16 842	20 716 000	22 787 000
Cafés/bars/restaurants ^e	1 600	16 401	26 242 000	28 866 000
Dairy farming ^f	1 900	5 929	11 265 000	11 265 000
Aquaculture/wildcatch ^g	1 900	316	600 000	600 000
Total (in 2001 prices)			69 207 000	74 941 000

^a Contains businesses within ANZSIC subdivision 57 (food, beverages and tobacco manufacturing), but excludes animal and bird feed manufacturing, and tobacco manufacturing. ^b The Allen Consulting Group survey did not separately identify wholesale businesses. The cost for the food retail industry has been used as a proxy. ^c Contains businesses within the ANSZIC group 471 (food, drink and tobacco wholesaling), but excludes tobacco wholesaling businesses. ^d Contains all businesses within ANZSIC subdivision 51 (food retailing). ^e Contains all businesses within ANZSIC subdivision 57 (accommodation, cafés and restaurants). ^f Actual number of dairy farms licensed by DFSV at 30 June 2006. Meat and seafood processors are captured in manufacturing numbers reported by the Australian Bureau of Statistics. ^g Actual number of aquaculture and wildcatch seafood harvest premises licensed by PrimeSafe. The cost for dairy farming has been used as a proxy.

Sources: VCEC estimates derived from ABS 2005a; ACG 2002; DFSV 2006b, p. 19; PrimeSafe 2006, p. 51.

Allowing for inflation, the Commission estimates the administrative burden of Victoria's food safety systems required under the four main Acts would have cost these industries at least \$85 million in 2006.⁴ (This figure excludes costs associated with registered premises in hospitals, aged care facilities, school canteens, not-for-profit bodies, child care facilities etc.)

Based on Australian Bureau of Statistics data on turnover (chapter 4)—available only for the food manufacturing, retailing and cafés/bars/restaurants industries—the total ongoing administrative cost for these three industries

⁴ This allows for annual inflation of 2.5 per cent in the period since The Allen Consulting Group report.

(estimated at \$66 million in 2006) represented a minimum of about 0.14 per cent of their aggregate turnover in 2005-06. Based on Australian Bureau of Statistics data for value added—available only for the manufacturing industry—administrative costs represented about 0.15 per cent of that industry's value added for 2004-05. The size of costs relative to profits would be much higher, but data are not available to derive this.

Implementation costs are essentially sunk costs and, as such, were excluded from the estimate of annual costs.⁵ The Commission considers their exclusion does not significantly alter the likely scale of costs. The reasoning is that while the one-off implementation costs per firm are broadly equal to ongoing costs (except for manufacturing, for which they are half the cost—see table 6.5), implementation costs would be amortised over a number of years. Allowing for a 10 year amortisation, implementation costs would add about 10 per cent to ongoing administrative costs.

The survey information on initial (that is, implementation) administrative costs helps little in forming a view of total costs, given respondents' generally poor recall of the costs incurred. The survey found that initial costs relative to ongoing costs (and allowing for a 10 year amortisation) for manufacturing, wholesaling, retail and cafés/bars/restaurants were 15 per cent, 8 per cent, 89 per cent and 12 per cent respectively. Except for the retail sector, these results broadly coincide with the Commission's view that such costs are relatively small (KPMG 2007, pp. 11, 13).

Compliance costs

Inquiry participants provided examples of the compliance costs of food regulation in Victoria, including some aggregate industry estimates. Joe White Maltings supplied information on local council audit costs (which, it argued, were an unnecessary cost on its business):

Joe White Maltings (JWM) operates two facilities in Ballarat ... Each of these premises is audited yearly by the City of Ballarat Council to ensure compliance to the Food Act 1984. The audit and subsequent certification costs JWM over \$800 annually for both plants along with the additional expense associated with JWM personnel's participation in the audit.

... this regulatory burden placed on its operations in Victoria is unnecessary. Both of these facilities are already externally certified by NCSI to Codex Alimentarius Alinorm: 97/13A ... that includes the identification of food safety risks and the placement of controls. An accredited external food safety auditor reviews this system annually along with an internal auditor and AQIS inspectors six monthly to verify compliance to HACCP and international exporting standards. Additionally a number of domestic and international customers

⁵ These costs are not sunk for new entrants to the industries.

throughout the year conduct their own supplier audits of these facilities with a focus on food safety. ... the above audits are in greater detail than the Food Act audits currently undertaken by local council. (sub. 11, p. 1)

Infocus (sub. 38) gave examples of compliance costs associated with developing or introducing food safety programs. It claimed that training a person to be a food safety supervisor costs \$200–400, not including the costs of that person being absent from work. High mobility and exit rates mean this is commonly an ongoing cost (sub. 38, p. 5). Often, staff are required to have food handling skills, so they sometimes must attend training courses, which can cost \$100–150 a person (sub. 38, p. 5). In terms of developing food safety programs, class 2 businesses (that is, low risk) can access a standard template online for no cost, or obtain a hard copy for about \$30. To develop their own program using a consultant would cost a business about \$1500, and an annual audit (required for these plans) would cost about \$400 (Infocus, sub. 38, p. 5). Infocus concluded:

Thus, for a class 2 business using a departmental program template, which is the majority of businesses, the costs for complying with the legislation is around \$1000 at start up this cost is at the lower end of costs when compared to other fees levied by government. (sub. 38, p. 5)

Comments from Restaurant & Catering Victoria suggested compliance costs associated with the Food Act are generally minimal for restaurants:

It is the view of Restaurant & Catering Victoria that the ‘good’ restaurant businesses have procedures and policies in place that produce safe food without the prescriptive obligations placed upon the business by a [food safety program]. (sub. 36, p. 7)

... a restaurant business owner has a great incentive to produce, and or have staff produce, safe food. Instances of unsafe food provide not only damage (short and long term) to reputation, but also potential financial ruin, exposure to penalties that exist under legislation and extensive legal action. All of these factors provide a major incentive for restaurant businesses to produce safe food. (sub. 36, p. 9)

In a similar vein, the Municipal Association of Victoria observed:

The substantive compliance costs imposed by local government are not of a high order. The sorts of capital items required by businesses to comply with the Food Act 1984 are thermometers and cleaning equipment ... (sub. 41, p. 9)

For businesses in a high risk category, however, costs can be substantially more. A survey of high risk businesses required to introduce food safety programs in March 1999, for example, identified program development costs of \$10 700 for a hospital and \$18 435 for a cook chill operation (ACG 2002, p. 33). Similarly, other Victorian food regulations can impose substantial costs on individual firms. Meat industry regulations, for example, require meat to be branded as having

been inspected as fit for human consumption. The regulatory impact statement assessing the cost of this requirement before its adoption estimated it would cost about \$67 600 a year for a medium to large abattoir (DPI 2005, p. 23).

The Australian Industry Group provided industry estimates that suggest the cost of food regulations to some industries is high. Its spot surveying of Victorian food processors found the cost of food regulations equated to 0.7 per cent of sales, or around \$100 million a year. Per employee, this represents about 36 hours of compliance work each year (sub. 32, p. 1). This cost, however, includes all food regulation (not just Victorian) and does not account for the incremental cost of regulation. Regarding the latter, the Australian Industry Group acknowledged that commercial requirements are overtaking minimum regulatory requirements:

Many food companies advised Ai Group that the very high standards demanded by the large retail food chains are such that the need for government regulation was becoming somewhat secondary. We were advised that each retailer conducted their own audits, creating a complex array of different rules and requirements, and operated in parallel with the government standards. (sub. 32, p. 1)

Such developments would mean, for these firms, that regulation is becoming less responsible for driving the incremental costs of achieving food safety. The Australian Industry Group's estimates, therefore, considerably overstate the cost of food regulation in Victoria, although they are useful in suggesting an upper bound to costs incurred by food processors.

The estimates illustrate the need to treat carefully the estimates of compliance costs. As noted, compliance costs represent the additional costs of regulation to business. Estimating them for food regulation in Victoria requires separating costs that are attributable to that regulation from costs that a business might otherwise incur. The latter could derive from other types of regulation or general business costs—for example, costs from parent company directives, a desire to achieve product quality and/or the need to protect and promote corporate reputation.

To judge compliance costs, therefore, it is necessary to assume the costs or share of costs that can validly be attributed to the regulations. The choice of a baseline against which compliance costs are measured is thus critical to any cost estimate. But, as the Centre for International Economics found in its report for Food Standards Australia and New Zealand on evaluating food regulation, 'There appears to be no one universal systematic approach to estimating the extent of compliance costs' (CIE 2002, p. 24). Estimating costs is thus complicated by there being no uniform approach to selecting the baseline against which incremental costs are measured. On this matter, an Organisation for Economic Cooperation and Development report examining food safety regulations within

the European Union and in the United Kingdom (OECD 1997) noted the necessity of considering how the market would develop without the regulation and how the market will respond to the regulation (chapter 2).

Compliance costs also depend on the extent to which firms comply with regulatory requirements in the most cost-effective manner. Relatively inefficient firms tend to have higher compliance costs than those of firms that have invested in new technology. Further, firms choosing very inefficient ways to comply with regulatory requirements can significantly affect estimates of compliance costs (OECD 1997, p. 2).

Estimates are thus highly sensitive to assumptions about baseline costs or market scenarios, as highlighted by The Allen Consulting Group estimates for implementing standard 3.2.1 (food safety programs):

The costs are calculated to have been in the order of \$200–600 million per annum Australia-wide, depending on the assumptions made about how much activity is directly attributable to the food regulations as opposed to being part of standard business practice. (ACG 2002, p. 5)

Information reviewed by the Commission and presented by inquiry participants strongly suggests that incremental compliance costs could be relatively small. The Victorian Farmers Federation, for example, acknowledged the incremental cost of some food regulation would be minimal:

The major supermarkets require their suppliers to comply with the supermarkets' food safety plans. These plans are usually designed to fit with the risk management strategy of the supermarkets. These risks are usually higher than the risks of many of their suppliers ... (sub. 40, p. 4)

It also drew attention to industry programs that essentially replicate the food safety objectives of food regulation (chapters 2 and 4).

Chapters 2 and 4 describe the strong commercial incentives to deliver safe food that derive from contractual obligations between suppliers and their customers. Examples are contracts between the large supermarket chains and their food suppliers or between vegetable processors and their grower suppliers. As well, firms operate to achieve food safety levels necessary to access the national market. In this regard, Woolworths Limited noted:

As a national business, state boundaries are irrelevant to Woolworths' operations and in most cases, our own systems for managing food safety need to consider the most stringent of state regulations, then for consistency implement this requirement throughout all supermarkets. (sub. 50, p. 5)

More generally, the Department of Primary Industries observed ‘food safety is a condition of entry into, and survival in, the marketplace’ (sub. 56, p. 1). In discussions with PrimeSafe, the Commission was told that many companies (particularly larger firms with a national presence) operate to a higher level of food safety than required by regulations. Such cases suggest the incremental cost of complying with food regulation is, for those firms, a minimal burden (box 6.3).

Likewise, firms selling into export markets need to meet international standards or satisfy Commonwealth export standards, which are equal to or greater than Victorian regulated standards. The Department of Primary Industries noted, for example, that ‘Harmonisation with export requirements and international standards ... is of critical importance to industry’ (sub. 56, p. 5). In such cases, firms may face little or no additional cost to comply with Victorian food regulations.

Box 6.3 The Australian Food Group: a case study of incremental costs

PrimeSafe, in its 2005-06 annual report, cited the Australian Food Group’s experience of incremental costs:

We use [quality assurance] as a radar. It drives and sets the direction of the business. To us, the customer is the ultimate regulator. If you work back from this point you realise [quality assurance] is the best tool to provide high quality and safe products to the customer. ... Our food safety systems are well in excess of the [quality assurance] and accreditation required. [Quality assurance] allows us to 100 per cent guarantee our product, which is important for customers such as Woolworths and Coles that have a considerable social responsibility.

Source: PrimeSafe 2006, p. 16.

In this regard Inquit Pty Ltd (engaged by the Commission to report on the impact of international regulations on the Victorian food industry) found:

Because two thirds of Victorian produce is exported, achieving an international standard of production and quality is essential. Food standards in Victoria are consistent, therefore, with international standards but they are made under Australian laws and in accordance with Australian conditions. (Inquit 2006, p. 1)

It also observed ‘Other food regulations in Victoria arise from Commonwealth laws regulating exports and imports and from firms’ participation in export or import markets’ (Inquit 2006, p. 1). Accordingly, Victorian businesses selling into export markets are effectively subject to the applicable international regulations (and to the related cost) if they wish to access those markets.

To better understand the role of regulation in imposing costs on industry, the Commission engaged a consultant to provide a case study of the impact of food regulation on Victoria's dairy industry.⁶ That study found:

Compliance with current food regulations is a major cost to the sector. The efficiency and effectiveness of the nature and application of these regulations are fundamental to the dairy sector's competitiveness and viability into the future. (Dench McLean Carlson 2006, p. 3)

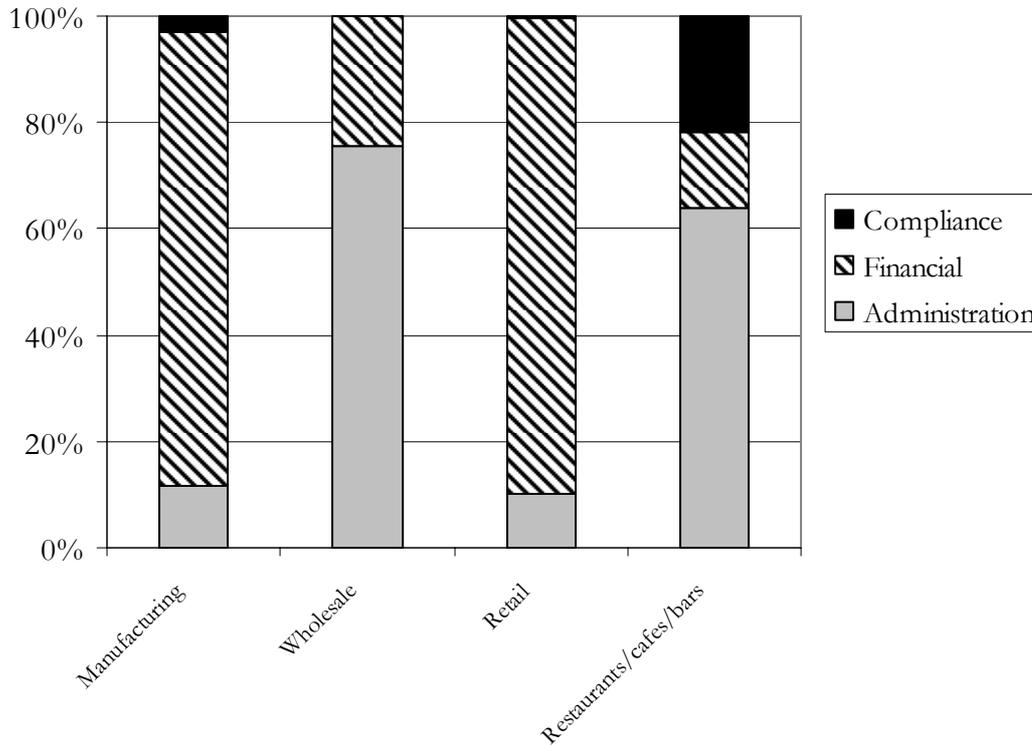
It found that many of the food regulations the dairy industry faces are based on the international Codex standard, and reported that 'Most manufacturers indicated that if the DFSV regime didn't exist they would have to meet similar requirements for their customers anyway' (Dench McClean Carlson 2006, p. 22). It is reasonable to conclude that such regulations impose little, if any, additional cost over that which a business would need to incur to meet the international standards.

Without previous studies on aggregate compliance costs, the Commission's survey of food businesses gives some indication of these costs for Victorian food industries. A 'scaling up' of survey results for the manufacturing, wholesaling, retailing and cafés/bars/restaurants industries suggests aggregate compliance costs for these industries amounted to about \$34 million in 2006. But this aggregate should be treated with caution. Of necessity, it was extrapolated from a small sample (29 firms) that did not mirror the composition of the four industries, and it is highly sensitive to the weighting ascribed to the sample firms. Moreover, the estimate attributes no compliance costs for wholesaling as sample businesses from this industry gave a nil response for this cost. (That is, they were unable to offer an estimate of the cost, rather than offering a response that stated they incurred no compliance cost).

Notwithstanding the sample response from wholesaling firms, the survey results provide an insight into the relative significance of ongoing compliance cost for each of the main food industries (figure 6.2).

⁶ The report is available on the Commission's web site at www.vceec.vic.gov.au.

Figure 6.2 **Proportion of ongoing costs, by food industry**



α The zero compliance cost recorded for the wholesale industry is the result of respondents being unable to provide an estimate. It does not reflect respondents attributing no cost for compliance.

Source: KPMG 2007, p. 20.

These results highlighted, for the surveyed firms, the relatively small proportion of compliance costs for food manufacturers, wholesalers and retailers. This is consistent with expectations where, for example, industry generally comprises medium–large firms with reputations to protect, or interstate and/or export sales are likely to be a significant share of total sales. The cafés/bars/restaurants industry displayed a markedly higher share of compliance costs (albeit still not the largest cost). This too is consistent with expectations. The industry essentially sells into local (that is, intra-Victoria) markets, so it would not be subject to standards required in other (Australian or international) markets. Accordingly, it would be expected to be relatively more affected by Victorian food regulations, with commensurately higher incremental compliance costs.

The Commission’s survey also highlighted, for the sample businesses, the extent to which regulatory costs differ across the four industries sampled (box 6.4).

Box 6.4 The share of ongoing costs by industry

The following discussion covers the ongoing costs to each industry, and provides some context for why the individual cost components vary in each industry.

Manufacturing

The major costs for the manufacturing industry sample include registration and licence renewal and, to a lesser extent, annual maintenance of the food safety program document. For the manufacturing industry, national and international requirements often require, regardless of Victorian regulations, costs associated with compliance, audits and inspections, and training. The cost associated with Victorian regulations for manufacturing is thus lower because businesses often have to incur these costs irrespective of the requirements of Victorian regulations.

Wholesaling

Based on a sample of three wholesaling businesses, the major costs associated with Victorian regulations include training, maintenance of food safety programs, and registration and licence renewal. As for manufacturing, the wholesaling sample faces relatively low compliance. Audits and inspections are also noticeable contributors to the overall costs of the wholesaling industry.

Retail

The costs of the retail industry primarily include those associated with registration and licence renewal, and the maintenance of food safety programs, including record keeping (for example, fridge temperatures, cleaning logs etc.). Compliance costs are also noticeable, representing around 10 per cent of the total costs of the Victorian food regulations for most firms sampled. The difference in the proportion of the cost elements for manufacturing and wholesaling relative to retailing is indicative of a change in market exposure—for example, the retail sample primarily consisted of smaller businesses with little or no national or international exposure. (Two large national retailing businesses sampled were removed from the analysis: given the small sample size and the fact that most businesses in the retail sector are small to medium enterprises, their inclusion would have distorted the data. Their costs, however, are included throughout the analysis in the report.)

Cafés/bars/restaurants

The costs for the cafés/bars/restaurants industry are relatively similar to the breakdown for the retail industry. Cafés/bars/restaurants tend to operate in a local market and often have limited exposure to national and international markets. The sample of businesses in this industry indicates that the major costs stem from having to maintain food safety programs (including record and log keeping) and from compliance costs. Licence costs represented about 15 per cent of total Victorian food regulatory costs to the sample businesses.

Source: KPMG 2007, pp. 22–3.

Indirect/market costs

Indirect or market costs arise from the impact of regulation on market structure or consumption patterns. In its report on a framework for the role of government in food safety, The Allen Consulting Group indicated the nature of these costs, when it posed the following questions:

- Are there any distortionary impacts that may arise from intended or unintended impacts on the incentives of regulated entities (for example, a regulation may promote a particular type of production process that is less efficient than other options)?
- Are there any impacts on competition in an industry? An unintended consequence may be that regulations prevent new firms from entering the market, thus reducing competitive pressures.
- What is the impact on innovation and the facilitation of improvements and advances into the future? (ACG 2000, p. 19)

Inquiry participants provided examples of adverse indirect or market effects arising from the current system of food regulation, although with limited quantification of their cost. The paucity of information on indirect costs, however, meant the Commission could not estimate their magnitude.

The Victorian Farmers Federation noted a member who decided against producing a product that is unavailable in Australia because the cost of establishing a 'best before date' for that product is prohibitive (sub. 40, p. 5). Similarly, George Weston Foods was critical of both the costs and time involved in approving food standards (sub. 52, p. 5).

The City of Wodonga noted that 'Smaller food operators have fewer resources to implement the food safety program' (sub. 29, p. 2), implying that this could impede new entrants to some markets. Woolworths suggested Victoria's seafood regulation impeded some markets:

... PrimeSafe restricts the sale of seafood and does not permit the retailer to display whole fish or whole gutted fish on ice for customer inspection and self service. ... no other Australian jurisdiction has the same interpretation for the sale of seafood. (sub. 50, p. 5)

Restaurant & Catering Victoria argued that the process for dealing with temporary food premises is costly to operators and a material impediment to participating in community festivals, major exhibitions and events. It noted a similar impediment for businesses that specialise in catering:

... [they] are faced with the problem of potentially having to register multiple food premises such as a production kitchen and also the venue/s where the function takes place. This requires multiple [food safety programs] which add considerably to the cost of doing business ... Such instances are compounded when they are across local council boundaries. (sub. 36, p. 12)

The Dench McClean Carlson case study of the dairy industry identified overly restrictive labelling laws as a brake on innovation. It reported this restriction as significantly restricting the dairy industry's ability to make general health claims:

The inability of enterprises to make clear claims in terms of health benefits and labelling ... restricts the level of investment they apply within their businesses and the degree of diversification achieved. This is especially the case in terms of creating a base in the domestic market off which manufacturers can launch value added products internationally. As a result the industry believes it fails to match the value adding of other developed dairy producing regions around the world and the production base remains predominantly commodities. (Dench McClean Carlson 2006, p. 22)

The cost of not being able to make even the most simple and broad claims relating to the value of dairy products and components (especially in terms of health)—at least domestically is seen as significant. All major companies interviewed believed this creates a lack of incentive to invest in R&D and innovation, and as a result impacts on their long term ability to compete—especially internationally, and to a degree domestically when competing against overseas importing companies who do not have these same limitations in their own home markets. (Dench McClean Carlson 2006, p. 23)

Most examples of restrictions on innovation related to the adverse effect of delays in approvals for changed food standards. The Australian Food and Grocery Council (sub. 17, p. 7) and MasterFoods (sub. 55, p. 6) gave examples of delays in the approval of additives to some products and of a new product line respectively. The Australian Industry Group too identified the lengthy approval time to obtain new food standards as imposing a cost on food manufacturers:

With product innovation being critical to market competitiveness, there is likely to emerge a range of new products with new additives to support healthy living objectives. ... Ai Group understands that the process of approval for new additives can be protracted and take up to a number of years. ... Speeding up the process of approval, and making use of overseas experience, should be facilitated so that food manufacturers are not hampered in using product innovation to develop new markets and competitive advantage. (sub. 32, p. 2)

Similarly, the Australian Beverages Council commented:

Australia is a single market and the food and beverages sector is on the one hand encouraged to be innovative and export oriented and on the other hand is stymied by a system that not only has in-built delays but is also open to artificially generated delays where philosophy contradicts with the business community's needs for innovation and progressive market developments both locally and overseas. (sub. 47, p. 6)

It and Cadbury Schweppes (sub. 20, p. 2) noted the slow pace of regulatory change to address a situation whereby New Zealand regulations—in conjunction with the free trade and mutual recognition between Australia and New Zealand—allow some fortified beverages produced in New Zealand to be sold in Australia while Australian production of such products was prohibited. The Australian Beverages Council stated that the approval process took 65 months and:

The cost in sales has been estimated over this period by the NSW Government at \$260 million. Given that Victoria represents approximately one third of total beverage production, this represents a loss in production and sales for Victorian beverage makers of almost \$90 million. (sub. 47, p. 7)

The Banks review also identified the time taken to develop or amend food standards impeding innovation in the industry. It observed that the average time taken between January 2002 and May 2005 to approve an unpaid proposal was 35 months (Banks 2006, p. 58). While such examples point to significant costs from the regulatory arrangements for setting food standards, those arrangements are essentially national, and not ones that the Victoria Government is unilaterally able to control. (Chapter 7 discusses this issue and what the Victorian Government might do to improve matters.)

Additionally, the estimated cost noted by the Australian Beverages Council from delaying innovation raises the issue of how to interpret such costs. The \$260 million cited by the Council is for gross sales forgone; the estimate did not measure the net cost to beverage makers (of incremental sales and profit forgone) or to the economy. The value of sales cited might, for example, fully cannibalise local sales of other beverages (or other discretionary food or other products in consumers' basket of goods). In that sense, it might represent only a re-ordering of market share within a company's product range, within the beverage industry generally or of domestic consumption generally. It is unclear whether the aggregate sales foregone include sales that might displace imports, or include exports that might displace non-Australian products sold in international markets. Moreover, 'Estimation of the cost to society is complicated because costs to one business may be offset by gains to a competitor' (CIE 2006, p. 6). Determining the net effect of such 'forgone' sales opportunities would thus require detailed economic modelling.

Regarding any indirect impact of Victoria's food regulation on industry, previous national competition policy reviews suggest this is not a material concern. As part of Victoria's commitment to national competition policy, the Dairy Industry Act and Meat Industry Act were reviewed in 1999 and 2001 respectively. The review of the Dairy Industry Act resulted in major changes at the state level, with deregulation of market milk to facilitate competition. It also resulted in the establishment of DFSV as a statutory authority to deliver the food safety

functions carried out by the (former) Victorian Dairy Industry Authority. The national competition policy review also concluded:

The [Victorian Dairy Industry Authority's] statutory public health objective does not restrict competition. In fact, it can be considered precompetitive by minimising any adverse effects of a potential hygiene breakdown by one supplier from spilling over to other suppliers to the market. This is particularly important in the case of export sales. (DPI 2007a, p. 1)

These comments highlight the need to consider the positive effects of regulation on competitiveness and trade—for example, regulation may facilitate Victorian businesses' access to markets.

The review of the Meat Industry Act recommended only minor changes, suggesting the legislation had only minimal (if any) adverse effects on competition. More recently, the regulatory impact statement for the (then) proposed Meat Regulations concluded the costs to businesses of licence fees for meat transport vehicles (\$83 per year) form a relatively small proportion of the operating costs of a meat transport vehicle. For the approximately 3000 meat transport vehicles in Victoria, this cost would amount to \$249 000 per year, but is unlikely to be significant enough to deter entry to the industry. The cost is unlikely, therefore, to influence the number of competitors in the industry (DPI 2005, p. 25).

While these comments highlight the potential for food regulation in Victoria to impose indirect costs on businesses, the Commission was unable to quantify the extent of indirect/market costs attributable to Victorian food regulations.

6.4 Effect on competitiveness and trade

The preceding discussion suggests the direct ongoing cost of Victorian food regulation to the four main food industries affected—manufacturing/processing, wholesaling, retailing, and cafés/bars/restaurants—is at least \$138 million. This annual cost is the estimated aggregate of:

- financial costs of around \$19 million
- administrative costs of at least \$85 million
- compliance costs of at least \$34 million.

This cost would represent less than 0.3 per cent of the four industries' turnover.⁷

The Commission's survey of businesses also found the cost is likely to be a relatively small burden on food businesses. That survey reported the total annual ongoing costs of food regulation in Victoria were relatively small for the firms sampled, ranging from 0.001 per cent relative to turnover for wholesalers to 0.25 per cent for cafés/bars/restaurants (KPMG 2007, p. 24). In the Commission's view, costs of this scale for these industries are generally likely to have little short term effect on the competitiveness and trade of many businesses. This does not mean, however, that reducing such costs is not important. As the Victorian Farmers Federation noted:

Reducing not only the level of regulation, but more importantly the red tape and compliance costs of regulation, will enhance Victoria's competitiveness, and promote economic growth and investment. (sub. 40, p. 4)

A common assumption in estimating costs and their effect on firms is that business bears the full cost burden. But this is seldom the case. The impact of costs of food regulation of any scale will depend on whether those costs are borne by businesses (in the form of lower profits), or by others. Are they passed onto input providers in the form of lower prices or wages? Or, are they passed on to intermediate and final consumers via higher prices? To answer the latter question would require an intimate awareness of a number of factors, including:

- capacity relative to demand in the market
- the level and form of market competition
- firm size
- industry demand and supply elasticities (OECD 1997, p. 25).

The Centre for International Economics scoping study (2002) on evaluating the benefits and costs of food regulation observed that compliance costs are likely to be shared between food manufacturers and consumers and between each stage of the processing chain (CIE 2002, p. 26). While the inquiry cannot determine the ultimate incidence of food regulation costs, general observations are possible:

- Where product is destined for export markets, Victorian producers are likely to be price takers and less able to pass on costs.

⁷ The \$138 million includes some costs incurred by other industry groups (such as registration fees for food premises of hospitals, aged care facilities, school canteens etc). Also, as Australian Bureau of Statistics data for wholesale turnover is not available, only turnover for the other three industry groups (\$47 billion, from chapter 4) has been used as a denominator. The combined effect suggests the costs of regulation would be less than 0.3 per cent of the four industries' turnover. Given that the financial cost of food regulation is not available on an industry basis, the Commission can provide only a combined estimate for the four food industries mainly affected by Victorian food regulation. For the same reason, it is not possible to provide a total cost for food manufacturing or to identify its significance relative to (available) manufacturing value added.

- Where product is destined for the domestic market, costs are likely to be passed on to consumers in the long run.

The Australian Retailers' Association suggested regulatory costs are generally passed on:

Industry should not be burdened with regulatory duplication and inconsistency, as the resultant disproportionate costs will ultimately be passed onto the consumer ... (sub. 35, p. 3)

Given the relative size of costs identified by the Commission and the survey, their incidence would likely make little difference in the short term to the general competitiveness and trade performance of Victorian industries. But this is the aggregate story. At a disaggregated level, data limitations hinder any definitive comment. Credible data on the total cost of food regulation in Victoria are available neither for segments within an industry (for example, confectionary within food manufacturing) nor for the firms within those segments. Moreover, a lack of firm-specific information on cost structures and elasticity of demand for their product range means it would be problematic to assess the impact of data, even if it were available at a disaggregated level. Nevertheless, inquiry participants' comments and previous studies provide insights into the impact of food regulation costs on specific industry segments. Submissions identified three areas in which competitiveness and trade performance of Victorian businesses could be materially affected: some restaurants, part of the seafood industry, and small businesses generally.

Restaurants

Restaurant & Catering Victoria argued that for some in the restaurant industry regulatory costs are of a magnitude sufficient to materially affect their competitiveness and trade:

The need for a restaurant business to lodge a separate [food safety program] to participate in community festivals, events and alike is a major impediment to participation in such events. There is both a direct cost of the application and an indirect cost associated with the application that acts as a deterrent to participation. (sub. 36, p. 11)

It noted low and declining profit margins in the industry, which emphasised the need to contain regulatory costs faced by the industry:

In 2005, restaurant businesses reported to the ABS an average net profit of 4 per cent, down 16 per cent on the previous 1998-1999 survey period. (sub. 36, p. 4)

Patrick Garry claimed costs have increased substantially in recent years: 'Registration costs rose approximately 300 per cent with the introduction of mandated across the board food safety programs' (sub. 14, p. 5). If this were

generally the case, such an increase could be expected to have a significant effect on competitiveness and trade performance. But a comparison of costs identified in the Municipal Association of Victoria survey in 1999-2000 with costs provided in submissions indicates this is not generally the case. Many submissions argued that registration fees are relatively minor. The City of Stonnington Community Health Unit claimed 'The greatest component of the cost to businesses is registration fees' (sub. 25, p. 2), but added:

The average level of registration fees is around \$500 per year, or less, and very few businesses would pay more than \$1000 per year. When considered as a percentage of the businesses' overall operating costs, registration fees would comprise only a small fraction in comparison to rent, wages, utilities, advertising and marketing, and fees imposed by other departments of council, such as planning, building and local laws. (sub. 25, p. 2)

It concluded 'The cost imposition on small businesses of food safety regulation is not great, when considered as a proportion of overall operating costs' (sub. 25, p. 7). Similarly, the Maroondah City Council (sub. 33, p. 1) and the Wyndham City Council (sub. 38, p. 3) observed that the registration fee for an average restaurant/café is usually less than the cost of registering a car.

Seafood industry

Anecdotal evidence presented at the Commission's business round table alleged that unnecessary and costly regulation of the seafood industry in Victoria has caused people to move their operations to Tasmania, New South Wales and South Australia to avoid regulation. The mobile nature of businesses' capital (boats) facilitates this reaction. Also, the Victorian Rock Lobster Association stated:

To the best of our knowledge the other states producing southern rock lobster (South Australia and Tasmania) do not even require lobster fishers to be licensed for food safety, let alone pay fees to a regulator, or even worse—pay the highest fees on a per kilo basis for the safest seafood. (sub. 24, p. 2)

This, it claimed, has had adverse consequences for the Victorian industry and effectively constrains the industry's competitiveness and markets:

The inconsistency in seafood safety licensing and fees payable for rock lobster in Victoria compared with the other states has caused a great deal of angst as previously iterated. While the cost to each operator may be less than \$1000 it is still a cost that operators in the other states do not have to pay even [though] they are operating to the same standard and in the same manner. This has led to uncertainty and a resulting reluctance to invest in both the rock lobster catching and processing sectors. (sub. 24, p. 3)

The Victorian industry has been placed at a distinct disadvantage with the other States. (sub. 24, p. 7)

Information provided to the Commission was insufficient, however, for it to judge the extent to which Victorian food regulations have affected the location of seafood operations. Following the release of the draft report the Commission will investigate this matter further.

The Commission invites interested parties to provide evidence to substantiate or refute the claim that Victorian seafood operations are moving to other states to avoid Victorian food regulations.

Small businesses

Small businesses constitute an overwhelming majority of the number of food businesses in Victoria. Non-employing businesses and those with less than 20 employees represent about 81 per cent of manufacturing firms, 92 per cent of wholesaling, 92 per cent of retailing, and 86 per cent of cafés/bars/restaurants (table 4.2).

A number of inquiry participants observed that the cost of food regulation is greater for small businesses and, by implication, imposes a greater burden on their competitiveness and trade performance. The City of Wodonga noted that smaller food operators have fewer resources to implement the food safety program (sub. 29, p. 2). The Victorian Farmers Federation similarly recognised that the food safety program works well for larger organisations but tends to be too arduous and time consuming for smaller businesses (sub. 40, p. 14). George Weston Foods Limited also claimed:

... the multiplicity of regulation and its complexity creates compliance difficulties for businesses of all sizes, but particularly in relation to small businesses that are not resourced to manage these issues. (sub. 52, p. 2)

Roger Pierotti argued that regulatory requirements impose a proportionately larger cost on smaller businesses, particularly where Hazard Analysis and Critical Control Points (HACCP) is required, because it is designed for larger businesses that tend to monitor, document and audit processes and test samples as necessary (sub. 30, p. 4). Evidence from the introduction of HACCP regulations in the United States supports this view. Studies there have shown first time implementation of HACCP requires large initial investments. These costs are lower on a per unit basis for larger food processors. And small firms' costs rise proportionally more than large firms' with the implementation of HACCP, which can put them at a competitive disadvantage. Further, large firms often have more inhouse resources for design and implementation, so have lower incremental costs in implementing HACCP. The need to have separate HACCP procedures for different products may also force small firms to drop some product lines (Unnevehr 2001, p. 14). Information from the Commission's survey of businesses also provided evidence that smaller firms incur a proportionately much higher burden (table 6.7).

Table 6.7 Annual cost of Victorian food regulation relative to turnover

<i>Business size by employees</i>	<i>Number of businesses in sample</i>	<i>Food regulation costs as percentage of turnover</i>
Large (more than 200 employees)	12	0.01
Medium (more than 20 employees but fewer than 199 employees)	4	0.32
Small businesses (fewer than 19 employees)	13	0.48

Source: KPMG 2007, p. 23.

Regulation can have a differential effect on small and large firms. This can arise for reasons such as asymmetry in compliance (where one firm suffers a greater cost burden per unit of output, even when regulations are evenly enforced across all firms) or asymmetry in enforcement (where regulation is more rigorously enforced against certain firms).

Since many new firms start as small firms, a regulatory burden favouring large firms can be considered a barrier to entry. The effects of environmental regulations, for example, have been shown to impede entry by small firms while not deterring entry by large manufacturing firms. This effect was shown to be persistent across 1977, 1982 and 1987 (OMB 2004, p. 54). Research suggests the cost of regulation generally is proportionately heavier for small firms. A literature review by Chittenden, Kauser and Poutziouris (2002, p. 68) provided evidence of compliance and administrative costs from a range of (non-food) regulation that are consistently greater for small firms and impose a burden that varies from 139 per cent to 867 per cent greater than that for large firms. The UK Better Regulation Task Force also noted that a 2004 study by the Federation of Small Business—*Better regulation is better for business*—found small firms’ regulatory costs are proportionately five times higher than those of large firms (BRTF 2005, p. 13).

To the extent that there are economies of scale in complying with a particular regulation, smaller firms suffer a higher unit cost than larger firms do. There is evidence, however, of significant differences in the level of enforcement for small and large firms, with the literature suggesting food regulations are more rigorously enforced for large firms (OECD 1997, p. 23). George Weston Foods observed this to be the case from their experience:

We already see a disparity in enforcement efforts with focus frequently being directed at larger food companies and many small food companies fail to comply with mandatory requirements under the code and other legislation. This can put large business at a significant commercial disadvantage ... (sub. 52, p. 3)

Similarly, the Moreland City Council observed:

Larger food companies and manufacturers in particular have adopted [food safety plans] with a greater level of compliance than smaller food retailers. (sub. 51, p. 1)

It suggested reasons for this being so, such as larger companies having more resources to implement food safety programs, and being larger companies are more likely to supply other food companies (such as supermarkets) and thus be subject to external audits required by those companies (sub. 51, p. 1).

Evidence in the economic literature of the relative importance (and net effect) of compliance asymmetries and enforcement asymmetries is inconclusive. However, based on information in submissions and from the Commission's survey of businesses, it would appear the costs of Victorian food regulation are proportionately greater for small businesses. Accordingly, the Commission considers it likely (if such costs do adversely affect competitiveness and trade performance in particular market niches) that smaller firms would be affected more than larger firms.

6.5 Concluding comments

The direct ongoing cost of food regulation in Victoria is substantial for its main food industries—estimated to be about \$138 million a year—and comprises mostly administrative costs. Relative to industry turnover, however, this cost is small. While this estimate is only indicative, the overwhelming impression from submissions (supported by evidence from the Commission's survey) is that generally this cost is relatively small. In the Commission's view, a cost of this scale is generally likely to have little short term effect on competitiveness and trade of most food businesses. Moreover, the cost is small relative to other regulatory costs for businesses, such as those arising from occupational health and safety, industrial relations and tax.

Most indirect costs noted by inquiry participants are derived from the operation of the 'national' system (and thus outside the ability of Victoria to unilaterally change). The Commission could not quantify the extent of indirect/market costs attributable to Victorian food regulations.

Knowing the total cost of food regulation is of only limited value, however, in developing or refining policy/regulation. The main significance of the cost of regulation is relative to the benefits derived from that regulation—given the acid test for any regulation is the net benefit—not simply the size of any cost. Also important is whether the cost can be reduced while still maintaining effectiveness (that is, maintaining the associated benefits). The remainder of the report focuses on this area: how to streamline or improve the regulatory arrangements so, while

maintaining the effectiveness (benefits) of government intervention, the cost to business and society is lessened. Some improvements could be directed against costs growing. Increasing product diversity and supply chain complexity suggests that costs could grow. Moreover, globalisation of food markets enhances competitive pressures on Victorian businesses and increases the significance of cost increases. Further, better risk related regulation can help ensure costs fall where most justified by the potential benefits.

7 Improving the regulatory framework: national issues

7.1 Introduction

Inquiry participants suggested aspects of the national food regulatory framework and its administration are imposing excessive administrative and compliance burdens on Victorian food businesses and could be improved. While the Victorian Competition and Efficiency Commission's capacity to influence policy in other Australian jurisdictions is limited, it has explored this issue to help inform the Victorian Government. During the inquiry, the Commonwealth Government announced a national review of food regulation, and this inquiry may also inform that review.

This chapter:

- assesses stakeholder views on the national framework governing food regulation and its impact on Victorian food businesses
- reviews options for improving the national arrangements for developing food standards.

Stakeholders identified numerous issues relating to the national framework governing food regulation (chapter 3 and appendix B), including:

- the nature and enforcement of food standards relating to health claims and labelling (section 7.2)
- the food standards development process and impacts on food sector incentives to innovate (section 7.2)
- the increasing use of food standards to achieve particular public health objectives (section 7.3)
- duplication in the area of misleading and deceptive conduct (section 7.4)
- approaches to regulating minimum residue levels in food (section 7.5)
- the method used to establish the weight of food products (section 7.6).

7.2 Health claims and labelling standards

The discussion in chapter 4 highlighted trends likely to influence the growth of the Victorian food sector, including:

- rising demand for safe and high nutrition food as a result of increasing income and education levels in export markets (particularly Asia)
- increasing mobility of food manufacturing and processing investment, as market proximity becomes more important than proximity to agricultural inputs

- increasing pressure on firms to develop new products and differentiate their existing ones, given generally flat domestic demand for food products and the growing pressure in export markets
- growing awareness of the links between diet and health, particularly in relation to obesity and diabetes. This has led to increasing consumer demand for healthy foods to help tackle diet and related health issues. Governments are also looking at ways to improve the quality of the food supply so as to improve community health.

These trends highlight the importance of innovation in the food supply chain (to business and consumers alike). How the regulatory framework accommodates innovation is critical to ensuring continued Australian food sector growth and meeting consumer expectations for healthier foods.

Inquiry participants considered that features of the national food standards (particularly those relating to health claims and product labelling), as well as the process for amending the standards, are inhibiting the responsiveness of Victorian food businesses to international and domestic consumer trends. They were concerned about the lack of flexibility associated with national standards relating to health claims (section 7.2.1) and labelling (section 7.2.2), and the slow and cumbersome process for amending food standards to allow marketing of new food products that would otherwise be prohibited (section 7.3).

7.2.1 Health claims

Several inquiry participants considered there should be more flexibility to make health claims about food products. Nutrient content claims are allowed (for example, ‘this food is high in fibre’), as are some function maintenance claims (such as ‘calcium is good for healthy bones and teeth’). There is, however, a ban on all health claims, other than the benefit of mothers consuming folate to reduce the risk of neural tube defects in unborn babies (FSANZ 2004a, pp. 15-16).

Reflecting the increasing interest in the development of new healthier foods, the Australia New Zealand Food Authority (now FSANZ), in consultation with industry, developed a scheme for the voluntary self-regulation of nutrient claims by the food sector (the Code of Practice on Nutrient Claims (CoPoNC)). There is pressure, however, to abandon the self-regulatory approach due to concerns about lack of coverage and the level of enforceability.¹ The Food Regulation Ministerial Council directed the Food Regulation Standing Committee to

¹ CoPoNC is a voluntary code, so government enforcement agencies are often unable to address products with noncompliant claims through this mechanism. Further, the Code of Practice does not have universal application; it applies to only signatories to the code, and not in New Zealand (FSANZ 2004a, p. 18).

examine new assessment and approval processes for amending food standards, including those for health claims; a preliminary final assessment report is expected in March 2007.

FSANZ has also proposed (via proposal 293) that health claims should be permitted on packaging and that health claims should be divided into high and general level claims.² The level of a claim would determine how the claim would be regulated, including what evidence would be required for substantiation. FSANZ would evaluate high level claims on a claim-by-claim basis, while manufacturers or suppliers would substantiate general level claims. All nutrition, health and related claims on food labels would need to be substantiated by scientific evidence, to ensure claims were soundly based and did not mislead consumers. Substantiation would be based on authoritative, current and generally accepted information, or on a structured review of the evidence (FSANZ 2004a, pp. 55–56).

FSANZ's proposed approach to health claims would be similar to the current approach for therapeutic goods. While claims made for therapeutic goods must meet standards set by the Therapeutic Goods Administration, sponsors of products carry the primary responsibility for ensuring claims made about products are true, valid and not misleading in line with these standards. Should a question arise about the appropriateness of evidence supporting a claim, the Therapeutic Goods Administration will make a final evaluation of that evidence (TGA 2001, p. 7).

The Commission considers that providing a more flexible approach to health claims is important to the Victorian economy and comes when there is increasing community demand for healthy foods and increasing pressure on governments to address diet related health issues. A relaxation of restrictions on health claims is consistent with the strong industry incentives to provide food that is safe for consumption. It will enable food businesses to develop and market new products, thereby opening up new market opportunities in Australia and overseas. It will meet consumer demand for healthier food and, provided they have confidence in the regulatory structures and can understand and use the information on claims appropriately, help consumers address diet related health issues. That said, safeguards are needed to ensure consumer confidence in health claims is not undermined. It is important, therefore, that robust scientific

² General level claims include those claims that describe or indicate the presence or absence of a component in food (nutrient content claim) or refer to the maintenance of good health and describe a component and its function in the body—for example, 'Calcium is good for strong bones and teeth'. High level health claims reference a serious disease or condition, or a biomarker of a serious disease or condition. They include claims that a food or component could help control a serious disease or condition by either reducing risk factors or improving health—for example, 'This food is high in calcium. Diets high in calcium may increase bone mineral density'. (FSANZ 2004a, p. 29)

evidence supports health claims. The Confectionery Manufacturers of Australasia, supported such an approach and ‘advocated that all foods should be permitted to carry health claims provided they are accurate and may be scientifically substantiated’ (sub. 63, p. 4).

Given both the strong market incentives for food businesses to comply with widely accepted standards, and the additional safeguard provided by legal restrictions on misleading and deceptive conduct, the Commission considers that an industry based code approach may be preferred to regulated standards over health claims. Redesigning the existing industry code (CoPoNC) and building in additional safeguards could address concerns about inadequate coverage and compliance. FSANZ or Standards Australia could, for example, independently assess the scientific basis for proposed health claims allowed under a code. There would be strong incentives facing food businesses to ensure competitors comply with a code, but a mechanism to monitor and report publicly on compliance would strengthen these incentives.

The FSANZ preliminary assessment report (P293) examined an industry based code as an alternative to a mandatory standard, but rejected the option on the grounds that compliance with a code could not be assured, given the code is voluntary and operating only in Australia. However, the Allen Consulting Group draft report *Benefit-Cost Analysis of Proposal P293—Nutrition, Health and Related Claims* indicated that the level of compliance with CoPoNC is reasonable and similar to that for the Food Standards Code:

An independent study of compliance with the Code of Practice and the Food Standards Code found that, in a sample of 6662 products, for the 3194 claims covered by the CoPoNC, the level of non-compliance was 14.8 per cent. This result is only marginally different from the reported level of non-compliance with the Code (13.3 per cent of 811 claims), and would therefore suggest the CoPoNC is comparatively effective. (ACG 2005, p. 24)

The draft Allen Consulting Group report also noted that many of the difficulties with compliance appeared to be due to the lack of regular updating of criteria in CoPoNC. However, it also noted that CoPoNC ‘not been updated due to awareness of changes being made by FSANZ to regulation of nutrition claims’ (ACG 2005, p. 24). This suggests that FSANZ should have considered the option of an updated industry based code to address the perceived lack of consumer confidence with CoPoNC.

FSANZ has previously raised concerns about the limited coverage of a voluntary code; however, companies outside a voluntary code will still be subject to consumer protection provision of the Trade Practices Act. Signatories to the code would also have strong incentives to highlight the higher standards of their products and any false claims made by non-signatories to the code. The Commission considers that a more flexible approach to health claims is

important but that greater consideration should be given to the adoption of an industry based code for health claims.

7.2.2 Food labelling standards

The Food Standards Code sets out requirements for labelling food sold in Australia, including ingredients, date marking of packaged goods, directions for use and storage, nutritional information, characterising ingredients and components of food, and country of origin. Food labelling can help consumers make informed decisions about the food they consume. Nevertheless, some inquiry participants were critical of aspects of national labelling standards and its implementation.

A number of inquiry participants considered that consumers find labels confusing, misleading and in need of reform. George Weston Foods noted instances where ‘information that food companies are required to put on their labels (such as percentage labelling of characterising ingredients) has either confused or misled consumers’ (sub. 52, p. 5). A 2003 FSANZ study supported this finding, noting that many (Australian and New Zealand) consumers:

- were confused about how to use the information from some label elements (particularly those with nutrition information) and had varied levels of capacity to use them appropriately and successfully
- were not making more informed decisions despite prescriptive labelling requirements, possibly due to information not being presented in the most useful way for consumers or because too much information was being provided, which was beyond the ability of the average consumer to process (FSANZ 2003a).

Several inquiry participants, however, argued that mandatory labelling requirements assist consumers. CHOICE, for example, noted labelling is important to ‘protect the health and safety of consumers and allow them to make informed choices about the content of the foods they eat and the impact it may have on their health’ (sub. 49, p. 4). On the other hand, some inquiry participants argued that labelling standards impose unnecessary costs on business and ultimately consumers. While the Commission did not estimate labelling costs from its survey of the costs of food regulation (chapter 6), a major study in the United Kingdom (PwC 2006) found statutory labelling requirements accounted for around 24 per cent of the total administrative costs of food regulation (see appendix C). The Australian Industry Group also considered that labelling requirements are too detailed and costly, especially when the rules are being frequently changed, resulting in increased printing costs and wasted labels (sub. 32, p. 2).

Some inquiry participants considered that the food sector has overstated the costs of complying with labelling standards. CHOICE, for example, argued:

... the food industry have resisted changes to labelling requirements, arguing that it is expensive and that these costs will be passed on to consumers. On the other hand manufacturers have no problem in changing labels to advertise the latest promotion or competition or to add new marketing claims to a label. (sub. 49, p. 4)

Given the importance of innovation to the food sector, it is important that government intervention does not crowd out industry attempts to develop new products and/or methods and market those goods to consumers. The Commission noted, for example, that a number of companies provide information on labels that is not required under labelling standards.

Several inquiry participants mentioned calls to impose additional mandatory labelling requirements in areas such as trans fats, ecological impacts, animal welfare and 'fair trade'. VicHealth, for example, suggested a system of eco-labels (sub. 57, p. 5). Consumer Affairs Victoria (CAV) highlighted this community concern:

It is also common to hear suggestions that, to help the environment, or achieve some other social objective such as 'fair trade', that government should develop 'eco-labels' or endorse those developed by the private sector. (sub. 53, p. 18)

A number of inquiry participants considered the consumer benefits of mandatory labelling are undermined by:

- a lack of enforcement (Australian Food and Grocery Council, sub. 17, p. 8; CHOICE, sub 49, p. 3; City of Stonnington, sub. 25, p. 6; Victorian Farmers Federation, sub. 40, p. 11)
- inconsistency in enforcement (Australian Food and Grocery Council, sub. 17, p. 8; CHOICE, sub 49, p. 3; Woolworths, sub. 50, p. 5).

In addition, the Commission understands that most complaints about noncompliant labels come from food sector competitors rather than consumers (sub. 48, p. 19).

A number of participants were also critical of the country of origin labelling requirements and the process that led to their development. In particular, they criticised the cost to the food sector of meeting the requirements and the lack of any consumer benefit and a demonstrated market failure requiring regulation—for example, George Weston Foods noted:

We remain unconvinced that country of origin is a significant factor in the minds of most consumers. In our experience cost is the major determinant of most consumer purchases of food, not the fact that the food was made in Australia versus China. (sub. 52, p. 5)

Similarly, MasterFoods Australia New Zealand commented:

Retailers' information on the buying habits of consumers suggests that consumers' primary concern relates to price and quality. Given a choice between Australian and imported foods of equivalent quality, few consumers alter their purchase behaviour to pay a premium price for Australian produced foods.

New Zealand quickly recognised the likely harm to its manufacturers and exercised its right under the Trans Tasman Treaty to opt out of the proposed standard ... (sub. 55, p. 8)

Concerns were also raised regarding proposals to extend the country of origin labelling requirements—for example, MasterFoods indicated that a proposal to extend country of origin labelling requirements to packaged food containing two (or fewer) principal whole fruits or vegetables would impose one-off and ongoing costs to the company of over \$0.5 million per year (sub. 55, p. 9). Adding to these concerns is research from the Centre for International Economics which suggested that any benefits associated with such schemes should be carefully assessed:

... where the benefits to consumers of ... information exceed the costs of providing it, manufacturers have already segmented the market to provide the products and information to those who value them. (CIE 2006, p. ix)

7.2.3 Assessing labelling standards

Several inquiry participants indicated that businesses face incentives to provide accurate information to consumers where the benefits of doing so outweigh the costs (see box 7.1). Business claims about products are also subject to the misleading and deceptive conduct provisions of Commonwealth and state consumer protection legislation (chapter 3, appendix B). While there may be a case for labelling regulations where market incentives and consumer protection legislation are insufficient to enable consumers to make informed choices, it must have regard to alternatives to regulation, and to the benefits and costs of regulation. CAV made this point:

A case-by-case approach to deciding appropriate forms of government intervention is very important in the food industry. More standards, and more labelling, are not always the answer. Efforts by governments to intervene in prescriptive ways will not run smoothly when there is no market failure. If consumers really want an attribute, and are prepared to pay more than it costs to supply, the market will generally supply it without government intervention. (sub. 53, p. 16)

Box 7.1 **Market incentives and labelling**

As consumers search among available products in making purchase decisions, firms have an incentive to try to draw consumers to consider their products. By providing product information through spending on various forms of advertising such as labelling, firms can attract consumers who find these advertised characteristics desirable. Firms with products that deliver the advertised characteristics are more likely to obtain the repeat business necessary to make the advertising worthwhile. This simple mechanism is the fundamental force underlying the information theory of advertising.

One concern about advertising (including labelling) is the potential bias in the types of information that businesses provide; businesses have an incentive to tell potential customers what is good about their product but not what is bad about it. Despite the inherent bias at the individual firm level, economic theory suggests in many cases competition among producers can substantially reduce or eliminate this bias in the information provided by the market as a whole. If, for example, firms advertise the no cholesterol benefits of their products and are gaining sales by omitting information on other dimensions (such as saturated fat), competing firms with low cholesterol, low saturated fat products have the incentive to highlight these facts.

As long as consumers are sceptical of firms that do not reveal key information, competitive pressures would induce the firm to fill in important missing information—such as cholesterol and saturated fat in the example above. That said, behavioural science suggests there is a finite limit to the ability of human beings to assimilate and process information (Jacoby et al 1974, p. 381). This suggests there is a finite amount of information on labels that people can absorb and that the provision of more and more information can be counter productive.

Source: Ippolito & Pappalardo 2002.

When the market fails to provide sufficient information to consumers, there are alternative ways of addressing this shortage. Although country of origin labelling involves a mandatory standard, there is scope to consider less interventionist approaches, such as relying on general consumer protection legislation, industry based codes and government provision of information to consumers (chapter 2). Concerns about the appropriateness of labelling standards have led to calls to review the food standards code and for a consideration of alternatives. The most recent example relates to the introduction of the mandatory country of origin labelling requirements.

Country of origin labelling

The Food Regulation Ministerial Council recently agreed to introduce country of origin labelling requirements for unpackaged food and to increase requirements for packaged foods. The new standards were gazetted on 8 December 2005 and came into force for unpackaged fruit, vegetables, nuts and seafood products six

months later. Producers of unpackaged pork products and packaged goods were given 12 and 24 months respectively to comply (FSANZ 2006a, p. 2).

As noted, food sector participants argued that country of origin labelling requirements for fresh foods were introduced despite the lack of evidence of market failure to justify regulation and had resulted in unnecessary costs on businesses and consumers.

It is important to undertake a rigorous assessment of the costs and benefits of labelling standards, given the strength of industry incentives to provide truthful information on product characteristics to consumers. Such assessments also need to consider alternatives to mandatory product labelling, such as voluntary industry codes, the provision of information on company websites and via other means, and consumer information strategies. These are elements of a good regulatory process and consistent with the Council of Australian Governments' 2004 *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies*.

The Banks review (2006) considered the issue of country of origin labelling and highlighted that:

- the country of origin requirements were introduced despite the cost–benefit analysis commissioned by FSANZ showing that the proposal would impose a net cost on the community (see box 7.2)
- New Zealand has decided to opt out of introducing the requirements, and three Australian jurisdictions announced they would not enforce them
- FSANZ commenced an investigation into extending country of origin labelling requirements to products with two or fewer ‘whole food’ ingredients, at the request of the Commonwealth Government.

The Banks review recommended the Commonwealth Government undertake an independent public review of the country of origin labelling requirements (including a full cost–benefit analysis) two to three years after the policy comes into force, and that it withdraw the request for FSANZ to consider extending the requirements. The Commonwealth Government subsequently accepted these recommendations and announced that a review of country of origin labelling requirements would be undertaken within three years. While the government agreed to withdraw the request to FSANZ, it stated that the ‘Government is currently undertaking work on this issue in preparation for discussions in the Food Regulation Ministerial Council’ (Commonwealth Government 2006, p. 28).

Based on the process and assessment of country of origin labelling, the Commission supports the Banks’ review recommendation that the relevant food standard be reviewed. However, given points that inquiry participants raised about labelling standards, there is a case for expanding the scope of the review to encompass the entire standard, not just the country of origin provisions.

Box 7.2 Country of origin labelling (CoOL)

In 2005 the Food Regulation Ministerial Council provided policy guidance to FSANZ for reviewing the transitional country of origin labelling (CoOL) standard, directing:

... that CoOL of food be mandatory in the [Food Standards] Code for the purposes of enabling consumers to make informed choices. (FSANZ 2004d, p. 5)

In light of the policy guidelines, FSANZ commenced Proposal 292, with the primary objective of enabling consumers to make informed choices about the origin of food products. It reported that consumers 'have regard to the origins of food', and that 'the current [transitional] standard may not provide sufficient information' (FSANZ 2005a, p. 38). It identified two options: to make the transitional standard permanent in the code or to develop a revised standard that would extend the existing requirements for unpackaged food, and strengthen the requirements for packaged foods and for clear labelling. A cost–benefit analysis by the New Zealand Institute of Economic Research (NZIER) found additional costs of the revised standard had a present value of \$214 million over 10 years (NZIER 2005, p. 35), \$62 million (0.12 per cent of food turnover) in the first year (NZIER 2005, p. iv), and no commensurate benefits (NZIER 2005, p. 41). NZIER also found that:

- interest in CoOL does not translate into a willingness by consumers to pay for the cost of providing CoOL
- the argument for a social value for CoOL is not strong
- if there were an appreciable benefit from CoOL, suppliers would be voluntarily applying it more than they do (FSANZ 2005a, p. 9).

FSANZ produced a regulatory impact statement in its final report and recommended the adoption of the revised standard. Its reasons were that:

- the revised standard addresses the desire of consumers to have access to country of origin information
- the recommended option provides the best ratio of benefits to costs (when intangible issues of social value, based on consumer research and feedback, are taken into account)
- the retail sector generally appears prepared to supply the requisite information to consumers (FSANZ 2005a, p.16).

The Office of Regulation Review assessed FSANZ's CoOL regulatory impact statement and deemed it inadequate at the decision making stage, stating:

The [regulatory impact statement] failed the COAG requirement to demonstrate that the benefits of introducing this standard outweighed the costs. (PC 2006a, p. 63)

Following a Food Regulation Ministerial Council request to review the recommendation, FSANZ re-affirmed its decision to recommend the revised standard for inclusion in the Food Standards Code. The ministerial council subsequently approved the revised CoOL standard, which was gazetted in Australia in December 2005.

Sources: FSANZ 2004d, FSANZ 2005a, NZIER 2005, PC 2006a.

A wider review of labelling standards?

There is ongoing debate about whether regulated labelling standards are the most effective means of achieving broader health objectives such as tackling obesity. Some inquiry participants considered that food standards should focus on addressing risks to public health and safety. The Department of Human Services stated that it does not:

... believe that the use of the [Food Standards Code] to pursue policy objectives that are essentially unrelated to its central purpose of safeguarding public health in relation to food consumption is appropriate in most circumstances. (sub. 48, p. 21)

The Obesity Prevention Policy Coalition (sub. 54, p. 4), on the other hand, felt the need for a national standard requiring the provision of nutritional information on the front of packaging that will enable consumers to more easily compare products as part of a balanced diet. The Department of Human Services, however, pointed out that:

...policy action such as current information campaigns encouraging consumers to eat optimal amounts of fresh fruit and vegetables may have substantially greater impact in improving the nutritional quality of food intake than are regulations requiring detailed nutritional information to be provided on the packaging of a range of processed foods. (sub. 48, p. 20)

This highlights the importance of rigorously examining alternatives to mandated standards.

A broader review of the labelling provisions of the food standards code could also examine the risk that mandating new standards will crowd out cost-effective industry initiatives. In October 2006, the Food Regulation Ministerial Council asked the Food Regulation Standing Committee to explore and report back on whether a uniform front-of-pack food labelling system would be an effective health strategy, and to advise on the efficacy of options for such a labelling system (such as the traffic light labelling system and the behavioural labelling system). The Commission understands that the food sector (the Australian Food and Grocery Council) had been developing its own proposals in late 2006—concurrent with the government initiative—for providing more useful nutritional information to consumers. It proposed a front-of-pack percentage daily intake energy labelling system to inform consumers about which product would best meet a consumer's dietary needs. The labelling would show the percentage of daily intake that a serve of a particular food or drink would contribute to an average adult's diet (AFGC 2006, p. 1).

A broader view could also consider whether there is scope to achieve the intended outcomes of current labelling standards at a lower cost to the food sector. FSANZ's research suggested labelling requirements have had little

influence on consumer choices. The food sector also considered that compliance is excessively costly, particularly when labelling standards change. There may be scope to move towards more cost-effective labelling requirements that ensure information is accessible for consumers without stipulating the manner in which this information should be made available. The food sector could then elect to provide the information on labels or through other mechanisms, such as on websites or at the point of sale. Moving to such an approach may lessen the regulatory burden while ensuring high quality information is accessible to consumers who place a high value on it (for example, people with allergens, or those concerned about a product's country of origin).

It may also be possible to reduce the regulatory burden on business by resorting to industry codes, rather than mandatory standards. As noted, there is scope to consider an enhanced industry code governing health claims, as an alternative to a mandatory standard. The Commission considers that the Victorian Government should push for a broad ranging review of food labelling standards in Australia. The review would need to cover a range of matters, including:

- the type of information demanded by consumers and the causes of any failure of the market to provide this information
- alternative instruments for addressing any failures in the market provision of information valued by consumers
- whether there is a sufficient case for retaining current labelling standards, including country of origin labelling
- the impact of food standards on industry incentives to develop labelling valued by consumers.

Draft recommendation 7.1

That the Victorian Government support greater consideration of alternatives to the regulation of health claims and labelling, so innovation is not unnecessarily restricted. The Victorian Government should do this by:

- supporting a relaxation of national standards prohibiting food businesses from making certain types of health claims, provided those claims are supported by scientific evidence
- pressing for greater consideration of nonregulatory approaches to managing health claims and a trial of the nutritional information proposal developed by the Australian Food and Grocery Council
- expanding the forthcoming review of country of origin labelling requirements to include a broad ranging and independent national review of the labelling provisions of the Food Standards Code. Options should address the ongoing issue of the use of and difference between ‘made in’ and ‘product of’ Australia
- actively supporting the rigorous consideration of nonregulatory alternatives to mandatory food standards in relation to labelling, health claims and new foods. Options could include alternative, cost-effective methods for delivering product information to consumers.

7.2.4 The standards amendment process

Several inquiry participants expressed concern about the food standards amendment process for health claims, novel foods and foods with additives that fall outside existing standards. A company that seeks to amend food standards—so as to make health claims or obtain approval to market foods that are otherwise prohibited—must first submit an application with FSANZ. In brief, the amendment process involves:

- preparation of three reports on a proposal by FSANZ (the initial, draft and final assessments)
- two rounds of public comment (on the initial and draft assessments)
- consideration of the proposal and FSANZ final assessment report by the Food Regulation Ministerial Council, with any single member of the council able to seek a review of its final assessment³

³ The Food Regulation Ministerial Council can request FSANZ to undertake a second review of the final assessment on a number of grounds set out in the Food Regulation Agreement (section 3e)—namely, that the proposal does not protect public health and safety, it does not provide adequate information to enable informed choice, it is difficult to enforce or comply with in both practical and resource terms, and it places an unreasonable cost burden on industry or consumers.

- after any review, the ministerial council accepting or rejecting FSANZ's recommendations (chapter 3).

The *Food Standards Australia New Zealand Act 1991* (Cwlth.) provides that FSANZ must make a decision concerning a draft standard or variation within 12 months of receiving an application (excluding any time during which the clock is stopped). FSANZ can extend this period by up to six months if it is not practicable for the decision to be made within this time. While these timeframes are prescribed in the legislation, the Food Regulation Standing Committee Working Group noted that many applications and proposals take considerably longer than 12 months to assess (Food Regulation Standing Committee Working Group 2005, p. 59).

Several inquiry participants considered that the process for approving health claims and permissive changes to Australian food standards is cumbersome, insufficiently flexible and works against effective innovation (chapter 3). Concerns included:

- the timeliness of the process
- the impact of delays and transparency of the process on incentives to develop new products
- the lack of recognition of international evidence in assessing applications
- the perception that the ministerial council is biased against the food sector.

The Australian Food and Grocery Council (sub. 17, p. 7) highlighted that an Arnott's Biscuits Limited (now Campbell/Arnott's) and Nutrinova proposal to fortify fruit and vegetable juices took four years to be assessed and accepted. Cadbury Schweppes (sub. 20, p. 2) highlighted that the amendment process for formulated beverages⁴ took four years to finalise, during which time businesses could import similarly formulated beverages from New Zealand under the terms of the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth.).

Several inquiry participants also considered that the operating procedures of the Food Regulation Ministerial Council work against the interests of the main food producing states (New South Wales, Victoria and Queensland). It was implied that jurisdictions without a significant manufacturing base give industry considerations a lower priority than do the main food producing states, and are more sceptical about

⁴ Formulated beverages are non-alcoholic, water based, flavoured beverages containing claimable amounts of vitamins and minerals (FSANZ 2006a, p. 6).

the benefits of new food products and the value of health claims. In May 2005, the NSW Minister for Primary Industries expressed concern that:

... industry would suffer following a decision about health claims which was dominated by jurisdictions that had little presence in the food manufacturing sector. (AFRG 2006, p. 117)

In effect, states and territories that are often involved only in day-to-day food safety activity (rather than product development and manufacturing) can use their voting powers to determine national policy. Recognising these and other concerns, the Food Regulation Ministerial Council commissioned an internal review of the standards amendment process in July 2004. A working group of officials on the Food Regulation Standing Committee undertook the review, having been directed to look at ways to expedite the FSANZ assessment and approval process. The remainder of this section considers whether the recommendations of that review and the proposed response would adequately address the concerns raised with this inquiry.

The review of the FSANZ assessment and approval process

The Food Regulation Standing Committee review of the standards development and amendment process reported to the Food Regulation Ministerial Council in September 2005, identifying two key shortcomings of the current process:

- (1) Legislative and other impediments to expediting the assessment processes— for example, the report noted:

... the average time for FSANZ assessment is approximately 16.8 months. Further, there is a considerable backlog of applications awaiting assessment by FSANZ with a waiting time of approximately 15–18 months before assessment of any new unpaid applications can commence. (Food Regulation Standing Committee Working Group 2005, p. 3)

- (2) Lessening the ability of firms to derive a ‘first mover’ advantage from bringing new products to market quickly. The absence of protections for commercially valuable information about new products and health claims means information is disclosed to competitors during the lengthy assessment process. The report noted:

... once a Standard has been amended anyone can sell the product without the need to seek separate approval to do so. In effect others can ‘free ride’ on the first applicant’s innovation. (Food Regulation Standing Committee Working Group 2005, p. 5)

Recognising food sector concerns, the Food Regulation Standing Committee recommended:

- developing clearer requirements for submitting applications (recommendation A1)
- establishing new assessment processes tailored to the nature, complexity and risk of proposed changes to food standards, and providing indicative timeframes (recommendations A2 and A3)
- empowering the Food Regulation Ministerial Council to issue policy principles and policy guidelines (with FSANZ required to adhere to policy principles but have regard to guidelines) (recommendation A4)
- limiting the basis for the Food Regulation Ministerial Council to seek a review of FSANZ's assessment of a proposal (recommendation A4)
- developing a transparent process for assessing proposed health claims, but with proposals for new claims being assessed on a confidential basis to preserve the first mover advantage of the applicant (recommendation B1)
- allowing company-specific amendments to food standards for novel foods, for a limited period (recommendation B2).

Setting out clear application requirements, for example, would help to lessen delays due to FSANZ requesting additional information to assess proposals. Similarly, limiting the basis for ministerial reviews would help reduce delays. Some of the proposals, however, would increase the complexity of the standards amendment process. In implementing the proposals to add new assessment paths, for example, FSANZ would need to judge whether proposals were of major or lesser significance, and thus whether they should be assessed under the full or streamlined assessment paths.

The Food Regulation Ministerial Council accepted a number of these recommendations, and amendments to the FSANZ Act are being prepared (Food Regulation Secretariat 2006, p. 1). Although draft amendments are not yet public, the Commonwealth Government has released a brief consultation paper that describes how it intends to respond to the review's recommendations.

Will the proposed changes address participants' concerns?

Based on the Commonwealth Government's consultation paper (DHA 2006b), many of the review's recommendations are to be implemented. The following are key areas of difference between the review's recommendations and the proposed changes:

- Although indicative timeframes will be provided for FSANZ for some of the new assessment paths, there is no intention to prescribe timeframes for the full assessment of proposals by FSANZ.

- The Food Regulation Ministerial Council will be limited to having the capacity to require FSANZ to undertake a single review of its full assessment (instead of two reviews), but a review would continue to be conducted on the request of a single jurisdiction (DHA 2006b, pp. 18–24).

It is not clear from the consultation paper why these apparent differences between the review's recommendations and the proposed changes exist. It is also difficult to assess the extent to which the proposed changes would address inquiry participants' concerns:

- While the proposal to limit jurisdictions to requesting a single review of FSANZ's final assessment promises some shortening of the process, there is the risk that individual jurisdictions may become increasingly likely to request reviews.
- It is difficult to foresee how many applications would fall into the proposed streamlined assessment path. This would depend on FSANZ's judgements of whether applications are minor or major. Unless guidelines are developed, or until FSANZ has developed a sufficient track record, there would be some uncertainty about how the process would operate and the deficiencies it would generate.
- To the extent that the current process is deterring companies from bringing forward new health claims or food products, the proposed changes could be expected to lead to some increase in activity. Subsequently, this could lead to extra demands on FSANZ, possibly increasing the average time for which applications are on FSANZ's forward work program.

The proposals to permit confidential discussion and assessment of proposals and permit company specific approval also create the risk that companies would attempt to 'game' the system. A company that became aware of a competitor developing a new product could, for example, attempt to delay the product's introduction by submitting its own application with FSANZ. This would not be costless because the company would be required to pay for the assessment of its application. The review assumed that the patent and trademark systems cannot provide sufficient protection for intellectual property embodied in new food products. Providing protections via the Food Standards Code for intellectual property developed by food businesses could be considered an indirect and untested way of addressing the perceived shortcomings in the legal framework for intellectual property protection.

Given uncertainty about the nature and impact of the proposed changes to the assessment processes, there is a case for examining other options for streamlining the application process, including:

- modifying the voting arrangements of the Food Regulation Ministerial Council. Options include limiting reviews to cases where two or more jurisdictions request a review, or where a majority requests a review, or in more limited circumstances, such as a concern that important scientific evidence has been overlooked
- requiring jurisdictions that request reviews to give reasons and meet the costs. This would bring the assessment process in line with COAG's guidelines on standards setting by ministerial councils
- providing companies the option of being granted an automatic approval to proceed while FSANZ assesses the available evidence. During this period companies would be subject to disciplines of their insurers and the *Trade Practices Act 1974* (Cwlth.). They would also bear the risk of an adverse finding by FSANZ and the Food Regulation Ministerial Council
- accepting overseas scientific evidence as prima facie evidence that new food products are safe or to validate health claims. There may be greater scope to automatically allow the marketing of a new product in Australia if that product has already been assessed and approved in another country such as the United Kingdom or the United States of America
- moving away from mandatory standards to rely on more flexible industry based standards, especially in the area of health claims and novel foods. Industry based standards could provide more flexibility but would need to be supported by a transparent and rigorous assessment of the scientific evidence supporting any claims.

A relevant consideration in evaluating these options is that there is increasing interest in using national food standards to achieve improvements in public health. As there will usually be a range of policy options for achieving specific public health goals, it is important that a sufficiently rigorous process exists to identify and carefully analyse options. This process needs to balance the competing influences of encouraging industry innovation against the community's interest in ensuring rigorous assessment of proposals to alter food standards to achieve particular public health goals. Section 7.3 examines possible improvements to the process of assessing changes to food standards in the context of governments' pursuit of broader public health goals.

Draft recommendation 7.2

That the Victorian Government support improvements in the governance arrangements for the Australia New Zealand Food Regulation Ministerial Council to increase the timeliness of decision making and the scope for Australian business to capture the benefits of innovation. Improvements could be achieved by:

- **the ministerial council focusing on providing policy guidance and ratification of standards, leaving technical decision making and proposals on standards to Food Standards Australia New Zealand**
- **two or more jurisdictions agreeing to a review of the Food Standards Code before it can proceed. Those jurisdictions requesting a review must also publicly release their reasons and meet the cost of the resources used in undertaking the review.**

7.3 Beyond food safety

A number of inquiry participants considered that food regulation should support initiatives that increase the health of the community and prevent outbreaks of foodborne illness (chapter 3). Others contended that food regulation is an inappropriate vehicle for promoting improved health outcomes in the community—for example, a number of inquiry participants argued that recent decisions on the mandatory fortification of bread with folic acid represented an inappropriate application of food regulation. The Flour Millers Council of Australia noted:

We do not accept that mandatory fortification is the most effective public health strategy to address the health problem. Even in combination with other strategy elements as per the FSANZ Proposal we believe a better option is available. We believe a similar proposal including enhanced voluntary fortification is the most effective public health strategy as advised elsewhere. (sub. 39, p. 4)

George Weston Food Limited also noted that it:

... believes that FSANZ's proposal of mandatory fortification of bread is irreparably flawed.... The industry supports finding an effective solution to this medical problem and believes that providing a range of fortified food and beverage choices specifically marketed to the target market, together with a sustained government supported education initiative will achieve the desired outcome. (sub. 52, p. 8)

The different views about the role of food regulation in achieving public health improvements partly reflect the lack of clarity about the objectives of food regulation.

As the central food standard setting agency, FSANZ has several objectives for food regulation, including:

- ensuring a high degree of consumer confidence in quality and safety of food for consumers, including preventing misleading and deceptive behaviour by food suppliers
- ensuring an effective framework within which the food sector can work efficiently
- providing information that will assist consumers to make informed choices
- assisting consistency between domestic and international regulatory measures without reducing public health or consumer protection (*Food Standards Australia New Zealand Act 1991* (Cwlth.)).

The previous national food standard setting body considered its primary role as setting standards for the content and labelling of foods, and not about promoting dietary change or medicating target groups:

ANZFA's [now FSANZ's] core business is dealing with individual foods and food components and not diets. For this reason, the development of comprehensive public health policies promoting dietary change for population health gains is most appropriately the role of health and education departments. However, where ANZFA [now FSANZ] does provide information about foods or regulates to require information about foods (e.g. food labelling), this will be consistent with current public health priorities and national dietary guidelines. (ANZFA 2001b, p. 12)

Increasingly, stakeholders are examining the scope to use national food standards to achieve dietary changes and improvements in health—for example, the Department of Human Services noted:

Some steps in this direction have already been taken in other jurisdictions, such as the recent banning of the use of 'trans fats' by the New York City municipal health authorities. Such moves arguably represent a substantial step toward qualitatively different forms of regulation, where regulation seeks to prevent the use of substances that are not necessarily harmful per se, but which can be harmful if ingested in significant quantities over substantial periods of time. (sub. 48, p. 19)

Similarly, the Australian Medical Association (Victoria) noted:

...current knowledge of the relationship between diet and disease must be used to guide further refinement of the National Food Standards Code, existing regulatory frameworks and ultimately the composition of the Australian diet. (sub. 22, p. 3)

More recently, FSANZ announced it was considering:

... whether to allow a health claim that a food is 'low in trans fatty acids and saturated fat which can reduce the risk of cardiovascular disease' when a new regulation on health claims is introduced. This will assist consumers to make healthier choices and encourage the food industry to develop healthier products. (FSANZ 2006b).

Given the emerging pressures to use food regulation to achieve wider public health objectives, many stakeholders are asking whether food regulation should be used for this purpose. There is no easy response to this question, and it is difficult to draw a clear dividing line between food safety and public health objectives around food.

Figure 7.1 **The dividing line between food safety and public health**

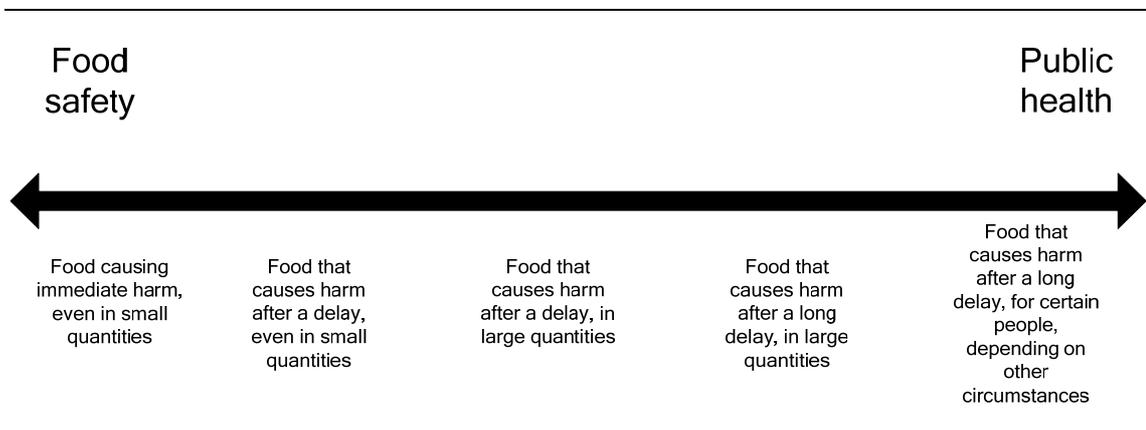


Figure 7.1 suggests policy makers need to be clear about the underlying problems that need to be addressed and the desired policy outcome. Comprehensive assessment of alternative methods to achieve the desired outcomes will also be required. The key issue, therefore, is not whether the food standards should be used to achieve broader community objectives but whether governments have clearly defined goals and the best instrument, or mix of instruments, to achieve these goals.

A key issue for this inquiry is whether the current process for amending food standards will lead to effective and efficient policies for improving public health. The remainder of this section examines whether the current and proposed processes for varying national food standards will achieve this and permit informed decision making. The Commission examined the national standard setting process and its implementation, having regard to the principles spelt out in the Food Regulation Agreement, COAG's guidelines for policy making and a best practice regulatory impact statement process (box 7.3).

Box 7.3 **Best practice regulatory processes**

The Food Regulation Agreement was established by the Commonwealth Government and all states and territories and came into effect on 6 December 2002. It formed the basis of the national cooperative system of food regulation and highlighted national objectives, including providing safe food controls, reducing the regulatory burden on the food sector, harmonising both domestic and international food standards, and having consistent, cost-effective compliance and enforcement regimes. Nothing in the agreement explicitly referred to the use of national food standards to achieve particular health outcomes.

In 2004, COAG endorsed an amended set of *Principles and Guidelines for National Standard Setting and Regulatory Action* within which national standards and regulations should be developed:

- Regulatory measures should be the minimum required to achieve an outcome.
- Regulations should entail the minimum necessary to achieve the objectives.
- Regulation should be designed to have minimal impact on competition.
- Regulation should have clearly identifiable outcomes.
- Regulatory measures should be designed and/or alternative approaches to regulation chosen with consideration of secondary effects.

The *Principles and Guidelines for National Standard Setting and Regulatory Action* also highlighted that if a regulatory action were to occur, an adequate regulatory impact assessment would be required:

- demonstrating the need for regulation
- detailing the objectives of measures proposed
- outlining the alternative approaches considered (including nonregulatory options) and explaining why an alternative approach was not adopted
- documenting which groups benefited from regulation and which groups paid the direct and indirect costs of implementation
- demonstrating that the benefits of regulation outweighed the costs
- demonstrating that the proposed regulation was consistent with relevant international standards (or justifying the extent of inconsistency)
- setting a date for review and/or sunseting of regulatory instruments.

The *Principles and Guidelines for National Standard Setting and Regulatory Action* also indicated that if two or more jurisdictions were dissatisfied with the impact assessment process, they could request a review: this is in contrast to the food agreement, under which only one jurisdiction is needed to request an initial review. This review would be undertaken by an independent body, and the jurisdictions requesting it would be required to meet its cost and make available any resources required to conduct it.

Sources: COAG 2002, COAG 2004.

Assessed against the Food Regulation Agreement and the COAG guidelines for standard setting bodies, the Commission considers that the current (and proposed) standard setting process has not been implemented in a manner that will lead to efficient policies for improving public health and safety:

- Under COAG’s principles for national standard setting, governments have agreed to ensure that proposed standards are subject to a rigorous assessment which outlines the alternatives to regulation that were considered and why alternatives were not considered; the identifiable outcomes that are to be achieved; and which avoids restricting competition and explicitly considers secondary effects. There is evidence that the recent assessment of a proposal to fortify bread with folic acid did not follow these agreed principles (box 7.4).
- In recent decision making, the Food Regulation Ministerial Council seems to be placing little weight on key objectives outlined in the Food Regulation Agreement and the FSANZ Act, particularly those relating to reducing the regulatory burden on the food sector and providing cost-effective compliance and enforcement arrangements for industry, government and consumers.

Box 7.4 Mandatory fortification of bread with folic acid

Each year in Australia, 300–350 pregnancies are affected by a group of birth defects known as neural tube defects (NTDs). In 2004 the Food Regulation Ministerial Council requested FSANZ to determine the most effective mechanism to increase the total folate intake of women of child bearing age to reduce NTD incidence.

The Food Regulation Ministerial Council’s policy guidelines on fortification of food stipulate that when assessing a proposed measure all feasible alternatives should be considered:

Assessment of alternative strategies – consideration must be comprehensive and include for example assessment of voluntary fortification and education programs. (FSANZ 2004c, p. 41)

Although FSANZ’s initial assessment report highlighted two other options (voluntary fortification and increased health/education) for reducing NTDs (FSANZ 2004c, p. 31), it appears that FSANZ was directed to focus on a regulatory approach:

On the basis of Ministerial advice received in 2005 that mandatory folic acid fortification is an effective strategy, FSANZ reduced the number of regulatory options considered...to maintenance of the status quo and mandatory folic acid fortification. (FSANZ 2006c, p. ii)

FSANZ then concluded that mandatory fortification of bread was the preferred approach to reduce NTD incidence; this proposal awaits Food Regulation Ministerial Council approval.

(Continued next page)

Box 7.4 **Mandatory fortification of bread with folic acid** (continued)

Several stakeholders questioned whether mandatory fortification of bread is the most effective strategy to address NTDs and whether other nonmandatory mechanisms would have been more appropriate. Other stakeholders expressed concern about:

- insufficient demonstration of commensurate health benefits and misinformation about potential health risks:
 - vitamin B12 deficiency can be masked by high folic acid intake (sub. 39, p. 8)
 - women may wrongly believe folic acid supplements are no longer necessary because of mandatory fortification (sub. 39, p. 9)
 - mandatory fortification may promote consumption of high calorie breads, contributing to Australia's obesity problems (sub. 22, p. 2)
- the cost burdens on businesses and consumers:
 - FSANZ estimated the costs of fortification of flour for industry were \$6.6 million in the first year and about \$1.1 million per year ongoing (FSANZ 2006c, p. 57), while the Flour Millers Council of Australia estimated them to be \$35 million and \$20.3 million respectively (sub. 39, p. 18)
 - the expected 2 per cent increase in the price of bread (FSANZ 2006d, p. iv), which could disproportionately affect disadvantaged groups
- the technical capacity of industry to meet the prescribed range of folic acid:
 - the Flour Millers Council of Australia highlighted international experience that millers must overadd folic acid to achieve minimum levels in the end product. Given FSANZ also sets upper limits to folic acid content, unlike in the United States of America and Canada, Australian millers would find it difficult to meet the standard (sub. 39, p. 12).

Sources: FSANZ 2004c, FSANZ 2006c, FSANZ 2006d, Australian Medical Association (sub. 22), Flour Millers Councils of Australia (sub. 39).

Several inquiry participants also expressed concern that focus is moving away from food safety and that new standards are imposing costs on the food sector and consumers in a nontransparent manner.

Draft recommendation 7.3

In relation to the use of national food standards to achieve public health objectives, that the Victorian Government support more rigorous regulatory impact assessments. A comprehensive investigation of all costs and benefits associated with a proposal, and alternative approaches, should also be undertaken.

7.4 Misleading and deceptive conduct

As discussed in chapter 8, the misleading and deceptive conduct provisions in the Trade Practices Act, the *Fair Trading Act 1999* (Vic.) and the *Food Act 1984* (Vic.) are largely complementary (chapter 8), but there is potential for overlap or gaps in regulatory coverage because of multiple regulators operating in this area. The division of responsibilities between the Department of Human Services, local councils, CAV and the Australian Competition and Consumer Commission (ACCC) could, therefore, be clarified, including the referral of cases between these authorities.

While there is an operating agreement for the relationship between the Victorian Office of Fair Trading and Business Affairs (now CAV) and the ACCC, it is dated and limited in coverage. Updating the operating agreement would provide an opportunity to reflect machinery of government changes, differences in how tolerance levels should be addressed and advances in best practice approaches. How information should be communicated between the two entities and the principles upon which this would be based could also be addressed.

Several inquiry participants highlighted that there were often insufficient resources available to regulators to address misleading and deceptive conduct, particularly in relation to labelling, or it was given a low priority by regulators (chapter 5)—for example, CHOICE noted:

Issues that aren't related to food safety (such as food labelling) are often low on the list of priorities of enforcement agencies and may not be actively enforced at all. There can also be inconsistencies in the way regulation is enforced. For example, one State might be interested in policing country of origin labelling while another may see health claims as an enforcement priority. (sub. 49, p. 3)

Woolworths also noted:

The enforcement of Country of Origin Labelling varies considerably between jurisdictions with some openly stating that this regulation will not be enforced. (sub. 50, p. 5)

To address misleading and deceptive conduct, the ACCC may, for example, take action against a business subject to the nature of the conduct in question and its own priorities. In the first instance, the ACCC could request that a business stop certain conduct by altering particular business practices. In more serious cases, the ACCC might accept a court enforceable undertaking from the company that it would stop the conduct and change its business practices, and make this undertaking known to the public. If a matter could not be resolved administratively, the ACCC could take court action (ACCC 2005, p. 5). A recent

misleading and deceptive conduct incident concerned genetic modified (GM) food labelling with regards to poultry, where the ACCC highlighted it was:

...watching 'GM-free' claims closely in the market and reminds food producers more generally that within the strong wording of our misleading conduct laws, 'free' has to mean 'free'. (ACCC 2004a)

In this case, the ACCC intervened because the 'not genetically modified' labels on packaged poultry products misled consumers into thinking that the poultry in question was also not being fed genetically modified feed, which it was. Following negotiations with the sector, new packaging was developed that did not contain the 'not genetically modified' statements (ACCC 2004a).

The Commission considers that this situation represents one where scientific information in the form of guidelines from FSANZ could have resulted in a more flexible approach being adopted by the ACCC. While FSANZ and the ACCC have a memorandum of understanding (MOU), the Commission is unaware of any specific guidelines issued by FSANZ to help the ACCC address issues about food and acceptable tolerance levels for specific items. In this instance, FSANZ's guidance could have repeated comments that FSANZ had made elsewhere, namely that:

The produce (meat, milk or eggs) of animals fed GM crops does not have to be labelled as there is a complete breakdown of that crop in the digestive system and none of the altered DNA becomes part of the animal. (FSANZ 2004b)

Had guidance been available to the ACCC to highlight this scientific evidence, the outcome and the costs involved may have been somewhat different. Consistency in local government's enforcement of the misleading and deceptive conduct provisions of the Food Act would also be supported by a clearer role for CAV. In particular, greater consistency in the enforcement of misleading and deceptive conduct could be achieved if CAV coordinated any misleading and deceptive action identified as necessary by councils.

An MOU currently exists between a number of regulators in Victoria including Dairy Food Safety Victoria, PrimeSafe, the Municipal Association of Victoria and the Australian Institute of Environmental Health. The MOU sets out some broad principles and provides for information sharing between regulators (chapter 8) and is scheduled for review in late 2007. This review represents an opportunity to clarify CAV's potential role in assisting councils to coordinate the enforcement of the misleading and deceptive conduct provisions of the Food Act and incorporate CAV into the MOU.

Draft recommendation 7.4

That the Victorian Government update the management of its approach to addressing misleading and deceptive conduct in Victoria by:

- **pressing for the development of guidelines outlining the scientific information that Food Standards Australia New Zealand can provide to the Australian Competition and Consumer Commission (ACCC) to assist it to pursue its legislative objectives**
- **Consumer Affairs Victoria updating its memorandum of understanding with the ACCC for misleading and deceptive conduct, including communication and enforcement protocols**
- **Consumer Affairs Victoria developing (in the revised memorandum of understanding for Victorian regulators) protocols to help local government enforce that part of the *Food Act 1984* (Vic.) relating to misleading and deceptive conduct.**

7.5 Maximum residue levels

The application of agricultural chemicals to agricultural produce in Australia must meet the national food safety standards set by FSANZ. FSANZ sets maximum residue limits (MRL) that aim to ensure produce is free from unacceptable levels of agricultural chemicals and heavy metal residues. If a chemical is not specifically listed in the Food Standards Code (standard 1.4.2), there must be no detectable residues of that chemical in any food. MRLs are also set by the Australian Pesticides and Veterinary Medicines Authority (APVMA), which independently evaluates the safety and performance of chemical products intended for sale, making sure that people's health and safety is protected. The Commonwealth Department of Agriculture, Fisheries and Forestry also conducts the National Residue Survey to monitor residues of agricultural and veterinary chemicals and environmental contaminants in selected products. Its aim is to assist key export and domestic market access.

The Victorian Department of Primary Industries' Chemical Standards Branch administers the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* (Vic.) and associated Regulations. Through its Victorian Produce Monitoring Program, the department aims to ensure the application of agricultural chemicals to agricultural produce is appropriate and meets national food safety standards. The Victorian Farmers Federation also noted that the Department of Human Services and local councils have authority in these matters (sub. 40, p .10).

Studies consistently show that Victorian produce meets the stringent national MRL. Monitoring programs from 2000-01 found that 99 per cent of samples met the acceptable standards (DPI 2007b), but the highly precautionary and

duplicative nature of MRLs in Victoria and their inconsistent interpretation have been highlighted as impediments to industry and consumer gains—for example, the Department of Primary Industries noted:

... farmers legally use chemicals on food with a MRL approved by the APVMA, however the food product may be in breach of the FSC [Food Standards Code] because no MRL has been listed. (sub. 56, p. 4)

The Commission notes, however, that the Victorian Government has made a policy commitment to achieve harmonisation of MRLs between the Food Standards Code and the MRLs approved as part of chemical registration undertaken by the APVMA. This initiative, which was originally raised at a meeting of the Food Regulation Ministerial Council in 2002, aims to address the potential legal exposure and trade risk (including export trade) to primary producers. Time delays between registration and listing in the Food Standards Code, which vary from 6–12 months, have been raised as an impediment to the harmonisation process (sub. 56, pp. 4-5).

The practice of imposing MRLs based on a precautionary zero tolerance approach by various government entities rather than a cost–benefit approach can adversely affect both consumers and industry. The marginal costs to businesses of achieving increasingly lower levels of residues are likely to rise rapidly beyond a certain point. Some of the costs of achieving zero residues will be passed on to consumers, depending on market conditions. In a submission to the FSANZ review of its MRL standard, Mr Planken of the International Honey Exporters Organisation suggested a revised standard:

... where a “chemical” is not listed in the Standard, there must be no detectable residue of that chemical in the food above 0.5 ppb [parts per billion] unless it is toxicologically proven that the detected substance has a potential impact on public health and safety. (FSANZ 2005b, p. 18)

Such a risk based standard could reduce the intensity of testing at the national and state levels. It would also allow some tolerance as testing equipment becomes more accurate in picking up levels of chemicals.

Considering the National Residue Survey is paid for by farmers through a levy, such a standard would be expected to have a favourable effect on industry costs. International practice also complements Mr Planken’s suggestion. Where residue limits are proposed in the American Congress, for example, there is a statutory obligation to prepare, and seek comment on, a cost–benefit analysis that addresses the range of issues specified (NPHP 2000, p. 34).

The Commission considers the current regulatory arrangements for MRLs are complex and duplicated in some areas and supports the Victorian Government’s commitment to achieve harmonisation between the various MRL requirements affecting agricultural industries. The Commission also considers the FSANZ’s

zero tolerance approach, which is embodied in the national standards, results in an economic loss for both consumers and industry. One way of improving this would be for FSANZ to adopt a risk based approach to MRLs: reducing the complexity, duplicative and precautionary nature of MRL requirements would have substantial economic benefits for industry and consumers.

Draft recommendation 7.5

That the Victorian Government support the adoption by Food Standards Australia New Zealand and the Australian Pesticides and Veterinary Medicines Authority of a more risk based approach to maximum residue limit requirements and the harmonisation between the various maximum residue limit requirements.

7.6 Weights and measures

Australia requires a wide range of packaged goods, including foods, to be labelled with a statement of quantity. The method of determining a deficiency in packaged goods is administered by a minimum quantity system (MQS), where a package marked with a statement of quantity must contain at least that quantity. This applies throughout the distribution process, from the time the goods are packed to the time they are sold. A number of inquiry participants, however, suggested that the MQS is placing Australia in an uncompetitive position—for example, Cadbury Schweppes noted:

A prime example of the differential impact of legislation on Australian and New Zealand is the Average Quantity System (AQS) for weight/volume for packaged foods, which has been in place in New Zealand for some 5 years. AQS is an international system where the emphasis is one providing an “average” weight or volume, with strict rules relating to underweight product. The current system used in Australia is essentially a minimum contents rule. Considering that AQS has been implemented in a number of countries including the EU, Japan, and Canada it is extremely disappointing that Australia has taken so long to reach this stage.

Under AQS rules, Australian manufacturers would see a significant reduction in overfill product and subsequently significant cost savings. New Zealand manufacturers are significantly advantaged as they can pack a lower fill weight/volume. Further, because of the Treaty [Trans Tasman Mutual Recognition Treaty], those products are able to be sold legally in Australia. (sub. 20, p. 3)

A minimum quantity system might sound ideal for consumers, but it does not recognise that variations in fill level occur with modern (usually automated) packing processes. Current Australian legislation recognises this by allowing deficiencies of no more than 5 per cent in any one package on the day the article

is packed, provided the contents of that package—plus 11 other of the same kind and stated quantity—show no aggregate deficiency.⁵ This means that any package in a selection of 12 packages could be deficient by no more than 5 per cent provided the overweight packages compensate for the deficient ones. If, for example, from 12 of 1 kilogram packages selected, six were each deficient by 50 grams and six were each overweight by 50 grams, it could be argued that no offence had occurred (Ministry of Consumer Affairs 2001, p. 5).

Australia's use of the MQS is at odds with a number of countries, including Canada, the European Union, India, Japan, Mexico, New Zealand, Switzerland and the United States of America, which have adopted an average quantity system (AQS) (Office of Fair Trading 2006a, p. 5). The AQS involves three rules:

- (1) The declared quantity on a package should accurately reflect the quantity being supplied, so the average net content of the packages in a lot (production run) may not be less than the declared quantity.
- (2) No more than 2.5 per cent of the packages in a lot may have negative errors more than the prescribed tolerable negative error.
- (3) No package shall have a negative error by more than twice the prescribed tolerable negative error (Ministry of Consumer Affairs 2005).

Table 7.1 provides an example of how the three rules would operate and provide greater consumer confidence in the accuracy of the goods packaged in various production runs under AQS.

Australia's use of the MQS is also at odds with it being a signatory to the International Convention on Legal Metrology. As a signatory, Australia is obliged to adopt International Organisation of Legal Metrology recommendations, one of which (R87) was the adoption of the AQS for international trade in prepacked goods. Inconsistent laws affecting the trade of goods and services often have an adverse affect on competition in the market. They can impede efficient production by reducing access to markets (and, therefore, potential sales) or impose greater costs on industry in meeting different standards for different markets.

⁵ In Victoria, this requirement is detailed in the Trade Measurement (Interim) Regulations 2006 (s85).

Table 7.1 Reference tests for weight or measure under an average quantity system

<i>Product</i>	<i>Quantity</i>	<i>Lot size</i>	<i>Sample size</i>	<i>Sample average</i>	<i>Number of nonstandard packages</i>	<i>Number of inadequate packages</i>	<i>Pass or fail</i>
Butter	500g	3500	32	501g	2	0	P
Wine	750ml	130	12	752ml	0	1	F
Sugar	1.5kg	5000	80	1.6kg	4	0	P
Potatoes	3kg	148	12	2.9kg	0	1	F

Source: Ministry of Consumer Affairs 2005.

Another aspect of the current MQS regime placing Australian producers at a commercial disadvantage is the excess fill that often results in each unit of a production run as Australian manufacturers' attempt to meet the MQS requirements and minimise the probability of legal action for packaging goods that do not meet that standard. While the additional cost of excess fill can be small, its accumulated burden can contribute to Australian producers not being as competitive as manufacturers who use AQS.

In 1995, recognising the changing international framework and growing competition concerns for Australian businesses, a Trade Measurement Advisory Committee was formed by the Ministerial Council on Consumer Affairs (MCCA). One of its functions was the ongoing review of trade measurement legislation in Australia. The MCCA is considering amending the uniform trade measurement legislation to introduce the AQS. In 2006, as part of the assessment process for amending the uniform trade measurement legislation to introduce AQS, the Queensland Government prepared and sought comment on a regulatory impact statement on the adoption of AQS for prepacked articles. The outcomes from the Queensland discussion paper have not yet been released for public comment, despite the closing date for submissions being 12 May 2006. The Commission is also unaware of any timetable for action on amending the uniform trade measurement legislation.

Adopting the AQS would allow Australian manufacturers to more effectively compete with international traders. It could also increase export opportunities and/or increase sales by businesses that supply overseas markets, particularly the European Union. Other potential benefits from AQS adoption include:

- improved capacity to measure goods created in a high volume production run
- improved consumer confidence in the accuracy of packaged goods (due to the application of the three rules of AQS)

- relative simplicity and low resource requirement for the majority of industries already with computerised systems that lend themselves to modification to accommodate the proposed arrangements
- lower consumer prices (or less upward pressure) as savings from ‘overfill’ and the efficiency gains from the new approach are passed on to the consumer (Office of Fair Trading 2006a, pp. 9-12).

The Queensland Government analysis also suggested that adopting the AQS would not be costless. While the majority of packing processes would not require substantial retooling, some costs would be expected: these costs would generally be expected to be passed on to consumers. Additional resources would also be required to meet the increased sampling frequency needed in the initial establishment phase. The extent and frequency of checks would, however, depend on the quantities packed, the type of packing and the rate of output (Office of Fair Trading 2006a, p. 10).

On balance, the Commission considers that moving to the AQS would align Australia with internationally acceptable standards and would provide a ‘level playing field’ so industry participants could compete to their full potential. The AQS is also a more efficient and equitable method of identifying short measure in prepacked articles and aiding fairer dealings between businesses, and a more effective means of protecting consumers against irregularities in the measurement of goods sold.

Draft recommendation 7.6

That through the Ministerial Council on Consumer Affairs, the Victorian Government support greater progress on the average quantity system and possible amendment to the uniform trade measurement legislation to align Australia with overseas trading partners, within six months of the release of the Victorian Competition and Efficiency Commission’s final report.

8 Improving the regulatory framework: state government issues

8.1 Introduction

The terms of reference ask the Victorian Competition and Efficiency Commission to report on opportunities for reducing or streamlining regulation, and on the applicability of alternative regulatory models. Chapter 7 examined issues arising from the national framework. This chapter considers ways to improve the broader regulatory framework in Victoria. Chapter 9 examines options for focusing regulation in Victoria on areas in which the risks are higher and for reducing the regulation of low risk areas.

Most Victorian businesses face strong incentives to ensure food is produced safely (chapters 2 and 4) and many respondents to the Commission's survey of business costs reported that they do more to ensure food safety than is required under Victorian regulations (chapter 6). As a result, the key to ensuring Victorian food regulation is effective and efficient is to target regulatory effort where risk is highest and market incentives are insufficient, due to a lack of knowledge or resistance to meeting minimum food safety standards.

To ensure effective targeting of food regulation, there should be clear objectives, 'seamless' regulatory coverage, consistent application, and robust accountability and transparency mechanisms. To inform decisions about where to concentrate scarce regulatory resources, timely and extensive information is needed on risks and the effectiveness of different types of regulatory intervention. And the regulatory system should exhibit the capacity and flexibility to shift resources to address identified food safety risks. Based on available information, however, it is difficult to determine whether regulatory effort in Victoria is allocated appropriately on a risk weighted basis. Nevertheless, the regulatory architecture could be improved so it conforms more closely with the desirable characteristics outlined above.

Chapter 3 noted:

- the objectives of food regulation are open to different interpretations
- the Food Act does not identify which agency is responsible for overseeing local government's performance in meeting its food safety responsibilities, which, when combined with the ambiguous meaning of some legislated objectives, clouds accountability

- there are examples of inconsistent application and duplication of regulation
- councils are not required to report how well they are performing their food regulation responsibilities.

This chapter discusses how these issues could be addressed by:

- clarifying the objectives of food legislation
- improving the regulatory architecture, to tighten the framework for accountability and capacity to respond
- establishing a performance monitoring and reporting system.

8.2 Clarifying the objectives of food regulation

Inquiry submissions identified actual and potential objectives of food regulation that relate to:

- protecting public health and safety, and promoting public health
- preventing misleading and deceptive conduct
- facilitating industry development.

8.2.1 Safeguarding public health and safety, and promoting public health

The Food Act

The first of three objectives in the Food Act is to ‘ensure that food for sale is both safe and suitable for human consumption’ (box 8.1). This objective mirrors the model Food Act, which all Australian jurisdictions endorsed under the Food Regulation Agreement (chapter 7). But words such as ‘safe’ and ‘suitable’ can have different meanings. The Food Act provides some guidance on the meaning of ‘safe’ food. Although it does not define ‘safe’, s4D states that food is unsafe if it would be likely to cause physical harm to a person who might later consume it. The Act also states that food is not unsafe merely because its inherent nutritional properties or chemical properties cause adverse reactions only in persons with allergies or uncommon sensitivities.

Box 8.1 Objectives of the Food Act 1984

The objectives of the Food Act include:

- to ensure food for sale is both safe and suitable for human consumption
- to prevent misleading conduct in connection with the sale of food
- to provide for the application in Victoria of the Food Standards Code (s3).

Source: Food Act 1984.

The term ‘food safety’ can mean different things to different people. Kinsey (2005, p. 269) suggested food safety can have three dimensions:

- (1) safety from known (biological or chemical) substances that lead to illness or death (for example, microbial contamination and pesticide residues)
- (2) safety from long term chronic diseases related to the quality of diets (such as diabetes and heart disease)
- (3) safety from deliberate contamination anywhere along the supply chain of an otherwise safe food supply.

The Australian Medical Association (Victoria) also considered that the definitions of ‘safe’ and ‘suitable’ food should be reviewed, to account for the relationship between diet and disease (AMA, sub. 22, p. 1).

In addition, the objective to ‘ensure’ food is safe raises a further issue. The *Australian Oxford dictionary* defines ‘ensure’ as ‘to make [something] certain’ or ‘to make [a thing] safe’ (OUP 1999, p. 435). A problem with this objective is that it could imply the aim of regulation is to make food for sale risk free, which is impractical (for reasons outlined in chapter 2). In reality, the community is willing to tolerate some level of risk of foodborne illness, given the costs involved in reducing this risk.

Best practice regulatory principles suggest objectives should be sufficiently clear to guide those responsible for achieving them. Yet, the breadth of the first objective in the Food Act may create problems for regulators applying the legislation and lead to inconsistencies and uncertainty for business and the wider community. Ambiguous objectives also undermine accountability, by making it harder to determine whether the desired outcomes are being achieved (chapter 5).

The Commission understands a key government objective is to reduce the incidence of foodborne illness resulting from the sale of food. The Department of Human Services supported this view, arguing that ‘direct evidence of the effect of the FSP [food safety program] requirements should ultimately be visible in the data on the incidence of food borne illness in Victoria’ (sub. 48, p. 7). This is a clearer and more measurable outcome than the current objective in the Food Act.

The Commission considers, therefore, that a key priority for regulators should be to reduce foodborne illness resulting from the sale of food. The Victorian Government could provide regulators with core principles and guidelines on how to achieve this outcome in context of the tradeoff between increasing levels of food safety and the rising costs of achieving that safety (box 8.2). A new section in the Food Act could set out the principles and enable the minister to publish the guidelines. The principles would include, for example, that food regulation should be risk based and nationally consistent, and the ministerial guidelines could require adherence to a nationally agreed risk framework. The

minister should be required to publish guidelines in the *Government Gazette* and in the Department of Human Services annual report.

Box 8.2 Guiding principles for food regulation

The Commission suggests the Food Act incorporate guiding principles for regulation and provide for more detailed ministerial guidelines to be issued to assist regulators. Food regulation should give priority to reducing the incidence of foodborne illness resulting from the sale of food. And it should be:

- the minimum necessary to achieve the desired objective, as the Victorian guide to regulation proposes (Government of Victoria 2005a, pp. 3–6)
- risk based, to reduce regulatory burden and improve resource allocation
- efficiently administered (minimising administrative and compliance costs), in line with the Victorian Government’s commitment to reducing the regulatory burden
- nationally consistent, so similar businesses are treated similarly
- evidence based.

A robust performance monitoring and reporting system (section 8.5) should inform the administration of food regulation in Victoria. And the information generated by this system should underpin the process of continuous regulatory improvement.

The major industry-specific food Acts

These Acts (box 8.3) do not contain clear and explicit objectives relating to food safety outcomes, such as ensuring food safety or reducing foodborne illness; rather, the objectives are expressed in terms of the regulatory instruments that should be used. As a result, there are no specified outcomes against which to assess regulators’ performance.

Box 8.3 Industry-specific objectives expressed in terms of ‘means’

Dairy Act 2000 (Vic.)

- Section 5(a) states that an objective of Dairy Food Safety Victoria is to ‘ensure that standards which safeguard public health are maintained in the Victorian dairy industry’.

Meat Industry Act 1993 (Vic.)

- Section 1(a) states that the Act’s purpose is ‘to set standards for meat production for human consumption and pet food’.

Seafood Safety Act 2003 (Vic.)

- Section 1 states that the Act’s purpose is to provide ‘a regulatory system under which all sectors in the seafood supply chain are required to manage food safety risks in accordance with the relevant applicable standards’.

Sources: Dairy Act 2000; Meat Industry Act 1993; Seafood Safety Act 2003.

Given that the major industry-specific food Acts outline Regulations seeking to maintain ‘food safety’, the Commission considers that the objectives in these Acts should be aligned with the primary objective in the Food Act (managing food safety risks to reduce the incidence of foodborne illness). The proposed key principles and the capacity to issue supporting guidelines should also apply. (There seems to be no need for the *Dairy Act 2000* (Vic.), the *Meat Act 1993* (Vic.) and the *Seafood Act 2003* (Vic.) to include an objective concerning misleading and deceptive conduct.) These changes would provide stronger direction to regulators applying food legislation, and enable more effective monitoring of the extent to which regulation is achieving its stated outcomes.

Promoting public health

The Commission’s proposed focus on reducing the incidence of foodborne illness would not preclude the government from pursuing broader objectives, such as promoting good health. As noted, there are divergent views on the role of food regulation in health promotion. The Australian Medical Association (Victoria) argued that the focus of the Food Act is ‘on preventing physical harm caused by damage, deterioration, or the presence of foreign biological or chemical agents or disease’; it argued that the Act’s definitions do not acknowledge the damaging health effects of food and beverages of poor quality (sub. 22, pp. 1–2).

Health promotion objectives can, however, be pursued through national food standards (which are given effect under the Food Act) and other programs (for example, education) or legislation. In chapter 7, the Commission recommended more rigorous assessment of proposed national food standards aimed at broader public health outcomes.

Draft recommendation 8.1

That the *Food Act 1984* (Vic.) be amended to incorporate principles to help regulators interpret and administer food regulation in Victoria. These principles should state that regulators give priority to reducing the incidence of foodborne illness resulting from the sale of food. This priority should be supported by food regulation that is:

- **the minimum necessary to address the problem**
- **risk based**
- **efficiently administered**
- **nationally consistent**
- **evidence based.**

The Act should also provide for ministerial guidelines that interpret the principles to be issued and gazetted.

Draft recommendation 8.2

That the *Dairy Act 2000* (Vic.), *Meat Industry Act 1993* (Vic.) and *Seafood Safety Act 2003* (Vic.) be aligned as far as possible with the amended *Food Act 1984* (Vic.), by incorporating similar objectives, key principles and capacity for ministerial guidelines.

8.2.2 Preventing misleading and deceptive conduct

The second objective of the Food Act (also a core provision of the model Food Act) relates to misleading and deceptive conduct (box 8.1). As discussed in chapter 2, the basis of this objective is to correct the market failure known as ‘information asymmetries’ between vendors and consumers. Consumer Affairs Victoria (CAV) stated:

Consumers have particular difficulties evaluating and verifying claims about credence attributes,¹ and some producers take advantage of this to engage in opportunistic behaviour. This is to the detriment not only of consumers, but honest producers, and the economy in general. (sub. 53, p. 2)

CAV argued that market failure is one of the main reasons for legislation focused on fair trading and trade practices, and for the existence of CAV in Victoria (sub. 53, p. 17). The food industry also perceives fair trading as important—for example, the produce and grocery industry’s code of conduct provides voluntary guidelines to promote fair trading among industry participants (PGICAC 2006).

Section 13 of the Food Act prohibits misleading and deceptive conduct in relation to food businesses.² (The industry-specific Acts do not contain objectives relating to misleading and deceptive conduct.) Breaches of this provision, however, rarely reach court. The Department of Human Services is not aware of any cases prosecuted under the Food Act for deceptive and misleading conduct, and noted that a prosecution would occur only if a business failed to take corrective action after being requested by a regulator to do so (DHS 2007b).

There are similar misleading and deceptive conduct provisions in state and national legislation, including in the *Fair Trading Act 1999* (Vic.) and the *Trade Practices Act 1974* (Cwlth). While the *Trade Measurement Act 1995* (Vic.) contains provisions on false and misleading statements, s81 expressly states that nothing in the Act affects the operation of the Fair Trading Act. Sections 9–12 of the

¹ Attributes of food that become evident to consumers well after the purchase and consumption of the food. Chapter 2 discusses credence attributes.

² The penalty is \$40 000 for an individual or \$200 000 for a corporation.

latter Act—the primary instrument of consumer protection in Victoria—relate to false, misleading and deceptive conduct. Section 9 mirrors s52 of the Trade Practices Act but extends the prohibition on engaging in misleading or deceptive conduct to a ‘person’ rather than a ‘corporation’ (CAV 2005, p. 9). The provisions in the Fair Trading Act are enforceable by consumers and competitors who are aggrieved by misleading and deceptive conduct. The provisions are also enforceable by CAV, which administers the Act.

At the national level, the prohibition on misleading and deceptive conduct in s52 of the Trade Practices Act has considerable reach. The Federal Court can enforce the provision against a corporation or other person when a consumer or class of consumers has been misled or deceived and has standing to bring representative proceedings under part IVA of the *Federal Court Act 1976* (Cwlth.). The available remedies are damages and certain orders.

In its recent examination of regulation in Australia, the Banks review reported inconsistencies across state and national consumer protection legislation (Banks 2006, p. 51). In response, the Commonwealth Government initiated an inquiry into Australia’s consumer policy framework, including the scope to avoid regulatory duplication and inconsistency by increasing the use of general consumer regulation instead of industry-specific regulation (Costello 2006). One option is to remove the misleading and deceptive conduct provisions from the Food Act, given the existing general provisions in the Fair Trading Act and Trade Practices Act. This would also involve a transfer of responsibilities to CAV or the Australian Competition and Consumer Commission (ACCC). Section 13 of the Food Act, however, is substantively different from s9 of the Fair Trading Act and s52 of the Trade Practices Act. And although it could probably form the basis of a civil claim for damages for breach of statutory duty, such a claim would unlikely ever be brought because the Fair Trading Act and Trade Practices Act are more suitable vehicles.

Section 13 of the Food Act has been drafted to create an offence that environmental health officers can prosecute in a magistrate’s court. Where a breach is established, the court can impose a penalty not only on the person carrying on a food business, but also on corporate officers (s51) and other business associates (s52). In addition, the court can order corrective advertising (s53B). If misleading conduct provisions were consolidated at the national level, councils would lose the ability to enforce misleading and deceptive conduct legislation (DHS 2007b).

The misleading and deceptive conduct provisions in the Trade Practices Act, the Fair Trading Act and the Food Act thus seem intended to be complementary, although there is potential for overlap. If the three Acts are to be retained, their administration should be managed so they are properly complementary. Also,

chapter 7 found that the division of responsibilities across the Department of Human Services, local councils, CAV and the ACCC could be clarified, including the referral of cases across these authorities. The Commission has recommended, therefore, that local government should coordinate with CAV in the former's exercise of its responsibilities under the Food Act in this area (see chapter 7).

8.2.3 Industry development

Some submissions suggested food legislation should promote industry development. The Australian Retailers Association, for example, argued that food industry policy must promote employment and business opportunities in regional Australia (sub. 35, p. 4), although CHOICE was concerned that food industry interests can be given undue weight (sub. 49, p. 3). While the Food Act and the key industry-specific food acts do not have explicit industry development objectives, national agreements and legislation include objectives that have regard for impacts on business. An objective of the Food Regulation Agreement 2002 s(A(c)), for example, is to reduce the regulatory burden on the food sector, while an objective of the *Food Standards Australia New Zealand Act 1991* (Cwlth) is to achieve 'an effective, transparent and accountable regulatory framework within which the food industry can work efficiently' (s2A). In addition, some food regulators in Victoria appear to have regard to the impacts of regulation on industry. The PrimeSafe mission, for example, is 'to regulate and advance food safety in the meat and seafood industries ... that facilitates opportunities for industry growth and innovation' (PrimeSafe 2006, p. 3).

The Commission considers, therefore, that there is no need for industry development to be an explicit objective of food safety regulation. An efficient and effective regulatory system will benefit the food industry anyway if it bolsters consumer confidence in the safety of the industry's products. Food regulators should, however, have regard to the costs they impose on industry by implementing or changing regulation.

8.3 Improving the regulatory architecture

As noted, effective institutional arrangements provide seamless regulatory coverage, clear accountability and coordinated regulatory activities. These require:

- clearly defined objectives, as discussed
- clearly defined responsibilities that are allocated to the agency best placed to perform the task.

- a planning framework that identifies key priorities and how they will be achieved
- performance reporting arrangements to assess whether the priorities are being achieved and to guide adjustments to regulatory instruments and the allocation of effort.

8.3.1 Roles and responsibilities

Chapter 1 noted the Food Act does not address which government agency is responsible for overseeing local government’s performance in respect to food safety, and the Auditor-General observed that:

If food safety in Victoria continues to be managed under legislation that does not require the key agencies to better account for their performance, it is unlikely that any systemwide change for the better will occur (AGV 2005b, p. 10).

The Auditor-General first raised this issue in 2002, so it is surprising that it has not been addressed. The Department of Human Services told the Commission that it does not ‘specifically measure its performance against all objects in the Food Act as it is not responsible for them, local government is’ (DHS 2006c). Yet given that the Minister for Health is responsible for the Food Act, it would seem, while each council is responsible for activities and outcomes at the local level, that the minister has responsibility for achieving the Act’s overall objectives. To enable the minister to discharge this responsibility, the Department of Human Services should be clearly responsible for monitoring the extent to which local government fulfils its responsibilities under the Food Act. This should be a high priority. The Commission has not taken advice on whether clarifying this responsibility requires legislative change beyond that recommended in this report (that is, clarifying objectives, providing for ministerial guidelines to local government and instituting performance reporting).

Draft recommendation 8.3

Given the accountability of the Minister responsible for the *Food Act 1984* (Vic.) for achieving the overall objectives of that Act, that the Victorian Government clearly establish within six months that the Department of Human Services is responsible for overseeing the performance of local government in meeting its obligations under the Food Act.

8.3.2 The food safety regulatory structure and strategic planning

The Infocus Management Group perceived the lack of a joint food safety management plan between state and local government as a fundamental weakness in Victoria's regulatory system. It argued that cooperation and coordination between the Department of Human Services and councils are prerequisites for effective management (sub. 38, p. 6). The Commission supports this concept but considers that it should be extended to encompass all food regulators within Victoria.

A strategic plan

In its report on food safety management in Victoria, the Auditor-General recommended that the Food Safety Unit, in collaboration with key stakeholders, develop a strategic plan (AGV 2002, p. 10). The unit subsequently prepared *Strategic directions 2004–2007*, which sets out directions for its activities. The plan states that 'it provides a basis for clarifying roles, responsibilities, key strategies and relationships with other key food safety stakeholders' (DHS 2004d, p. 1). The Department of Human Services is revising this document.

In a follow-up report, however, the Auditor-General identified deficiencies with the plan. First, the Food Safety Unit developed the plan without specifically consulting industry and local government, although intelligence gathered from these sources was used (AGV 2005b, p. 18). Second, the plan did not address the Auditor-General's recommendation on establishing protocols for monitoring the performance of local government against its legislative obligations (AGV 2005b, p. 18).

A coordinated framework

Although the Food Safety Unit's strategic plan identifies other regulatory agencies, it focuses primarily on the unit. Both DFSV and PrimeSafe have developed corporate plans setting out strategies for coming years (DFSV 2004c; PrimeSafe 2005b). While these efforts are useful, the sectoral approach means Victoria lacks a comprehensive plan for its entire food regulatory system.

An option is for the Victorian Government to develop an overarching plan, one that encompasses all food regulators and that would seek to ensure coordination across the plans of individual regulators. The Infocus Management Group argued that a joint state and local government food safety management plan would provide a framework for systemwide strategic interventions, for various projects and activities that currently are being undertaken in isolation, and for system review (sub. 38, p. 6).

A major benefit of an overarching plan would be a more integrated approach to food safety regulation. Regulators would be aware of each other's activities and working under better aligned objectives and guidelines, which would reduce duplication of effort, improve coordination of activities and help identify gaps in regulatory coverage. The framework would also reduce costs to the extent that duplication is avoided or lessened—for example, where a problem or task affects more than one regulator (such as education of food handlers, or training options), a coordinated solution would be easier to reach.

8.3.3 Performance reporting

Given the Minister for Health's responsibility under the Food Act for food safety, effective coordination across regulators is needed to target regulatory resources where food safety risks are highest. The clearer risk related framework proposed by the Commission is central to this targeting. Further, the minister will need timely information on the distribution of food safety risks and the effectiveness of regulation, so they can be confident of properly acquitting their responsibilities. Providing sufficient information, however, would require more sophisticated performance reporting than is currently undertaken. Section 8.5 describes the characteristics of such a performance reporting framework.

8.4 Structural arrangements

The reforms described in sections 8.2 and 8.3 would improve the regulatory framework, irrespective of how organisations are structured within that framework to deliver the government's objectives. Within such an improved framework, the Commission has considered two broad organisational structures:

- (1) merging some or all state food regulatory agencies, so a single agency would carry out most of the tasks identified in table 8.1
- (2) maintaining existing regulators, but seeking to improve coordination among them.

Table 8.1 Responsibilities of food regulators in Victoria

<i>Responsibilities</i>	<i>Food Safety Unit</i>	<i>Councils</i>	<i>DFSV</i>	<i>PrimeSafe</i>	<i>CAV</i>
Sectoral coverage	Broad ^a	Broad ^a	Dairy	Meat and seafood	All sectors
Registration and/or licensing		✓	✓	✓	
Registering food safety programs	✓		✓		
Registering food safety auditors	✓				
Inspections and/or audits		✓	✓	✓	
Food sampling and testing		✓	✓	✓	
Investigations:					
• Complaints		✓	✓	✓	
• Foodborne illness	✓	✓	✓	✓	
Enforcement:					
• Food safety	✓	✓	✓	✓	
• Misleading conduct	✓	✓			✓
Food recalls	✓	✓			
Emergency response	✓	✓	✓	✓	
Information and education	✓	✓	✓	✓	✓
Policy coordination	✓(DHS)				✓(DoJ) ^b

^a Coverage includes most food businesses in Victoria (including some mixed food businesses) but excludes dairy, meat and seafood businesses. ^b Department of Justice.

Sources: DFSV 2007; DHS 2004d; PrimeSafe 2007a.

8.4.1 Problems identified by inquiry participants

The Australian Industry Group (sub. 32, p. 3) and Woolworths (sub. 50, p. 8) considered that a single food regulator, as in New South Wales, would clarify responsibilities and improve resource allocation, reporting and communications. Other submissions had a contrary view. This section describes the organisational problems identified by inquiry participants. Subsequent sections describe different ways in which to address the problems.

Unclear responsibilities among existing regulators

Inquiry participants pointed to a lack of clarity about the roles and responsibilities of food regulators in some areas, including:

- multiple points of contact
- mixed food businesses
- waste management
- complaints and investigations
- misleading and deceptive conduct
- mobile and temporary food businesses
- food sampling.

Multiple points of contact

Table 8.1 shows that some food businesses may have to deal with multiple regulators. Although the memorandum of understanding (MOU) between Victorian regulators is intended to clarify responsibilities, some submissions proposed a ‘one-stop shop’—for example, George Weston Foods supported such a structure because ‘it makes it easier for industry’ (sub. 52, p. 10).

Mixed food businesses

Mixed food businesses³ can present challenges for regulators, possibly leading to unintended gaps in regulatory coverage. Some inquiry participants, such as the City of Whittlesea, reported confusion about which authority should register these businesses (sub. 31, p. 2). Although Victorian food legislation distinguishes broad food categories (such as dairy, meat, seafood and other foods) reasonably clearly, it does not set out rules for determining which regulatory agency should be responsible for mixed food businesses. The MOU between Victorian food regulators seeks to provide guidance by stating that:

- where dairy food and a food other than a dairy food is manufactured on, packed on or distributed from a premises, DFSV will negotiate with the responsible local government authority to determine the appropriate licensing authority for the mixed food businesses
- where it is difficult to determine the principal activity of a food premises, the licensing responsibility shall be determined by negotiation between PrimeSafe and the responsible local government authority.

³ Mixed food businesses are those that sell foods within the scope of more than one Victorian food Act. A shop may, for example, sell pre-packaged processed food as well as fresh meat. In this case, it would be covered by the Food Act and the Meat Industry Act.

These provisions may not provide sufficient clarity, because regulators still need to negotiate each case to determine responsibility. There is also the question of whether to determine responsibility for registration or licensing on the basis of principal risks rather than principal activity.

Waste management

Submissions raised the issue of which regulatory authority is responsible for overseeing compliance with waste management requirements (that is, the storage and disposal of garbage) at food premises. The Victorian Branch of the Australian Institute of Environmental Health reported that councils frequently attend to complaints concerning waste management by businesses registered by PrimeSafe and DFSV—an issue these agencies refuse to deal with (sub. 10, p. 10).

Several councils, including Moreland City Council (sub. 51, p. 8) and the City of Greater Dandenong (sub. 12, pp. 6–7), also raised this issue. The City of Greater Dandenong stated:

There are major discrepancies between food premises regulated by local government and those under the management of the state's PrimeSafe. ... Attendance [at the premises] is necessary to gain compliance with simple matters of waste management. (sub. 12, pp. 6–7)

Local government's responsibilities extend beyond the Food Act, including provisions of the *Health Act 1958* (Vic.) and *Tobacco (Amendment) Act 2005* (Vic.), as well as local and state laws regarding waste disposal. Environmental health officers can inspect food premises not only for the purposes of the Food Act, but also for compliance with this other legislation; under the Health Act, for example, officers may investigate complaints relating to noise, smells and smoke.

In summary, despite the MOU between food regulators, some confusion over roles is still apparent, although the Commission has received little evidence about its impact.

Complaints and investigations

Some submissions noted public confusion about which regulator to contact regarding complaints about a food premises. The Maroondah City Council noted that consumers generally perceive local government as the first point of contact (sub. 33, p. 2). Consumers, however, are less likely to know about the role of DFSV and PrimeSafe.

According to the Department of Human Services, councils are responsible for investigating foodborne illness under the Food Act (DHS 2002c, p. 7). Woolworths claimed, however, there is no coordinated approach to investigating food poisoning incidents (sub. 50, p. 5). Investigating food complaints, therefore,

can lead to interjurisdictional or boundary issues. The City of Whittlesea claimed that it must carry out an investigation until the problem is proven to have originated from another municipality (sub. 31, p. 3). This approach can result in multiple investigations by different councils, and thus additional costs. Again, it is difficult to assess the frequency of boundary issues.

Misleading and deceptive conduct

As noted, CAV, the Department of Human Services and councils administer provisions in the Fair Trading Act and Food Act relating to misleading and deceptive conduct.

Mobile and temporary food businesses

The regulatory obligations of temporary or mobile operators were a common concern in submissions. Determining requirements and the cost (for councils and the individual operator) of process duplication were at the core of the problems cited. Chapter 9 examines whether a central register of food businesses would reduce duplication.

Food sampling

Under the Food Act, local government officers can sample any outlets selling meat or seafood. The MOU between Victoria's food regulators specifies that councils, to avoid duplication and obtain greater coverage, should focus on meat or seafood outlets that they license, rather than on ones licensed by PrimeSafe.

Some submissions pointed to the potential duplication of food sampling at meat and seafood outlets. The Maroondah City Council, for example, stated:

Local government also carries out monitoring of food standards and labelling via sampling programs. It is considered that there is opportunity to reduce overlap, particularly at the retail level. (sub. 33, p. 2)

Evidence of how often councils and other regulators duplicate food sampling programs is not available.

8.4.2 A single food regulator for Victoria?

Some inquiry participants suggested that moving to a single regulator, as in New South Wales, would address these issues. The Blair report also urged governments in Australian jurisdictions to take steps to reduce the number of agencies by integrating them from 'paddock to plate' (Blair 1998, p. 19). But would merging existing food regulators in Victoria into one agency, as occurred in New South Wales, address the issues identified above and provide additional benefits? Food regulation arrangements in New South Wales have changed

significantly in recent years, with SafeFood NSW merging in 2004 with the food regulatory activities of NSW Health to establish the NSW Food Authority, which is responsible for food safety across the state's entire food industry from primary production to point of sale. Councils are meant, however, to continue to play an important role in food regulation.⁴ The merger was intended to address problems in the New South Wales food safety system, including unclear roles and responsibilities and excessive management and staff time spent establishing workable boundaries (Kerin 2002, p. ii).

A number of countries have also moved towards more integrated food safety regulatory agencies, although local government is still involved in food regulation activities in most of them (table 8.2).

Table 8.2 Entities responsible for food safety, by selected countries

<i>Country</i> ^a	<i>Entities before consolidation</i> ^b	<i>Entities after consolidation</i> ^b
Canada	3	2
Denmark ^c	3	1
Ireland	6	1
New Zealand ^d	2	1
The Netherlands	2	1
United Kingdom	2	1

^a Excludes the United States because it has not undertaken a major consolidation of its food safety agencies. ^b Excludes local councils and regional entities. ^c While one agency is responsible for almost all food safety responsibilities, there are two directorates that operate under another department. ^d Excludes Food Standards Australia New Zealand which sets standards for composition, labelling and contaminants.

Source: US GAO 2005.

The potential benefits of a single regulator include:

- a single interface
- improved coordination
- enhanced consistency
- improved resource allocation
- cost savings
- greater accountability.

⁴ A summary of the food safety system in New South Wales is available on the Commission's website www.vceec.vic.gov.au.

A single interface

A single agency would present a sole public contact point, avoiding the need for businesses or consumers to identify the relevant regulator. The NSW Food Authority has set up a contact centre to deal with queries and complaints from the public. According to the Organisation for Economic Cooperation and Development, one-stop shops reduce information search and transaction costs for users interacting with regulators (OECD 2006a, p. 62). It is still possible, however, that councils would continue to receive many complaints if there were a single regulator. The Municipal Association of Victoria noted that councils are often the first agency to receive complaints about businesses regulated by PrimeSafe and DFSV (sub. 41, p. 11).

The Department of Human Services has established a food safety hotline—broadly similar to the New South Wales contact centre—to coordinate business and consumer queries. Councils also assist businesses and consumers to identify the agency responsible for a particular type of business (although how well equipped they are to give such advice is not clear). An MOU has also been developed between councils and Victorian regulators to provide greater clarity about which agencies regulate particular food businesses. Its effectiveness is discussed in section 8.4.3.

Coordination

Some submissions raised the issue of coordination. The Victorian Farmers Federation noted poor coordination and cooperation across agencies (sub. 40, p. 9), while Brimbank City Council contended that coordination and cooperation across regulatory bodies could be improved (sub. 5, p. 2). A single agency could improve coordination of regulatory activities through better internal assignment of responsibilities, clearer communication channels and reporting structures, and more flexible reallocation of resources as priorities change. The NSW Food Authority has a service group that is tasked with communicating and coordinating services with other government agencies.

As noted, however, some inquiry participants argued that the existing regulators already work well together via the MOU, and that a single agency model would deliver few additional benefits. The Department of Human Services, for example, argued that the gains from such a move may be minimal or non-existent where different food regulators have been able to establish effective cooperative working relationships (sub. 48, p. 13).

Consistency

Consistency involves food businesses in similar situations being regulated in a similar way. Many submissions argued that regulation is implemented inconsistently (chapter 3). Woolworths, for example, claimed there is considerable variation in the interpretation of regulations at the state and local levels (sub. 50, p. 4). Mr John Ward argued that uniform application and enforcement of legislation across the current three agencies is needed (sub. 21, p. 2). A single regulator could promote greater consistency: Mr Roger Pierotti argued that a single statewide authority would deliver more consistent regulatory implementation and deliver more consistent regulatory communications (sub. 30, pp. 1–2).

While there may be a case for achieving greater consistency in the implementation of Victorian food regulation, the Commission considers that such opportunities are greatest in the way that local governments implement Victorian Government objectives. A single regulator would not necessarily address these concerns unless it also took on the role played by local government; further, it is not the only way in which to coordinate the regulatory activities of local government and to promote consistency. Chapters 9 and 10 propose a more risk related framework and guidance to promote consistency.

Resource allocation

Removing institutional demarcations between industry sectors (that is, dairy, meat and all others) may improve effectiveness by allowing a single regulator to target resources more easily to areas of identified need or priority. That is, a single regulator could remove the institutional ‘silos’ that exist, to enhance flexibility and responsiveness to changing circumstances. ‘Silos’ can, however, still develop within an integrated organisation. The structure of the NSW Food Authority appears to have been developed with this issue in mind. Rather than having industry branches, the authority’s structure is based on broad functions such as policy, science and operations. It is too early to determine how well this structure is working.

Cost savings

Consolidating regulatory agencies could reduce duplication and costs. George Weston Foods pointed to the multiplicity of regulation and its complexity (sub. 52, p. 2). And the Victorian Farmers Federation suggested there may be cost savings from reducing the number of regulators (sub. 40, p. 3). Similarly, the Australian Industry Group suggested consolidating food regulators could streamline the administration of regulation (sub. 32, p. 3), by reducing costs for business and government.

Some submissions suggested a single statewide agency could provide economies of scale. Mr Roger Pierotti, for example, argued that the small separate authorities cannot secure economies of scale or well integrated services because:

Each entity [has] its own administrative systems, management and governance structure and cultures, operational processes, and communications methods and channels. (sub. 30, p. 2)

He argued that streamlining and integrating regulatory authorities under common governance, management and reporting structures may create significant benefits (sub. 30, p. 3).

The Department of Human Services, however, doubted whether a single regulator in Victoria would achieve cost savings (sub. 48, p. 15). The Municipal Association of Victoria, while recognising the potential benefits from uniformity and centralised control by a single agency, argued that costs might arise from dispersal through a state system—that is, through a network of regional offices (sub. 41, p. 12).

In addition, establishing a single regulator would involve transition costs, to be weighed against ongoing benefits. Overseas experience indicates that startup costs can vary widely. The startup costs for the Food Standards Agency in the United Kingdom were about 8 per cent of the agency's budget, whereas the startup costs for the Danish Veterinary and Food Administration were about 21 per cent of its budget (US GAO 2005, pp. 19–24).

Merging regulatory agencies would be efficient if there are significant economies of scale and scope. But given the small size of the Food Safety Unit, DFSV and PrimeSafe, very large economies would be needed for a merger to yield significant cost savings to government. Chapter 6 highlighted that total expenditure by the three state regulators was around \$8 million in 2005-06, of which nearly \$5 million was funded through DFSV and PrimeSafe licence and other fees. Expenditure by local government was about \$25 million in 2005–06. If a merger produced savings of around 10 per cent, the potential direct benefits to industry and the state government would be around \$3 million, depending on the role for local government. The industry based governance of DFSV and PrimeSafe already serves as a discipline to contain increases in licence fees and is broadly supported by industry participants; further, local governments with around 60 per cent cost recovery remain cost conscious in their activities.

Accountability

A single agency may encourage accountability because responsibility for food safety cannot be shifted to another state regulator. Yet clear lines of responsibility can be established in systems that have multiple regulators, provided their responsibilities are well defined. Improved reporting arrangements

under the existing institutional structure in Victoria could also improve transparency and accountability (section 8.5).

A single food authority?

Having examined the still evolving New South Wales approach and assessed the implementation of food regulation in Victoria, the Commission is not convinced that Victoria should now establish a single food authority involving the consolidation of the Food Safety Unit, DFSV and PrimeSafe. Many issues that inquiry participants put forward to support a single Victorian regulator could be addressed in other ways. Concerns about local government administration of the Victorian food regulations, however, would still need to be addressed.

There is little international evidence on the impact of consolidation. The US Government Accountability Office, after examining the experiences of seven countries in consolidating their food safety systems, reported that none of the countries had analysed the results of consolidation (US GAO 2005, p. 4). Further, while a merger of regulatory agencies in Victoria might generate small cost savings for industry and government, implementation and adjustment costs would offset these savings, at least in the early years.

Given these points, the case is not strong enough to justify merging the Food Safety Unit with PrimeSafe and DFSV at this time, especially given there are alternative ways of addressing concerns about accountability, coordination, consistency and the costs to business of Victorian food regulations. Following sections examine these alternatives.

8.4.3 Improving coordination among existing regulators

A number of submissions reported coordination problems between food regulators in Victoria. The Commission identified similar issues in its report on regulation and regional Victoria (VCEC 2005a), as did the Auditor-General in its reports on food safety management in Victoria (AGV 2002, 2005b). In response to these reports, the Department of Human Services / Municipal Association of Victoria Food Safety Coordination Project was established, incorporating a mechanism to improve the level of coordination between state and local government (MAV, sub. 41, p. 5).

In addition to the option of creating a single regulator, the Commission has examined the following improvements to address concerns about accountability, duplication, coordination and inconsistency across food regulators in Victoria:

- improving the existing MOU between food regulators
- setting up service agreements between state and local government
- introducing a strategic food safety framework.

Coordination among public agencies is not simply a function of organisational structure. Regulators' incentives to improve coordination are a key driver of information exchange and operation. The effectiveness of organisational arrangements would be given a firmer foundation with the earlier recommendations, which would clarify food regulation objectives and provide related guidance. Moreover, improved performance monitoring against objectives (discussed in section 8.5) is an important component of improved coordination.

Memorandum of understanding

Memorandums of understanding are used by food regulators in Victoria and other Australian jurisdictions, and can be useful in delineating regulators' responsibilities and coordinating their activities in food safety systems with many regulators. An effective MOU can help ensure 'seamless' regulatory coverage from 'paddock to plate' without duplication of effort.

The existing MOU between DFSV, PrimeSafe, the Municipal Association of Victoria and the Australian Institute of Environmental Health came into operation in 2004 for a term of five years (with a review scheduled after three years). Its purpose is to achieve a cooperative approach to protect public health and safety in Victoria by ensuring a high level of food safety. It sets out broad principles and the roles of the respective parties as they relate to food safety, and provides for information sharing among regulators.

The MOU supplements Victorian food legislation, which does not specify the responsibilities of regulators in some areas. Even though recent industry-specific legislation has been drafted to complement the Food Act, further guidance is required in areas such as responsibility for dairy, meat and seafood in supermarkets. (When food legislation was changed a number of years ago, the Victorian Government at the time wished to avoid dual licensing of a business for food safety purposes [Theophanous 2003, p. 841]). Where such ambiguity exists, the MOU can be used to clarify responsibilities.

Few submissions commented directly on the operation of the MOU, although some parties to it considered that it has reduced overlap between regulators. The Municipal Association of Victoria commented that the demarcation between agencies is clear and that the memorandum clarifies these relationships (sub. 41, p. 11). Similarly, the Department of Primary Industries stated that the memorandum 'clarifies who is the regulatory body responsible for licensing food businesses where there is the potential for overlap' (sub. 56, p. 6). It also stated that:

The memorandum of understanding (MOU) between PrimeSafe, DFSV, [the Department of Human Services] and local government provides for mutual recognition of the systems operating under separate legislation. ... The MOU provides guidance on interpretation and implementation. (DPI 2007a)

In a consultancy report prepared for the Commission on the dairy industry, DFSV suggested that the MOU has streamlined responsibilities in relation to recalls and consumer complaints. If, for example, a dairy licence holder is implicated in a complaint or recall, the local council will refer the process to DFSV rather than the Department of Human Services (Dench McClean Carlson 2006, p. 9). The department also argued that the arrangements had increased collaboration and cooperation (DHS 2007a).

Under the MOU, local government registers supermarkets and mixed food businesses whose principal activity is not dairy, meat or seafood. These businesses, however, must still comply with the Victorian Standard for Hygienic Production of Meat at Retail Premises. According to PrimeSafe (2007a), when the Victorian Standard for Seafood Processing is developed, an MOU will be developed with local government to ensure consistent standards apply to supermarkets and mixed food businesses handling and processing seafood. This could be incorporated into the revised MOU between food regulators.

In chapter 7, the Commission recommended changes to improve the consistency and effectiveness of the administration of misleading and deceptive conduct provisions. It proposes a role for CAV in coordinating councils' actions in response to misleading and deceptive conduct. CAV would thus need to become a party to the MOU, which would clarify roles and facilitate information sharing among regulators.

The MOU's review scheduled for late 2007 should examine these issues. The Commission proposes that the coordinating committee of regulators (discussed below) undertake the review, with input from the Food Safety Council and the Food Victoria Council. The review should be completed within six months of commencement, and have a timetable for the implementation of its recommendations.

A potential weakness of the MOU is that it is not binding on the parties, because it does not impose any legal rights or obligations on them. Its effective operation, therefore, relies on the cooperation and good faith of the signatories. That said, publication of the memorandum strengthens the signatories' incentives to abide by its provisions and provide information to parties affected by it. Moreover, the Commission's other recommendations to improve accountability and reporting would mean that an improved MOU would more readily expose shortfalls. The reporting arrangements under the Food Safety Strategic Framework (discussed below) should strengthen regulators' incentives to make the MOU work effectively.

Draft recommendation 8.4

That the planned review in late 2007 of the memorandum of understanding between food regulators in Victoria identify, examine and address unclear responsibilities. The review should examine responsibilities described in this report relating to:

- the provision of a single contact point for businesses in food regulation
- mixed food businesses
- waste management
- complaints and investigations
- misleading and deceptive conduct.

In conducting the review, the coordinating committee of regulators should consult with the Food Safety Council and the Food Victoria Council. The review should be completed within six months of commencement, and have a timetable for the implementation of its recommendations.

Service agreements

A further approach would be for the Department of Human Services to negotiate service agreements with councils. These agreements would:

- set out the roles and responsibilities of each party
- specify the regulatory services that councils and the department will provide
- specify payments to councils for meeting performance or service levels, with inspection and registration fees now accruing to the department
- incorporate performance monitoring and reporting mechanisms.

Service agreements are being developed in New South Wales but have not been widely applied in Victoria, although this approach has been used to achieve a health objective relating to smoking (box 8.4).

Box 8.4 Service agreement: tobacco regulation

For tobacco regulation, as with food safety regulation, policy is set at the state level but environmental health officers employed by councils administer and enforce some aspects. When the Victorian Government decided in 2001 that it wanted councils to take on additional responsibilities in relation to smoking restrictions, for example, it concluded a performance agreement with the Municipal Association of Victoria. This involved department payments to councils, through the association, that were linked to key performance indicators. Councils were provided with the additional funds necessary to undertake the additional work required, and the Victorian Government received valuable information with which to evaluate the success of reforms in achieving its policy objectives.

The performance agreement sought to set out clear and measurable performance criteria for councils, clarifying their expectations of what was required. And the improved information base flowing from the service agreement helps to ensure the regulation is enforced efficiently. This consultative and contractual approach adopted by the Department of Human Services and local councils through the performance agreement for tobacco reforms provides a practical illustration of how state and local governments can work together to implement regulation.

Source: VCEC 2005a, p. 423.

Service agreements have considerable advantages:

- As a precursor to negotiating agreements with councils, the Victorian Government would need to articulate the outcomes it wants to achieve through food safety regulation. It would also need to resolve any gaps and duplications in responsibilities.
- The Victorian Government would need to set up and maintain a performance monitoring regime to manage the agreements.
- Agreements would allow the Victorian Government to set priorities across local government areas and within each area based on risks, and to evaluate the success of those targeted strategies. The Department of Human Services could decide to prioritise takeaways one year, for example, with increased information provision, subsidised training and enforcement activity, all linked to a coordinated communication strategy (much as the police, the EPA, WorkSafe or the Australian Taxation Office might do for important risks).
- The agreements could be used to encourage consistency in implementing regulation, particularly if accompanied by formal internal decision reviews for environmental health officers, operated by the Department of Human Services (along the lines of the process that WorkSafe uses to review its inspectors' decisions).

- Agreements could be negotiated to encourage cooperation among different levels of government.
- Incentive payments could be written into agreements to encourage superior performance.

Significant issues, however, would need to be resolved:

- There would be substantial costs in negotiating agreements with 79 councils. These costs could be reduced by using a template agreement or by the Victorian Government negotiating directly with the Municipal Association of Victoria, although an aggregated approach would limit attention to the individual circumstances of each municipality.
- There would be costs, possibly substantial, in managing the agreements, although these would be lower if, for example, the agreement were between the Department of Human Services and the Municipal Association of Victoria.
- The agreements would need to retain local government responsibility for local food issues about which a council may have local knowledge or an understanding of local preferences, while making the Department of Human Services responsible for prioritising food safety regulation activities across the state.

Service agreements on this scale would be a departure from current practice. This approach could be trialled, however, with a few volunteer councils under the aegis of the MOU, subject to any necessary changes being made to the Food Act. Alternatively, the Department of Human Services could consult with the Municipal Association of Victoria about the best way in which to introduce such agreements.

The Commission has insufficient information to judge the suitability of service agreements, but invites comments about the advantages and disadvantages of using this approach to achieve food safety outcomes in Victoria.

Coordinating arrangements

If all regulators were retained and the MOU were reviewed, the Victorian Government might wish to review the coordinating arrangements. Several submissions suggested a central agency or committee could coordinate food regulatory activities. Mr John Ward suggested the establishment of an umbrella body to coordinate the activities of the different regulators in Victoria. He stated that:

The existing agencies have great strengths in terms of systems, personnel, geographical coverage and resourcing so the exercise may more be about the most effective deployment of those collective strengths with a mechanism to coordinate activities. (sub. 59, p. 2)

Food regulators already meet twice a year under the MOU, and can meet as required. In the view of Dairy Australia, regular meetings by the chief executive officers of each group have helped strengthen a common understanding and ensure a consistent interpretation of the principles set out in the memorandum (Dench McClean Carlson 2006, p. 10).

In addition, the Department of Human Services coordinates a whole of government group, which includes:

- the Department of Primary Industries
- the Department of Innovation, Industry and Regional Development
- the Department of Premier and Cabinet
- CAV.

This group develops a coordinated Victorian approach to issues relating to food standards being developed under the Food Standards Code. It also looks at policy and regulation. A number of inquiry participants commented favourably on the whole of government approach in Victoria. According to Mr John Ward, Victoria has a form of single agency with this approach (sub. 21, p. 1).

The Commission considers that an option would be to strengthen the role of the committee of regulators under the existing MOU. An important role for this committee would be to develop for ministerial approval a food safety strategic plan, which as described in section 8.3.2 is an instrument for bringing about a state-wide integrated approach to food safety regulation. Other roles for the committee could include to:

- oversee the MOU and its ongoing operation
- regularly monitor performance of the food safety strategic plan and coordinate reports to the responsible ministers
- oversight a common food safety performance reporting system
- identify and address any significant problems that require a coordinated or statewide response, with regulators to seek ministerial decisions when required
- examine the scope to use coordinated education and information strategies to balance regulation
- consult with the Food Safety Council and the Food Victoria Council on matters as appropriate
- serve as a forum to share knowledge, information and lessons.

The whole of government group, which has a different membership, would continue to advise on Victoria's approach to national standards.

The coordinating committee of regulators would not have statutory form nor diffuse the lines of accountability between the regulators and responsible ministers: the Food Safety Unit through the Secretary of the Department of Human Services to the Minister for Health, and DFSV and PrimeSafe through the Secretary of the Department of Primary Industries to the Minister for Agriculture.

Figure 8.1 illustrates how these coordinating arrangements would combine with the other elements of the proposed improved framework for food safety described earlier in this chapter, namely:

- clarified objectives, for which the ministers are responsible
- a state-wide strategic food safety plan, approved by the responsible ministers, who can issue guidelines on how to achieve the priorities developed in the plan
- an enhanced role for the Department of Human Services in monitoring the extent to which local governments satisfy their responsibilities under the Food Act
- improved performance reporting.

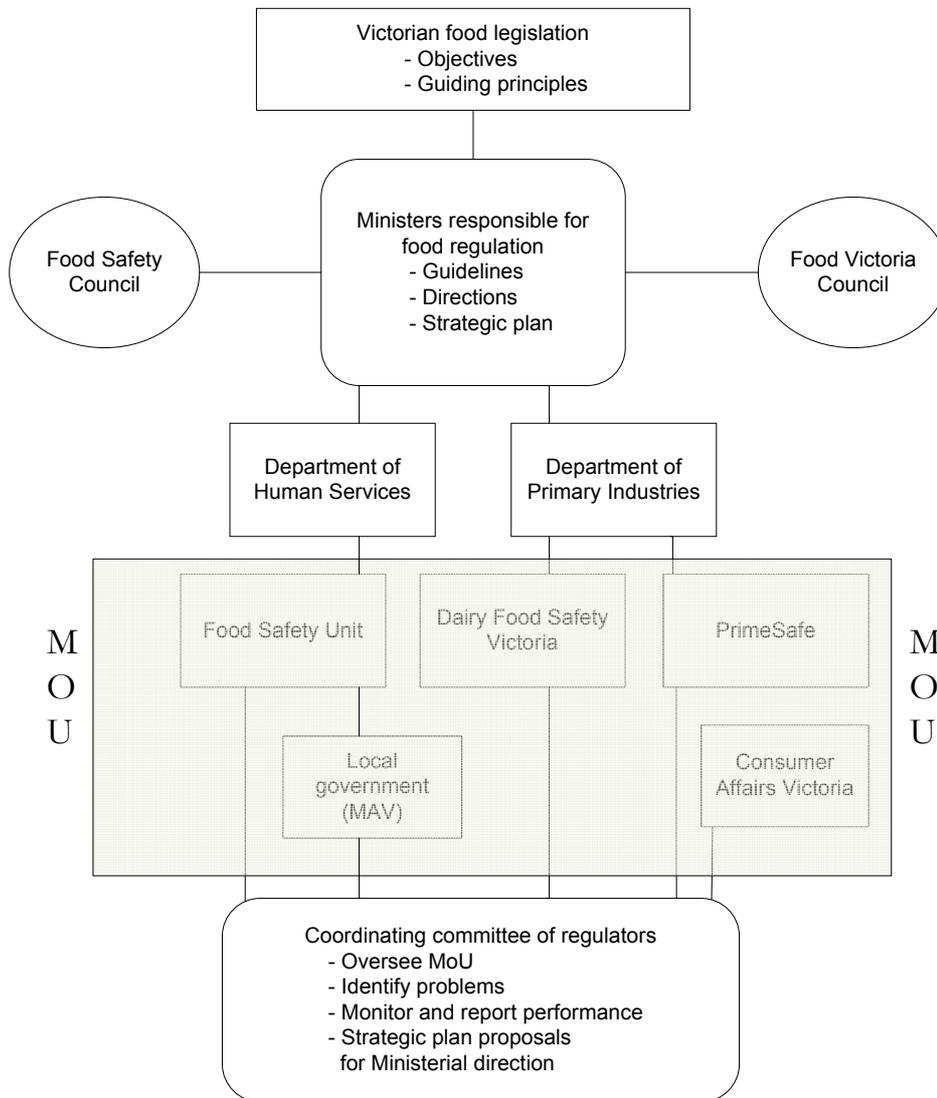
Binding councils to the proposed arrangements

While collaboration between regulators is to be encouraged, a cooperative approach on its own may not guarantee the effectiveness of the proposed arrangements. A weakness of current arrangements is that the Victorian Government cannot direct councils under the Food Act. Woolworths noted there is no overriding body that controls local government (sub. 50, p. 4). The Department of Human Services stated that:

... the Food Act, despite being a piece of State Government legislation that is applied by local government, currently provides no power to the Minister or the department to direct councils in any meaningful way. Further, there are no sanctions that can be applied if a council fails to meet its obligations under the Act. (sub. 48, p. 15)

Council officers are also looking for direction from the Department of Human Services. Environmental health officers reported that they want the department to take a leadership role in supporting councils to explore options for consistency (Windsor & Associates 2005, p. 40). The Commission considers that the Minister for Health should be given the power to direct local government on food safety matters as appropriate. This would involve inserting a new section in the Food Act that allows the minister to issue such directions (and that requires these directions to be published in the *Government Gazette*).

Figure 8.1 **Accountability and the food safety framework**



The Food Safety Unit and the Department of Human Services would advise the minister about proposed directions, drawing on the views of the coordinating committee of regulators. In the first instance, directions would cover performance reporting (see section 8.5). The need for further directions could be assessed once the strategic framework is bedded down. Resource implications would need to be considered, if directions impose additional tasks on local government rather than adjusting priorities.

Consultation

The Commission perceives an important role for the Food Safety Council in advising the coordinating committee and providing independent advice to the Victorian Government on progress with the proposed strategic plan. The council was established under the Food Act to provide advice on food safety, food standards and the operation of the Food Act. It has a considerable range of expertise in areas such as microbiology, food technology and sciences, communicable diseases, nutrition and public health, food manufacturing, retail and food service sectors, and primary industries (FSU 2005a, p. 3). The coordinating committee of regulators should draw on this expertise and advice in overseeing the MOU and when considering systemwide issues. The committee should also consult with industry (through the Food Victoria Council) and consumer and community groups on matters as appropriate.

Implementation and review

The costs of implementing and operating the proposed framework are likely to be modest, because key parts are already in place. As discussed, the arrangements are expected to improve the coordination and consistency of regulatory activities, and to remove gaps in regulatory coverage. To the extent that duplication is reduced, this too would produce cost savings.

A further benefit is that the effectiveness of the food safety system in Victoria could be improved as a result of the performance reporting system and enhanced consultation with experts, industry and the community. The information from performance monitoring and consultation could be used to develop statewide strategies and interventions.

The performance of the proposed framework should be reviewed in five years. If the review finds performance below expectations, it could re-examine other options (including a single food regulator for Victoria).

Draft recommendation 8.5

That the Ministers for Health and Agriculture agree to implement a food safety framework for Victoria, and that the Food Safety Unit develop a statewide strategic plan in collaboration with Dairy Food Safety Victoria, the Municipal Association of Victoria, PrimeSafe and Consumer Affairs Victoria, whose own strategic plans and operation should be consistent. This would involve a new form and wider mandate for the existing committee of regulators. The committee would:

- oversee the memorandum of understanding and its ongoing operation
- regularly monitor performance of the food safety strategic plan and coordinate reports to responsible ministers
- oversight a common food safety performance reporting system
- identify and address any significant problems that require a coordinated or statewide response, with regulators to seek ministerial decisions when required
- examine the scope to use coordinated education and information strategies to balance regulation
- consult with the Food Safety Council and the Food Victoria Council on matters as appropriate
- serve as a forum to share knowledge, information and lessons.

The Victorian Government should review the operation of the food safety framework in 2012, re-examining other options, including a single food regulator for Victoria.

Draft recommendation 8.6

That the *Food Act 1984* (Vic.) incorporate a new section that allows the Minister to issue directions to local councils on food safety matters, and that the section require ministerial directions to be published in the *Government Gazette*.

8.5 Improved reporting of food safety performance

Information about the contribution of regulators to food safety outcomes would assist the public to assess regulators' performance. Yet, a number of recent reports have criticised the reporting of food regulatory activities. In 2002, the Auditor-General reported that neither the Food Safety Unit nor councils were adequately informing the public of their performance against their obligations

under the Food Act (AGV 2002, pp. 103–07). In 2005, the Commission examined food safety regulation in its report *Regulation and regional Victoria: challenges and opportunities*, in which it recommended:

That councils should report their performance against their obligations under the *Food Act 1984*, using performance indicators developed by the Food Safety Unit and local government, represented by the Municipal Association of Victoria. The results should be published. Performance reporting should be made mandatory after two years if negotiations have not achieved an acceptable outcome. (VCEC 2005a, p. xivi)

The Victorian Government supported this recommendation in principle, but noted that mandatory reporting would be contrary to policy on local government reporting.

In its follow-up report, *Management of food safety: progress on our 2002 report* (AGV 2005b), the Auditor-General concluded that progress had been limited, other than some progress by the Department of Human Services in developing food safety performance indicators. It found that councils were not adequately reporting their food safety activities to the Department of Human Services.⁵ (The Auditor-General noted that the department has no authority under the Food Act to ensure local government meets its obligations). Only nine of the 19 councils the Auditor-General visited reported food safety activities externally through their 2003-04 annual report (AGV 2005b, p. 29).⁶

8.5.1 Why report on performance?

Potential benefits from improved performance reporting include:

- reassuring the public about the quality of food being eaten
- indicating to policy makers whether performance is improving
- helping identify where particular problems or resource constraints exist
- helping identify ways in which to reorder priorities to improve performance (VCEC 2005a, p. 253).

Performance reporting is standard practice in most areas of public policy, and it is undertaken in Australia and overseas in the area of food safety.

The NSW Food Authority's annual report provides information on its activities including audit and verification, compliance and inspection, enforcement, and foodborne illness investigations (chapter 5). In addition, through its quarterly publication *Foodwise*, the authority reports output performance measures including enforcement and prosecution statistics (for example, prohibition

⁵ The department notified the Commission, however, that every council, at one time or another, has accessed VicFin (DHS 2007b).

⁶ Chapter 5 provides some information about reporting of food safety activities in councils' annual reports.

orders, food recalls and licence cancellations), and audit and inspection statistics (NSW Food Authority 2006b). In the United Kingdom, the Food Standards Agency measures its contribution to reducing foodborne illness using major bacterial reports. A stated objective of the agency was the reduction of food borne illness by 20 per cent over five years (chapter 5).

8.5.2 What information should be reported?

Chapter 5 highlighted that little information is reported about the effectiveness of food regulation in Victoria. Yapp and Fairman (2003) listed food safety service indicators that could be used to assess local government performance, highlighting the importance of using both input and output measures to assess effectiveness (how well the service meets its objective) and efficiency (how well the service uses its resources to meet its objectives). Input measures include:

- the number of environmental health officers employed
- staff training in food safety
- the availability of documented guidance within the service (for example, enforcement policy and procedure notes).

Output measures include:

- the number of inspections undertaken
- the level of enforcement
- the level of educational activity for food businesses (Yapp and Fairman 2003, p. 3).

Measuring the outcome of food safety regulation is also crucial. The proposed key Victorian Government objective is to reduce the incidence of foodborne illness. Thus a 'good' outcome of enforcing the Food Act would be reduced illness from the sale of unsafe food. This could be measured by indicators relating to the prevalence of foodborne illness and/or the presence of pathogens and other harmful substances in food.

8.5.3 Improving current arrangements

Chapter 3 described councils' significant responsibilities for enforcing the Food Act but noted that the Act does not require councils to report their activities to the Department of Human Services. Some attempts have been made to develop cooperatively a reporting system. The VicFin database was developed (in 2001) partly to facilitate uniform food safety activity reporting across local government, with a view to potentially include data from other regulators such as DFSV and PrimeSafe (Mr John Ward, sub. 59, p. 3). VicFin contains data on businesses, compliance and inspections, and should be expanded to include data on

foodborne illness. While VicFin is an important tool for central reporting, information technology problems have made implementation difficult. The Department of Human Services could provide additional resources (financial and on-the-ground assistance) for councils to implement VicFin and meet their reporting requirements. The full implementation of the VicFin system, coupled with regular reporting by councils, could provide a useful framework for performance reporting.

In addition to its joint Food Safety Coordination Project with the Municipal Association of Victoria, covering a number of food safety issues, including performance reporting, the Department of Human Services informed the Commission that an additional project is underway to develop a food safety framework under which performance indicators will be developed (chapter 5). While this is a step towards better reporting, much work remains to be done: the Auditor-General first discussed these reporting issues in 2002, and progress has been negligible in the five years since.

Given the knowledge that exists about performance monitoring and reporting in relation to food safety, why has a performance reporting framework not been implemented in Victoria? In the Commission's view, the lack of reporting reflects a combination of factors, including council priorities, limited resources and the absence of any framework for the Department of Human Services to require councils to report on their activities. Overall, the incentives for councils to report are weak.

As discussed, the Victorian Government noted that mandatory reporting by councils is not in line with policy. But given the lack of progress since the Auditor-General's report in 2002, and the failure of the voluntary approach to performance reporting, the Commission considers mandatory reporting necessary to build a satisfactory food safety performance regime. Moreover, councils need to be assured that performance reports will be used to guide them to better fulfil their regulatory responsibilities (including the more risk based arrangements set out in chapter 9).

Reporting between the Department of Human Services and councils should also improve public reporting on food safety—a crucial element for the accountability of food safety regulators. For privacy reasons, it may not be desirable to publish all details, especially those relating to foodborne illness outbreaks. The public should be made aware, however, of developments in food safety and the performance of regulators in ensuring food safety. The Food Safety Unit, for example, has published a case study of a foodborne illness investigation (FSU 2005b, p. 9). The NSW Food Authority also publishes case studies of foodborne illness outbreaks and how they are dealt with, without releasing information that may expose the identity of the businesses involved (NSW Food Authority 2006b).

Neither PrimeSafe nor DFSV publicly provides detailed information on its food safety performance. PrimeSafe has flagged, however, that it will develop a set of performance benchmarks against which it will measure its effectiveness and contribution, through its corporate plan for 2005–10 (chapter 5). Like the Department of Human Services and local government, DFSV and PrimeSafe should report their food safety performance to the public and their minister to ensure accountability.

In addition to advising the coordinating committee of regulators on what information should be reported, the Food Safety Council could advise the minister on progress in implementing a performance reporting system.

Draft recommendation 8.7

That the Minister for Health issue a direction under the new section in the *Food Act 1984 (Vic.)* to require local councils to report their food safety performance to the Department of Human Services, based on the performance reporting system developed by the department's Food Safety Unit in consultation with the committee of regulators.

8.6 Conclusion

This chapter has outlined that the framework of food safety regulation in Victoria would be improved by:

- clarifying the food safety objectives for which the responsible ministers are accountable
- the responsible ministers approving a strategic plan that outlines food safety priorities for all food safety regulation, and issuing guidelines on how to achieve these priorities
- enhancing the role of the Department of Human Services in ensuring local governments satisfy their responsibilities under the Food Act (The Department of Primary Industries performs this role for the other industry Acts.)
- markedly improving performance reporting by all food safety regulators, to reveal the extent to which regulators are achieving the priorities set for them by ministers.

Within this improved framework, the chapter has described three different organisational arrangements (not necessarily mutually exclusive) for achieving the Acts' objectives:

- (1) a merger of all food safety regulators into a single entity, which may then enter into service agreements with councils

- (2) service agreements directly between the Victorian Government and local governments, under which councils deliver outputs prescribed by the Victorian Government
- (3) a review of the MOU between regulators, and an enhanced role for the committee of regulators to monitor food safety performance and report problems to the responsible ministers, who would have the power to issue directions to local government.

The Commission currently leans towards the third approach, which it expects could be achieved with the lowest transition costs of the three options. There is also strong support from industry representatives for maintaining DFSV and PrimeSafe, while councils are best placed to judge local food safety performance, which is central to the more risk based proposed regulatory arrangement.

The third option relies on cooperation among regulators to coordinate their roles effectively when inconsistencies or gaps arise, and to reallocate resources for changing priorities, backed up by a new power for ministers to direct councils when cooperation is ineffective. The relative merits of this option would be influenced by a range of factors, including the effectiveness of the proposed new power for the minister to issue directions to councils, and the strength of the incentives for the various regulators to operate cooperatively.

The Commission welcomes inquiry participants' comments on the advantages and disadvantages of these three options.

9 Improving food regulation: regulatory instruments

9.1 Introduction

The previous chapter found that the institutional architecture for food regulation can be improved by clarifying the objectives of regulation, having clearer accountability, ensuring better coordination between the regulators, and improving performance reporting. This chapter examines the key regulatory instruments used to manage food safety risks and the scope to streamline regulation through a more targeted approach to implementing Victorian food regulation.

In examining the regulatory instruments and in accordance with the terms of reference, the Victorian Competition and Efficiency Commission has developed a package of reforms designed to streamline regulation without undermining the objectives of Victorian food regulation. The Commission has drawn on suggestions from inquiry participants and its own analysis.

The intent of the proposed changes is to ensure that regulatory effort is targeted where risks to food safety are highest. This is generally where food is served to vulnerable groups in the community and where market incentives are insufficient to ensure that risks are appropriately addressed, because of a lack of knowledge or resistance to meeting food safety standards.

One challenge facing the Commission in its assessment of options for streamlining regulation is the lack of robust information on the effect of current regulations on food safety (chapter 5). Without such information, the Commission has attached significant weight to the available evidence indicating where food safety risks are greatest. The term ‘risk’ has also been defined broadly, encompassing the inherent characteristics of particular foods and the strength of market and other incentives facing food businesses to ensure they produce safe food. Having examined current regulatory arrangements, the Commission considers that the *Food Act 1984* (Vic.) and its application should be more closely geared to addressing food safety risks.

A regulatory system that focuses on key problem areas would be characterised by a risk based approach, one based on an assessment of the inherent risks associated with particular foods and the strength of industry incentives to manage risks effectively. The regulatory system would have the capacity, flexibility and incentives to shift resources to identified areas to prevent food safety risks. This could also involve managing the balance between regulatory intervention (such as extra audits and penalties for noncompliance) and nonregulatory measures such as provision of information and training.

While the lack of robust information makes it difficult to determine where regulatory effort in Victoria is allocated and how this relates to risk, there appears to be scope for reducing regulation for some food manufacturing and processing businesses, food service businesses such as restaurants and cafés, and community groups, given the risks posed (chapter 11 examines the effects of regulation on community groups). There is also scope in some areas to rely less on regulation, especially where it is not well implemented, and more on providing education and information to businesses and consumers (section 9.10).

9.2 Strengthening the risk based approach

Given the strength of market, legal and other incentives for firms to produce food that is safe, the Commission considers there is scope to take greater account of these incentives in implementing food safety regulation in Victoria. Under the risk based approach proposed by the Commission, the administration of regulation would be guided by the risk profile of food businesses, taking account of incentives and not just the type of food. This approach would see regulatory resources specifically target areas that will deliver the largest potential reduction in the incidence of foodborne illness.

9.2.1 Risk based classification of food businesses

A key element of food safety regulation in Victoria is the requirement that a food business develop a food safety program (FSP) tailored to its food hazards. Declared food premises must be registered under the Food Act and have FSPs; this requirement applies to both commercial and not-for-profit activities. Businesses licensed under the *Dairy Act 2000* (Vic.), the *Meat Industry Act 1993* (Vic.) or the *Seafood Safety Act 2003* (Vic.) must have FSPs or quality assurance programs (DPI 2007a).

The additional regulatory requirements for food premises registered under the Food Act (such as inspections, audits and the requirement for a food safety supervisor (FSS)) depend on the type of activity undertaken. They do not depend on broader factors such as market and other commercial incentives to produce safe food, or their track record in producing safe food and complying with regulation. While the classification system differentiates high and lower risk businesses, it does so in a limited way. Victoria's current classification system also differs from the approach being developed nationally (box 9.1) and applied in states such as New South Wales, which is to undertake a risk assessment for different sectors and mandate FSPs only for those sectors where there is clear evidence of a net benefit.

Box 9.1 National Risk Validation Project

In 2002, the Commonwealth Department of Health and Ageing together with the NSW Department of Health funded the National Risk Validation Project. The project involved a review by Food Science Australia of the available data to identify food sectors that are consistently associated with foodborne illness outbreaks. The following five high risk food sectors were identified and ranked in order of priority:

1. food service for sensitive populations
2. producers, harvesters, processors and vendors of raw ready-to-eat seafood
3. catering operations serving food to the general population
4. eating establishments
5. producers of manufactured and fermented meats.

As part of the project, Minter Ellison Consulting estimated the cost of foodborne illness attributable to these sectors to be around \$1 billion a year in Australia. The study also examined the benefits and costs of applying FSPs to these high risk sectors, finding that FSPs would yield net benefits for most sectors, but net costs for eating establishments (FSA & MEC 2002). This was also noted in the *Ministerial policy guidelines on food safety management in Australia: food safety programs* (FRSC 2003).

Based on the results of these studies, the Australia New Zealand Food Regulation Ministerial Council agreed in December 2003 that FSPs should be made mandatory in all high risk categories except eating establishments (ANZFRMC 2003). This is being implemented through several new or proposed standards:

- primary production and processing standard for seafood for the raw ready-to-eat seafood sector (to commence on 26 May 2007)
- food safety programs for food service to vulnerable populations (to commence on 5 October 2008)
- primary production and processing standards for production of ready-to-eat meat and poultry meat (these commenced on 24 November 2006 for the manufactured and fermented meat sector)
- food safety programs for catering operations (with a draft assessment expected to be submitted to the board of Food Standards Australia New Zealand in May 2007) (FSANZ 2007a).

Sources: ANZFRMC 2003; FRSC 2003; FSA & MEC 2002; FSANZ 2007a.

Table 9.1 sets out the Commission's proposed approach to food regulation in Victoria. While the focus is on the approximately 45 000 business and not-for-profit food premises regulated under the Food Act, the principles underpinning the proposed structure equally apply to businesses regulated by PrimeSafe and Dairy Food Safety Victoria (DFSV). To a large extent, DFSV and PrimeSafe already employ this approach.

Table 9.1 Proposed approach to food safety regulation

<i>Instruments</i>	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	<i>Class 3 food premises</i>
Food safety risk (broadly defined)	High	Medium	Low
Registration	Yes, but with simplified paperwork	Yes, but with simplified paperwork	Yes, but with simplified paperwork
Food safety program	Yes, customised	Yes, customised or simple templates	Certification
Food safety supervisor	No	No	No
Training for food handlers	Councils can impose training orders	Councils can impose training orders	Councils can impose training orders
Record keeping requirements	Yes	More flexibility	More flexibility
Council inspection or compliance check	Capacity to inspect	Regular inspection (eg annual minimum)	Occasional inspection
Third party audit	(Compulsory) Performance based	(Voluntary) Performance based	(Voluntary) Performance based
Food sampling	High frequency	Moderate frequency	Very low frequency

The Commission invites interested parties to comment on its proposed changes to food regulation in Victoria, including the benefits and costs of the changes, and the applicability of the underlying approach to businesses regulated by PrimeSafe and Dairy Food Safety Victoria. The Commission also invites suggestions about further opportunities to streamline food regulation.

While more detail is provided in later sections, the key features of the model include the following:

- Expanding the current risk classification system to three classes, having regard to the national approach to developing risk categories. A new class 3 would initially include identified low risk retailers of fresh and packaged foods such as greengrocers, service stations, milk bars and convenience stores selling packaged foods (including milk products), food vending machines, and most community activities.¹ A large number of class 2 premises would migrate into class 3, based on whether businesses have separate accreditation or quality assurance processes and their track record of complying with regulation. Present class 1 premises—hospitals, aged care and child care centres serving food to vulnerable groups—would remain.

¹ The application of the Commission’s proposed approach to community groups is discussed in chapter 11.

- The Department of Human Services establishing and updating this new classification approach, having regard to the national work on risk classification and further analysis of food sampling, complaints and council reporting information. Councils would have the capacity to move premises into and out of class 3, subject to conditions.
- Businesses continuing to register their premises annually but with simpler paperwork requirements—for example, businesses would provide detailed information only for a change in business details or in their FSP (where one is required).
- Establishing a single registration system, which would enable mobile food businesses (such as caterers and food vans) to register once rather than in multiple council areas.
- Retaining the requirement for FSPs for all class 1 and 2 food premises. Existing templates for class 2 premises, however, would be significantly simplified and shortened by the Department of Human Services. Class 3 premises would not be required to prepare FSPs but would need to certify to councils that they have taken appropriate steps to identify and manage food safety risks.
- Replacing the FSS requirements with a more targeted regime of training for food businesses that have failed to comply with food safety standards. Additional reliance would be placed on the provision of information and training for businesses that lack knowledge and skills in food safety.
- Removing the requirement for annual council inspections where premises are third party audited, relying instead on a structured system of random or lower frequency inspections developed from the results of councils' food sampling programs and other data.
- Streamlining mandatory record keeping requirements that allow businesses to have more flexibility in meeting the national food standards—for example, reporting equipment breakdowns and problems encountered (that is, exception reporting).

Draft recommendation 9.1

That the Victorian Government focus food regulation where food safety risks are greatest, and lessen the regulatory burden on food businesses with a good track record by:

- **introducing a new risk class and strengthening incentives for food businesses to maintain a good food safety track record**
- **streamlining registration processes for premises that are low risk, have accreditation under quality assurance processes, or have a good food safety track record**
- **simplifying food safety program templates**
- **streamlining record keeping requirements for lower risk businesses**
- **introducing more targeted and effective support for food safety training for food businesses and removing the requirement for food safety supervisors**
- **establishing a central register covering all food premises that would also enable mobile food businesses such as caterers and food vans to register once, rather than in multiple council areas.**

The following sections examine various elements of the Commission's proposed approach to food regulation and the impacts on the commercial sector in more detail. Chapter 11 examines the implications for the community sector.

9.3 Food safety programs

The Food Act requires all registered food businesses in Victoria to develop and adhere to an FSP, a document that identifies potential hazards in food handling operations and the steps for ensuring hazards are managed. Key features of FSPs as applied in Victoria include the following:

- Class 1 premises (covering commercial and not-for-profit hospitals, aged care facilities and child care centres) currently must develop their own FSP, while class 2 premises (all other types of business apart from those specifically exempt) have the option of using standard templates registered by the Department of Human Services covering fixed and temporary food premises (chapter 3 and appendix B).
- Victorian councils may inspect a food premises at any time to determine whether the food business carried out at the premises is operating in accordance with the FSP (s19HA of the Food Act).
- FSPs or quality assurance programs are also required by DFSV and PrimeSafe in the Victorian dairy, meat and seafood sectors.

- Victoria is unique in requiring all declared food premises to develop FSPs: other states that have implemented FSPs have done so for specific industry sectors—for example, the New South Wales Government has mandated FSPs for meat handling and processing businesses; dairy producers, factories and vendors; and businesses handling seafood and shellfish (NSW Food Authority 2006c). The only activities exempt from the FSP requirement in Victoria are retailers of low risk prepackaged food.
- When the FSP requirement was originally conceived, no assessment of the impact of the proposed legislation on government and industry was undertaken (Smith 2001, p. 119).
- Victoria requires community groups raising funds by selling food to prepare FSPs; the national voluntary standard for developing FSPs provides an exemption for such activities from this requirement. Other jurisdictions do not require community activities to prepare FSPs (chapter 11).
- The Department of Human Services has registered FSP templates for fixed premises and temporary events such as community fund raising events. These templates also serve an educational function by explaining types of risks and control methods, and providing other information to food businesses.

9.3.1 Assessment of food safety programs

It is difficult to draw a direct link between the use of specific regulatory instruments (such as FSPs) and changes in the incidence of foodborne illness in Victoria, given the lack of data (chapter 5). Views were divided on whether FSPs have reduced the incidence of foodborne illness—for example, the City of Melbourne, which had around 2700 fixed premises registered as at 1 January 2007², argued that the introduction of FSPs has yet to demonstrate a significant improvement in food safety standards (sub. 16, p. 1). Similarly, the Victorian branch of the Australian Institute of Environmental Health, which represents environmental health officers (EHOs), stated that FSPs were not generally resulting in large food safety improvements, despite placing a heavy workload on EHOs and councils (sub. 10, p. 1). Several councils, however, commented positively on the effect of the arrangements (section 5.2.1).

The case for requiring businesses to develop FSPs depends on whether the benefits outweigh the costs. Previous studies have found that FSPs can deliver net benefits in some cases. The national study of FSPs undertaken by Food Science Australia and Minter Ellison Consulting (FSA & MEC 2002, p. 8) concluded that FSPs would provide benefits in a number of high food risk sectors but that they would generate net costs for the food service sector (which includes restaurants and cafés) (box 9.1). Although The Allen Consulting Group

² This figure is based on the City of Melbourne's response to a survey of local governments undertaken by the Department of Human Services for the Commission (DHS 2007d).

estimated that introducing FSPs nationally would deliver a net benefit, it noted that for businesses that are small and serve low risk foodstuffs the costs may outweigh the benefits (ACG 2002, p. 97). The approach adopted nationally has been to develop a voluntary standard for FSPs (s3.2.1 of the Food Standards Code) and to consider mandating FSPs on a case-by-case basis for identified high risk sectors or activities (box 9.1).

The net benefits of FSPs also depend on how businesses respond to the requirements. In some areas, businesses may have adopted a ‘tick the box’ approach to completing registered templates—for example, some businesses may maintain FSP records but not actually perform all the tasks documented. Some respondents to the Commission’s survey of food businesses reported that they use FSP templates rather than developing their own to avoid what they viewed as difficulties in getting a customised plan approved (KPMG 2007, p. 25).

Against these concerns, some inquiry participants considered that FSPs have helped to raise business awareness about food safety issues. This is partly because they are designed to serve an educational purpose, particularly for small businesses that lack sufficient knowledge about food hazards and their control. While surveys commissioned by the Department of Human Services have shown increased awareness of food safety practices among food handlers since the introduction of current FSP requirements, the effects on food safety outcomes are less obvious (chapter 5). Furthermore, there are probably more efficient nonregulatory means for raising food handlers’ knowledge about food safety that can better target problem areas (section 9.10).

While the benefits are unclear, the available evidence suggests that the FSP requirement has imposed costs on councils and some businesses:

- Some submissions highlighted the costs to councils—for example, the City of Melbourne stated it has invested considerable time and effort in assisting the transition to FSPs (sub. 16, p. 1); the City of Port Phillip also reported it has spent significant resources on educating proprietors about FSPs (sub. 13, pp. 2–3); and the City of Greater Dandenong argued that FSPs have been resource intensive for councils and business (sub. 12, p. 1).
- Several submissions highlighted the administrative costs to businesses—for example, Coles Myer noted that the FSP template must be reviewed and renewed every year at considerable cost (sub. 7, p. 3).
- The Municipal Association of Victoria considered that while some businesses find the requirements onerous, those that have embraced the intent of FSPs do not (sub. 41, p. 8).
- Evidence about the costs of food regulation suggests that the compliance costs of FSPs for some businesses are low, but this may be because these businesses have implemented food safety standards that exceed regulatory standards (chapter 6).

It was also argued that the administrative burden of preparing FSPs has fallen most heavily on small businesses, particularly those in the food service sector such as restaurants and cafés. Although the Hazard Analysis and Critical Control Point (HACCP) system (which is the basis for FSPs) was primarily designed for large businesses (WHO 1999, p. 3)³, the mandatory requirement in Victoria has seen FSPs applied to businesses of all sizes. Several submissions pointed to the costs imposed on smaller businesses:

- Restaurant & Catering Victoria contended that the resources required by restaurant businesses to comply with the record keeping requirements of FSPs are substantial (sub. 36, p. 7).
- The Australian Institute of Environmental Health argued that smaller businesses have fewer resources to implement FSPs (sub. 10, p. 2).
- The requirement to prepare an FSP has also placed a significant burden on small community groups (chapter 11).

Reflecting the concerns about the net benefits of FSPs, particularly for low risk sectors and for small businesses generally, the Commission considered two main options for reducing the regulatory burden:

- (1) targeting the FSP requirement at high risk food businesses
- (2) streamlining the current FSP templates.

9.3.2 Targeting food safety program requirements

There may be scope to target the FSP requirements at businesses posing a relatively high risk to food safety. The National Risk Validation Project (box 9.1) identified producers, harvesters, processors and vendors of raw ready-to-eat seafood; catering operations serving food to the general population; eating establishments; and producers of manufactured and fermented meats as high risk areas. Further work at the national level has generated a range of risk classifications using a business sector food safety risk classification tool (DHA 2006d). This risk classification tool categorised newsagents, sweet shops and vending machines (supplying shelf-stable foods) as activities considered to present negligible risk of causing foodborne illness. Greengrocers were categorised as handling low or medium risk foods (DHA 2006d, p. 50).

Based on this evidence, the Commission considers there is scope to introduce a new class of registered food premises—class 3—that would not be required to prepare an FSP. This category would comprise a large number of (often small)

³ The World Health Organisation noted that because the Codex HACCP system and guidelines for its application were developed from the perspective of large food industries, they are not well-adapted to small businesses.

businesses that sell only low risk foods (including milk and other refrigerated packaged products) such as:

- greengrocers
- newsagents
- pharmacies
- sweet shops
- convenience stores
- service stations
- vending machines.

Preparing an FSP for these groups is likely to impose administrative costs in excess of the food safety benefits. An administratively simpler approach is to introduce a certification requirement for such low risk (class 3) premises. This would require the owner to inform councils about their food-related activities, identify the person(s) responsible for food safety, and certify that they understand and have taken appropriate steps to identify and manage food safety risks. With a certification requirement, councils could continue to identify food businesses in their area and follow-up, where necessary any complaints or product recalls. Councils would also still be able to undertake an inspection at any time to determine whether the requirements of the Food Act and national food safety standards are being met, as is currently the case. This approach would be more consistent with national arrangements, where FSPs are required only for identified high risk activities.

Consideration could also be given to reclassifying the food service sector (restaurants, cafés and takeaways) from class 2 to the new class 3. Although the food service sector has been defined as a higher risk sector under the National Risk Validation Project, the cost–benefit studies undertaken suggested that requiring food service premises to prepare FSPs imposes a net cost, mainly due to the record keeping requirements. But food service premises cover a wide range of activities, risks and performance. Because the Commission is proposing that current FSP and record keeping requirements be streamlined, there may be a case for maintaining the FSP requirements for food services generally, but with provision for those businesses with a demonstrated record of good risk management to migrate to class 3. Based on the information available, the Commission supports retaining the food service sector in class 2 as the starting point for new businesses, with provision for good performers not handling inherently high risk foods to migrate to class 3.

The Commission invites comment from inquiry participants on proposals to expand the current risk classification system to three classes, to remove the requirement for food safety programs for low risk food premises, and to maintain the (streamlined) food safety program requirement for food service sector premises, but allowing good performers to migrate to class 3.

Initial implementation of the new three class system (table 9.1) would need to be undertaken by the Department of Human Services and based on available evidence from, for example, the National Risk Validation Project and previous cost–benefit studies. Consideration should be given to outlining the classification of low risk business activities in subordinate legislation so that it would be reviewed periodically (at least every 10 years) and could be modified if circumstances warrant, subject to a regulatory impact assessment.

There may also be greater scope to reduce the administrative burden for businesses that must meet stringent export, domestic customer and other accreditation requirements because they already meet FSP requirements. Many manufacturing businesses have achieved accreditation under quality assurance processes such as SQF, ISO and WQS. Some businesses have sought accreditation to gain a marketing advantage; others do so to meet supermarket and other customer requirements. These processes also require companies to meet national food safety standards to achieve accreditation. A number of service providers such as hospitals, aged care centres, hostels and child care centres must obtain accreditation under various contractual arrangements with funding bodies. These accreditation arrangements may cover food safety and other safety issues.

According to the Department of Primary Industries, one of the advantages of quality assurance programs is the opportunity for industry to develop a single system that will satisfy both regulatory and industry requirements. PrimeSafe’s third party audit arrangements allow businesses to combine regulatory audits with commercial audits, provided the auditor is approved to undertake both (DPI 2007a).

The Department of Human Services already has a process in place to recognise quality assurance programs (section 9.6.2)—for example, it will accept an FSP and audits conducted under SQF 2000, provided:

- the SQF plan is modified to meet the requirements of the Food Act regarding matters such as the requirement for food safety supervisors and record keeping
- third party audits of the plan are conducted by an auditor accredited by the department (DHS nd, p. 1).

Implementing proposed changes to Victorian FSS and record keeping requirements will make recognising quality assurance processes much easier. To further target regulation, the department could identify quality assurance processes that meet streamlined Victorian food regulations, and provide this information to councils. Accredited premises would then be allocated to class 3, meaning councils would not need to review the accredited quality assurance process or inspect the business premises unless a complaint is received or a random inspection undertaken.

Streamlining the regulatory requirements for low risk activities and businesses with certified quality assurance programs would have little or no adverse effect on food safety. This is because of the low inherent food risk characterising these activities combined with the strong industry incentives to maintain food safety, particularly in the manufacturing sector which depends on exports and supplying major retailers. The removal of the FSP requirements for low risk activities would be supported by improved monitoring, training and information measures (section 9.10).

A further option for streamlining regulatory requirements is to allow flexibility in the classification of businesses between class 2 and the Commission's proposed class 3 categories. Businesses in class 2 demonstrating a consistent track record of compliance with food regulation requirements could, on the recommendation of councils, be shifted into class 3, meaning fewer council inspections, streamlined registration and record keeping requirements, and possibly lower registration fees. Councils could also move a business into class 3 in the event of noncompliance with food safety standards. The aims of this proposal are to reinforce incentives for complying with regulatory requirements and to free up council resources to focus on improving food safety where it is needed. The food regulation framework in Victoria provides too little flexibility for both councils and businesses.

To ensure consistency in implementing a more flexible classification system by councils, and provide certainty for business, the Department of Human Services would need to ensure that councils use a consistent approach to assessing compliance and making decisions about moving premises into the low risk (class 3) category. Options to achieve more consistent implementation of food regulation by councils are discussed further in chapter 10.

Given the implications of reclassification for affected businesses (such as higher registration fees, a requirement to develop an FSP, and more frequent council inspections), it may be necessary to establish a mechanism for reviewing council decisions to move premises between classes 2 and 3. If a business has concerns about a decision regarding reclassification, councils could initially review the decision: requiring councils to annually report the outcomes of reviews would impose a discipline on the internal review. If a business is still not satisfied with the council's internal review, a further review could be undertaken by the department or an independent body, with the cost of the review being borne by the business if the council's decision is upheld.

The Commission invites comment on the administration of the proposed food safety risk classification system and the basis for allocating food premises to the expanded risk classification classes.

9.3.3 Simplifying food safety programs

Under the Commission's proposed regulatory changes, food premises in classes 1 and 2 would still be required to prepare FSPs. There may be scope to achieve further savings to business by simplifying the FSP requirements, particularly in terms of the complexity and length of the FSP templates and record keeping.

Simplifying food safety program templates

A number of inquiry participants suggested there is scope to reduce the costs of Victorian food regulation to business and community groups by simplifying FSP templates. The Knox City Council recommended that FSP templates for food businesses be further simplified (sub. 19, p. 2) while the Maroondah City Council saw potential for simplifying templates for temporary or community events (sub. 33, p. 2). The Commission considers that there are two options:

- (1) reduce the length and complexity of templates, including record keeping obligations
- (2) develop a more graduated set of templates.

An option for reducing the length and complexity of the existing templates is for the Department of Human Services to simplify and streamline the templates. This would involve focusing on the major food hazards such as inadequate temperature control (with resources for more complex issues provided separately) and reducing record keeping requirements. Simplifying the templates would also make them more accessible and understandable to food business proprietors. The *Food Safety Program Template for Retail and Food Service Businesses* comprises more than 80 pages and there is considerable repetition—for example, messages about time and temperature danger zone are repeated numerous times (DHS 2004e).

A complementary approach is to develop a graduated set of FSP templates in conjunction with key food safety messages for businesses that differ in risk, size and compliance history. Record keeping requirements could also be graduated across these templates. The major disadvantages of this option are that multiple templates could cause confusion among food businesses and community groups and give rise to councils adopting different requirements for the same activities. The Commission, therefore, does not support this option.

The development of simplified FSP templates supported by education and information provision (section 9.10) would help to reduce administrative costs for businesses (especially small business), community groups and councils. Savings to be made by reducing the complexity and length of templates are difficult to estimate, but other benefits are likely to include improved awareness and greater acceptance of the key issues in ensuring food safety and, therefore, compliance with regulatory requirements.

Record keeping requirements

While the Australian food safety standard 3.2.1 states that food businesses must make and keep appropriate records for FSPs, Victoria has its own record keeping requirements. Chapter 6 reported that administrative costs (mainly record keeping requirements) for Victoria's main food industries⁴ currently account for around \$85 million a year. Numerous submissions reported that record keeping associated with FSPs is imposing a burden on food businesses without improving food safety:

- Restaurant & Catering Victoria argued that there is no necessary connection between producing safe food and being able to demonstrate this to an EHO by way of written records (sub. 36, p. 11). Similarly, the Municipal Association of Victoria argued that record keeping does not guarantee safe food (sub. 41, p. 8). The City of Greater Dandenong reported that most businesses now monitor food temperatures even though many other records are not kept (sub. 12, pp. 4–5). And a survey commissioned by the Department of Human Services showed that compliance with practical requirements such as monitoring temperatures generally exceeds compliance with the associated record keeping requirements (Culinary Solutions Australia 2004).
- Several inquiry participants including Mitchell Shire Council (sub. 3, p. 1), Knox City Council (sub. 19, p. 1), City of Wodonga (sub. 29, p. 2) and Moreland City Council (sub. 51, p. 2) indicated that the costs of meeting record keeping requirements fall mostly heavily on small food business. And in a report for the Department of Human Services, Campbell Research & Consulting (2005b, p. iii) found all stakeholder groups considered that reporting requirements are arduous for small business and seem particularly 'over the top' for low risk businesses.
- There is evidence of a lack of compliance with record keeping requirements. The survey commissioned by the department found that around half the businesses surveyed kept appropriate temperature records covering the cooking and cooling processes for hot food (Culinary Solutions Australia 2004, p. 11). The Wyndham City Council stated that many food businesses in its area struggle to meet the record keeping requirements and are often deemed noncompliant (sub. 37, p. 7).

A potential benefit of the record keeping requirements is that they raise awareness about the importance of equipment and food storage and handling practices and enable authorities and businesses to identify and address any failings in food safety practices. There are, however, other ways to raise awareness and ensure some traceability in the event of problems—for example, education and information can be provided to business proprietors to ensure

⁴ That is, food manufacturing, wholesaling, retailing and eating establishments (excludes school canteens, hospitals, and aged care and child care establishments).

they understand the importance of appropriate food safety practices. And as pointed out by the Maroondah City Council, information on suppliers of food inputs can be obtained from invoicing systems (sub. 33, p. 2). As well as the proprietor's knowledge, invoicing systems might be sufficient to identify food suppliers.

While one response to low compliance with record keeping requirements is to strengthen enforcement, such action could also be counterproductive. Given the inherent difficulty of monitoring the day-to-day activities of businesses, for example, stronger enforcement could produce higher levels of records falsification or disputes between EHOs and businesses.

Given that the record keeping requirements appear to provide limited benefits, (that could be achieved through alternative nonregulatory means), the Commission considers that food regulatory requirements could be streamlined by removing most record keeping requirements for registered food premises and relying on the general requirements of the Food Standards Code. This would allow increased flexibility for business such as greater reliance on electronic monitoring and alarm systems that alert staff to a fall in temperatures, or adopting exception reporting where problems such as a fall in temperatures and resulting actions are reported.

Relying on the general requirements of the Food Standards Code would not undermine food safety, but would produce savings for many businesses, particularly small business. Section 9.11 explores the effects of streamlined record keeping requirements.

The Commission invites comment on specific ways to streamline record keeping requirements associated with food safety programs.

9.4 Registration and licensing

Food premises in Victoria (including not-for-profit events involving the sale of food) must be registered with councils. Businesses engaged in the primary production, manufacture, transport and sale of meat, poultry, seafood and dairy products are also required to be licensed under relevant industry specific food legislation. Registration or licensing as the basis of food regulation provides:

- regulators with knowledge about the ownership and location of food businesses, which assists with tracing sources of foodborne illness and food recalls
- a mechanism for ensuring compliance with food regulations (the threat of nonrenewal)
- revenue to meet the costs of regulatory activities
- a basis for distributing educational material.

Registration, however, also involves administration and compliance costs, and can become a barrier to entry if the requirements are more stringent for new entrants. Submissions to this inquiry identified a number of issues relating to the registration and licensing of food premises in Victoria, the main issues being:

- the registration of mobile and temporary food businesses under the Food Act, with some inquiry participants calling for a central register to deal with mobile food vendors
- the registration period for food premises under the Food Act, with some inquiry participants suggesting that registration could be increased to two years for some businesses.⁵

9.4.1 Registration of mobile and temporary food businesses

Victorian councils registered about 20 000 temporary premises in 2006. The activities undertaken at these premises probably included events where commercial caterers or mobile food vendors operated, as well as community activities such as food fairs, cake stalls and sausage sizzles. Businesses such as caterers and mobile food vendors are likely to operate in multiple council areas.

Under the Food Act, each premises or location where food is sold must be registered. While there is no provision in the Act for temporary registration, in practice councils have granted registration to these operators. Inquiry participants raised two main concerns about these arrangements, that:

- (1) registration and inspection of mobile operators may be carried out on multiple occasions throughout the state because they operate in different locations
- (2) councils have different approaches to registering temporary food events.

Regulatory burden on mobile operators

Many inquiry participants were concerned about the need for mobile businesses such as mobile food vendors and caterers to register in multiple council areas.⁶ This requirement can add significant administrative and compliance costs to a business and registration, inspection and inspection follow-up costs to a council. As noted by the City of Melbourne:

... the Food Act requires that temporary premises be registered with every municipality in which they sell food. The inspection and approval process may therefore be carried out many times across the state. This is not only costly for the operator, but a major drain on local government resources. (sub. 16, p. 4)

⁵ The Victorian Rock Lobster Association expressed concerns about the requirement for the rock lobster wild catch sector to be licensed and about the level of licensing fees (sub. 24, p. 3).

⁶ Examples included the Australian Institute of Environmental Health (sub. 10, pp. 7–8), City of Greater Dandenong (sub. 12, p. 6), City of Port Phillip (sub. 13, p. 5), City of Melbourne (sub. 16, pp. 3–4), Moonee Valley City Council (sub. 18, p. 1), Knox City Council (sub. 19, p. 4), Wellington Shire Council (sub. 28, p. 2), City of Wodonga (sub. 29, pp. 2–3), Restaurant & Catering Victoria (sub. 36, p. 11), Wyndham City Council (sub. 37, pp. 2–3) and the Municipal Association of Victoria (sub. 41, p. 14).

There is little information available on the numbers of mobile food vendors in Victoria or the effect of food regulation and its administration on their activities. Nevertheless, concern about the regulatory burden led some inquiry participants to suggest a single registration scheme for mobile and temporary operators—for example, the City of Melbourne stated:

An alternative to existing arrangements may be to establish a central agency to register temporary food premises State-wide. Registrations would be recognised by all municipalities, and provide operators with access to any number of events. Municipal EHOs could then be more effectively utilised in monitoring food safety at events, rather than spending time administering the registration process. (sub. 16, p. 4)

Implementing a single registration system for mobile food vendors could be achieved by establishing a central database. A number of inquiry participants expressed support for a central database, or at least more effective linking of information.⁷ The City of Melbourne (sub. 16, pp. 4–5) also suggested there may be scope for a central database to be used for vending machines. A vending machine, like a mobile operator, moves regularly (subject to location and profit).

How would a single registration system for mobile businesses work?

Under a single registration system, a mobile business could register with one local government but notify other councils if they visit their areas. Using a common system, councils could then confirm that the visiting mobile business is registered. Any council would be free to undertake an inspection within its boundaries and take action if a breach of food regulations is suspected.

Several practical issues would need to be addressed before a central business registry is established, including designating which council would be responsible for inspections of mobile businesses listed on the registry, cost recovery, entering inspection information into the database, investigating complaints, monitoring the effectiveness of the registry in achieving food safety outcomes, and any constraints (such as privacy) to sharing information between councils. The fees associated with a single registration process and inspections may also need to be re-examined. The Municipal Association of Victoria noted:

If registration were to occur in a different municipality, councils covering the location of sale of the food would need to charge other fees, such as site fees, to cover their costs of inspection, sampling and other enforcement activities. (sub. 41, p. 14)

These issues could be addressed by the Department of Human Services/Municipal Association of Victoria Food Safety Coordination Project.

⁷ This included the Australian Institute of Environmental Health (sub. 10, p. 9), City of Port Phillip (sub. 13, p. 4), City of Melbourne (sub. 16, pp. 4–5), Australian Retailers Association (sub. 35, p. 12), Restaurant & Catering Victoria (sub. 36, p. 13), Wyndham City Council (sub. 37, p. 2) and Municipal Association of Victoria (sub. 41, p. 15).

This project is examining (among other things) options for a more streamlined registration system (sub. 41, p. 14).

The cost of establishing a registry would largely depend on the ability of state and local regulators to use existing systems. The Commission has estimated the cost of developing a new central database to be between \$150 000 and \$200 000, which is broadly equivalent to the estimated costs of integrating NSW Health databases and information systems as part of establishing the NSW Food Authority (Kerin 2002, p. 140).

The costs would be offset by savings to mobile food businesses and councils. It is not possible to accurately estimate the benefits to councils and business because there are no available figures on the number of mobile businesses and the number of council permits. But the Commission considers that a central database for mobile food businesses would help to streamline the registration process and reduce costs to both business and councils.

An added benefit of a central register for mobile food businesses is that it could be combined with a single registration system for all food premises. Councils currently have different systems for storing information on registered food premises, and there is a need to improve performance reporting by councils about the administration of food safety regulations (chapter 8). While a previous attempt to develop a common data reporting system—VicFin—encountered several difficulties (chapter 10), any single registration system for mobile food businesses should be designed to allow councils to record information about all registered food premises.

The Commission invites comment from inquiry participants on its proposal to establish a single food premises registration system and to enable mobile food businesses (such as caterers and food vans) to register once, rather than in multiple council areas.

9.4.2 Registration period for food premises

Under s40B of the Food Act, the period of registration is for one year from the date it is granted or renewed, although this may be extended for a class of food premises beyond one year (appendix B). Several inquiry participants argued that the period of registration should be more flexible, to reduce the burden on businesses and councils—for example, the Knox City Council argued that the Food Act needs to be amended to allow for a flexible registration period to be determined by the registration authority (sub. 19, p. 4). Similarly, Coles Myer stated that it:

... does not believe that food businesses in Victoria should have to renew their registration on an annual basis, only where a significant change has been made to the food safety program. (sub. 7, p. 3)

The Commission has not recommended a change in the registration period because the proposed changes to Victorian food regulation will reduce the regulatory requirements on businesses and councils associated with registration. Class 3 businesses, for example, would not be required to lodge an FSP on registration. The annual registration requirement gives councils an additional way of ensuring compliance and provides them with a direct means for recovering the costs of implementing food regulation.

The Commission invites comments from inquiry participants on its assessment that the current requirement for annual registration of food premises be retained.

9.5 Food safety supervisors and food handlers

Under nationally agreed food standards, food businesses must ensure that persons undertaking or supervising food handling operations have skills and knowledge in food safety and food hygiene matters. Declared food premises in Victoria are also required to appoint an appropriately trained FSS. Appendix B sets out the detailed FSS requirements and chapter 11 discusses the requirements facing community groups. A number of inquiry participants questioned the benefits of the FSS requirement, with some supporting the concept but critical of the way it has been applied.

9.5.1 Impact of the food safety supervisor requirement

Most food businesses have a strong incentive to ensure their employees possess the required skills and are appropriately supervised. This means that most businesses will be best placed to determine the level and type of on-the-job or external training necessary to equip staff with the desired skills. Because of the high rate of turnover of staff in the food sector, however, employers may have difficulty capturing the full benefits from external training and may, therefore, underinvest in training. There may also be some businesses that, due to a lack of awareness or for cultural, language or other reasons, underestimate the benefits of training.

In such circumstances there may be a case for government intervention to support food safety training, provided the benefits outweigh the costs. Intervention may include provision of information about the benefits of training and courses available, subsidies to businesses for training, and mandating some types of training.

The Food Act mandates that all declared food premises must appoint an appropriately trained FSS. The type of training required depends on the industry sector and activities undertaken on the premises. Registered premises are required to inform councils about their FSS and the training course completed; this approach contrasts with the nationally agreed approach of requiring food handlers to have skills and knowledge in food safety, without prescribing methods for obtaining skills and knowledge.

The administrative burden imposed as a result of the FSS requirement is difficult to estimate, but could be substantial. According to the Infocus Management Group, training costs typically range from \$200–\$400 per FSS. This is often an ongoing, rather than one-off, cost due to the high mobility and exit rates in the food and hospitality industry (sub. 38, p. 5). There are also productivity losses from staff attending FSS training courses. Although formal training courses vary from less than a day to more than two days, survey data suggests that the average duration is about one day (Culinary Perspectives 2005, p. 35). Based on an employee time cost of \$54 per hour⁸, this suggests that productivity costs are around \$400 per FSS and total costs range between \$600 and \$800 per business premises. If one in 10 of the 45 000 registered fixed premises in Victoria were required to provide FSS training for one staff member each year, annual administrative costs would be between \$2.7 and \$3.6 million.⁹

In addition to concerns about the costs of meeting the FSS requirement, inquiry participants raised issues about:

- the level of compliance with FSS requirements, with a number of inquiry participants noting that many businesses do not require their FSS to be present at all times, thereby undermining the effectiveness of the requirement. The Australian Institute of Environmental Health, for example, noted that it is too easy to appoint a person as the nominated FSS who is remote from the business (sub. 10, p. 3)
- inconsistent approaches by councils in enforcing the requirements and advising businesses on training requirements (chapter 10).

The main potential benefit of the FSS requirement is a reduction in the incidence of foodborne illness. While there is no direct evidence indicating that FSP and FSS requirements have reduced illness, there is some evidence to suggest that food handling skills have increased. Department of Human Services commissioned surveys on food safety practices show improvements in the food safety knowledge of FSSs and junior food handlers since 2002 (chapter 6). The lack of evidence that increased skills have translated into reductions in foodborne illness could reflect limitations of the available data. It may also be an indication that the FSS requirement is not targeted at those businesses that, due to a lack of awareness or for cultural, language or other reasons, underestimate the benefits of training. Given doubts about the net benefit of the FSS requirements, the Commission examined several options for reducing the impact on business, including:

- removing the FSS requirement for all or some food businesses and relying on national standards
- replacing the FSS requirement with more targeted training opportunities.

⁸ The methodology outlined in VCEC (2006a) suggests a rate of \$54 per hour to cost staff time.

⁹ This calculation does not account for those businesses that would pay for some staff training in the absence of any regulatory requirements.

Removing the requirement for food safety supervisors

Given the concerns about the effect on business of the FSS requirements, an option is to remove this requirement for all registered businesses. This option would be administratively simple and produce large savings to businesses. If 4500 business per year were no longer required to provide FSS training for a staff member, the savings to the business sector would be between \$2.7 and \$3.6 million (\$600–\$800 multiplied by 4500 businesses). This can be considered an upper limit because some businesses would continue to undertake food safety training for their staff.

Removing the requirement could lead to concerns that the skill level of food handlers would decline, thereby increasing foodborne illness. It is not clear that this would adversely affect food safety, given that some inquiry participants stated that many businesses do not require their FSS to be present at all times, thereby undermining their effectiveness. The Municipal Association of Victoria, for example, stated that councils have reported that ‘often the nominated supervisor is not present at the food premises on a regular basis, [and that the FSS] has been nominated to clear regulatory hurdles rather than for the intended reason of ensuring that a person regularly attending a premises is knowledgeable about safe food handling’ (sub. 41, p. 7). Without the FSS requirement, businesses would still be required to comply with national food standards relating to the skills and knowledge of food handlers.

A general requirement that all registered food premises appoint a trained FSS may not be an effective way of targeting training at businesses that lack the skills and knowledge of food safety for cultural, language or other reasons. There may also be much more cost-effective ways of improving knowledge and skills for these businesses.

Targeted training options

The case for government intervention to support food safety training is probably strongest for those businesses that, due to a lack of awareness or for cultural, language or other reasons, underestimate the benefits of training.

One way to target training is to give councils or the Department of Human Services the power to require a business premise proprietor and/or their staff to undertake training in food safety where there have been serious or persistent breaches of food safety standards.¹⁰ Training could cover the regulatory requirements as well as food safety and hygiene practices. By requiring training to be undertaken at businesses’ expense, giving councils or the Department of Human Services this power would strengthen incentives to comply with food regulation.

¹⁰ A further option is to enable a court to require a business proprietor to undertake food safety training. This could be achieved by including an injunction provision (as exists under the *Fair Trading Act 1999* (Vic.)) in the Food Act.

Implementing a more targeted food safety training requirement would enable the government to remove the FSS requirements because there is little evidence that these requirements have lifted food safety. Replacing them with targeted training programs will yield significant savings to businesses and strengthen incentives to comply with food regulations.

There may, however, still be a gap for businesses that have difficulty in understanding and complying with food regulation requirements for cultural, language or other reasons. The City of Greater Dandenong, for example, noted:

The diversity of cultures trading food in Victoria has required City of Greater Dandenong Environmental Health Unit to develop many CALD [culturally and linguistically diverse] food safety resources, including a ‘no words’ food safety picture kit, a ‘virtual food premises’, and many language translated food safety materials. However, CALD food operators continue to experience difficulty with compliance to food law. CALD food traders require greater regulatory resources to encourage uptake of regulation and generally consume enormous amounts of resources to ensure food safety compliance. (sub. 12, p. 6)

The department has developed some materials targeted at culturally and linguistically diverse food (CALD) businesses, councils have carried primary responsibility for developing this material. The City of Dandenong, for example, informed the Commission of council’s initiative in distributing awareness raising materials it developed to other Victorian councils. There may be scope for the department to take a more active role in ensuring a coordinated approach to assisting CALD businesses understand and comply with Victorian food regulation, including through the provision of targeted training and other support programs.

The Commission invites comments from inquiry participants on the proposals to replace the food safety supervisor requirements with a more targeted regime of training for food businesses that have failed to comply with food safety standards. The Commission also welcomes comments about the proposal to better coordinate the provision of information and training support to businesses that, due to a lack of awareness or for cultural, language or other reasons, find it difficult to understand and comply with food regulations.

9.6 Inspections and audits

Victorian food businesses may have their operations inspected and/or audited by a number of regulatory authorities as well as by private sector auditors. The existence of multiple public and private inspection and audit regimes has given rise to concerns about unnecessary duplication and costs to the food industry. The Australian Food and Grocery Council, for example, claimed that food manufacturers are subject to multiple audits by their customers and governments. It noted that each audit generates a report and in many cases, each being similar (sub. 17, p. 8).

Similarly, Restaurant & Catering Victoria stated that the additional cost of auditing is particularly significant where multiple audits are needed to satisfy suppliers and regulatory requirements (sub. 36, p. 6). The Victorian Farmers Federation noted that the cost of complying with audit requirements can be significant for businesses (sub. 40, p. 4), and Joe White Maltings argued that multiple audits are an unnecessary burden on business (sub. 11, p. 2).

The main issues brought to the Commission's attention related to:

- unnecessary duplication between council inspections and third party audits
- duplication between regulatory and private sector audits
- the proliferation of private sector audits.

9.6.1 Council inspections and third party audits

The Food Act distinguishes between two types of inspections of food premises that may be conducted by council EHOs. It also provides for audits by approved third party auditors of certain types of food premises.

First, there are inspections and audits of compliance with standard and nonstandard FSPs respectively:

- In the case of food premises with a standard FSP, council EHOs may inspect the premises at any time to determine whether the food business carried on at the premises is operating in accordance with the FSP (s19HA).
- In the case of food premises with a nonstandard FSP, the proprietor of the business must ensure that an FSP audit is conducted by an approved food safety auditor (s19IA). The purpose of the audit is to determine whether the FSP has been complied with and whether the program is still adequate (s19J). The frequency of the audits is determined by the Secretary of the Department of Human Services and varies depending on the type of food premises (s19K).

Second, there are inspections by councils that must be carried out before a council registers, renews or transfers the registration of food premises. This is irrespective of whether the food premises has a standard or nonstandard FSP, or has no FSP at all. Under s39 of the Food Act, before a council registers, renews or transfers the registration of food premises, it must inspect the premises and be satisfied that all the relevant requirements of the Food Act have been complied with. And if the premises is a declared premises and is not exempt, the council must be satisfied that there is an FSP for the premises that complies with relevant requirements.

Section 39 inspections cover matters different from those covered by inspections under s19HA and audits under s19IA and s19J. Council inspections under s39 are undertaken to determine whether premises have complied with Food Act

requirements, and in the case of declared premises, have a complying FSP. Council inspections under s19HA and audits under s19IA and s19J are undertaken to determine whether the food premises has complied with their FSP.

Although the Act has been drafted in such a way to prevent overlap between inspections and audits, some submissions noted that, in practice, there was duplication between council inspections and third party audits. Woolworths Limited, for example, stated that:

Even now and despite Woolworths having opted for third party auditing it is often noted that council EHOs continue to request changes to documentation (food safety plans), operations and/or building structure. Such comments may indicate non-compliance against the Food Safety Program, Food Act, or Food Standards code and are also included in Third Party Audit Reports, which are submitted to Councils for review. This is unnecessary duplication of effort between Council EHOs and Third Party Auditors. (sub. 50, p. 2)

Requiring councils to undertake annual inspections of food premises under s39 before renewal of registration, when there is no reason to suspect noncompliance with the Food Act, arguably imposes unnecessary costs on councils and businesses. Consideration should be given to making annual inspections risk based rather than routine.

The Municipal Association of Victoria expressed concern about removing the requirement for annual council inspections, arguing that removing it would weaken the food safety system (sub. 41, p. 13). This concern, together with those about the costs to business and councils of mandatory annual inspections under s39, could be addressed if these inspections were made discretionary. For example, a council could decide to conduct an s39 inspection if:

- EHOs had made an unsatisfactory inspection report under s19HA (compliance with the FSP)
- council had received an unsatisfactory audit certificate following a third party audit
- council had some reason for concern about compliance by food premises with their obligations under the Act (for instance, complaints from consumers).

Following inspection, renewal of registration could be refused if defects were not minor (as specified in s39A). Section 9.11 discusses the effects of removing the requirement for councils to inspect all food premises annually.

Draft recommendation 9.2

That the Victorian Government amend s39 of the *Food Act 1984* (Vic.) to remove the requirement for councils to inspect premises before annual renewal of registration and make inspections discretionary under s39.

9.6.2 Regulatory and private sector audits

In addition to the inspections and audits under the Food Act (described above), there are several other major inspection and auditing regimes applying to Victorian businesses:

- Food businesses licensed by DFSV and PrimeSafe may be required to have second or third party audits (appendix B).
- The Australian Government's quarantine agency, the Australian Quarantine and Inspection Service (AQIS), provides export certification services to facilities exporting meat, fish, dairy, grain, horticultural products, live animals and organics.
- A number of food businesses are accredited under their own or customers' quality assurance processes that require third party audits. Examples of quality assurance programs are HACCP, SQF 2000, ISO, BRDC and WQA.

Several arrangements are in place in Victoria to ensure duplication of audits does not occur:

- The Department of Human Services will recognise third party audits under a quality assurance program, provided the program covers the requirements of the Food Act and the auditor has certification from the Registrar Accreditation Board Quality Society of Australasia. (Section 9.3.2 discusses opportunities to provide further recognition of quality assurance programs.)
- PrimeSafe may require licensed businesses to operate an FSP and be third party audited. PrimeSafe approves a panel of companies, one of whom must be engaged by licensed businesses to conduct the audit. An audit under a quality assurance process can be recognised by PrimeSafe, provided the audit is conducted by an auditor approved by PrimeSafe.
- The Department of Primary Industries reported that PrimeSafe and DFSV are working with AQIS to address potential duplication of audits (sub. 56, p. 7):
 - Where a meat or seafood business requires an AQIS inspection, PrimeSafe now recognises such inspections as meeting the requirements of the Meat Industry Act (DHS 2007a).
 - AQIS now formally recognises DFSV audits for the purposes of their export orders and this audit duplication has been removed (Dench McClean Carlson 2006, p. 7).
- For an AQIS audit to be recognised under the Food Act, the AQIS auditor must obtain approval under the Food Act. However, AQIS has not required its auditors to seek such approval and AQIS audits therefore have not been recognised as meeting the requirements of the Act. In these circumstances a separate audit would be required (DHS 2007f).

The Commission did not receive any direct evidence suggesting that the arrangements for recognising AQIS, DFSV and PrimeSafe audits are not working.

9.6.3 Private sector audits

Some inquiry participants commented on the number of private quality assurance processes—for example, the Department of Human Services stated that:

Numerous companies require their suppliers to run specific QA [quality assurance] systems and have them third party audited. Often there is no mutual recognition of these commercial systems. As a result the suppliers are subject to multiple audits and the associated expense. This is a worldwide problem. (DHS 2007f)

The Commission has not examined the reasons for the proliferation of private quality assurance processes. It notes, however, that this national issue has been recognised as an item on the work program of the Food Standards Implementation Subcommittee (FSISC 2005, p. 13). Industry associations such as the Australian Food and Grocery Council, which has initiated an auditor competency forum with a key goal being to rationalise audit requirements (sub. 17, p. 8), can also play a useful role in streamlining audits under quality assurance processes.

9.7 Frequency of audits

By adopting a risk based approach, the frequency of audit would vary according to the food safety risks posed by different types of food businesses. The initial audit frequency for a food business would be determined by the risk classification and by the business's compliance record. The Australia New Zealand Food Authority, the predecessor to Food Standards Australia New Zealand (FSANZ), developed national guidance for the frequency of audits (table 9.2).¹¹

Table 9.2 **FSANZ national guidance on audit frequency^a**

<i>Classification</i>	<i>Starting point</i>	<i>Maximum</i>	<i>Minimum</i>
	(months)	(months)	(months)
Low risk	18	12	24
Medium risk	12	6	18
High risk	6	3	12

^a The table shows the 'starting point' number of months between audits for different risk classes. The frequency can be adjusted between the minimum and maximum depending on the food safety performance of the business.

Sources: ANZFA 2001a, 2001c.

¹¹ The more recent National Food Safety Audit Policy does not provide specific guidance on audit frequencies but indicated that regulators will align the frequency of regulatory audits with the business risk profile and the business's compliance history (FSISC 2006).

Victoria's audit regime is broadly consistent with these guidelines but there appears to be scope to reduce audit frequencies for some sectors (for example, dairy) and to lower the minimum frequency of audit stipulated by the Department of Human Services:

- PrimeSafe requires audits for retail butchers and retail chicken meat businesses twice a year; smallgoods manufacturers, where food safety risks are considered to be higher, are audited four times a year (DPI 2007a).
- Dairy exporters are currently required to be audited three times a year, although reducing the frequency to two times a year has been discussed. Domestic dairy manufacturers whose products are not for export have had their audit frequency reduced by DFSV from three to two times a year (Dench McClean Carlson 2006, p. 7).
- PrimeSafe and DFSV auditing are based on performance; if compliance is assessed to be low, the frequency and intensity of audits is increased (DPI 2007a; Dench McClean Carlson 2006). As audits of meat, poultry, seafood and dairy manufacturers and processors are on a user pays basis, this creates an incentive for these businesses to maintain or improve their food safety performance and thus keep the number of audits and related costs to a minimum.
- The Secretary of the Department of Human Services establishes the frequency at which audits should be held: classes 1 and 2 food businesses must have a minimum of one audit every 12 months. While this allows for more frequent audits, it does not allow for lower audit frequencies.
- Neither the Food Act nor any regulations provide sufficient guidance to third party auditors about determining the frequency of audits based on food safety risk and performance. While the *Food safety auditor's handbook* specifies the minimum frequency, it makes no reference to risk and/or performance based audit frequencies (DHS 2005b, p. 11).

It appears, therefore, that there may be scope to reduce audit frequencies for the dairy sector and for premises registered under the Food Act by bringing them into line with national guidelines. It is difficult to estimate the savings from implementing lower recommended audit frequencies because they will depend on the level of compliance of businesses with food regulations and on the number of third party audited businesses that fall into the high, medium and low risk categories.

There is also scope to adopt more of a risk based approach to audits under the Food Act by reducing the frequency of audits for businesses that are low risk (based on an assessment of inherent risk and compliance history). Allowing this flexibility could reinforce incentives to comply with food safety requirements. To enable this to occur, and to ensure that frequencies do not rise except in cases of poor performance, the Department of Human Services would need to provide guidance to businesses and auditors about how to lower audit frequencies

according to the food safety performance of individual businesses. This guidance could be based on the audit frequency adjustment guidance developed by FSANZ (ANZFA 2001a, 2001c). The Commission considers the audit frequencies for classes 1 and 2 food businesses should be reviewed based on the FSANZ's audit frequency model.

Draft recommendation 9.3

That the Department of Human Services work with councils to strengthen the risk based approach to food regulation by:

- **implementing a more flexible system of audit frequencies for food businesses that is consistent with national guidelines such as Food Standards Australia New Zealand's audit frequency model**
- **including further guidance in its *Food safety auditor's handbook* on risk and performance compliance to determine audit frequencies.**

The new arrangements should be implemented within six months.

9.8 Food sampling

Section 32 of the Food Act requires councils to submit at least three samples of food for analysis during each year for each thousand persons of population of the municipal district. The Infectious Diseases Regulations 2001 also require food analysts to notify the Department of Human Services if any food samples are found to contain notifiable pathogens (DHS 2006c).

Councils have developed and implemented food sampling programs. The East Gippsland Shire Council, for example, conducts routine food sampling throughout the shire, and food premises can either be chosen randomly or industry specific premises targeted as part of a sampling program (East Gippsland Shire Council 2007). Mr John Ward noted that most councils work to a food sampling plan based on the risk prioritisation of food businesses in the municipality (sub. 21, p. 2).

The Commission understands that the results of food sampling can be used by councils to develop risk based surveillance programs. These programs, together with councils' local knowledge, can enable councils to identify risky food activities within their municipalities.

Despite around 15 000 food samples being analysed in Victoria each year (DHS 2006c), the results of food sampling are not being used to assess the statewide effectiveness of food regulation. While the Food Act requires the results of food sampling to be reported to councils, there appears to be no requirement for councils to report these results to the Department of Human Services.

The department and local government established the Victorian Food Sampling Committee in 2002 to identify food sampling activities of strategic importance and

seek collaboration in conducting surveys across the state. The committee has representatives from municipal councils, the Municipal Association of Victoria, food and microbial testing laboratories, OzFoodNet and the department (FSU 2004a). The first statewide food sampling survey focused on freshly squeezed juices from retail businesses (DHS 2005c).

The collation of food sampling results from councils across the state would provide a valuable database for assessing the effectiveness of food regulation. The Commission considers that the department should establish and maintain such a database and report regularly on trends in food safety across Victoria and in specific parts of the state. The participation of local councils and the Municipal Association of Victoria would be required. The committee would be well placed to provide advice to the department on the development of the database and comment on the analysis and reports prepared by the department. The analysis could assess trends in food sampling results over time and between geographic areas.

The Commission sees several benefits arising from this option. The analysis of statewide data on food sampling would shed light on the effects of food regulation in Victoria. It would also help to identify problem or risk areas, and provide a basis for reallocating resources and developing strategies to address these problems. The analysis and reports prepared by the department would also inform councils' surveillance programs.

Draft recommendation 9.4

To provide a basis for assessing the effectiveness of food regulation in Victoria, that the Department of Human Services:

- **establish and maintain a database of food sampling results from across the state**
- **analyse food sampling results and prepare reports at least annually**
- **seek input and advice from the Victorian Food Sampling Committee in undertaking these tasks.**

9.9 Encouraging compliance

This report has argued that the administration of food regulation could be better focused on areas where there are major risks to the public—for example, providing incentives for compliance such as lower frequency inspections and audits for businesses that have good compliance records. This will reinforce strong market incentives for food safety. But there is also scope to concentrate enforcement efforts on those businesses that do not meet food standards, because of either a lack of skills and awareness or an unwillingness to comply. The Commission has examined two further mechanisms to support compliance with food regulation: financial penalties, and a rating system for food service establishments.

9.9.1 Penalties

Several remedies are currently available under the Food Act to deal with noncompliant businesses including prosecution of specified offences under the Act and suspension or revocation of registration. Some inquiry participants expressed concerns that the remedies available to councils are too few, thus limiting their ability to enforce food safety regulation. Some thought councils should be able to impose on-the-spot fines (also called penalty improvement notices), or ‘name and shame’ businesses that fail to comply. Kernow Environmental Services Pty Ltd, for example, noted:

Greater powers need to be granted to EHOs and Councils to specifically and quickly deal with minor non conformances such as inadequate record keeping. The introduction of Penalty Infringement Notices (PINS) should be actively considered. (sub. 6, p. 2)

While councils can prosecute companies for breaches of the Act, it was also argued that they have limited incentive to do so because of the high cost relative to the size of penalties imposed. Moreover, given the delay that can occur between detecting a serious breach and an appearance in court, this remedy is unsuitable for addressing breaches that need to be quickly resolved. The City of Port Phillip argued that:

In itself, prosecution is a long and often costly process, but in this case—with the offence that commonly carries a typical penalty of approximately \$1000—it is considered even less appropriate. (sub. 13, p. 3)

The evidence reviewed in chapter 10 indicates that a small number of councils resort to prosecutions. Regional councils appear to be particularly reluctant to prosecute or deregister businesses because of the wider effects on the local community.

It is difficult to determine whether broadening the range of enforcement options available to councils would improve food safety outcomes. Anecdotal evidence suggests that many businesses are not complying with current regulatory requirements, and a 2001 survey of councils by the Victorian Auditor-General found that approximately one in every four food businesses registered by councils had a follow-up council inspection due to noncompliance (AGV 2002, p. 6). Several council submissions also reported problems with noncompliance, although mostly in relation to record keeping (section 9.3.3).

Best practice regulation suggests that regulatory bodies should have a graduated range of enforcement options available to encourage compliance with regulation. The *Victorian guide to regulation* notes that key features of a good compliance regime include strategies based on the principle of graduated deterrence and a wide range of penalties including persuasion, warnings, financial penalties, licence suspension and prosecution (Government of Victoria 2005a).

Victorian regulators in a number of other areas such as occupational health and safety have the capacity to issue on-the-spot fines as part of an escalating range of responses. The Commission understands that some councils are using strategies such as more frequent inspections and the imposition of ‘revisit’ fees to encourage compliance with food safety regulations. The current system of enforcement options is not, however, sufficiently graduated—the options available to councils are to continue conducting inspections and issuing notices, suspend or revoke registration, or prosecute a business that has failed to respond adequately to an improvement order or provision of advice and support by EHOs.

Developing a system of on-the-spot fines would need to have regard to a number of key principles:

- Given concerns about inconsistent application of food regulations by councils, an initial step is to put in place mechanisms for achieving more consistent implementation (chapter 10).
- A system of on-the-spot fines should not be a substitute for council practices such as provision of advice and support to food businesses. Fines should be issued only after other options have been tried and failed (for example, a business has ignored an improvement order).
- Fines should apply only to breaches of food regulations and standards that pose a risk to food safety (such as maintaining unclean premises and unsafe food handling practices). They should not apply to procedural breaches such as a failure to keep proper records.
- To ensure community confidence in the system and consistency in application, businesses would be able to request a review of a decision to impose a fine (for example, review of the decision by a low cost and neutral party, possibly the Department of Human Services).
- Councils should report on the use of on-the-spot fines as part of their broader reporting on food safety (chapter 8) to ensure fines are limited to actions that pose a serious risk to food safety and that they are applied consistently.

The Commission considers there would be benefits in providing councils with a broader range of enforcement mechanisms, provided the regulatory framework is streamlined consistent with its recommendations.

Draft recommendation 9.5

That the Victorian Government amend the *Food Act 1984* (Vic.) to provide councils with the power to issue on-the-spot fines for specified breaches of the Act, together with adequate safeguards.

9.9.2 A star rating system for food services

Several inquiry participants suggested there is a need to reward good business behaviour and publicise bad behaviour. The idea of developing a 'rating system' for the food service sector (restaurants and cafés) based on inspection results was raised by a number of inquiry participants—for example, Brimbank City Council has a five star award based program. About 500 restaurants, takeaway shops and other food premises throughout Brimbank are inspected by EHOs to determine whether they are worthy of a star certificate. A business complying with the minimum set standards could be eligible for a three star certificate, while one that clearly exceeded the minimum standards could be eligible for a four or five star certificate. Brimbank City Council awarded 38 five star awards in 2006 (Brimbank City Council 2007).

A restaurant rating scheme has some appeal because councils currently inspect food premises to assess compliance with food safety standards and collect information that could inform a rating scheme. Also, when food businesses have better information than consumers about the safety of their products, market incentives to provide safe food are undermined (chapter 2). A rating system could improve consumer awareness about food safety and provide a way for them to differentiate between good and poor food safety performers. The rating system could involve displaying the results of food safety inspections (star ratings), or providing certificates or awards to good performers.

There is nothing preventing councils or other groups from establishing voluntary rating systems. The Municipal Association of Victoria pointed out that several Victorian councils have considered rating systems (sub. 41, p. 7) and Glen Eira City Council has a system based on awards for high safety standards rather than on ratings. However, as Roger Pierotti noted:

... [local council rating systems] tend to be small scale and locally specific, have no regulatory legitimacy and generally lack the marketing muscle to attract broad consumer attention. A coordinated statewide approach with adequate marketing resources, appropriate legislative and regulatory instruments and an integrated operational framework with consistent and collaborative implementation and enforcement processes would be required to make this such a scheme happen. (sub. 30, pp. 1–2)

A number of cities in North America and the United Kingdom publicise inspection scores on web sites and require restaurants to display scores, grades or full reports in their windows. A study of the restaurant hygiene grade card scheme operating in Los Angeles found that the scheme had:

- positively affected hygiene standards and health
- raised consumer awareness about safe food practices

- rewarded food safety ‘high achievers’ through increased revenue (Jin & Leslie 2005).¹²

Some concerns have, however, also been raised about the implementation of these schemes because:

- there can be potential inconsistencies between individual inspectors or between regions
- a considerable delay can occur between awarding a rating and subsequent inspections, potentially undermining confidence in the relevance of the rating
- consumers may have difficulty in interpreting ratings, depending on how schemes are devised
- there may need to be a review mechanism to deal with business concerns about the basis for publication of any adverse inspection findings.

Such issues would need to be addressed in the development of any scheme for Victoria: the detailed costs and benefits of a proposed scheme would also need to be assessed. And because s54 of the Food Act currently prohibits public disclosure of inspection findings, legislative changes may be necessary to permit a scheme.

Establishing a rating scheme for Victoria’s restaurants and cafés could be costly because of the need to broadly educate businesses and consumers to ensure that the scheme has the intended effects. Given concerns about inconsistent implementation and interpretation of food regulation by councils (chapter 10), an initial step is to ensure greater consistency in the way council EHOs assess food safety. Consequently, it is not clear whether the benefits of a mandatory rating scheme would outweigh the costs at this time. There is also no information on whether Victorian consumers would change their behaviour in response to the provision of ratings or other information on food safety characteristics. It could be argued that if food safety was a key factor in consumer decisions, businesses could be expected to develop their own strategies for informing consumers, such as making kitchens more visible to restaurant patrons. And it might also be expected that the publishers of restaurant guides and reviews would place more emphasis on this issue if food safety was a major concern for consumers.

The Commission invites feedback from inquiry participants on the costs and benefits of establishing a rating scheme for the Victorian food service sector and on the likely effects of increased publicity of offences.

¹² Jin & Leslie (2005) noted that, after grade cards were implemented in Los Angeles, if a restaurant received an ‘A’ grade (that is, the highest grade), their revenue increased by about 6 per cent relative to their revenue when there were no grade cards.

9.10 Education and information strategies

In countries such as the United Kingdom, Ireland and the United States of America, education and information campaigns are a growing part of an effective food safety regulation framework (Patnoad 2001; Safefood 2007; PFSE 2006). And because regulation cannot directly affect what goes on in the home, education and information is the key to influencing safe food behaviour.

The use of targeted education campaigns in Ireland provides some evidence of the effectiveness of such strategies in changing consumer behaviour. Ireland's Food Safety Promotion Board—Safefood—designed an awareness raising campaign that was focused and relevant to the individual, using a variety of mediums including television and radio advertising, in-school education and promotional literature. In the seven years since its establishment, Safefood has had success in changing consumer attitudes and behaviour towards food safety, with the most recent survey indicating that one in five people had actually changed their behaviour (Amarach Consulting 2004).

The Auditor-General has been critical of the lack of coordination in Victoria of education and information activities. These coordination problems have limited the effectiveness of the independent efforts of the Department of Human Services and councils in this area (AGV 2002, 2005b). The Commission recognises that steps have been taken by the department (such as initiating the joint Food Safety Coordination Project with the Municipal Association of Victoria) to address some of the education and information issues raised in the Auditor-General's reports.

During this inquiry, however, the department indicated that it has concerns about the effectiveness of awareness raising for consumers, viewing training of EHOs and food handlers as being more effective. Despite two of the Food Safety Unit's four key strategic directions being education related (DHS 2004d, p. 1), the department has substantially reduced resources in this area. This has effectively stalled the development and implementation of these strategies (DHS 2007g). Moreover, the department does not assess the queries and complaints received by its food safety hotline.

The Commission supports more targeted training food safety skills (section 9.5), and chapter 10 identifies scope for the department to provide additional support to EHOs. The Commission also considers there is a need for more effort to be placed on raising consumer awareness by developing targeted campaigns that actively address identified problem areas. International research suggests that the focus should be on targeting those behaviours that are most likely to result in foodborne illness, such as unsatisfactory hand washing, inadequate cooking, and cross-contamination (Medieros et al. 2001, p. 108). The Australian National Risk Validation Project reported that the three most frequently encountered hazards

associated with foodborne illness outbreaks include temperature misuse, inadequate handling and contaminated raw material (FSA & MEC 2002, p. 1).

There appears to be a case in Victoria for better identification of the specific food safety issues to target, so that resources can be focused in these areas. This would be assisted by the development of systems of statewide food sampling, analysis of sampling results, assessment of queries and complaints to the food safety hotline, and the examination of international evidence. Recognising that councils have already developed consumer education materials, there are opportunities to streamline and strengthen these through a more coordinated approach.

For an education and awareness raising campaign to be successful in changing consumer behaviour, some challenges need to be overcome. The department has pointed to the limited resources of the Food Safety Unit and the capability and capacity of EHOs as being restricting factors (DHS 2007g). However, overseas experience suggests there are benefits from implementing a consistent, multifaceted, and targeted consumer information campaign. Awareness raising efforts can help to address some of the market failures that contribute to pressures for government intervention (chapter 2). They can also improve overall food safety outcomes by addressing the use of food in the home, which on some estimates contributes about one-quarter of cases of foodborne illness (chapter 5).

Improved awareness may also lead to increased public reporting of foodborne illness and increased compliance with regulations by well informed consumers who also work in food businesses. Most importantly, if awareness raising campaigns are implemented effectively, consumer attitudes and behaviours towards food safety will change.

Draft recommendation 9.6

That the Department of Human Services place increased emphasis on raising consumer awareness of food safety issues. This would involve better identifying specific food safety issues by:

- **analysing the results of statewide food sampling programs**
- **assessing queries and complaints to the food safety hotline**
- **developing approaches based on international assessments of effective education and information campaigns.**

9.11 Effects of the Commission's proposed changes

This chapter has outlined a number of changes designed to streamline Victorian food regulation without undermining the objective of the regulations. This section considers the expected effects of the main proposals on the administrative burden of regulation for businesses, councils and the Victorian

Government, and on food safety outcomes (chapter 11 discusses the effects of the proposals on community activities, including the not-for-profit sector).

The Commission considers that the proposed changes to food regulation could potentially reduce administrative costs to business and costs to councils by at least \$37.5 million per year, while strengthening overall compliance with food safety standards. The proposed changes seek to ensure that regulatory effort is targeted where risks to food safety are highest, that is, where food is served to vulnerable groups in the community and where incentives are insufficient to ensure that risks are appropriately addressed, because of a lack of knowledge or resistance to meeting food safety standards.

Where possible, the Commission has endeavoured to estimate the expected effect on administrative costs to business and governments (appendix D provides more detailed calculations). It has also provided a qualitative indication of the expected effect on food safety outcomes.

Reduced regulatory requirements for low risk businesses

The development of a nationally consistent risk based regulatory approach via an expanded risk classification system that better targets FSP requirements (at high and medium risk businesses), provides greater recognition of quality assurance processes, and that gradually eases regulatory requirements on businesses with a good track record, will reduce the costs of meeting Victorian food regulation. Savings would depend on how the changes were implemented. Based on assumptions outlined in appendix D, the Commission estimates that the changes could result in an aggregate net saving (in administrative costs, mainly record keeping costs) of at least \$13.4 million per year for businesses that move to the low risk class 3 category.

The proposed changes will also result in cost savings to councils of about \$2.7 million per year. The savings will result from a lower frequency of inspections for many businesses and less time spent on reviewing individual FSPs. These resources can be devoted to improving compliance, and therefore food safety outcomes in problem areas.

Simplified FSP templates and record keeping requirements

The introduction of simplified FSP templates and streamlined or exception based record keeping requirements for remaining classes 1 and 2 businesses would not undermine food safety, but would produce savings for a large number of businesses, particularly small businesses. The Commission estimates that these options have the potential to save food businesses in the four main food industries at least \$12.9 million annually. There will be some savings to councils due to the reduced need to follow up noncompliance. Negligible effects on food safety outcomes are expected as national food safety standards relating to record keeping will still apply.

Single register for mobile businesses

Establishing a single registration system may cost the Victorian Government about \$200 000. The savings to mobile food businesses (such as caterers and food vans) from registering once, rather than on multiple occasions, are difficult to estimate. Assuming that the database saves 1000 businesses from registering on five separate occasions (with each registration costing businesses \$500 in fees and time to prepare documentation), the savings could be in the vicinity of about \$2.5 million per year. There will be a loss in council revenue, but this will be offset by a reduction in paperwork. Revenue sharing or charging arrangements would need to be established to enable councils to recover costs, and the changes would reduce the savings to businesses.

More targeted training requirements

Replacing the FSS requirements with a training regime targeted at food businesses that have failed to comply with food safety standards is expected to improve food safety outcomes. Businesses with good performance will have greater flexibility in determining how they meet the national standard specifying that employees possess skills and knowledge in food safety. Assuming that about 3000 businesses each year elect not to send a staff member on the required training, and the cost each time is between \$600 and \$800, the savings to business will be between \$1.8 and \$2.4 million per year. These savings will decrease depending on the number of noncompliant businesses required to undergo training. There will also be some costs to councils and the Victorian Government in establishing consistent arrangements for implementing this recommendation.

More targeted inspection and audit arrangements

Removing the requirement that councils undertake an annual inspection of all registered food premises is likely to result in considerable savings to business and councils. For example, the expected 13 300 or so fewer council inspections of class 3 businesses (with each inspection assumed to cost business \$300) should save business about \$4 million per year. (The savings for councils of these fewer inspections—about \$150 a business or \$2 million in total—has been incorporated into the estimated savings for low risk class 3 businesses.) Removing the requirement for annual inspections more widely would generate additional savings for business and councils. The Commission has not attempted to estimate any savings for extending these proposed changes more widely. Any savings would depend on the degree to which councils embraced the proposal and increased inspection frequencies for high risk or noncompliant businesses. Better targeted inspection and audit arrangements have the potential to lead to an overall improvement in food safety outcomes by redirecting effort away from businesses with strong incentives to comply towards those that do not because of a lack of knowledge or resistance to meeting food safety standards.

Supporting strategies

The Commission has outlined the need for improvements in a number of areas to support more targeted implementation of the regulatory framework and encourage improved compliance, including:

- development of an improved food sampling program
- an expanded array of penalties for major breaches of food regulation
- increased effort to raise consumer and business awareness about food safety
- career development of EHOs.

Initiatives in these areas will support improved food safety outcomes in a number of ways. Information obtained from a more robust food sampling program will support efforts to raise business awareness about food safety risks and enable councils to better identify and target enforcement and education at problem areas. While the thrust of many of the measures proposed by the Commission is to provide rewards for good performance, these need to be backed up by stronger penalties for the small number of businesses that refuse to do the right thing. Greater emphasis on informing the public and businesses about major food safety risks and strategies for addressing these risks can support the instruments of food regulation. Finally, career development and mentoring for EHOs should improve consistency of enforcement.

These supporting strategies will need to be adequately funded by Victorian and local governments. The Commission has not analysed whether additional state government funding is required as the costs to government will depend, amongst other things, on how the various measures are implemented.

Financial impacts for government

Although the implementation costs for government of the Commission's proposals have not been estimated, these costs are expected to be small.

There will also be ongoing costs to government resulting from the proposed changes. These costs will stem, for example, from councils assessing and categorising food businesses under the new classification system and reviewing any complaints about these decisions, the statewide collation and analysis of food sampling results, improved monitoring and reporting systems, and provision of advice and assistance to councils. The Commission has not estimated these ongoing costs, but envisages that they would be more than offset by the savings to government from more targeted and streamlined regulatory arrangements.

The Commission invites comments from interested parties on its assessment of the effects of the proposed changes on Victorian food regulation (on businesses, councils, the Victorian Government and the broader community).

10 Local government

10.1 Introduction

Local government has a key role in administering Victoria's food regulation. Under the *Food Act 1984* (Vic.), all food premises (except primary food production business) must be registered with councils. As discussed in chapter 3, Victorian local governments are responsible for registering and inspecting food premises, monitoring food safety, responding to complaints and undertaking investigations. They register around 45 000 food premises each year across the state (DHS 2007d), and the Victorian Government allocates responsibility to councils to implement and enforce regulation for a number of reasons:

- For reasons of food safety, this allocation reflects a desire for locally elected bodies to be responsible for decision making that requires local tradeoffs and judgements. Where allocation of responsibility to local government works well, it should produce outcomes that respond to local views but possibly at the expense of some broader state-wide consistency.
- Administration and enforcement have also been allocated to local government because this approach is efficient, matching the enforcement of a particular law as closely as possible to the jurisdiction which will be most affected by its enforcement (ORR 1995, p. 10). The aim is to achieve consistent regulation while using local resources, knowledge and expertise. Examples of complementary regulatory activities include public health and restrictions on smoking in food establishments (VCEC 2005a, p. 418).

How local government administers the Food Act has a significant impact on the efficiency and effectiveness of Victorian food regulation (the cost of Victorian food regulation was estimated in chapter 6). A number of inquiry participants considered there is scope to reduce the regulatory burden on food businesses and improve food safety. This chapter explores council implementation of the current food regulatory environment and options for reform. (Regulatory framework issues were discussed in chapter 8.)

10.2 Issues of concern

As discussed in chapter 3, several inquiry participants were concerned about the consistency of local government implementation of food regulation. While consistency can be defined in many ways, the Victorian Competition and Efficiency Commission considers it should be defined as the use of the same underlying principles by which certain outcomes, such as safe food, are being sought—for example, inspection frequency should be related to risk and fees

based on costs. Consistent application of these principles by councils would result in differences between fees, reflecting the extent that costs and risks differ across municipalities.

Inquiry participants raised three main concerns about the lack of consistency:

- (1) between different local governments in their approach to registration and enforcement to ensure compliance
- (2) in the way different environmental health officers interpret the requirements of the Food Act
- (3) in the way fees and charges are determined by local governments, particularly for food businesses that operate within and across municipalities.

Inconsistency partly reflects the complexity of relevant matters to be taken into account. It can also be partly attributed to food safety decisions being open to subjective judgements, and that the weight given to competing considerations is influenced by the decision makers' experience and assessment of competing considerations. Inconsistency may also occur where council environmental health officers do not understand the relevant food safety regulation and policy—for example, the City of Yarra noted:

... Food Safety is one of many issues handled by LG [local government] Health Departments. This can lead to some LGs [local governments] not having resources and time to understand and apply regulatory requirements in a uniform manner (sub. 43, p. 4)

Moonee Valley City Council also noted:

... the legislation itself, or enforcement officers need clarity to reduce different interpretations and therefore some of the perceived 'inconsistencies' between Councils. (sub. 18, p. 1)

The lack of uniformity between different councils' interpretation of the obligations on food businesses can create costs if it:

- leads to poorer health outcomes in areas where enforcement is less robust
- distorts competition by encouraging resources to shift to areas where compliance costs are lower
- adds to compliance costs because businesses that operate in more than one jurisdiction devote resources to understanding and complying with regulatory regimes that are not identical (VCEC 2005a, p. 251).

Quantifying the magnitude of the burden imposed by inconsistent implementation of food regulation is difficult. However, inconsistent local government implementation of food regulation has been recognised as imposing

undue burdens on the economy for some time. As seen in the Blair report (1998):

We are also aware of unwarranted costs to business due to inconsistencies and duplication within the regulatory and enforcement framework. (Blair 1998, p. 3)

Small businesses, in particular, complain they learn one set of 'rules' only to find the next inspector on duty interprets the same rules differently. (Blair 1998, p. 61)

In 2003, as a result of the Blair report (1998), the national Food Standards Implementation Sub-Committee (ISC) was established. The ISC was to address the burdens imposed by inconsistency and develop a consistent approach to implementing and enforcing food regulation and standards. In 2005, the ISC released its *Strategy for Consistent Implementation of Food Regulation in Australia*, providing a framework for collaborative work among food safety regulators in Australia and New Zealand. It aimed to develop a consistent approach to implementation. All jurisdictions have endorsed the ISC strategy and agreed to participate in the three-year work plan either by sponsoring key components of work or progressing individual projects (ISC 2005, pp. 19–20). However, the Commission is unaware of any specific local government action that has been implemented to encourage greater consistency other than the setting of medium term goals. (Moreover, the role of local government in food regulation varies across states and territories.)

The Victorian Auditor-General noted inconsistent local government implementation of food regulation (AGV 2002, 2005a), and pointed out that:

... only a few councils were fulfilling all their legislative responsibilities. For most, there was poor compliance with key elements of the framework. (AGV 2005a, p. 9)

A survey of Victorian local governments (box 10.1) found vastly different approaches to implementing Victorian food regulation, particularly for registration and enforcement. While some local governments used more frequent inspections, deregistration and prosecutions to ensure compliance, others used education, information sessions, translators and awards (section 10.4.1) (DHS 2007d). The specific strategy adopted by a local government did not appear to depend on the size and type (metropolitan or rural) of local government, but large local governments were more likely to have undertaken prosecutions while medium sized local governments were most likely to have deregistered a business.

Several inquiry participants were concerned about the approaches to registration and enforcement of community events adopted by local governments. Some local governments required all community events to be registered while others permitted the use of temporary food permits, a tool not recognised under the

Food Act. Differences in the local government registration requirement for domestic and multi-use kitchens were also a concern to inquiry participants, particularly those from the community sector (chapter 11).

Box 10.1 Survey of Victorian local governments

In September 2006, the Commission in conjunction with the Department of Human Services and the Municipal Association of Victoria requested information from 79 councils about fixed food premises registration; permits issued to temporary food premises; the number of inspections of both fixed and temporary food premises in Victoria; and fees, council compliance strategies and strategies for dealing with culturally and linguistically diverse businesses.

This information was sought by 25 January 2007, and 47 councils (about 60 per cent) responded to the request. Respondents covered the range of councils, from small rural to large metropolitan, and the Commission considers the survey coverage to be reasonable. The interpretation of the survey results expressed in this inquiry report represents the views of the Commission, not those of either the Department of Human Services or the Municipal Association of Victoria.

This survey, together with input from inquiry participants, suggested that food safety outcomes differ across municipalities. In other words, different council inputs had created different incentives and therefore different food safety outcomes—for example, if a council inspected all registered food premises in its local area, provided business with support such as information and access to environmental health officers, and applied the law strictly, the incentives to meet the required food regulations would be high. However, if a less vigilant inspection approach was adopted by a council and resources were more limited, the incentives to meet food regulation could be weaker and the food safety outcomes not as robust.

The Commission's examination of the results of the survey and inquiry participants' submissions has been unable to identify if risk (or any other factor) has influenced the different approaches to food regulation implemented by local government. Input from inquiry participants suggest the different approaches adopted by local governments have caused confusion and added costs to doing business in Victoria.

The Commission would welcome further examples of any inconsistent implementation of food regulation by local government imposing unnecessary costs on Victorian businesses.

10.3 What is causing these concerns?

The Commission considers inconsistent implementation of food regulation by local governments reflects a combination of:

- differences in the skills and financial capacity of local government to implement food regulations and competing activities that utilise the same resource base
- aspects of the regulatory framework established by the Victorian Government, particularly those that inhibit local governments from adopting risk based approaches to implementing food regulation.

A number of the proposed changes to food regulation (chapters 8 and 9) could help to address the challenges facing councils by, for example, refining the nature and scope of the regulatory tasks local governments must perform and:

- strengthening the risk based approach to annual registration and inspections
- streamlining business registration, including for mobile and temporary food businesses
- simplifying food safety program requirements for businesses.

These improvements could, in turn, help local governments address capacity limiting factors (skills and financial) that influence how food regulations are implemented. The remainder of this chapter examines options for addressing these capacity limiting factors.

10.3.1 The capacity of local governments

To implement regulation effectively, local governments need access to sufficient skills and resources to ensure good, consistent decision making (including in relation to enforcement) and avoid delays. While streamlining regulation will indirectly address some of the skills and financial constraints faced by local government, other options are available to address these concerns. Local governments could, for example, improve resource use for implementing food regulation by some combination of:

- reprioritising expenditure based on better risk management (Chapter 9 provides a discussion on the benefits of a risk based approach to food safety regulation and for the need to draw on better data collection to enable identification of where key risk areas are.)
- aligning fees and applying cost recovery principles for food regulation activities such as registration and inspection
- drawing on common resources of the state government
- better reporting activities and outcomes to the state government (chapter 8).

Council rates and priorities

Local government rates levels and the relative priorities accorded by local government to food regulation and their other activities go beyond this inquiry, however, the following points are relevant:

- The *Local Government Act 1989* (Vic.) (s155) allows local governments to impose rates and charges for activities regulated by local laws. The capacity to raise rates and charges is, however, limited by the state (s185B).
- The Food Act (s41A) allows local government to vary registration fees for food premises according to the size or nature of the food premises. The fees set by local government must not exceed the amount published in the *Government Gazette* by the state government, although this amount has yet to be set (VCEC 2005a, p. 273).
- The limited financial capacity of local governments to meet their regulatory responsibilities is a longstanding issue that the Commission has previously examined and that continues to be of concern (VCEC 2005a, p. 258).
- Given the financial constraints facing councils, it is imperative that local governments have robust performance arrangements to ensure sound decision making and guide resource allocation decisions (chapter 9).

A number of inquiry participants also suggested local governments placed low priority on food regulation relative to their other functions and that this was reflected in how councils approached inspections and the assessment process. While there is no data to support (or disprove) this finding, there is anecdotal evidence that supports this. Roger Pierotti noted:

Food safety matters compete against other more strategic and higher profile issues and thus food safety receives limited attention or resources. The administration of food safety regulations has been perceived as an operational matter and issues only come to prominence when a significant food poisoning outbreak or food contamination occurs. (sub. 30, p. 2)

This position is further supported by the *Environmental Health Officer Workforce Review*, which highlighted that the (environmental health officer) profession was held in low regard within the broader context of council services. According to two environmental health officers cited in the review:

Councils resent having us – they have to have us but they don’t want us.

What we do isn’t sexy – we don’t raise revenue. (Windsor & Associates 2005, p. 36)

Cost recovery

While local governments have the capacity to fund their food regulation activities through registration fees, analysis by the Municipal Association of Victoria suggested local governments recover only part of their total food regulation costs through cost recovery (MAV 2002). This view was supported by the City of Stonnington which noted:

Most councils waive fees, or have much reduced fees for community groups, and not-for-profit organisations, both for premises registration and for temporary events. (sub. 25, p. 5)

Partial local government recovery of the total cost of food regulation is further supported by the survey of Victorian local government, which indicated:

- over 75 per cent of local governments applied cost recovery principles to varying degrees, although a rate around 60 per cent was applied on average
- nearly 25 per cent of local governments failed to consider cost recovery principles when implementing food regulation (DHS 2007d).

While an average rate of cost recovery of 60 per cent is consistent with the level of cost recovery the Municipal Association of Victoria suggested councils adopt for 'licensing' business (MAV 2002, p. 6), great differences were reported in the survey of Victorian local government.¹ The partial cost recovery approach to food regulation adopted by councils contrasts with other areas of food regulation within Victoria. PrimeSafe and Dairy Food Safety Victoria, for example, have a total cost recovery policy (DPI 2007). A total cost recovery approach is consistent with the *Victorian Guide to Regulation*, which states 'general government policy is that fees should be set on a full cost recovery basis' (Government of Victoria 2005, p. 3-10). The Productivity Commission has also noted that the 'the price of regulated products should incorporate all the costs of bringing them to market, including the costs of regulation' (PC 2001, p. 2). Poor cost recovery arrangements can undermine equity and efficiency objectives (VCEC 2005b, p. 435). A related issue is the appropriate level of regulation, and consequently costs. The proposed regulatory framework reforms (chapter 9) would help minimise the costs associated with regulating non-business food activity.

Funding local government regulation from direct fees may be appropriate if those charged the fee are the sole beneficiaries of the regulations, but rate based funding may be appropriate if the beneficiaries of the regulation are located more broadly in the local government area. If, however, most of the beneficiaries of

¹ The Commission also understands from discussions with the Municipal Association of Victoria that the cost recovery figures cited in the survey of Victorian local government must be used with caution because councils have vastly different approaches to measuring and attributing costs.

regulation are outside the local area, there is a case for arguing that the Victorian Government should be involved in funding the regulation.

Local governments appeared reluctant to base their registration fees for food activities on a full cost recovery basis, particularly in areas of regional Victoria where population and the rate base is under pressure. Less than total cost recovery for food regulation by local government could reflect the need for local government to balance a range of competing objectives—for example, the Municipal Association of Victoria stated in its submission to the Commission's 2005 inquiry into regulation in regional Victoria that:

Local government will collect a substantial portion of its rate revenue from commercial and industrial businesses, providing it with a direct financial incentive to attract and retain business. Any reduction in the number of businesses will reduce the ability of councils to collect own source revenue, and require alternative sources to be identified and rated. At a more nebulous but equally important level, the viability of the community will depend on the development of strong and reciprocal ties within its population. Councils that can attract business into the municipality will have a greater competitive advantage to encourage an influx of population, and hence, build its community. (VCEC 2005a, p. 100)

The Commission has not examined whether underrecovery of the total costs of administering food regulation by councils is an effective way to encourage activity in municipalities, but given the small amounts charged by councils (relative to the costs of operating most businesses), such strategies are unlikely to be effective in isolation. The Commission supports better targeting and application of cost recovery on those that use council resources (including high risk businesses that require extensive assistance to meet food standards) to ensure the total revenues received by councils through registration fees remain at similar levels and help to appropriately resource these activities.

Skill (education, experience and knowledge) capacity

An effective system of food regulation relies on appropriately trained environmental health officers. In 2005, the Municipal Association of Victoria estimated local government in Victoria employed about 190 environmental health officers (Windsor & Associates 2005, p. 17) to regulate (among other responsibilities) 45 000 registered food premises.

The capacity of environmental health officers to address food safety issues

With 190 environmental health officers and 45 000 registered food premises, the implication is that an environmental health officer needs to be able to undertake

one inspection (either under s19HA or s39 of the Food Act)² roughly every working day during the year.³ The capacity of environmental health officers to implement food regulation effectively and consistently, however, depends on:

- the number of registered premises, the types of food premises (for example, the number of temporary premises and those operated by culturally and linguistically diverse groups) and the geographic spread of the premises
- the range and complexity of other tasks for which environmental health officers are responsible, including management of staff, emergency management, public health planning and needle syringe management
- whether the role is performed by a solo operator or as a member of a team, which has implications for administrative load (Windsor & Associates 2005, pp. 39–43).

And while food business education and support has long been part of the environmental health officer's role, these officers now spend more time assisting businesses with information and explaining how to meet their food safety regulatory responsibilities. Anecdotal evidence suggested the average time required to conduct a food business inspection has increased from about half an hour to around two hours since the introduction of the food safety program requirement (Windsor & Associates 2005, pp. 47–48).

Recruiting and keeping environmental health officers

Local governments are under increasing pressure to find suitably skilled people to fill the environmental health officer role. As noted by the Victorian Auditor-General:

We are concerned that the effectiveness of the food safety regulatory system may be compromised by the shortage of skilled staff. (AGV 2005a, p. 17)

It is critical that DHS [Department of Human Services] and other agencies involved in training, recruitment and employment of EHOs [environmental health officers] act quickly to respond to the work force shortage as it represents a significant risk to the food safety regulatory framework. (AGV 2005a, p. 17)

² An inspection of a food premises under s19HA of the Food Act is undertaken to determine whether a food business is operating in accordance with its food safety program. An inspection of a food premise under s39 of the Food Act is undertaken to determine whether all relevant requirements of the Food Act have been complied with, and that the premises has a food safety program that meets the requirements of the Act, without actually checking compliance with the food safety program.

³ An inspection every working day is determined by dividing the number of food premises (45 000) by the number of environmental health officers (190) and then dividing the resultant figure by the number of working days in a year (229). This includes 11 public holidays and 20 days of annual leave, which results in an estimate of one inspection per day, per environmental health officer.

Department of Human Services analysis suggested most local governments are able to fill vacant environmental health officer positions, but that this capacity is limited:

You can fill positions, but you have no real choice. You have to take whoever you can get. (Windsor & Associates 2005, p. 26)

The environmental health officer workforce is also in a period of transition, moving towards a younger profile: for nearly a quarter of environmental health officers (22 per cent), it was their first job, and over 58 per cent of the workforce was under 40 years of age (Windsor & Associates 2005, pp. 18–31). This age and experience profile may contribute to inconsistent interpretation of food safety regulation. The following comment by a department survey respondent highlighted the importance of experienced and new environmental health officers working together to ensure greater consistency in local government implementation:

There is no mentoring program for more experienced EHOs [environmental health officers] to pass on their knowledge to younger EHOs. I was an EHO for many years and no one took the time to teach me much at all. It wasn't until I came out to the country that someone took me under their wing and showed me the ropes. (Windsor & Associates 2005, p. 57)

Roger Pierotti also noted:

The small separate nature of the regulatory authorities may also be contributing to a potential shortage in the food safety regulatory workforce. There seems to be particular workforce capacity limitations in country areas of Victoria. There does not seem to be coordinated processes for workforce development, recruitment, retention and career planning. It could [be] argued that this disparate nature creates competition between the regulatory authorities for suitably qualified staff and does not encourage sharing of resources and the development a cohesive workforce. (sub. 30, p. 3)

As noted, recruitment challenges may be particularly acute for rural local governments, but one option available to them is to take on relatively recent graduates who are then required to 'learn on the job'. The other option is to either contract the task to consultants or share resources with other councils. The lack of sufficiently skilled environmental health staff in regional Victoria reflects a problem afflicting many parts of regional Australia, one that has been evident for some time as the population (and the workforce) concentrates more in coastal areas and in the larger, regional 'sponge' cities (VCEC 2005a, pp. 131-3).

The Department of Human Services recently reviewed issues facing the environmental health officer workforce and recommended strategies be developed:

- to attract people to the role and ensure new entrants can meet its requirements, including implementing food safety regulations
- to raise and promote the profile of environmental health officers
- to improve consistency in the implementation of regulation across local governments
- to address changing job roles, manage environmental health officer expectations of the role, and take advantage of the increased skills and knowledge of new entrants
- to address professional development and training needs of environmental health officers (Windsor & Associates 2005, p. i - vi).

The department has commenced the *Food Act Authorised Officer Development Project Part 1—Pathways* to progress these recommendations. This (unfinished) project aims to identify minimum environmental health officer training requirements to effectively administer the Food Act in Victoria.

The Commission supports initiatives to address environmental health officer recruitment and capacity. It considers the department's initiative and the proposed regulatory reforms discussed in chapter 9 as complementary, with both helping to address the financial and skills challenges contributing to the inconsistent implementation of food regulation by Victorian councils.

The skills and training of environmental health officers

The Victorian Auditor-General found in 2002 that local governments considered environmental health officers have the knowledge to perform their role effectively (AGV 2002, p. 64). Several inquiry participants, however, indicated that an improved environmental health officer skill base was required—for example, Coles Myers indicated:

... there should be increased efforts to recruit and train competent Environmental Health Officers (EHO's) to enable them to better undertake their roles as food safety regulators. (sub. 7, p. 4)

Several inquiry participants suggested that a more coordinated approach to environmental health officer training would increase consistency in local government implementation of food regulation. There also appeared to be a demand on the part of environmental health officers for the department to take a stronger leadership role. Such a role would include the provision of relevant information and training to increase an environmental health officer's capacity to explore options to achieve consistency and understand the costs of inconsistent practice in terms of both business and staff morale.

While some efforts have been made to improve consistency by issuing guidelines such as *Administering the Food Act – A Guide for Local Government 2002*, they are dated and often applied inconsistently. The City of Moreland noted, for example, that some councils ignore Food Act requirements (sub. 51, p. 6). Notwithstanding this issue, environmental health officers (as part of focus groups) have indicated that the department needs to provide more of this type of leadership (Windsor & Associates 2005, p. 40).

The provision of updated guidelines would be a useful first step to ensure improved council consistency in implementing food regulation. The City of Whittlesea argued, for example, that the department should develop standard guidelines on key elements of the Food Act to improve consistency of interpretation by local government (sub. 31, p. 4). And the Australian Institute of Environmental Health noted that the provision of standard compliance check formats for environmental health officers to use during an inspection could improve both consistency in the way inspections were undertaken and clarify the emphasis placed on specific issues during an inspection (sub. 10, p. 13). A template such as the Food Service Establishment Inspection Score Worksheet used in New York City in the United States could be adopted. The score sheet details a range of food safety requirements a food business is required to meet, along with the scores associated with noncompliance with those requirements. The total score (based on summing all points collected during an inspection) determines whether a premise fails or passes an inspection.

Providing the Health Minister with the statutory power to issue directions and guidance material requiring council compliance may encourage greater consistency and provide a greater incentive for councils to comply. Compliance with directions and guidance could also be encouraged by strengthening cooperative agreements (which provide some flexibility to councils) and performance reporting. Monitoring the level of compliance with directions and guidance in the short term would provide a mechanism to assess the need for a more regulated approach, one that encourages consistent council implementation of food regulations.

To address inconsistencies in implementing food regulation, the NSW Food Authority is expected to commence environmental health officer education and training from mid-2007. Training is expected to be delivered by state authority personnel (or contracted experts) and online learning opportunities (NSW Food Regulation Partnership 2005, p. 38).

In Victoria, the VicFin information sharing system was designed to make implementation of regulation more consistent. While it has not lived up to expectations, VicFin was developed:

- to act as a forum for geographically separated environmental health officers to share and discuss information and implement consistent food regulation
- to help inform the department about where assistance may be required and to be a communication tool between the department and local government (sub. 59, p. 3).

While the slow uptake and use of VicFin and its lack of development has limited its effectiveness as an information dissemination and communication tool, the development of an effective online discussion forum—where environmental health officers could post questions and issues for discussion—would be useful and would meet the original intent of VicFin. An effective online forum (and training tool) would also allow the department to post scenarios based on actual events, invite environmental health officers to describe actions they would take, and then provide feedback on the proposed actions.

Another mechanism to increase consistency would be via a mentoring system whereby experienced environmental officers could share their experience and knowledge with junior officers, particularly those just starting their careers. The Commission recognises that the Department of Human Services and the Australian Institute of Environmental Health have implemented some environmental health officer mentoring initiatives and regional forums in Victoria. These initiatives, which appear to be informal and uncoordinated, could provide significant public health benefits if they were formalised and more broadly applied. One option by which this process could be formalised would be through state government funding—for example, through the adoption of a formal mentoring program, with environmental health officer salary supplementation provided by the state government. Such a program, in combination with an online discussion forum, would help ensure consistency and reduce the business costs associated with inconsistent implementation of food regulations.

As discussed in chapter 9, the introduction of a new low risk class of food business (class 3) as part of a more risk based approach to food regulation will have implications for councils and food businesses. As the assessment of performance and the scope for switching to a lower or higher level of regulation will be undertaken at the council level, this may raise issues relating to the skills and experience of environmental health officers (especially in regard to risk assessment), record keeping in regard to the businesses being reviewed and appeal provisions. The introduction of a new low risk food business classification, in combination with a standard compliance check list should,

however, impose minimal additional burdens on environmental health officers and councils.

The Commission welcomes views on the implications of a new low risk class of food businesses, especially with regard to the skills and experience of environmental health officers, record keeping, appeals provisions and the use of a standard compliance check list by environmental health officers during inspections.

Draft recommendation 10.1

That the Department of Human Services improve consistency in local government implementation of the *Food Act 1984* (Vic.) by:

- **updating the guidelines for local government in administering the Food Act. The guidelines should reflect any changes in regulatory arrangements since 2002 and any changes to the Food Act emerging from this inquiry**
- **developing, in consultation with the Municipal Association of Victoria and the Australian Institute of Environmental Health, a standard compliance check template for environmental health officers.**

Draft recommendation 10.2

That an environmental health officer training and professional development program be developed to increase consistency in the implementation of the *Food Act 1984* (Vic.) This outcome could be achieved by:

- **the department further developing guidance material, including ‘questions and answers’, for use by environmental health officers**
- **drawing on the outcomes of the Pathways project and the New South Wales approach to environmental health officer training**
- **using new platforms of delivery, including the increased use of new technology to maximise the coverage and effectiveness of the training and professional development program**
- **developing a mentoring program that would provide experienced environmental health officers with an opportunity to share their skills and knowledge with less experienced officers. This program could be financed through state based salary supplementation, thereby providing improved career development opportunities for experienced environmental health officers.**

10.4 Enforcement

Local government powers to enforce Victorian food regulation are set in legislation. Local governments can exercise limited discretion as to the actions required from a food business and the (limited) tools used to encourage compliance. As discussed in chapter 3, several inquiry participants expressed concern that local governments have adopted inconsistent approaches to enforcing food regulation—for example, there are inconsistencies across councils in interpreting food safety supervisor requirements. Knox City Council stated that ‘there are complexities in the interpretation of appropriate training leading to inconsistencies among registration authorities’ (sub. 19, p. 2). The Australian Institute of Environmental Health also considered that there is an inconsistent approach within local government regarding food safety supervisor qualifications (sub. 10, p. 3).

The City of Whittlesea noted that a common complaint of food proprietors was the variation of interpretation of the Food Act for building requirements, inspection and compliance check requirements (sub. 31, p. 3). Further, the regulations applying to labelling and composition were cited as ‘extensive, of a complex and highly technical nature, and are at times ambiguous and open to different interpretations’ and:

An example of this ambiguity would be [that] the ‘strawberry’ in strawberry yoghurt could be equally considered a characterising ingredient, or a flavouring, with different labelling requirements for each interpretation.

The average EHO [environmental health officer] has neither the technical expertise, nor the time to determine whether a food business was fully complying with these regulations, even though Local Government has a regulatory responsibility to monitor and enforce these standards. (sub. 25, p. 7)

Some differences in local government food regulation enforcement should be expected given that local governments are responsible for administering food regulations having regard to local conditions. That said, the differences in enforcement should be based on common enforcement principles (section 10.4.3) to ensure consistency and help inform businesses and consumers about the rationale for any differences. Without clear and consistent principles, different approaches to enforcement by local government may cause confusion about compliance requirements within the business community and weaken business and consumer confidence in the regulatory framework. Areas in which this may be particularly important include inspection frequency and complaints handling, including in relation to food labelling. Chapter 9 examined the remedies available to council for breaches of food regulations.

10.4.1 Local government's approach to enforcement

The survey of Victorian local governments (see box 10.1) found that different strategies are used to encourage businesses to comply with Victorian food regulations, including:

- education, newsletters, information sessions and training material for businesses and community groups
- environmental health officers working one-on-one with businesses
- increased frequency of food business inspections
- food safety business awards
- business 'scoring systems' that help environmental health officers identify high risk food businesses
- user pays based registration fees, with 'poor performing' food businesses required to pay a higher registration fee
- deregistration and/or prosecution.

The survey suggested that about 17 per cent of local governments used only frequent inspections, deregistration and prosecution as their enforcement strategy. The remaining local governments highlighted the importance of education, training and information to their enforcement strategy. The approaches used to disseminate this information varied considerably and include business one-on-one sessions, newsletters and training. Hume City Council, for example, produces a quarterly newsletter (*Hume Food News*), which is delivered to all food businesses to assist in ensuring safe food. It also has a multilingual telephone information service for people from culturally and linguistically diverse backgrounds (Hume City Council 2006). Many other councils, including Greater Geelong City Council, Mount Alexander Shire Council and Maroondah City Council, used material developed by the Department of Human Services to provide information about good food safety practices. Banyule City Council also used a 'food safety week' to promote the benefits of food safety (Banyule City Council 2006).

According to the survey, about 36 per cent of local governments had prosecuted noncompliant food businesses, and it appeared that large local governments with large numbers of registered businesses were more likely to prosecute noncompliant businesses, perhaps due to the demonstration effect a court case can have. It is, however, somewhat of a blunt instrument, not well related to risk, to achieve compliance. Smaller local governments appeared more likely to rely on compliance strategies such as undertaking more frequent inspections and providing advice and information to noncompliant businesses. The threat of more frequent inspections can be an effective mechanism to encourage business compliance with food regulations.

A number of councils also indicated the use of ‘reward’ systems as part of their food safety compliance strategy. Five Star awards and Golden Plate awards were cited as mechanisms to recognise and encourage excellence in the provision of food in a safe and responsible manner (chapter 9). Such mechanisms help consumers make informed decisions as to the safety of the food they have purchased.

The survey also suggested that local governments have adopted different approaches to the annual food business inspection legislative requirement—for example, while some councils indicated they were meeting this requirement by undertaking inspections on all premises registered in their local government area, other councils indicated a rate of inspection (of fixed premises) as low as 60 per cent. This finding is broadly consistent with the Auditor-General’s reported findings on food safety implementation (AGV 2002, 2005a).

The survey did not reveal the basis on which local governments develop and implement their enforcement strategies. In discussions with the Commission, Mr John Ward—a provider of food testing services to a large number of Victorian councils—indicated that although some councils use food sampling tests to develop surveillance and enforcement programs, not all use their sampling programs in this way. The Commission understands that the Department of Human Services does not provide any guidance on, or analysis of, food sampling results to assist local governments develop consistent surveillance and enforcement strategies and programs. It also understands that local government is often assisted in the development of surveillance and enforcement strategies by private sector laboratories that undertake the mandatory food sampling.

10.4.2 Inspection frequency

Section 39 of the Food Act requires every local government to inspect food premises before they are registered, which must (in general) occur annually. Several inquiry participants suggested this legislative requirement limited local government’s ability to adopt more flexible risk based approaches to food regulation. Several inquiry participants also supported removing the requirement for local government to inspect all food premises. The Australian Institute of Environmental Health considered:

The requirement to undertake an annual inspection of all food premises does not follow the concept of risk management. Scarce Council resources should be allocated and focused on those premises that pose a higher risk to the community i.e. those that are continuing to show poor hygiene and management practices. (sub. 10, p. 4)

Similarly, the City of Melbourne considered:

... low risk food operations such as market fruit and vegetable stalls, pharmacies and small news agent type kiosks, can have their inspection cycle reduced to once every 2 years, without any significant increase in the risk to public health.

Similarly, food businesses that demonstrate a consistently high standard of food safety could be inspected with a reduced frequency to those performing poorly. Lesser inspections could again result in a decrease in costs to both the Local Government and food businesses. (sub. 16, p. 3)

The survey of local government suggested that, on average, about 10 per cent of fixed and 39 per cent of temporary food premises were not inspected by local government in 2006 (DHS 2007d). Around one third of local governments inspected all food businesses registered in their municipalities. The remaining local governments indicated vastly different rates of compliance with the legislative requirement that all food premises be inspected, with a number of councils indicating a noncompliance rate of over 40 per cent. The Commission is unaware of the reasons for this noncompliance because councils do not publish their rationale for selecting an enforcement strategy. This level of local government noncompliance with legislative requirements is broadly consistent with the Auditor-General's findings (AGV 2002).

However, the requirement to inspect all food premises annually is inconsistent with a risk management approach to implementing Victorian food regulation. There are doubts also about the practicality and enforceability of this obligation on councils. As the *Victorian Guide to Regulation* noted:

Only those regulations that can be realistically enforced should be put in place or retained. Without adequate enforcement, the credibility of the regulation may be compromised and the desired objectives are unlikely to be achieved. (Government of Victoria 2005, p. 3-9)

Amending the Food Act to allow the adoption of a more risk based approach to food business inspections would generate a number of benefits; in particular, it would strengthen existing incentives for compliance. Businesses that were able to display a continued record of safe food practices, for example, could be moved to an inspection frequency that more appropriately reflected their (lower) potential to cause damage to public health.

The potential resources freed for alternative use by councils and food businesses due to a more risk based approach are difficult to calculate because of the lack of information on the effectiveness of food regulation. However, with around 45 000 fixed food premises in Victoria (DHS 2007d) costing councils (on

average) \$544 in 2005-06 prices per premises to deliver food safety services,⁴ the potential savings to councils from the adoption of a more risk based approach could be large, although there may be additional costs involved in the administering of a system where businesses can move through classes of risk depending on performance.⁵

Adopting a food business inspection strategy guided by risk assessment could also help address any duplication of local government inspections and third party audits—for example, Woolworths noted:

Even now and despite Woolworths having opted for Third Party Auditing it is often noted that Council EHO's continue to request changes to documentation (Food Safety Plans), operations and/or building structure. Such comments may indicate non-compliance against the Food Safety program, Food Act or Food Standards code and are also indicated in Third Party Audit Reports, which are submitted to Councils for review. This is unnecessary duplication of effort between Council EHO's and Third Party Auditors. (sub. 50, p. 2)

Under the Food Act (s19N), only a third party audit 'certificate' needs to be lodged with a local government if a third party auditor has been approved by the department and is qualified to undertake this role.⁶ If a local government also undertakes an inspection (under s19HA of the Food Act) of audited premises that inspection is unnecessary and resource intensive for local governments and businesses. An inspection under s39 of the Food Act (one that does not examine the adequacy of a food safety plan but seeks to confirm that a premises has a food safety program that meets the requirements of the Act) may still be necessary, but this should be determined based on risk.

Some inquiry participants suggested council inspections can serve as a useful independent check on third party auditor reports and act as a mechanism to gain familiarity with businesses, thereby aiding effective investigation of any complaints and transfer of information. The Commission considers, however, that the withdrawal of the Department of Human Services accreditation (s19T of the Food Act) in the event of audit shortcomings provides sufficient discipline for third party auditor standards and food safety standards to be maintained. The Commission is also unclear about whether the removal of the requirement for a council inspection under the Food Act, in addition to a third party audit, would

⁴ Food services delivered included costs associated with the inspection of premises and assessment of food safety programs as they formed part, or are intended to be part, of the food business registration process (MAV 2002, p. 16).

⁵ The average cost to council of meeting its food regulation responsibilities is \$469 per business (in 2001 prices) (MAV 2002, p. 6). Allowing for compound inflation of 2.5 per cent a year, this results in a figure of \$544 per premises in 2007.

⁶ The Department of Human Services will approve a prospective third party auditor only if the individual concerned has gained certification from the Registrar Accreditation Board Quality Society of Australasia (RABQSA) for appropriate sectors before applying to it (DHS 2007e).

preclude a council from visiting a business to gain familiarity with it and convey information to it on a discretionary basis.

Allowing local government more flexibility to undertake inspections would also allow councils to better focus their resources on areas of greatest risk and/or need. This may be particularly relevant for local governments where there is a large number of culturally and linguistically diverse businesses—for example, the City of Greater Dandenong noted:

Culturally and Linguistically Diverse food operators require greater assistance and human resources to understand the concept and comply with FSPs [food safety program]. The limited resources available to Councils would be better used in dealing with this issue. (sub. 12, p. 4)

10.4.3 Surveillance and enforcement strategies

The issue of improving consistency in the implementation and enforcement of food regulators has been recognised at the national level, and a strategy for addressing the issue has been developed (section 10.2). While Victoria has contributed to the development of the strategy, it does not include any specific initiatives that can be implemented in Victoria in the short term. The recently released summary of progress in implementing the Blair review recommendations, part of the Bethwaite review, stated:

It is generally felt this recommendation [recommendation 3 – nationally consistent risk-based enforcement and compliance strategies and priorities] has either not been implemented, or is in the process of being addressed via the strategies of the ISC. (DHA 2007a, p. 2)

To address inconsistent local government enforcement of food regulation it would also be beneficial if the Department of Human Services (as the appropriate state authority) was to concentrate food regulatory activities on problem areas and high risk activities and demonstrate leadership by providing initial guidance to local government about opportunities to improve outcomes. Local governments could then apply local knowledge and experience to develop surveillance and enforcement strategies tailored to their local areas. While initial surveillance and enforcement guidance should have come from VicFin, there may be scope to introduce a new central database that will meet the original intention of VicFin. As John Ward noted, ‘the current incarnation of VicFin is not fit for [the] purpose’ for which it was established (sub. 59, p. 3).

An alternative to the Department of Human Services preparing and delivering surveillance and enforcement guidelines would be for each council to develop its own surveillance and enforcement guidelines and release them to the public. It would, however, be more efficient if the Department of Human Services developed this initial material in consultation with local government. Public

access to the guidelines and information on the effectiveness of council strategies would also improve incentives for businesses to meet food safety standards and raise community awareness about the importance of food safety.

Public provision of surveillance and enforcement guidelines by the Department of Human Services, and reporting on the implementation of surveillance and enforcement guidelines by councils would also help assure businesses that differences in inspection frequency (within and across local governments) would be based on a set of consistent and transparent principles. This approach is common in other areas of regulation in Australia—for example, the Australian Competition and Consumer Commission provides information about how it approaches enforcement of its (*Trade Practices Act 1974* (Cwlth)) legislative responsibilities. This approach has also been adopted in other countries such as the United Kingdom, where the *Reducing administrative burdens: effective inspection and enforcement* review (the Hampton review) identified principles of inspection and enforcement to be used by regulators to encourage more efficient approaches to regulatory inspection and enforcement, without compromising regulatory standards or outcomes. The principles included the following:

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
- Regulators should be accountable for the efficiency and effectiveness of their activities.
- All regulations should be written so they are easily understood, easily implemented and easily enforced.
- No inspection should take place without a reason.
- Businesses should not have to give unnecessary information or give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- When new policies are being developed, explicit consideration should be given as to how they can be enforced using existing systems and data to minimise the administrative burden imposed (Philip Hampton 2005, p. 7).

The UK Government accepted the Hampton review recommendations, which were based on the above principles. The Commission understands these recommendations are being implemented (HM Treasury 2005, p. 53).

Public access to a council's enforcement strategy could be achieved in a number of ways. Under the *Local Government Act 1989* (Vic.) (s153A), for example, established councils (more than three years old) are required to release an annual corporate plan that highlights the council's corporate objectives and the strategies used to achieve them. Requiring food safety to be a key corporate

objective could be one mechanism by which a council's surveillance and enforcement strategy could be communicated to the public. That said, because a corporate plan is usually a high level document, another more accessible mechanism may be required to ensure public access to a council's surveillance and enforcement strategy.

Draft recommendation 10.3

That the Department of Human Services provide greater leadership to Victorian councils by:

- **assisting councils to develop and publish consistent council inspection strategies to increase understanding of and confidence in the administration of food regulation. To achieve more focused coverage and better, more efficient outcomes, regular food business inspections should be guided by risk assessment**
- **providing robust guidance and training within one year to councils on the interpretation and application of food safety regulation and risk management strategies. Such guidance and training should also address ongoing environmental health officer constraints, including recruitment, career progression and job design.**

11 Community groups and food regulation

11.1 Introduction

The inquiry terms of reference require the Victorian Competition and Efficiency Commission to report on the impact of food regulation on the not-for-profit sector and on community activities such as fêtes and cake stalls. These requirements reflect concerns about the potential for food regulation to have an adverse effect on community activities and volunteering.

While there is no widely accepted definition of the not-for-profit sector and community activities, the Commission refers to the broader community sector for the purposes of this report. This includes activities undertaken by not-for-profit community and charitable groups that involve the sale of food for fund raising or other purposes; examples include community group meetings, school canteens, community food festivals, local sporting club events, cake stalls and sausage sizzles held to raise funds.

The Commission has adopted the approach that regulation should target areas where food risks are greatest and capacity to manage these risks is lacking. Under a more risk based approach to regulation, the key factor shaping the extent of regulation is risk (as broadly defined in chapter 9), not the status of the group providing the food. That said, community groups may have some characteristics that will influence the appropriate form of intervention by state and local governments. Some community groups may lack the knowledge and skills to adequately deal with food safety issues, despite the incentives facing them and their general good will (chapter 2). The impact of this knowledge gap will be negligible for low risk activities such as cooking sausages, preserves and cakes. The effects will be much greater for large community events involving cooking, handling and storing of a diverse range of foods. The nature of the issues facing community groups will influence the nature of government responses to food safety.

This chapter applies a broad approach to examining the effects of Victorian food regulation on the community sector and appropriate risk management strategies, briefly outlining:

- some of the key characteristics of the community sector
- the role of community activities in society and the role of food in fostering such activities
- how Victorian food regulation has been applied to community activities
- the impact of Victorian food regulation on community activities
- how the Commission's proposed regulatory framework would apply to community activities, and outstanding issues.

11.2 Overview of the community sector

The broadly defined community sector comprises a large number of organisations whose diversity of composition and purpose makes a simple definition difficult. A common characteristic of these organisations is that they are mission driven and operate on a not-for-profit basis. They include:

- welfare groups such as St. Vincent de Paul, Anglicare and the Red Cross
- community groups such as social, cultural and sporting clubs established to pursue a shared interest or objective
- volunteer organisations such as the Country Women's Association (CWA), the Country Fire Authority (CFA), the State Emergency Service¹ and neighbourhood houses established to meet particular community needs
- religious groups
- educational and child service institutions
- health and care organisations such as hospitals and aged care facilities
- research organisations
- philanthropic foundations and trusts
- peak bodies representing and servicing community groups, industries and professional groups.

The national economic contribution of the community sector was 3.3 per cent of gross domestic product in 1999-2000 (ABS 2002a).² If imputed wages of volunteers were taken into account, this contribution rises to 4.7 per cent of gross domestic product. Based on these estimates, the size of the community sector is roughly equivalent to the agriculture, fisheries and forestry sector. No corresponding data is available for Victoria, but it is reasonable to assume that the community sector contributes a similar percentage to the state economy. But beyond this, the community sector adds much more to (unmeasured) community welfare and social capital.

The Victorian community sector is extremely diverse in terms of the role of food in the sector, the size of individual groups, and the food safety skills of the workforce. But it is not known how many community groups operate in Victoria or how many of them undertake activities involving the sale of food, because councils are not required to report publicly on the numbers of premises registered by businesses and community groups.

¹ The CFA and the State Emergency Service are included in the Victorian Government accounts and are therefore not strictly in the not-for-profit sector. Because these organisations depend on volunteers for their operations, however, they have been considered in this chapter.

² This figure represents the economic contribution made by the not-for-profit sector, whose coverage corresponds with the sectors listed above (ABS 2002).

A survey of councils (undertaken by the Department of Human Services on behalf of the Commission) found that about 45 000 fixed premises (of which 3400 are estimated to be class 1 by the Commission) and 20 000 temporary food premises were registered by councils across Victoria in 2006 (DHS 2007d). Based on a more detailed breakdown of registrations for seven councils, the Commission estimates that around 65 per cent of temporary registrations are issued to community events, indicating that about 13 000 groups or events were registered as temporary premises in 2006.³

Community groups also operate class 1 and class 2 fixed food premises, and on the basis of discussions with the Department of Human Services, there are probably around 2300 class 1 business premises in the health, aged and child care sectors operated by not-for-profit organisations.⁴ While the number of class 2 fixed premises such as sporting and other club facilities, school canteens and neighbourhood houses cannot be reliably estimated, if 5 per cent of these were premises operated by community groups, there would be a further 2100 class 2 fixed premises. Combining these figures gives around 17 400 fixed and temporary premises and events operated by community groups in Victoria.⁵

The Commission heard from a diverse range of community groups such as sporting clubs and parents' associations, that a key part of their activities involves preparing and selling food to the public to raise funds. The Commission also heard that some groups such as hospitals and aged care centres provide food to clients as part of their activities, while others such as seniors groups provide food to group members who may pay a small fee to be a member of the group. And community groups such as the welfare agencies provide emergency food relief to their clients at no charge.

The types of food-related activity undertaken by community groups are relevant because current Victorian food regulation applies only to activities involving the sale of food. However, the term 'sale' is broadly defined at s4 the *Food Act 1984* (Vic.), and is discussed in more detail in section 11.3.2.

The community sector relies heavily on volunteers, who are invaluable to the success of community organisations. And the types of roles volunteers perform are as diverse as the sector itself. Such roles include volunteer fire fighting,

³ Registration data for 26 councils in 2004 indicated that close to three-quarters of temporary registrations were by not-for-profit (community) groups. Comparable data for seven councils in 2006 indicated that not-for-profit registrations were 65 per cent.

⁴ This is based on the number of hospitals (ABS 2005), the number of aged care homes (DHA 2007) and the number of long day care and preschools (DHS 2006b) operating in Victoria. The numbers are adjusted for estimates of entities operated in the for-profit sector and estimates of child care centres and preschools that do not operate a kitchen.

⁵ This estimate excludes community groups that donate food and hence do not need to register with councils; and those that sell food but choose not to register with councils.

managing sporting clubs, caring for elderly people, helping at school canteens, staffing neighbourhood houses and delivering meals. A study by Soupourmas and Ironmonger (2002) estimated that Victorians volunteered 196.9 million hours in 2000, valued at around \$4.3 billion.

The strength of incentives, and the capacity of the sector to ensure food safety, is likely to vary. Community organisations that operate nationally face strong market incentives to ensure food safety—an incident in Victoria could affect their reputation across the country. Such groups also have the resources to train staff in food safety skills or pay for catering, but food safety awareness and skills within the many small local groups will probably vary more, depending on the experience and background of a few volunteers. The Commission heard from the CWA, for example, that many of its members have many years of experience in preparing food for events (CWA 2006). The Commission also heard that some groups have difficulty finding volunteers with the required food safety skills (sub. 61, p. 1).

11.2.1 Community groups' contribution to social welfare

The Commission heard during its consultations that the community sector provides a number of broad benefits to the community that should be recognised in the design and implementation of Victorian food regulation. The community sector:

- helps strengthen communities by providing an opportunity for people to connect with others, enhancing a sense of belonging and reducing isolation within society. 'Community groups create social capital by providing opportunities for people to come together, volunteer and participate in local activities' (OSISDC 2006, p. xx). Neighbourhood houses, for example, help to reduce the isolation of the elderly and members of culturally and linguistically diverse communities
- provides low cost or free access to goods and services to the needy and those at risk such as the elderly, the disabled, the chronically sick, the homeless and the long term unemployed. One provider of emergency relief estimates that 'between 20 000 and 60 000 people a day do not have access to food and require that food to come from some sort of welfare agency' (One Umbrella 2006)
- provides services to the community that would otherwise not be provided or would be delivered by governments. Community groups make a major contribution in areas such as hospitals, aged care, country fire services, cultural activities and the arts (ACG 2005, p. 11).

11.2.2 The role of food in supporting community activities

Food is important to community groups for a number of reasons. It can be an important way of raising funds, it can bring people together, and it can put welfare groups in touch with people who require their support services. According to the Good Shepherd and Youth Family Service:

... encouraging people who are marginalised to come to a community event almost always relies on the sharing of food. People who are disadvantaged feel valued when they are provided with a ‘free lunch’ ... many community-based events include a lunch or supper, which may also double as a fund raising opportunity in some cases—itself a very important function (sub. 46, p. 2).

Food also supports the activities of emergency response organisations such as the CFA. There are a number of factors including food safety that are important to ensure the wellbeing of workers undertaking heavy work in extreme conditions. In discussions with the CFA the Commission was told Red Cross often coordinates catering arrangements for emergency workers at the request of the CFA, frequently in a rapidly changing setting where the number and location of meals needed also changes rapidly. The food is generally requested and paid for by the CFA and is hence subject to food regulations. But on occasion, members of the community will also donate food. The CFA advised the Commission that catering is often a key concern in postincident debriefings and ongoing planning.

While the provision of food can be integral to many community group activities, Victorian food regulation does not apply to all community activities. Section 11.3 examines how food regulation applies to the community sector.

11.3 Food safety and food regulation in the community sector

The regulation of food safety should focus on activities that involve high food risks, where risk is related to the type of food served, the market disciplines that apply, and the skills and experience of the food provider. While the community sector is subject to similar regulatory arrangements that apply to the commercial sector, a number of special arrangements apply to fund raising events. Before examining how food regulation applies to community groups, it is worth looking at the available evidence on food safety for the sector.

11.3.1 Food safety risk at community events

The food safety risks of community events will depend on:

- the types of food being served
- the skills and experience of those running the event
- the characteristics and number of people who attend the event.

The available evidence on outbreaks of foodborne illness, together with input from participants, indicates that food risks from community activities are greatest for vulnerable people in hospitals or aged care centres and for complex multiday community events where a wide variety of food is provided over a number of days:

- Evidence from the National Risk Validation Project (FSA & MEC 2002, p. 2) identified food service to vulnerable groups such as young children, the elderly and people with weak immune systems as a high risk activity. Victoria's Food Act requires such activities to prepare a food safety program audited by a third party.
- The Department of Human Services reported four⁶ significant incidents of foodborne illness attributable to food at community events in the last nine years (sub. 48, p. 17). All of these incidents occurred at relatively complex events, sometimes run over several days, where a wide variety of food was served by multiple providers. Three of the four events involved groups and individuals from culturally and linguistically diverse backgrounds. It seems likely that many smaller incidents have not been detected and reported.
- A number of inquiry participants argued that many of the small scale events run by community groups involve low risk foods and/or are conducted by groups and individuals with adequate knowledge and capacity to provide food safely. Examples of events identified by participants as low risk included sporting clubs catering for home games (Sports Assemblies Victoria 2006), CWA morning teas (CWA 2006) and sausage sizzles at local shopping centres or at school fêtes (sub. 6, p. 2).

Victorian councils appear to have widely divergent views about food safety risks associated with small scale community events. The Municipal Association of Victoria reported on a workshop held in November 2006 at which council officers considered the issue of sausage sizzles and whether they should be exempt from registration requirements:

Officers were divided about this issue, with some suggesting that this would be appropriate, others citing examples of sausages being left semi-heated for longer than would constitute a safe time. (sub. 41, p. 16)

⁶ A fifth incident was attributed to contaminated water.

Brimbank City Council said the ‘risk of providing a sausage from a hotplate or BBQ onto a slice of bread with tomato sauce is minimal’ (sub. 5, p. 2). In contrast, the City of Stonnington considered that:

... community groups can often pose a higher risk than those run by commercial enterprises. The reasons for this are:

- food handlers may have little or no food safety knowledge or training
- food handlers may have little or no experience in handling large quantities of food
- community groups are less likely to have the resources to provide adequate temporary facilities and equipment, such as hand washing facilities and registered food storage. (sub. 25, p. 6)

Given that the regulatory challenge is to focus resources on areas where food risks (broadly defined) are greatest, the emphasis should be on food service to vulnerable groups and at large and complex community food events. While the first of these areas is currently subject to relatively intensive regulatory scrutiny under the Food Act, both complex and relatively simple community events may be subject to the same regulatory requirements.

11.3.2 Are all community activities subject to regulation?

To obtain registration for its premises, a food business must have a food safety program (FSP), nominate a trained food safety supervisor (FSS), be inspected by the local council as the registration authority, and pay a registration fee (chapter 3). Under the Food Act, a food business includes community activities involving the sale of food:

... a food business means a business, enterprise or activity (other than a business, enterprise or activity that is primary food production) that involves—

- (a) the handling of food intended for sale; or
- (b) the sale of food, regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only. (s4B)

‘Sale’ is broadly defined to include any provision where consideration or commercial benefit might be deemed to have occurred. This broad interpretation means that providers of child care and aged care centres and hospitals are covered by the Food Act because meals are provided in conjunction with other services. A number of activities in the community sector are not subject to regulation under the Food Act, including:

- the charitable provision of food, provided no payment is made by the consumer, including:
 - the donation of food by businesses

- the donation of food by welfare or other organisations providing no charge, including for delivery, occurs
- any other supply of food to which the ‘for sale’ definition does not apply.

While these activities are not subject to food regulation, they are subject to other laws (such as tort law and federal and state laws prohibiting deceptive and misleading conduct) that provide recourse for a consumer who suffers harm.⁷

Food safety programs and supervisors

All high risk (class 1) community group activities are subject to the same regulation as class 1 for-profit businesses. The regulations applying to lower risk (class 2) community events are slightly different from those applying to lower risk food businesses. The following discussion explains how Victorian food regulations apply to events undertaken by community groups.

Community activities involving the sale of food can use an FSP template provided by the Department of Human Services. The Food Safety Program Template: Food Events can be used by groups holding fund raising events, provided:

- groups hold no more than one event per month and less than 12 events per year
- events operate for no more than one day at a time
- the event does not store food on the site of the event between days of operation (DHS 2003, p. i).

These conditions are not explicit in any of the regulations. If the activities of community groups do not meet these conditions, however, they must use the Food Safety Program Template: Retail and Food Service Businesses template available to businesses.

Food businesses are required to designate an FSS who has undertaken approved food safety training; community fund raising events do not need to appoint an FSS. Under s19V of the Food Act the Secretary of the Department of Human Services has granted an exemption from the FSS requirements to:

... any class 2 premises that are used for events that raise funds solely for community or charity causes and not for personal gain from the requirement in s19GA of that Act to have a food safety supervisor. (Government of Victoria 2002, p. 1047)

⁷ Donor provisions in s31F of the Wrongs Act 1958 (Vic.) limit the liability of donors provided the food is given in good faith, is safe to consume at the time of donation and any necessary handling requirements are conveyed to the recipient. Section 37 of the Food Act effectively transfers any liability arising from an act or omission by a volunteer to the community organisation.

Although this exemption appears to apply to any fund raising event, the Department of Human Services advised the Commission that the exemption applies only to community events satisfying the definition of an ‘event’ as described in the Food Safety Program Template: Food Events. When the exemption applies to an annual school fête, for example, community activities must nominate an event coordinator. Unlike an FSS, an event coordinator is not required to have any formal qualifications in food handling hygiene but is required to ‘ensure that all food handlers at the event, whether they are volunteers or paid workers, understand the relevant food safety and safe food handling practices for the tasks they will be carrying out’ (DHS 2003, p. 1).

While the roles of FSSs and event coordinators have been designed to reduce the regulatory burden on groups holding a few events each year, the Commission considers they are unnecessarily complex and contribute to confusion about the regulatory requirements community events need to meet. Table 11.1 provides examples of the regulatory requirements that may apply to different types of community events.

The complexity of the regulatory requirements for community activities contributes to confusion within the community sector. A number of community sector participants at the roundtable held with community groups and through the online survey (section 11.4.1) discussed the burden imposed by training requirements, even though many did not need to appoint an appropriately trained FSS. This indicates that groups are unaware of the exemption from the FSS requirements for community groups, or that councils are influencing community groups to undertake formal training.

Table 11.1 **Victorian registration regulations for various community events**

<i>Event</i>	<i>Register</i>	<i>FSP^a</i>	<i>FSS^b</i>
A tennis club holding a sausage sizzle once a month to raise funds	Yes	R&FS	Yes
If the tennis club held its sausage sizzle every month except July	Yes	Event	No
A local football club selling food to spectators at home games 12 or more times a year	Yes	R&FS	Yes
A local football club serving food after 12 or more matches to players, officials and club members who have paid an annual membership fee	If council considers that the food is 'for sale', same as above; otherwise no registration requirements		
The local bike club using the football club's facilities to hold a one-off curry and rice fund raising night	Yes	Event	No
A school canteen operating less than 12 times a year on a not-for-profit basis	Yes	Event	No
A school canteen operating less than 12 times a year on a for-profit basis	Yes	R&FS	Yes
A community group serving a meal of soup and sandwiches at no charge once a month as part of a program to connect with disadvantaged groups	No	None	No
The same community group serving the same meal for the same reasons but accepting a gold coin donation to support the groups activities	If council considers that the food is 'for sale', the same as above; otherwise no registration requirements		
A barbecue held weekly at a shopping centre to raise funds for community purposes	Yes	R&FS	Yes
A one-day cultural food fair for recently arrived migrants to showcase their diverse cuisines, where meals are paid for	Yes	Event	No
A two-day cultural food fare where patrons pay an entry fee	If council considers that the food is 'for sale', the group must register; otherwise, no registration requirements		

^a Food safety program template: food events or R&FS (template for retail and food service businesses).

^b Food safety supervisor required.

Source: Based on the Commission's understanding of the application of food regulations to community activities.

Practice in other jurisdictions

The Victorian regulatory arrangements for community events are stricter than those in other states and territories. Table 11.2 shows that Victoria is the only jurisdiction to require community events to register, prepare FSPs and require formal training for some events.

Table 11.2 **Interstate regulations for fund raising events**

<i>State</i>	<i>Registration/notification</i>	<i>FSP^a</i>	<i>Food handlers and supervisors</i>
ACT	Notify if food is sold less than six times a year for no more than three consecutive days and is not hazardous ^b ; otherwise register	No	There is no requirement, but appropriate training is encouraged
NSW	Notify only if selling potentially hazardous food ^b	No	No formal training. Knowledge and skills required if dealing with hazardous food
NT	Special arrangements apply; in general registration is not required	No	No formal training. Knowledge and skills commensurate with tasks performed required for hazardous food. Exempt if food is not hazardous
Qld	Organisation must be licensed and premises registered with local government	No	Nominated person for overseeing food safety. No formal training, but knowledge and skills commensurate with tasks performed required if food is hazardous. Exempt if food is not hazardous ^b
SA	Organisation must notify once regardless of number of food activities undertaken	No	No formal training, but knowledge and skills commensurate with tasks performed required for hazardous food
Tas	Organisation must notify if food is shelf-stable and nonrefrigerated, otherwise must register ^b	No	As per Australia New Zealand Food Authority fact sheet and decision path for organisers
VIC	Registration required	Yes	A trained food safety supervisor must be nominated unless the groups holds less than 12 events a year. Otherwise an event coordinator must be nominated who has responsibility for ensuring food safety understanding by food handlers

^a Food safety program. ^b The definition of 'hazardous food' differs between states but generally relates to higher risk foods such as meat, seafood and dairy when not eaten immediately after cooking, or for which safe temperature storage is required.

Sources: ACT Health; NSWFA; DHCSNT 2007a; DHCSNT 2007b; DHCSNT 2007c; Queensland Health 2003; EHBDHS South Australia; DHHS Tasmania; ANZFA 2002b; DHS, 2003.

Labelling requirements

Regulatory obligations governing the labelling of all food sold to consumers in Victoria are established in s16(3) of the Food Act. The Act requires compliance with the relevant standards in the Food Standards Code, which exempts food sold at fund raising events from the labelling requirements applying to businesses (Food Standards Code 2007, standard 1.2.1, clause 2). This exemption is subject to the community event being able to provide information on request or display that information:

- to enable consumers to make an informed choice, including about healthy eating and avoidance of allergens to which they have a sensitivity
- to provide information about the period during which it is safe to eat a food
- to enable food traceability in the event of an adverse incident.

The Department of Human Services event template acknowledges that labelling is not mandatory for fund raising events, and provides recommendations about how to ensure consumers are appropriately informed (DHS 2003, pp. 16-17). The template states, for example, that if labels are not used, a sign or brochure advising customers of foods that can cause allergies be made available. Traceability is handled via the food providers list, which the event coordinator must keep.

Local councils also have differing requirements for the administration of food regulations for community groups and provide differing advice about food labelling and information. This may have contributed to some confusion about the labelling requirements for community events—for example, The President of the Parent’s Association of St Bede’s Primary School (North Balwyn) argued:

Cake stalls—once an easy fundraising option, are now governed by fairly strict regulations on food preparation and labelling of goods. ... strict labelling requirement presents extra work for the fund raising committee and the labelling of ingredients also deters some parents from baking altogether. (sub. 15, p. 1)

Record keeping

All food businesses must keep records about food storage and handling (appendix B). Record keeping requirements for community groups depend on the number of events held; for relatively infrequent events (less than 12 per year), the record keeping requirements are relatively light—the food safety coordinator must prepare a food providers list and maintain checklists about the setup and conduct of the event. Groups holding more frequent events, however, are also required to keep records about the operation and maintenance of processes and equipment such as temperature control and repairs to fridges and ovens.

Registration of premises and kitchens

The Food Act requires a person conducting a food business to operate from registered premises (s35). Accordingly, a group must register kitchens used to prepare food for sale to the public with the council in the municipal district in which it is located. The requirements for high risk (class 1) not-for-profit activities were discussed in chapter 9, and participants identified a number of areas where uncertainties or inconsistencies in interpretation affect community activities.

One such area is the registration of temporary food events. As noted, the Food Act does not make specific provision for temporary food events such as food stalls, fêtes, festivals and sausage sizzles and councils have adopted different approaches to the registration of temporary premises. A survey conducted by the Southern Region Food Surveillance Group, for instance, found that:

A total of 1789 applications for temporary food premises were received by nine councils during 2003. Of these, one council indicated that they issue 12 month permits, two issue single permits, one issues both and two do not issue either. Four councils register premises which are already registered by another municipality. (SRFSG 2004, p. 1)

There is also some confusion about policy relating to the use of unregistered home kitchens to prepare food for cake stalls and other fund raising events. The Department of Human Services and the Institute of Environmental Health Officers (Victorian Branch) advised the Commission that food prepared in unregistered home kitchens and donated to an event is not subject to the Food Act. However it appears that this policy is not understood by some community groups resulting in uncertainty for those groups.

Some participants also raised concerns about differences in the application of registration requirements by councils. Some community groups use kitchens in community centres run by councils or not-for-profit clubs. Technically, if those premises are used to prepare food for a vulnerable group such as senior citizens, and the food is deemed to be for sale, the group would need to register as a class 1 premises. This means the group would need to develop an FSP and have a third party audit. The Moreland City Council noted that:

[An] approach by some councils, which is not uncommon, is to ignore the Food Act requirements as they pose too many practical difficulties to administer. This approach, although convenient, is hardly a sound risk management approach. (sub. 51, p. 6)

11.3.3 Food safety information support for community groups

Given the complexity of the regulatory requirements, good (less complex and more user friendly) information should be available to help community groups understand their obligations, identify and manage food safety risks, and help reduce the burden imposed by food regulations on community groups undertaking events involving the sale of food (discussed in section 11.5.2). Information is currently available from a number of sources:

- Local councils are likely to be the first point of contact for community groups, but based on a review of council web sites it appears the level of support provided by Victorian councils varies. Some rely solely on the Food Safety Program Template: Food Events, for example, while others such as the City of Greater Dandenong are active in providing education programs and other support to community groups.
- The Food Safety Unit (FSU) of the Department of Human Services also has a role in providing information on food safety. The FSU does not provide any links specifically for community groups on its web site.
- Some resources have been developed at the national level. Examples include the Looking After Our Kids (DHA 2002) resource for school canteens, developed to help introduce the national Food Standards Australia New Zealand (FSANZ) Food Standards Code in 2002, but which is no longer publicly available in Victoria. FSANZ has also developed a series of fact sheets addressing most food safety issues relevant to community groups. Links to these and other national resources have not been maintained because, the Commission understands, they were viewed as transitional resources and food safety programs now provide all the necessary food safety information.

Less complex and more user friendly information resources would help reduce the burden imposed by food regulations on community groups that undertake events involving the sale of food (section 11.5.2).

11.3.4 Implementation and enforcement by councils

A number of differences in the way councils apply food regulations to community activities involving the sale of food have been highlighted. The main differences were registration requirements for temporary premises and kitchens, how councils interpret 'for sale' under the Food Act, and the amount of information on food safety regulation provided to groups. These differences have caused confusion and uncertainty for community groups. As noted by the Victorian Branch of the Australian Institute of Environmental Health:

Often community groups are confused with various council requirements when applying for an application to sell food because each council has their own procedure. (sub. 10, p. 8)

Enforcement also varies significantly across councils. Considerable disparity in the attitudes of local authorities was noted by participants at the community group roundtable. For example Martin J Cowling noted that City of Melbourne inspects regularly while One Umbrella also operates a kitchen in another municipality where they were told by the environmental health officer (EHO) that inspection was not necessary because they are a community organisation (One Umbrella 2006). Some councils, such as Brimbank City Council acknowledge priority is not given to enforcement in the community sector (sub. 5, p. 2). It is not clear whether differences in the way councils implement and enforce existing food regulations reflects different assessments of the risks for such events, or simply differences in capacity to meet obligations.

11.4 Effects of food regulation on community activities

Inquiry participants submitted that the administration of Victorian food regulation has had a number of effects on the activities of the community sector, specifically:

- the costs of providing community activities has increased, thereby reducing the funds raised to support such activities
- changes have occurred as to how fund raising events involving food are conducted
- volunteer resources have been diverted to handle administrative matters.

Much of the information provided to the Commission on this issue was anecdotal, and assuming these examples apply to all community activities is problematic because the Commission heard that some groups ignore the regulatory requirements. A number of characteristics of the community sector however, suggest that food regulation and its administration may be particularly burdensome for this sector. Two types of groups stood out as being particularly affected by the food regulations:

- the small grassroots organisations such as local sporting clubs and neighbourhood houses—key characteristics of these groups are their small size, their reliance on a rapidly changing volunteer workforce, and the importance of food to group cohesion and fund raising
- the organisations such as charitable groups servicing the needy in the community and providing emergency relief to the disadvantaged, and delivered meals organisations—for a number of these organisations, the regulatory requirements are particularly onerous because they must meet the stricter regulatory requirements that apply to vulnerable persons.

11.4.1 Cost of meeting Victorian food regulations

The cost to the community sector of meeting Victorian food regulations is difficult to estimate because of the many factors affecting it and the lack of information about the sector and its activities. Many factors will influence the total cost of food regulations, including:

- the number of community groups engaged in the ‘sale’ of food
- the characteristics of community groups and the nature of the food-related activities undertaken by them. As noted, the community sector is highly diverse, comprising large and small groups that undertake a wide range of food-related activities. Community groups experiencing high turnover of skilled staff may need to continually invest in understanding and complying with regulatory requirements. While larger groups may encounter initial set up costs as procedures and systems are established, the ongoing costs will be much lower than for a small group
- the type of regulatory obligations the groups are required to meet—for example, those that provide catering to vulnerable community sectors must prepare their own FSPs and undertake a third party audit. Costs to this group will be greater than for small local groups such as a church holding a fête or a sporting club serving food to members
- whether food regulation has any indirect effects such as modifying the types of food-related activities undertaken by community groups and deterring people from volunteering
- levels of compliance with food regulation. Costs to community groups who do not comply with food regulation will obviously be low or zero, although some may have devoted time to understanding the requirements.

The Commission is unaware of previous attempts to quantify the costs of food regulation to the community sector. To estimate the costs to the community sector of meeting Victorian food regulations, the Commission undertook a simple online survey (with Our Community) of community groups about the impact of food regulations (box 11.1).

Box 11.1 Online survey of community groups

Between December 2006 and January 2007, the Commission undertook an online survey of the effects of food regulation on community groups via the Our Community web site, an online resource for community and not-for-profit groups. People accessing the web site were invited to complete a brief survey (22 questions). The questions sought information about the respondent’s community group, estimates of the administrative and compliance costs of meeting the regulations (including the value of time spent understanding and meeting the requirements), information on the level of compliance with regulatory requirements, and suggestions for improvement. Non-Victorian groups were also invited to participate to provide a basis for comparison.

Box 11.1 Online survey of community groups (continued)

Analysis of Victorian responses

Eighty-three people completed the survey, with 56 from Victoria. More than half the respondents represented groups with less than five staff (paid and unpaid), but varied in size of membership, funding base and focus areas. While the small number of responses makes it difficult to interpret the results, the survey highlighted:

- (1) that the number of hours devoted to meeting food regulations does not increase in proportion to the income generated by groups, indicating that the regulatory burden is relatively higher for small groups
- (2) that the reported annual costs of meeting food regulations vary from less than \$100 for some groups to several thousand dollars, with most groups spending between \$101 to \$750 per year.

\$ Cost ^a	<100	101–300	301–750	751–1500	1501–3000	>3000
Number of organisations	6	16	18	5	5	6

^a Cost denotes financial outlays for staff, equipment and training, and where applicable, the dollar value of unpaid time as assessed by the respondent.

Just over 70 per cent of respondents indicated that their group complied with regulations all of the time (23 per cent) or most of the time (47.3 per cent). A further 20 per cent complied some of the time, less than 3 per cent said they never complied, and 7 per cent said they were unaware of the food regulations.

Opinions on current regulation

Most respondents considered Victorian food regulation to be excessive. Fifty per cent of Victorian groups felt regulation was ‘excessively burdensome’, but only one non-Victorian respondent felt this way.

Respondents were asked to indicate whether food regulation had led them to alter their activities. Over a quarter of Victorian respondents indicated that because of the costs of regulation, they had cancelled or reduced the number of food-related events they organised. Common problems identified were an inability to ensure trained volunteers, approved environments or appropriate equipment. None of the groups had faced legal claims relating to a food incident.

Suggestions for improvement

The most frequent suggestions were to improve information and resources, and to provide free training (69 per cent) or to abolish the regulations for community groups (59 per cent). Cost reduction appeared to be a comparatively minor concern, with only 14–18 per cent of respondents suggesting cost reducing improvements. These responses suggest there is a great need to make information and training accessible to community groups as a primary way of addressing food safety.

Source: Our Community 2007.

The survey of community groups asked respondents to estimate the costs of meeting existing food regulation requirements, with costs defined to include financial outlays on staff, equipment and training, and where applicable, the dollar value of unpaid time. On the basis of the 56 responses received from Victorian community groups, the Commission estimated that it would cost community groups between \$324 and \$750 per year to comply with Victorian food regulations. The lower figure reflects the costs of ‘just’ understanding the regulatory requirements and completing and submitting the relevant paperwork to councils.⁸ The upper figure reflects the annual costs to a group of meeting the costs of understanding and complying with regulatory requirements plus the costs of training to become an FSS.⁹ No allowance has been made for any changes to premises (such as installation of equipment) or activities because of the need to comply with food regulation. This upper figure also assumes that the group uses the standard template and thus does not pay for third party audits.¹⁰

As noted, councils do not publicly report on how many premises (including community activities) they register. In an effort to examine the total administrative costs of Victorian food regulations, the Commission has assumed that there are around 17 400 community events or premises registered in Victoria, comprising:

- 13 000 temporary food events and premises operated by community groups
- 2300 registered class 1 premises covering delivered meals services, and the hospital, aged and child care sectors
- 2100 registered class 2 fixed premises operated by sporting clubs, schools, and other community groups.

Based on these estimates for community groups and the average costs of complying with food regulations (\$324 to \$750), it further estimates that complying with Victorian food regulations costs Victorian community groups between \$5.6 million and \$13.1 million per year.

⁸ The lower cost assumes that a community group member spends six hours a year on administrative activities relating to food regulation and that councils do not charge registration fees. Based on the methodology recommended by the VCEC (2006a) a rate of \$54 per hour has been used to cost staff time in this report. Applying this figure yields an annual cost of \$324. The actual time needed to meet regulatory requirements will vary depending on the scale of events, the types of food sold and the resulting complexity of the FSP. The lower figure also assumes that no formal training for volunteers is required.

⁹ According to the Infocus Management Group (sub. 38, p. 5) training costs are from \$200 to \$400, not including costs of being absent. It is assumed that due to staff turnover, each community group has to train one FSS per year.

¹⁰ Infocus Management Group (sub. 38, p. 5) stated that an annual third party audit would cost around \$400, excluding any staff time preparing for and following-up the audit.

The Commission's preliminary estimates of the costs to community groups of Victorian food regulations are based on a range of assumptions. The Commission encourages feedback from participants on the reasonableness of both the individual and aggregate estimates.

It is likely that the burden of food regulation falls disproportionately on small community groups. Participants at a community group roundtable argued that the preparation of FSPs involved excessive paperwork, even with the simplified events template. This work was viewed as disproportionate to the size of the event for many of the activities of smaller organisations (such as local sporting clubs) or at the unit level of organisations such as the Red Cross. This concern was also shared by some councils, with Brimbank City Council arguing that:

The burden on these groups in completing the required FSPs, training volunteers, paying registration fees and on council to process applications and inspect the activities (mostly on weekends) exceeds by far the risk of the activity causing a food safety issue. (sub. 5, p. 2)

It was also suggested that many smaller organisations are focusing on meeting the requirement to complete the template without necessarily absorbing the underlying food safety message. This was the view of the City of Stonnington in relation to food businesses more generally:

Rather than utilising the template document as a standard operating procedure manual, as was intended, many proprietors see the FSP purely as a record keeping task. (sub. 25, p. 3)

The costs imposed by Victorian food regulation need to be viewed in the context of the total regulatory burden faced by organisations in the community sector. There are also compliance responsibilities under a range of national, state and local laws: significant among these are occupational health and safety and WorkCover. John Minchinton from Meals Victoria, for example, noted at the roundtable that:

Our small business probably has four or five different auditors come through the place every year for various different things, and each of those auditors wants to see a paper trail. In my office now I have a wall ... full of folders of paper trail to show those auditors we're actually keeping records. (Meals Victoria 2006)

11.4.2 Broader effects of food regulation

The Commission's estimates of the total administrative costs associated with food regulations do not take account of the broader effects of regulation on community groups. Inquiry participants considered that Victorian food

regulation has had a number of broader effects on community groups, particularly on volunteering and on the overall vitality of the community sector:

- Some groups reported that they conduct some events differently, including paying outside caterers and keeping events private rather than engaging more widely with the community; in other cases, groups have stopped undertaking some activities altogether—for example, both the Walwa Golf Club (box 11.2) and the Wangaratta Cycling Club no longer run a Saturday morning barbecue fund raiser (sub. 61, p. 1).
- Negative and positive impacts on volunteers were reported—for instance, Phil Clarke (sub. 34, p. 2) indicated that some volunteers are frustrated by the need to meet regulatory requirements which they perceive to be overly bureaucratic and which add little to food safety. But Kathy Landvogt from Good Shepherd Youth and Family Service noted that the training requirements of food regulation can provide a pathway to education and employment opportunities for young volunteers (Good Shepherd Youth and Family Service 2006).
- The Commission also heard that some groups and individuals ignore the regulations. While the level of noncompliance is uncertain, the Commission heard anecdotally that it is widespread among smaller groups: the Our Community online survey for the Commission indicated that 30 per cent of respondents did not comply or complied only some of the time. Such noncompliance (which some authorities encourage in part through the perception that ‘no one’s watching’ as noted by Shelley Mulqueen (Sports Assemblies 2006)) undermines the intent of the regulations and brings them into disrepute.

Although examples provided by participants illustrate how excessive food regulation can affect the activities of community groups, particularly small ones, evidence suggests that these effects have not been sufficient to inhibit the sector from growing. Rather, it suggests that the number of temporary food premises registered by councils has increased significantly over the last few years. Surveys of councils undertaken by the Department of Human Services in mid 2004 and the beginning of 2007 suggest registrations of temporary temporary premises have doubled from around 10 000 to approximately 20 000 (DHS 2007d) over that time.

The surveys show that community activities comprised around 65 per cent of the total number of temporary premises in early 2007 compared with around 75 per cent in mid-2004. This indicates that the number of registered temporary community activities has increased by around 70 per cent over the last 30 months, although this may be an overestimation of the actual growth in temporary registrations by community groups. Apart from possible limitations of the data, the growth in temporary registrations may be due to more active

enforcement by councils and/or greater awareness and compliance on the part of community groups. And the nature of the activities undertaken and the capacity of groups to raise funds may be affected in ways that the data does not reveal. The growth in registrations, however, does not negate concern that the regulations restrict the activities of community groups.

Box 11.2 Walwa Golf Club

Walwa Golf Club in north eastern Victoria has a playing membership of 20 and a further 80 social members. The club relocated 15 years ago and established new premises, including a new course and club facilities, following a fire at the previous premises. The new club house included a kitchen with stainless steel surfaces and new refrigeration and cooking appliances.

A member of the local community cooked on Saturday evenings, serving up to 40 meals to members and their guests. They enjoyed a variety of occasions, such as fish nights, depending on what had been sourced from Melbourne markets or local suppliers.

The club rooms are air conditioned and safely positioned, and are an ideal function facility for local celebrations. The club took advantage of these attributes to raise funds to help meet the \$300 000 cost of its new facilities.

When amendments to the food regulations came into effect, the club discovered that it would need to spend money on the kitchen to comply, including installing a separate hand washing sink. Together with the cost and inconvenience of training and other compliance requirements, the club decided to cease its Saturday meals and the hiring of the club rooms as a function venue.

After play on Saturday evening, members and visitors can now purchase only prepackaged foods such as chips and biscuits. Members can, however, self cater in the club facilities by bringing along precooked foods or cooking their own food using club facilities. According to Walwa Golf Club, members are at greater food safety risk from cooked food being brought to the venue and shared by members or from less healthy food being consumed. A fund raising source is also no longer available to the club because of concerns about food regulations.

Source: Straughton, S. 2007.

11.5 Effects of proposed reforms

The discussion so far has found that Victorian food regulations have imposed costs on the community sector. The administrative costs of regulation for the sector are difficult to estimate but may be between \$5.6 and \$13.1 million (section 11.4.1). These estimates exclude any allowance for possible indirect effects such as groups stopping or altering their food-related activities and discouraging volunteering.

Evidence suggests that the highest risks in community activities relate to food service to vulnerable groups in hospitals, aged care facilities and child care centres. Irrespective of whether they are run by commercial or community groups, these businesses are subject to stricter regulatory requirements than most community activities. Large and complex community food events are also relatively high risk, and are subject to the same regulatory requirements as smaller and simpler community food events such as sporting club events, sausage sizzles, cake stalls, and school fêtes. It seems, therefore, that there is scope to reduce the regulatory burden on low risk community activities and encourage a greater focus on higher risk activities such as large and complex food events.

11.5.1 Simplifying regulation for community activities

Several sources of confusion and inconsistent council approaches are apparent, including the use of event FSP templates, exemptions from FSS requirements and council approaches to enforcing regulatory requirements. Chapter 9 outlined a number of reforms to food regulation to reduce the burden imposed by Victorian food regulations, without undermining the objectives of the regulations: the Commission considers most of the confusion and inconsistencies would be resolved by adopting these measures. Remaining concerns could be addressed by developing an education and information strategy for the community sector.

Consistent with the general principle that regulation should focus on areas of high risk to health and safety, the Commission has not put forward specific changes to food regulations that would apply only to community activities. Instead, food activities in the community sector would be assigned to the risk based classification system outlined in chapter 9, consistent with commercial businesses. A further regulatory instrument—information and education—is added for community activities (table 11.3).

Initial assignment of food activities in the community sector would be made by the Department of Human Services based on inherent risk (broadly defined), and incentives and capacity to handle that risk. There should be scope to reward good performers who demonstrate a sustained delivery of safe food events, moving them from class 2 to class 3. Conversely, poor food safety performance would result in events run by a group being moved from class 3 to class 2.

Under the proposed framework, the large number of low risk activities undertaken by community groups, such as school fêtes, sausage sizzles and catering by community sporting clubs, would be assigned to class 3 and would thus face minimal regulatory requirements. High risk food businesses operated by community groups and catering to vulnerable populations would continue as class 1. Medium risk activities, such as food festivals drawing large crowds, would

be initially assigned to class 2. These proposals would reduce the administrative burden of food regulation for the community sector through:

- simpler registration requirements
- simpler FSP templates for class 2 food businesses and certification (that basic food safety practices are understood for class 3 businesses)
- removing the FSS requirements
- reduced record keeping requirements for class 2 food premises and removal of record keeping requirements for low risk activities
- mandatory annual council inspections of all registered food premises replaced by a system of lower frequency inspections targeted at specific areas.

Table 11.3 Assigning regulatory instruments according to food safety risks for community activities

<i>Instruments</i>	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	<i>Class 3 food premises</i>
Food safety risk	High	Medium	Low
Examples	Hospitals, aged care facilities, child care centres	Food festivals	Cake stalls, sausage sizzles, school fêtes, school canteens
Registration	Yes, but with simplified paperwork	Yes, but with simplified paperwork	Yes, but with simplified paperwork
FSP	Yes, customised	Yes, simple templates	Certification
FSS	No	No	No
Training for food handlers	Councils can impose training orders	Councils can impose training orders	Councils can impose training orders
Record keeping requirements	Yes	More flexibility	More flexibility
Council inspection or compliance check	Capacity to inspect	Regular inspection (e.g. annual minimum)	Occasional inspection
Third party audit	(Compulsory) performance based	No	No
Food sampling	High frequency	Moderate frequency	Very low frequency
Information and education	Basic	Event specific resources	Basic safe food handling information

Such changes will reduce the administrative burden of food regulation on councils and community activities because they are designed to allow councils to focus regulatory effort on areas where food risks are greatest, thereby improving

overall food safety outcomes. In some respects, the changes proposed by the Commission also reflect what is happening in practice. As noted (section 11.3.4), a number of councils do not inspect community events because they consider such events to be low risk and because many are held on weekends when the costs of sending out environmental health officers would be relatively high. Many small community groups are also choosing to ignore the regulatory requirements (section 11.4.2), and councils appear to adopt different approaches to actively encouraging compliance.

Under the Commission's proposals, the regulatory requirements for high risk community activities (class 1 premises) will remain in line with those for comparable commercial businesses and will be higher than for other community activities. There would be no need for annual council inspections, which would occur only in the event of an adverse third party audit or complaint.

The effects of the Commission's proposals for simplifying food regulation would be greatest on low risk community activities such as sporting club events, sausage sizzles, cake stalls, and school fêtes. Organisers of these events would only need to certify that they understand basic food safety requirements and complete simplified registration paperwork. There would be no FSP or other regulatory requirements but information and training resources would be available to meet community groups' needs and councils could impose training orders if inadequate food safety practices were evident.

Benefits of the proposed changes include reduced administration costs for community groups and a reduction in the adverse effects on activities that have been attributed to the current regulations. Under the proposals, information and education will be the preferred instrument to mitigate food safety risk in the sector. Potential costs of the proposals would be any greater food safety risk arising from this change. The Commission considers that appropriate information and education resources can be at least as effective as alternate instruments in managing food safety risk. There are also costs associated with developing information and training resources (section 11.5.2).

The cost savings from the proposed changes reflect the estimates developed in section 11.4.1. The Commission anticipates that community groups conducting temporary food events or operating class 2 fixed premises will spend one-half of the time now spent meeting the present regulations if the proposed changes are implemented. Time will instead be spent on obtaining relevant information and will result in savings of between \$2.8 and \$6.5 million for these groups in the first year. There will be an additional advantage resulting from greater certainty regarding the intended application of the regulations.

Draft recommendation 11.1

That the Victorian Government address concerns within the community sector about the lack of clarity and inconsistent council approaches to administering regulations, by applying the recommendations outlined in chapter 9 to streamline and reduce regulatory hurdles for community groups. The proposed approach is set out in table 3 of the overview and table 11.3 in chapter 11.

11.5.2 Supporting education and information for community activities

Under the Commission’s proposed changes to Victorian food regulations, responsibility for ensuring food safety remains where it currently resides—with the organisations providing food.¹¹ State and local governments also have a responsibility to ensure that businesses and community groups have access to training opportunities and information about food safety hazards and ways to minimise them.

The Commission’s proposals would place more of a responsibility on councils to identify potentially higher risk community activities such as large scale community food events. While these events would be subject to the same requirements as simple low risk food events, councils would need to work with the organisers of higher risk activities to ensure food safety risks are addressed. Some councils already operate in this manner—for example, the City of Greater Dandenong has developed a set of awareness raising and educational procedures for dealing with complex food events (box 11.3). The Commission understands that Dandenong has taken this approach because it has given food safety a higher priority than some other councils and because it has a particularly large representation of culturally and linguistically diverse groups holding community food events.

¹¹ As noted in chapter 3, ss11–12 of the Food Act stipulate that the operators of food premises have a responsibility to ensure that food for sale is safe and suitable for human consumption.

Box 11.3 **Best practice food regulation for community groups**

The City of Greater Dandenong has established risk based policies and procedures that enable community groups to hold quite complex food events safely. Each year around 18 food festivals draw attendances of more than 200 000 and most of the events involve organisations from culturally and linguistically diverse backgrounds.

Council requires groups who want to hold a stall at an event to attend an information night to explain food safety regulatory requirements such as registration, FSPs and FSS requirements. The council has developed a compact disc that provides food safety and compliance information relevant to all food businesses, including those from the community sector, in a friendly and accessible format. The council also considers the track record of community groups when advising on the regulatory requirements that need to be met.

Sources: City of Greater Dandenong (sub. 60) and discussions with council officers.

Although information on food safety is provided at the national, state and local levels, the Commission considers that there is ample scope to improve the range of information that is available, the consistency and quality of that information, and the means by which it is delivered. There are a number of options for improving support to community groups, including developing a coordinated resource centre for community groups to access information on how to conduct a safe food event. Information available from the centre would include resources to enable risk management at community events that involve the sale of food, including:

- fact sheets detailing the essentials of safe food handling, including personal hygiene and the danger temperature zone
- event kits for the safe conduct of events such as cake stalls, sausage sizzles and plated meals that provide a checklist of good food handling practice appropriate to a particular type of event
- fact sheets identifying hazardous foods, that is, those for which the danger temperature zone applies
- fact sheets detailing safe transport and storage procedures for events where this is necessary
- fact sheets detailing how to provide ingredient information for those with allergen sensitivities and manufacture/use by label or other means
- posters for display onsite at an event to remind food handlers of safe practices
- translations for groups from culturally and linguistically diverse backgrounds
- links to sources of further assistance in managing food safety risk at community events.

Inquiry participants and responses to the Commission's joint survey of community groups suggest that the community sector needs additional information and support. A common message from the community sector was that simple information material is likely to be more effective in conveying messages than large volumes of complex material. Developing improved resources for community activities can also be a low cost and effective way to raise awareness of food safety issues and strategies for addressing risks. The knowledge base necessary to develop these resources already exists and the costs of developing further resources will depend on their nature and the media used. Documents can be made available on web sites and more expensive formats (such as video versions of the fact sheet topics) are possible, but given the intended audience and the limited time volunteers have, the most effective format for delivering key messages is also likely to be the lowest cost.

Whatever the form or types of information provided, there is a strong case for involving community groups in their development to ensure the messages are accessible to the sector. Importantly, once these resources are developed, they should be available through a well publicised central location to ensure that community groups are aware of their existence. Involvement of peak bodies within the sector would be a low cost way of disseminating that information.

Draft recommendation 11.2

That the Victorian Government develop an education and information strategy for the community sector, and particularly for high risk food events:

- **outlining the roles and responsibilities of the Department of Human Services, councils and relevant community sector bodies**
- **identifying main areas in which education and information can aid more informed organisation and management of community events involving the sale of food**
- **identifying the types of material and delivery mechanisms to be developed for community events, with an emphasis on them being accessible and user friendly**
- **outlining arrangements for funding these activities.**

Appendix A: Consultation

A.1 Introduction

In keeping with its charter to conduct extensive consultations during public inquiries, the Victorian Competition and Efficiency Commission advertised the inquiry into food regulation in Victoria in the major metropolitan and regional newspapers in September 2006. Following the Treasurer's announcement of the terms of reference on 14 September 2006, the Commission published an issues paper in October 2006, which outlined:

- the scope of the inquiry
- how to make a submission
- the Commission's consultation processes
- the inquiry timetable.

The issues paper invited inquiry participants to make submissions. The Commission received 63 submissions before the release of the draft report (section A.2).

The Commission held three round table meetings in December 2006 with a range of participants from business, community and government organisations (section A.3). The Commission also held discussions with a wide range of organisations, which included targeted consultations in the regional cities of Warrnambool and Traralgon (section A.4).

The Commission has appointed consultants and contractors to assist with aspects of the inquiry:

- Inquit Pty Ltd prepared a discussion paper on the impact of international regulation on the Victorian food industry.
- Dench McClean Carlson prepared a paper on the impact of food regulation on the dairy industry.
- KPMG surveyed food businesses to identify and measure the cost of food regulation in selected industries and identify where and how the regulatory burden could be lessened.

To encourage public debate on the draft report, the Commission has made these documents available on its website at www.vcec.vic.gov.au. While the views presented are those of the consultant or contractor, the Commission's position on the issues covered in these reports is reflected in this draft report.

A.2 Submissions

The invitation to make submissions was open to members of the public, community groups, employees, businesses, industry associations, Victorian Government departments and agencies, and local government. The Commission received 63 submissions (table A.1). The submissions are public documents that can be viewed on the Commission's website.

Table A.1 **Submissions received**

<i>Participant</i>	<i>Submission no.</i>
Chapman, N.R. (Ms)	1
McGorlick, Sue (Ms)	2
Mitchell Shire Council	3
Grant, Graham (Mr)	4
Brimbank City Council	5
Kernow Environmental Services Pty Ltd	6
Coles Group Limited (formerly Coles Myer Ltd)	7
Lorenzi, Dianne (Ms)	8
OZ Bin Cleaning	9
Australian Institute of Environmental Health—Victorian Branch	10
Joe White Maltings Pty Ltd	11
City of Greater Dandenong	12
City of Port Phillip	13
Garry, Patrick (Mr)	14
Parents Association of St Bede's Primary School	15
City of Melbourne	16
Australian Food and Grocery Council	17
Moonee Valley City Council	18

Table A.1 Submissions received (continued)

<i>Participant</i>	<i>Submission no.</i>
Knox City Council	19
Cadbury Schweppes	20
Ward, John (Mr)	21
Australian Medical Association—Victoria	22
Dairy Australia	23
Victorian Rock Lobster Association	24
City of Stonnington	25
Australian Dairy Products Federation	26
Regional Development Victoria	27
Wellington Shire Council	28
City of Wodonga	29
Pierotti, Roger (Mr)	30
City of Whittlesea	31
Australian Industry Group—Victoria	32
Maroondah City Council	33
Clark, Philip S. (Mr)	34
Australian Retailers' Association	35
Restaurant and Catering Victoria	36
Wyndham City Council	37
Infocus Management Group Pty Ltd	38
Flour Millers Council of Australia	39
Victorian Farmers Federation	40

Table A.1 Submissions received (continued)

<i>Participant</i>	<i>Submission no.</i>
Municipal Association of Victoria	41
City of Yarra	43
Jackson's on Middle Park	44
Jackson's on Middle Park (supplementary to sub. 44)	45
Good Shepherd Youth and Family Services	46
Australian Beverages Council	47
Department of Human Services	48
CHOICE (formerly Australian Consumers' Association)	49
Woolworths Limited	50
Moreland City Council	51
George Weston Foods Limited	52
Consumer Affairs Victoria	53
Obesity Prevention Policy Coalition	54
MasterFoods Australia New Zealand	55
Department of Primary Industries	56
VicHealth	57
Wilbur-Ham, Hugh (Mr)	58
Ward, John (Mr) (supplementary to sub. 21)	59
City of Greater Dandenong (supplementary to sub. 12)	60
Wangaratta Cycling Club Inc.	61
Apostle Whey Cheese	62
Confectionary Manufacturers of Australasia Limited	63

A.3 Round tables

The Commission held three round tables with a range of business, government and community organisations in December 2006 to discuss the effectiveness of the regulatory environment and the development of best practice options. Table A.2 lists participants in the business round table held on 6 December 2006.

Table A.2 Business round table participation

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Joanne Butterworth-Gray	Chief Executive Officer	Victorian Wine Industry Association
Helen Dornom	Manager Technical Issues Group	Dairy Australia
David Edwards	Deputy Chief Executive Officer	Australian Retailers' Association
Fiona Fleming	Consumer & Regulatory Affairs Manager	George Weston Foods Limited
Tony Gentile	Chief Executive Officer	Australian Beverages Council (and Victorian Beverages division)
Wendy Jones	Chief Executive Officer	Restaurant and Catering Victoria
Keith Lloyd	Policy Advisor (Economics)	Victorian Farmers Federation
Ross McGowan	Executive Director	Seafood Industry Victoria
Paddy O'Sullivan	General Manager Public Affairs	Australian Hotels Association Victoria
Tanya Pittard	Manager—Chicken Meat Group	Victorian Farmers Federation
Dr David Roberts	Deputy Chief Executive	Australian Food and Grocery Council
Chris Turner	Director President	Inghams Enterprises Australian Chicken Meat Federation
Robert Williams	Group Compliance and Regulatory Affairs Manager	George Weston Foods Limited

Table A.3 lists participants in the community round table held on 8 December 2006.

Table A.3 Community round table participation

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Martin Cowling	Chief Executive Officer	One Umbrella
Diane Embry	Chief Executive Officer	Volunteering Victoria
Kathy Landvogt	Social Policy Researcher	Good Shepherd Youth and Family Service
Noela MacLeod	State President	Country Women's Association of Victoria Inc.
Nelson Mathews	President	Meals Victoria
Alan Matic	Marketing Manager	Our Community
John Minchinton	Treasurer	Meals Victoria
Shelley Mulqueen	Chair	Sports Assemblies Victoria
Susan Pascoe (observer)	Commissioner	State Services Authority

Table A.4 lists participants in the government round table held on 12 December 2006.

Table A.4 Government round table participation

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Anne Astin	Chief Executive Officer	Dairy Food Safety Victoria
Carol Bate	Assistant Director, Food Safety and Regulatory Activities	Department of Human Services
Brian Casey	Chief Executive	PrimeSafe
Margaret Darton	Manager, Food Policy	Department of Primary Industries
Geoff Fraser	President, Victorian Branch	Australian Institute of Environmental Health
Catherine Gay	Special Advisor, Food Regulation Policy Section	Department of Health and Ageing
Paula Giles	Director, Policy Projects and Commercial	Municipal Association of Victoria

Table A.4 **Government round table participation**
(Continued)

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Jane Harris	Senior Policy Advisor	Consumer Affairs Victoria
Hon. Rob Knowles	Chairman	Food Standards Australia New Zealand
Clare McArdle	Director, Sector Development	Department for Victorian Communities
Peter Rea	Manager, Food and Related Industries	Department of Innovation, Industry and Regional Development

A.4 Stakeholder consultations

The terms of reference required the Commission to consult with key interest groups and affected parties (including the business and community sectors) and to draw on the knowledge and expertise of relevant Victorian Government departments and agencies. Stakeholders consultations (table A.5) included organisations that attended one of the round tables listed in section A.3 (RT), and regional meetings in Colac (CL), Warrnambool (WR) and Traralgon (TR).

Table A.5 **Stakeholder consultations**

<i>Category</i>	<i>Organisation/individual</i>
International	New Zealand—Ministry for Economic Development New Zealand—New Zealand Food Safety Authority
Commonwealth Government	Food Standards Australia New Zealand (RT) Australian Quarantine and Inspection Services Department of Agriculture, Fisheries and Forestry Department of Health and Ageing (RT) Mr Mark Bethwaite, Independent Food Regulation Review Productivity Commission—Office of Regulation Review
Other government	New South Wales Food Authority

Table A.5 **Stakeholder consultations** (continued)

<i>Category</i>	<i>Organisation/individual</i>	
Victorian Government	Consumer Affairs Victoria (RT)	
	Dairy Food Safety Victoria (RT)	
	Department of Human Services (RT)	
	Department of Innovation, Industry and Regional Development (RT)	
	Department of Primary Industries (RT)	
	Department for Victorian Communities (RT)	
	Food Safety Council	
	PrimeSafe (RT)	
	Parliament of Victoria Outer Suburban/Interface Services Development Committee	
	Regional Development Victoria	
	State Services Authority	
	Business	ACIL Tasman
		Australian Beverages Council (RT)
Australian Chicken Meat Federation (RT)		
Australian Food and Grocery Council (RT)		
Australian Hotels Association Victoria (RT)		
Australian Retailers' Association (RT)		
Apostle Whey Cheese (WR)		
Burra Foods Pty Ltd (TR)		
Cadbury Schweppes		
Ceres Natural Foods Pty Ltd (Pureharvest) (TR)		
Coles Supermarkets (then Coles Myer)		
Costa Group of Companies		
CRF (Colac Otway) Pty Ltd (CL)		
Dairy Australia (RT)		
Fyna Foods Australia Pty Ltd		
George Weston Foods Limited (RT)		

Table A.5 Stakeholder consultations (continued)

Business	Great South Coast Food and Wine Group (WR)
	Inghams Enterprises Australia Pty Ltd (RT)
	Masterfoods Australia New Zealand
	Metcash Trading Limited
	National Foods Limited
	R. Radford and Son Pty Ltd (TR)
	Restaurant and Catering Victoria (RT)
	Ron Hull and Associates
	Seafood Industry Victoria (RT)
	SPC Ardmona Operations Ltd
	Timboon Fine Ice Creams (WR)
	Unibic Australia Pty Ltd
	Vegco Pty Ltd (TR)
	Victorian Wine Industry Association (RT)
	Victorian Employers' Chamber of Commerce and Industry
	Victorian Farmers Federation (RT)
	Ward, John (Mr)
	Warrnambool Cheese and Butter Factory Company Holdings Ltd (WR)
	Woolworths Limited
	Association of Network Houses and Learning Centres
Community	CHOICE (formerly Australian Consumers Association)
	Australian Institute of Environmental Health (RT)
	Australian Red Cross
	Country Fire Authority
	Country Women's Association of Victoria Inc. (RT)
	Glass Street Kindergarten
	Good Shepherd Youth and Family Service (RT)
	Hampton Primary School

Table A.5 **Stakeholder consultations** (continued)

Municipal Association Victoria (RT)

Meals Victoria (RT)

One Umbrella (RT)

Our Community (RT)

St Vincent de Paul

Second Bite

Sports Assemblies Victoria (RT)

VicHealth (Victorian Health Promotion Foundation)

VicRelief + Foodbank

Volunteering Victoria (RT)

Walwa Golf Club Inc.

Appendix B: The regulatory and institutional framework

B.1 Introduction

This paper outlines the framework for food regulation in Australia, with a particular focus on regulation in Victoria. It adopts the definition of food regulation used in the Blair report: *Report of the food regulation review*, (Blair 1998, p. 26),¹ which takes food regulation 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.

The regulation of food to protect public health and provide appropriate information is complex and fragmented. It comprises international standards and agreements and a number of agencies and legislation spread across all tiers of government (Healy, Brooke-Taylor & Liehne 2003).

Food regulation is affected by Australian laws and international standards relating to food production and trade. The international standards have a flow on effect on Commonwealth and state regulation and contribute to regulatory consistency. International standards include the *Codex alimentarius*, a collection of standards, codes of practice, guidelines and other recommendations maintained by the Codex Alimentarius Commission, a part of the United Nations Food and Agriculture Organisation. There are also several World Trade Organisation Agreements and bilateral trade agreements such as the Australia New Zealand Closer Economic Relations Trade Agreement, which established free trade in food products between the parties after July 1990, and the free trade agreements between Australia and Thailand, Singapore and the United States. Although international standards have an impact on the Australian Food Standards Code, which is incorporated into Victorian law by s16 of the *Food Act 1984* (Vic.), the

¹ The Blair report surveyed the food industry in Australia; considered the benefits and costs of food regulation; produced a list of major issues including lack of uniform legislation (a problem reduced by the national adoption of the Food Standards Code), the inconsistent application of regulations by enforcement officers, the overlap and duplication of agency responsibility and the lack of coordination between government agencies; and proposed a series of reforms. The report can be found at www.foodstandards.gov.au.

impact is limited. According to the draft discussion paper prepared by Inquit Pty Ltd for the Commission:

Australian food standards are made for Australian purposes, under Australian laws and in accordance with Australian conditions: they do not impose 'international' standards (Inquit 2006, p. 2).

The three levels of government in Australia and various specialised regulatory bodies are involved in food regulation. Because the Australian Constitution does not confer an express power on the Commonwealth to regulate food, the (limited) role of the Commonwealth comes about through its reliance on other powers, including its powers over corporations, trade and commerce, imports, exports and taxation, and by agreement with the states and territories to promote national consistency. Consequently, the food Acts of each state and territory, which among other things oblige participants within the food sector to comply with the Food Standards Code, constitute the principal instrument of food safety at the point of sale. A number of other enactments also form part of the food regulation framework, the most important in Victoria being the Acts relating to the meat, fish and dairy industries.²

A national Model Food Act drafted during the 1980s was intended to form the basis of state and territory food Acts (or food related provisions in state health Acts) to promote uniformity in Australian food regulation. But because of jurisdictional departures from this Act, its success was limited, and so at the time of the Blair report in 1998, Australia had eight different food Acts operating throughout the country (Blair 1998, p. 38).

The Blair report made a number of important recommendations designed to achieve:

- an integrated and coordinated regulatory system for food
- improved compliance and enforcement
- better legislation and national decision making
- integrated monitoring and surveillance
- more effective communications
- a review of the *Australia New Zealand Food Authority Act 1991* (Cwlth) against national competition principles (Blair 1998, pp. 18-24).

Greater consistency in food regulation has resulted from the adoption of a number of the Blair report recommendations; in particular, incorporating the national Food Standards Code into food Acts, which specifies permissible safe

² A useful web site for accessing food Acts passed by the Commonwealth, state and territory governments can be found at www.ausfoodnews.com.au/flapa/ActsRegulations.php. This site also provides other information about food regulation throughout Australia.

levels of substances such as additives in food, and compositional requirements for some food. At the state level, the Model Food Bill 2000 as supported by the Food Regulation Agreement (2000) has contributed to greater national consistency. The Food Regulation Agreement provided the instrument under which states and territories were uniformly required to adopt selected provisions of the Model Food Bill, requiring all Australian jurisdictions to incorporate the provisions of annex A of the Bill (which included key definitions and offences relating to food) into their respective food Acts. Under the agreement, all jurisdictions were also authorised to include in their food Acts whichever provisions they choose to include from those contained in annex B, which relate principally to enforcement and administration. To date, the provisions of annex B have been adopted to a limited extent in Victoria, unlike in other jurisdictions such as New South Wales where they have been adopted more fully.

These efforts aside, regulatory inconsistencies remain partly because of continuing variations in laws and partly because enforcement is inconsistent across and within jurisdictions. This is evidenced in Victoria, for example, where responsibility for enforcement of the Food Act principally rests with 79 councils with different resources and enforcement standards. The Commonwealth Government has commissioned another independent review, the Bethwaite review, to identify how the food regulatory framework can be streamlined and made nationally consistent to improve the competitiveness of the Australian food sector.

B.2 The food regulation framework

B.2.1 National food regulation

Victoria's food regulation framework operates within the context of a national system of food regulation. In response to the Blair report, each state and territory entered into an intergovernmental agreement with the Commonwealth to promote a national system of food regulation. The Food Regulation Agreement was necessary to give the Commonwealth a role in the regulation of domestic food supply because it has no specific constitutional power in this area (Banks 2006, p. 57). The agreement established the Australia New Zealand Food Regulation Ministerial Council (FRMC) and the Food Standards Australia New Zealand (FSANZ) with responsibility to develop food policy and a set of uniform food standards.

The agreement stated that the objects of the co-operative national system of food regulation are:

- to provide safe food controls for the purpose of protecting public health and safety
- to reduce the regulatory burden on the food sector

- to facilitate the harmonisation of Australia’s domestic and export food standards and their harmonisation with international food standards
- to provide cost effective compliance and enforcement arrangements for industry, government and consumers
- to provide a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures
- to recognise that responsibility for food safety encompasses all levels of government and a variety of portfolios
- to support the joint Australia and New Zealand efforts to harmonise food standards (COAG 2002, p.1).

Australia New Zealand Food Regulation Ministerial Council

The agreement established the FRMC as a central agency responsible for organising and overseeing the pursuit of a cooperative national system. The FMRC comprises health minister representatives and ministers from related portfolios from each state and territory and from the Australian and New Zealand Governments, and aims to provide a ‘whole of government’ and ‘whole of food chain’ approach (DHA 2006a).

The functions of the FRMC as laid down in the agreement include developing and implementing consistent food policy, standards, and enforcement procedures throughout Australia and New Zealand. In performing these functions, the FRMC has the capacity to adopt, amend or reject national standards and to request that they be reviewed. The FRMC is also responsible for promoting harmonisation with international food standards principally derived from *Codex alimentarius* (cl3(a)(iii)).³

The Food Regulation Standing Committee (FRSC) was established under the agreement to coordinate policy advice to the FMRC and ensure a nationally consistent approach to the implementation and enforcement of food standards. The Food Standards Implementation Subcommittee (ISC), a subcommittee of the FRSC, was formed to assist in the consistent implementation, compliance and enforcement of policy, regulations and standards. The ISC has released *A strategy for consistent implementation of food regulation in Australia, 2005* with the endorsement of the FRMC. The objective of this strategy is to provide a framework for collaborative work among Australian food safety regulators, and New Zealand regulators where appropriate.

³ The FRMC is not required by the agreement or the *Food Standards Australia New Zealand Act 1991* (Cwlth.) to adopt *Codex alimentarius* standards in the development of Australian standards. Section 7(1)(d) of the FSANZ Act provides that the functions of the FRMC include promoting ‘consistency between standards in Australia and New Zealand with those used internationally, based on the best available scientific evidence’. The concluding words indicate that the Codex standards may be varied where there is good evidence for doing so.

Food Standards Australia New Zealand

FSANZ, a statutory authority resourced principally by Commonwealth appropriation, also plays a fundamental role in promoting a national system of food regulation. It was established and operates under the *Food Standards Australia New Zealand Act 1991* (Cwlth.) and is responsible for researching, developing and submitting proposals for food standards to the FRMC. The standards constitute the Food Standards Code which is the foundation of Australia's national system of food regulation, and which is implemented and enforced by state and territory food regulators.

The objective of the FSANZ Act is to ensure a high standard of public health protection throughout Australia and New Zealand. Through the establishment and operation of FSANZ, it aims to achieve:

- a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand
- an effective, transparent and accountable regulatory framework within which the food industry can work efficiently
- the provision of adequate information relating to food to enable consumers to make informed choices
- the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection (s2A).

The objectives of FSANZ in developing, reviewing and varying food regulatory measures (in descending priority order) include:

- the protection of public health and safety
- the provision of adequate information relating to food to enable consumers to make informed choices
- the prevention of misleading or deceptive conduct (s10(1)).

Further, FSANZ is directed to have regard to additional considerations:

- the need for standards to be based on risk analysis using the best available scientific evidence
- the promotion of consistency between domestic and international food standards
- the desirability of an efficient and internationally competitive food industry
- the promotion of fair trading in food
- any written policy guidelines formulated by the council for the purposes of this paragraph and notified to the authority.

FSANZ has entered into a Memorandum of Understanding (MOU) with the Australian Competition and Consumer Commission (ACCC) to set out the respective roles and responsibilities of FSANZ and the ACCC in enforcing the Food Standards Code and the provisions of the *Trade Practices Act 1974* (Cwlth), specifically, misleading and deceptive conduct in connection with the sale of food (cl1.1). The MOU provides that FSANZ may advise the ACCC of an apparent breach of the fair trading provisions of the Trade Practices Act, which is causing widespread and significant consumer detriment across Australia, for it to consider and determine appropriate action. During the past five years the ACCC has identified approximately 450 instances of misleading and deceptive representations relating to food (DHS 2007c).

The ACCC has also entered into an MOU with the Victorian Office of Fair Trading and Business Affairs, now Consumer Affairs Victoria (CAV), which is responsible for administering the misleading and deceptive conduct provisions of the *Fair Trading Act 1999* (Vic.).

Food Standards Code

The Food Standards Code is provided for under the agreement to promote national consistency in Australia's food laws.⁴ Following a comprehensive review of the code in the late 1990s, more generic food requirements were introduced in place of prescriptive food standards, offset by increased labelling requirements for all food products.

New standards for inclusion in the Code may be applied for by interested persons (s12(1) FSANZ Act) or a proposal may be prepared by FSANZ on its own initiative (s12AA). The proposed standard or variation must be approved by a majority vote of the FRMC after a lengthy and complex process which involves public consultation and regulatory impact analysis. In seeking to ensure food standards do not impose an unreasonable cost burden on food businesses, the FSANZ Act requires FSANZ to have regard to the cost consequences of a proposed standard or variation at the initial assessment and draft assessment stages of the application process (s13(2) and s15(3) FSANZ Act).

The main steps in processing an application are its lodgement, initial assessment, draft assessment, further consultation, ministerial approval and gazettal.

Lodging the application

When FSANZ first receives an application, preliminary scoping is carried out to determine its complexity or degree of contention and whether the application falls within its area of responsibility. The application is also checked to ensure it

⁴ The Food Standards Code can be viewed at www.foodstandards.gov.au/thecode

is not duplicating any other application and to determine whether FSANZ has enough information to proceed.

Initial assessment

FSANZ then develops an initial assessment report which provides some information to stakeholders, but which is primarily used to stimulate input from stakeholders by raising issues and asking questions. Public submissions are invited through notices being placed in newspapers, in the *Food standards news*, in circulars to interested stakeholders and on the FSANZ website.

Draft assessment

After considering submissions, FSANZ makes a draft assessment, taking into account its statutory objectives under s10 of the FSANZ Act; in particular, the protection of public health and safety, the provision of adequate information relating to food to enable consumers to make informed choices, and the prevention of misleading and deceptive conduct. A comprehensive scientific risk assessment is undertaken together with a regulatory impact analysis, incorporating a cost or risk benefit analysis. The FSANZ board considers the draft assessment report, which is released as a public document for comment if endorsed. The report is posted on the FSANZ website and stakeholders are advised of its availability. The report includes a draft of a proposed standard when the board concludes that a new standard or an amendment to a standard is warranted.

Further consultation

After a standards amendment is drafted, a second round of public consultation follows unless the FRMC has unanimously approved the proposed standard. After considering any further public submissions, FSANZ fine tunes its recommendation if necessary and produces and publishes a final assessment report.

Ministerial approval and gazettal

The final stage in this process is when the FSANZ board makes a recommendation to the FRMC, which is responsible for determining whether an amendment should become law. The FRMC must within 60 days of receiving a recommendation from FSANZ either request a review of the standard by FSANZ or approve the standard (s21(1) FSANZ Act).

A first review may be triggered by a single jurisdiction of the FRMC on the basis that one of the criteria set out in s3(e) of the Agreement applies to the draft standard or variation. The criteria include that the draft standard or variation does not protect public health and safety or does not accord with the objects of FSANZ under the FSANZ Act. Where FSANZ decides to reaffirm its original decision subsequent to a first review, the FRMC may request a second review of

the standard or variation if it is agreed, by a majority vote, that one or more of the criteria in s3(e) of the Agreement applies (s3(f) of the Agreement). If following two rounds of review the FRMC is still of the majority opinion that one or more of the criteria in s 3(e) applies, the FRMC may amend or reject the draft standard or variation (s23(1) FSANZ Act; s3(g) of the Agreement).

If the FRMC approves the draft standard or variation, FSANZ gazettes the standard. The amendment becomes part of the Food Standards Code and then automatically becomes law in the states and territories and is gazetted in New Zealand. Once the standard becomes law, it is up to the relevant authorities in the states and territories and the New Zealand Ministry to enforce the standards.

The Food Standards Code mandates compliance with limits on the use of ingredients, processing aids, colouring, additives and residues, and sets compositional requirements. The code also sets standards for product labelling (packaged and unpackaged), marketing and advertising (ANZFA 2002a, p. 17). The standards apply to the whole spectrum of the food supply chain, and to whole food groups as well as specific food products.

The Food Standards Code is divided into four chapters:

- chapter 1—food standards applying to all foods (that is, labelling, substances added)
- chapter 2—standards affecting particular classes of foods (that is, cereals, meat, oils, dairy)
- chapter 3—food hygiene specific to Australia
- chapter 4—standards dealing with primary food production in Australia.

Chapters 3 and 4 and standard 1.2.11—Country of Origin Labelling—apply only to Australia.

Chapter 1

Chapter 1 specifies:

- permitted forms of recommended dietary intakes and estimated safe and adequate daily dietary intakes for vitamins and minerals
- health claims that can be made about particular foods
- country of origin labelling requirements, including the standard type that must be used in some cases
- labelling requirements for pollen products, royal jelly and special purpose foods
- warning statement requirements for condensed milk, modified milk and skim milk
- requirements for the labelling and naming of ingredients and compound ingredients, including the order in which ingredients are to be listed,

declaration of alternative ingredients that may be substituted for each other, and declaration of food additives and vitamins and minerals

- the form of the required date marking system
- directions for storage and use of the foods that need to be labelled
- nutrition information labelling requirements and exemptions⁵
- legibility requirements for the labelling of packaged and unpackaged foods
- requirements for the declaration of the percentage of characterising ingredients and components of certain food products which are required to be declared
- allowed food additives in the production and processing of food
- allowed vitamin and mineral additions to food, and claims that can be made about them
- prohibitions on the use of processing aids in food manufacture, unless there is a specific permission within the standard
- specifications for the identity and purity of food additives, processing aids, vitamins and minerals, and other added nutrients
- maximum levels of specified metals and non-metal contaminants and natural toxicants in nominated foods
- maximum permissible limits of agricultural and veterinary chemical residues present in food
- prohibitions on the sale of novel foods and novel food ingredients, unless they are listed in the standard and comply with special conditions of use specified in the standard
- prohibitions on the sale of food produced using gene technology, other than additives and processing aids, unless the foods are listed in the standard and comply with special conditions of use specified in the standard
- labelling requirements for food produced using gene technology
- prohibitions on irradiation of food, unless specific permission is given
- maximum permissible levels of foodborne micro-organisms that pose a risk to human health in nominated foods or classes of foods, together with mandatory sampling plans and criteria for determining when food poses a risk to human health and should not be offered for sale
- requirements for processing specified foods.

These standards provide, for example, lists of permitted additives, specific and detailed requirements for labelling and naming ingredients, and legibility and maximum residue limits. The majority have an impact on public health, although country of origin labelling appears to be an exception. The City of Moonee

⁵ For example, a nutrition information panel is not required for food sold at fund raising events.

Valley commented that labelling legislation is ‘extremely complex’ (sub. 18, p. 2), the City of Stonnington referred to ‘the complex, highly technical nature of the labelling and compositional standards, while the City of Yarra similarly noted that ‘labelling requirements are very prescriptive and detailed’ (sub. 43, p. 3).

Chapter 2

Chapter 2 is similarly prescriptive, defining and setting out compositional requirements for cereals, meat, eggs and fish, fruit and vegetables, edible oils, dairy products, non-alcoholic beverages, alcoholic beverages, sugars and honey, and special purpose foods. For some of these products, special labelling requirements are specified; for example, standard 2.1.1 requires the mandatory fortification of flour for bread making with thiamin.

Chapter 3

Chapter 3 sets out ‘model’ requirements for food safety programs, and the standard is based on the principle that:

... food safety is best ensured through the identification and control of hazards in the production, manufacturing and handling of food as described in the Hazard Analysis and Critical Control Point (HACCP) system, adopted by the joint WHO/FAO Codex Alimentarius Commission, rather than relying on end product standards alone (Food Standards Code 2007, standard 3.2.1, p. 1).

This chapter also sets out:

- specific requirements for food businesses and handlers that will ensure food does not become unsafe or unsuitable if complied with
- health and hygiene requirements of food handlers
- requirements for food premises and equipment.

Chapter 4

Chapter 4 sets out production and processing standards for seafood, poultry meat, meat, specific cheeses and wine.

Timing and implementation issues

The limited effectiveness of the Food Standards Code in targeting and covering food products in a timely way, particularly new food products, has been identified as a shortfall.

To streamline the standards setting processes, amendments to the FSANZ Act have been proposed. While currently in its drafting stage, the FSANZ Amendment Bill is due to be introduced in the 2007 spring sitting of Parliament (FSANZ 2007c).

The code has been incorporated into state and territory law through the food Acts, which make it an offence not to comply with the code. All amendments to

the code become effective on the commencement date published in the *Commonwealth Gazette*, and operate without amendment to the food Acts.

Individual states and territories are responsible for enforcing the code for food produced and sold within their jurisdictions. The Commonwealth, through the Australian Quarantine and Inspection Service (AQIS), is responsible for enforcing the code for food imported into Australia through powers conferred by the *Imported Food Control Act 1992* (Cwlth.). Food for export from Australia is regulated under the *Export Control Act 1982* (Cwlth.).

There is limited scope for state and territory variation in the application of the code (COAG 2002, cl26). Public or stakeholder comment during the standards development process, and the requirements that a majority of representatives in the FRMC assent to the new or amended standard, provide the opportunity for individual state concerns to be heard. Clause 27 of the agreement, however, provides that individual provisions may be made for a state or territory (or part thereof) where the FRMC is satisfied it is needed because of exceptional conditions in that state or territory, and where the provision would not present a risk to public health or safety or contravene Australia's international treaty obligations. Further, clause 28 allows for a temporary (12 months) new standard or variation to be developed by a state or territory where there is an immediate issue affecting public health and safety, and where there is no time to apply to the FRMC for the amendment. The Department of Human Services is unaware of any matters that have been pursued through clause 28 (DHS 2006c).

B.2.2 Commonwealth regulation

In addition to the Commonwealth legislation applying to food, the *Trade Practices Act 1974* (Cwlth.) administered by the ACCC, and taxation legislation administered by the Australian Taxation Office (ATO) are also significant.

The Trade Practices Act promotes competition and fair trade in the market place to benefit consumers, business and the community. Its reach extends to business competition such as price fixing and other anticompetitive agreements and affects market structure and agreements within the food sector. Its reach also extends to consumer protection such as prohibiting misleading and deceptive conduct, and requiring that goods meet specified standards such as being of merchantable quality and reasonably fit for purpose. A fruit juice manufacturer could, for example, be subject to action by the ACCC for misleading conduct under the Act for a claim its product was 'squeezed daily', when it was not the case. And a restaurant could be liable to a claim for damages for supplying unsafe food which was not, therefore, of merchantable quality or fit for the purpose of consumption. A range of enforcement actions can be undertaken under the Act, including product recall orders.

The ATO also administers the taxation laws that affect food, particularly the Goods and Services Tax (GST). While fresh foods including fruit, vegetables and meat are deemed to be GST free, most others foods will incur GST.

Other Commonwealth agencies with responsibility for regulation that affects food to some extent include:

- the Department of Agriculture, Fisheries and Forestry
- the Department of Health and Ageing
- the AQIS.

B.3 State regulation

Victoria has two principal streams of food safety regulation. The first stream applies to the handling of food intended for sale and the sale of food, both of which are governed by the Food Act. The second stream applies to the primary production, manufacture, transport and sale of meat, poultry, seafood and dairy products: this regulation is found in several specialised industry focused Acts, namely the *Meat Industry Act 1993* (Vic.), the *Seafood Safety Act 2003* (Vic.) and the *Dairy Act 2000* (Vic.). Many other Acts have a limited impact on food regulation but also produce social and business costs and benefits.

The various food laws are designed to be complementary, not overlapping, although provisions in the Food Act relating to safety in the sale of food are of general application. An MOU was entered into in 2004 between key food regulatory bodies—PrimeSafe, Dairy Food Safety Victoria (DFSV), the Department of Human Services, the Municipal Association of Victoria and the Australian Institute of Environmental Health (Victorian Division)⁶—to promote a cooperative approach in the administration of the laws (PrimeSafe 2004b). The MOU is due to be reviewed by October 2007 (DHS 2007a). Most relevant legislation (primary legislation and statutory rules) is subject to cost benefit analysis through business impact assessments and regulatory impact statements, which are required by the Victorian Government where they pass significance tests.

⁶ The Australian Institute of Environmental Health is the representative body of environmental health officers

The Food Act

The Food Act constitutes the principal instrument of regulation of food intended for sale. The Act, like the food Acts in other Australian jurisdictions, incorporates the Food Standards Code as part of Victorian law (s16) and adopts the framework of the Model Food Bill, particularly annex A and some provisions from annex B. The responsible minister is the Minister for Health.

The Act regulates the handling of food intended for sale and the sale of food. Its objects include:

- to ensure food for sale is both safe and suitable for human consumption
- to prevent misleading conduct in connection with the sale of food
- to provide for the application of the Food Standards Code in Victoria (s3).

‘Food’ is defined broadly as ‘any substance or thing used for human consumption’, whether it is raw, live, prepared or partly prepared (s4A). The definition specifically includes the sale of live animals intended for the table and excludes therapeutic goods.

The Act does not define the meaning of ‘safe’ and court decisions on its meaning have not been found. Section 4D of the Act states, however, that ‘food is unsafe if it would be likely to cause physical harm to a person who might later consume it’, assuming it was properly processed before being consumed and consumed according to its reasonable intended use. It appears, however, that the Act seeks to prevent harm not only in the short term, for example, by ensuring food is safe from relatively immediate foodborne illness, but that it is also concerned with preventing harm in the long term, harm such as adverse health effects resulting from contaminants, such as high mercury levels in food, which are regulated by the Food Standards Code. Section 4D clarifies the meaning of ‘unsuitable’ food as food that is ‘damaged, deteriorated or perished to an extent that affects its reasonable intended use’, or contains ‘a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food’ (s4D(1)).

Although the Act regulates conduct in relation to food which is for sale, and not, for example, food that is prepared and consumed in the home or provided charitably, it adopts a broad definition of ‘sale’. Sale includes not only transactions where consideration is provided; it also includes transactions such as giving away food for the purpose of advertisement, or promoting trade or business through activities such as free wine tasting in a liquor store and the supply of food to patients in hospitals (s4).

Some requirements of the Act apply generally to persons involved in the handling of food for sale—for example, the requirement that a person must not handle food intended for sale in a manner he or she knows will render the food

unsafe (s8(1)). The farmer who sells cattle intended ultimately for the table and the butcher who sells steak are clearly both subject to such requirements.

Other requirements of the Act, such as the requirement that food businesses must have food safety programs (s19C), do not apply to businesses involved in 'primary food production', that is, businesses involved in 'growing, raising, cultivating, picking, harvesting, collecting or catching food'. This limited application of the Act stems from the existence of supplementary industry focused Acts that regulate primary industries, in particular the Dairy Act, the Meat Industry Act and the Seafood Safety Act, discussed below.

Exceptions to the application of the Food Act may also arise under s5, which provides that the minister may make orders declaring any premises not to be food premises for the purposes of the Act (s5(3)), or exempting specified food premises from some or all provisions of the Act (s5(3A)). The power of exemption permits flexibility in the application of the Act.

The Act encourages self-regulation and prevention strategies, focusing on outcome based provisions and reflecting a national movement from prescriptive standards of food safety and compliance to a more flexible model (AGV 2002, p. 3). The implication of this outcome based model is that the law becomes less clear about what is required to comply with the provisions of the Act. Section 11(1), for example, provides that 'a person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsafe'. Section 4D assists with the meaning of 'unsafe' food by providing that food is unsafe if it would be likely to cause physical harm to a person who might later consume it, assuming it was properly processed and it was used as intended. While this provision sets out a desired outcome in relation to the safe handling of food, it does not provide clear guidance about what is actually required for safe handling (for example, washing hands or cleaning surfaces). Another example of the shift towards self-regulation is that the Act allows many businesses to either write a food safety program that sets out strategies for dealing with recognised food risks and is tailored specially for their business, or use a template which has already been approved by the government.

The Act uses several regulatory processes: it creates offences for prohibited conduct; requires the registration of food premises, the preparation of food safety programs, the training for nominated food safety supervisors and the regular inspection or audit of food safety programs; and establishes surveillance and enforcement procedures. The Act also creates an advisory mechanism on food regulation through the establishment of the Food Safety Council (Part 10). The council, which comprises public health, food hygiene, consumer and industry representatives, provides advice and information to the minister and the Secretary on matters related to food regulation in response to their requests (s60A).

Offences

Several offences under the Act include knowingly handling food intended for sale in an unsafe manner (s8), knowingly selling unsafe food (s9), and engaging in misleading or deceptive conduct in relation to the advertising, packaging or labelling of food intended for sale or the sale of food (s13). The Act also requires compliance with the Food Standards Code (s16) and provides for defences in proceedings for offences, including that the person took all reasonable precautions and exercised all due diligence to prevent the offence (s17E). This defence may apply to a supermarket that sells a pre-packaged product such as sliced bread, which it acquires from a reputable supplier and which turns out on testing not to comply in all respects with the code.

It is not an offence under the Act for a business to fail to comply with the requirements of its food safety program, although the failure would ordinarily amount to a breach of the Food Standards Code, and this is a breach of the Act (s16(3)). Such failure may also lead to suspension or revocation of registration, or refusal to renew or permit the transfer of registration, but councils are reluctant to impose such draconian penalties except in instances of serious contravention.

Registration of food business premises

Premises from which a food business is conducted—excluding a primary food production business—must be registered with the council in the appropriate municipal district, or with the Secretary in limited cases (part VI). This is dissimilar to other jurisdictions such as New South Wales, for example, where the *Food Act 2003* (NSW) more simply requires ‘notification’ of a food business (s100).

Failure to register is an offence punishable by a fine (s35). The term ‘premises’ includes buildings and vehicles, but not any premises used solely for primary food production business such as a farm or a dairy, or transport vehicles such as tankers of drinking water while they are engaged in the transport of food for sale (s4). There are exceptions to the registration requirement where, for example, the business is operated by the Crown (s35(2)(a)), or where an exemption for premises or a class of premises has been granted by resolution of the relevant council or the Secretary (s38(3)). Under this provision, councils have the power to determine whether not-for-profit temporary food outlets need to be registered. Further exemptions apply to facilities and vehicles licensed under the Meat Industry Act, and premises licensed under the Dairy Act or the Seafood Safety Act (ss38(5)–(8)). Premises may also be exempted by the minister from the registration requirement under s5(3A).

Businesses seeking registration or renewal of registration of declared food premises must have a food safety program (s38A) and a food safety supervisor (s38B), and must be inspected by the council and found generally to be compliant

with all requirements of the Food Act (s39(1)). Where a business fails to comply with all requirements (for example, where there are minor defects), the Act gives the registration authority the discretion to allow registration to proceed, subject to an undertaking that the defect will be remedied by a specified time (s39A).

Registration continues for one year from the date it was granted or renewed, unless the premises is within a class for which the minister has declared that the registration is to be for a longer period (s40B) or is revoked or suspended before normal expiry (s40C). There is no provision for short term registration or for recognition of registration of mobile food premises which have been registered in another council. The follow-up report to the Auditor-General's report on the *Management of food safety in Victoria* (2002) acknowledged this issue in the context of 'temporary food business' (that is, travelling food businesses) and documented the Act's shortfall in failing to provide for temporary registration (AGV 2005a, p. 13).⁷

While registration fees are determined by each council and consequently vary between councils, they must not exceed the amount fixed by the Governor-in-Council by order published in the *Government Gazette* (s41A). To date, no amount has been fixed under this provision. Councils are not required to prepare a cost benefit analysis or undertake public consultation when determining the registration fees to be charged.

A council may suspend or revoke the registration of food premises on several grounds, including that a person is convicted of a second or subsequent offence against the Act in respect of the premises (s40D). The Secretary may direct a council to suspend or revoke the registration of a food premises, if in the Secretary's opinion, the grounds for suspension or revocation exist (s40E). A person who is aggrieved by a decision to refuse registration or to suspend or revoke registration may appeal to the Magistrates' Court (s42) rather than the Victorian Civil and Administrative Tribunal, which more commonly hears such appeals. During the period until the appeal is heard, a revocation of registration is stayed and the business may continue.

Food safety programs

Standard 3.2.1 of the Food Standards Code provides that food businesses determined by each state and territory authority must adopt food safety programs. At present, standard 3.2.1 is a 'model' standard and is therefore not automatically adopted under the law of individual states and territories. In order to become operational, the appropriate enforcement agency within a state or territory must make a determination in respect of the 'food businesses' to which

⁷ The Auditor-General's follow-up report to the *Management of food safety in Victoria* can be viewed at www.audit.vic.gov.au/reports_par/pafollowup_report.pdf

the standard is to apply. Under the Food Act, the Secretary does not have the power to make determinations in relation to ‘food businesses’, only ‘food premises’ (s19C). As a result, standard 3.2.1 will not apply within Victoria until amendments are made to the scope of the secretary’s power under the Food Act or to the application of the code itself. Because standard 3.2.1 is not mandatory, food safety programs have been adopted independently in each state and territory, leading to significant inconsistencies across Australia.

Under the Food Act, the Secretary has power to declare that food premises of particular classes must develop a food safety program (s19C).⁸ This program must document potential hazards in food handling operations, and provide for monitoring of controls that manage the hazards and the records needed to demonstrate compliance with the program (s19D). The standard does not apply to any premises used solely for primary food production or to any exempt premises declared by the minister not to be food premises under the Act (s5(3)(a)). Different requirements apply to primary food production businesses.

The Secretary has declared that most food premises must comply with this standard and develop a food safety program, and ensure all staff have adequate skills and knowledge to carry out their tasks safely. There is an exemption for retail food premises at which only prepackaged low risk food is handled or sold (Government of Victoria 2001, p. 3012).

Under the Secretary’s declaration, most food premises are allocated to class 1 or class 2 according to the degree of risk associated with the food type or persons the food is being prepared for. Class 1 comprises all food premises operated by a food business where food is handled or sold that is high risk and ready to eat, and is to be consumed predominantly by vulnerable populations such as children aged five years and under and adults aged 65 years and over. Class 2 comprises all food premises operated by food businesses other than class 1 food premises and exempt food premises (Government of Victoria 2001, p. 3012).

Food premises may develop an independent food safety program in light of identified risk factors or use a standard food safety program template which has been registered by the Department of Human Services. Businesses that adopt a registered template must answer questions about their business, choose the records they will keep to provide evidence of their compliance, and provide a copy of the completed template to the council. The department has developed a simplified food safety program template for community groups to use.

⁸ Part IIIB of the Act alternates between using the term ‘food business’ and ‘food premises’. As a result, there is a lack of clarity in the application of some provisions. Part IIIB only applies in respect of ‘declared food premises’ despite several references to a ‘food business’.

Unless an exemption has been granted, declared premises—that is, premises within class 1 or class 2—must have a food safety supervisor who has met an appropriate food safety competency standard, has the ability and authority to supervise other people handling food, and who can ensure the handling is done safely (s19G). Several certified training courses are available for supervisors to satisfy the competency standard: there are also courses for food handlers. Failure to comply with this requirement is a ground for refusal of registration or its renewal or transfer, or for the revocation or suspension of registration of the food premises (s19GA).

The Secretary may exempt the proprietor of a declared premises or the proprietors of a class of declared premises from the requirement to have a food safety program, or to have a food safety program audited or to have a food safety supervisor (s19V). The exemption must be in writing (s19V(2)) and there is no requirement for it to be published in the *Government Gazette*.⁹

Inspection and audit of food safety programs

Class 2 food businesses that use a registered standard food safety program template may choose to have the program inspected by an environmental health officer (EHO) from the council (s19HA) to ensure compliance with their food safety program. Class 1 food businesses, and class 2 food businesses with their own food safety program, must have the food safety program audited by a certified food safety auditor (s19IA). The audits must be carried out at intervals declared by the Secretary for different declared premises (s19K).

The food safety auditor must give the proprietor of the premises a certificate of compliance if the auditor considers the food safety program has been complied with (s19L). If, however, the auditor considers the program has not been complied with or is inadequate, the auditor must advise the proprietor of the premises about the remedial action required and provide an audit certificate when the noncompliance has been remedied (s19M). In each case, the proprietor of the business must provide a copy of the audit certificate to the council: failure to do so may lead to nonrenewal of registration or suspension or revocation of registration (s19N).

The Act does not provide for other penalties such as penalty infringement notices for noncompliance with the food safety program. Noncompliance would, however, ordinarily amount to a breach of the Food Standards Code, in contravention of s16(3) of the Act.

⁹ An exemption from the requirement to have a food safety supervisor, which was granted for declared food premises used for events that raise funds solely for community or charity causes, was published in the *Government gazette* (Government of Victoria G 21, 23 May 2002, p. 1047).

Surveillance and enforcement

The Act confers wide powers on ‘authorised officers’ (defined in s4) to investigate and inspect food premises in order to ensure compliance with the Act (part IV). People who have been appointed by councils as EHOs under the *Health Act 1958* (Vic.) are deemed to be authorised officers under the Act (s4).

The surveillance and investigation powers of authorised officers extend to examining and opening packaging (s21(1)(a)(iii)), seizing articles where there is a reasonable belief they have been used in connection with the contravention of the Act (s21(1)(a)(v)), or requesting the name and address of a person reasonably believed to have committed an offence under the Act (s21(1)(c)).

Information obtained by authorised officers in the performance of their functions (such as in compiling inspection reports) must not ordinarily be disclosed or published (s54(1)) except with the consent of the person from whom the information was obtained, in connection with the administration of the Act, or for the purposes of proceedings under the Act. This provision permits the disclosure of information obtained by authorised officers in limited circumstances, such as to provide evidence that would assist a person wishing to claim damages for loss as a result of conduct that contravenes the Act, including the supply of unsafe food. It would, however, prohibit the supply of information to a person who wished to take action for damages under other consumer legislation such as the Fair Trading Act or the Trade Practices Act, where loss was suffered as a result of the supply of unsafe food. The provision also prevents the disclosure of information to the public about poorly performing premises.

Most of the enforcement provisions contained in part XX of the Health Act, including provisions relating to expenses recoverable in certain circumstances (s412) and simplification of proof in certain cases (s437), are incorporated into the Food Act (s59).

Proceedings for contravention of the Act may be brought in the Magistrates’ Court (s45), which may impose penalties of up to \$500 000 in the case of corporations and up to \$100 000 and two years imprisonment in the case of individuals.¹⁰ Where a corporation has contravened the Act, managers of the corporation are also guilty of an offence and liable to the penalty for the offence (s51).

All penalties recovered in relation to offences under the Act must be paid into the municipal fund of the council that brought the proceedings (s57), subject to the council accounting to any informant for half of the penalty (Health Act s450). The court may also order forfeiture of articles involved in a contravention (s48),

¹⁰ By way of comparison, the Meat Industry Act provides that a butcher must not sell meat that is unfit for human consumption: the penalty for a first offence is 100 penalty units or just over \$10 000 (s34).

make orders requiring payment of costs and expenses (ss49 and 53A) and make orders requiring corrective advertising (s53B). Nonetheless, the small amount of the penalties actually imposed and costs awarded, coupled with delays in the hearing of cases, may have a bearing on whether councils take this form of enforcement action. The Food Act does not provide that a court can make orders to compensate any persons who may have suffered losses as a result of unlawful conduct.

Despite the Act's self-regulatory orientation, there is no requirement for food businesses to submit food suspected of contamination for testing or to report suspected contamination to the council or the Department of Human Services (Lederman 2006). Where it is reasonably believed that a threat to public health exists, the Secretary has emergency powers to make an order to reduce the danger and mitigate the adverse consequences (s44). The nature of the order can range from requiring warnings to be published (s44A(1)(a)) to directing that a particular food be recalled (s44(1)(d)) or even impounded, isolated and destroyed (s44(1)(e)). Council officers are not permitted to exercise emergency powers.

The Act does not incorporate the infringement notice provisions set out in annex B of the Model Food Bill. Thus, there is no provision for 'on the spot' fines that could be imposed by council officers, possibly after appropriate education has been provided and warnings given.

The department provides some advice to councils to assist them in the performance of their obligations under the Act; for example, it has published *Administering the Food Act: a guide for local government 2002* (DHS 2002c). But it does not publish comprehensive data on council enforcement activities such as the number of registered premises in each municipality and the number of inspections or particulars of enforcement action, and it does not have power to direct councils to provide this information. It also does not ordinarily publish statistical information on food contamination incidents. The Commission was unable to find current information that would provide an overview of enforcement action taken by councils.

Primary industry focused Acts

Various specialised primary industry focused Acts operate to complement the Food Act, the most important being the Dairy Act, the Meat Industry Act and the Seafood Safety Act. These Acts provide for the second stream of food regulation and their scope is confined to the 'primary production industries' (which are only partly covered by the Food Act) which require particular regulatory attention. Each Act principally exists to establish a key regulatory agency, empower a code of conduct and establish licensing powers.

Regulation of the dairy industry

The dairy industry is a major rural industry in Australia and particularly in Victoria where the bulk of Australian milk production occurs. The key laws regulating the dairy industry in Victoria are the Food Act and the Dairy Act. The responsible minister for the Dairy Act is the Minister for Agriculture.

Dairy products come within the definition of food in the Food Act and consequently a person who handles dairy products for sale or sells dairy products must comply with the provisions contained in the Act. A dairy business, however, must only comply with the Act to the extent that it creates offences for unsafe handling and sale of food, and is therefore not bound by the provisions relating to the obligation to prepare a food safety program and be registered with a council.

The Dairy Act was enacted as part of the reforms to the dairy industry across Australia, which were intended to result in managed deregulation (Legislative Assembly 2000, pp. 1862 & 1871). The Act was drafted to be consistent with the Food Act, and as far as possible, with the principles of the Model Food Bill for matters such as the use of food safety programs, preventative methods of food safety management and audit arrangements (Legislative Assembly 2000, p. 1325).

The Dairy Act aims:

- to remove price and supply controls on milk
- to establish DFSV
- to provide a licensing system for the dairy industry
- to enable codes of practice and food safety programs to be implemented in relation to dairy food (s1).

‘Dairy food’ includes milk, dried or condensed milk, cream, butter, dairy spreads, cheese, yoghurt, ice-cream, colostrum and any other product derived or extracted from those products (s3).¹¹

The Act established DFSV as an independent statutory body to ensure standards that safeguard public health are maintained in the Victorian dairy industry (s5). Most of the seven members of DFSV now have a background in the dairy industry.

DFSV’s functions under the Act include establishing, maintaining, improving and monitoring the food safety standards of dairy food, the standards of construction and hygiene of plant and equipment in a dairy and the standards of

¹¹ Appendix 2 of the MOU between DFSV, PrimeSafe, the Department of Human Services, the Municipal Association of Victoria and the Australian Institute of Environmental Health (Victorian Division) further outlines the meaning of ‘dairy food’ by providing specific examples under each product class (MOU 2004, appendix 2, p. 9).

maintenance, cleanliness and hygiene of dairy transport vehicles. It is also responsible for monitoring and reviewing these standards (s6(b)).

DFSV is committed to achieving a national framework for dairy food safety based on international best practice principles. Its key objectives are to achieve consistency in standards and to reduce compliance costs for industry (DFSV 2006a). DFSV is subject to written direction by the minister and may cause a direction to be published in the *Government Gazette* and must cause it to be published in its annual report (s8). The Commission is not aware of any direction that has been given. To promote a nationally consistent food regulatory framework, DFSV signed an MOU with Tasmanian and South Australian dairy authorities during 2005-06 (DFSV 2006b, p. 3).

DFSV also entered into an MOU in 2004 with PrimeSafe, the Department of Human Services, the Municipal Association of Victoria and the Australian Institute of Environmental Health (Victorian Division) with a view to 'achieving a cooperative approach to protect public health in Victoria by ensuring a high level of food safety' (PrimeSafe 2004b, p. 2). The MOU allocates responsibilities to the parties to clarify responsibilities under the various laws regulating food in Victoria.

The regulatory mechanisms available to DFSV are licensing dairy businesses, developing and implementing codes of practice and food safety programs, and the enforcement of conduct obligations under the Act.

Licensing

A person must not conduct business as a dairy farmer, dairy manufacturer, dairy food carrier or dairy distributor (such as a milk bar) unless they are licensed to do so (s22(1)) or unless an exemption applies. A person must also not own or use a dairy transport vehicle to transport dairy food in bulk unless there is a dairy industry licence for the vehicle (s22(2)). There are, however, exemptions from the licensing requirement for proprietors of food businesses that operate from food premises registered under the Food Act, and for licensees under the Meat Industry Act and the Seafood Safety Act, where they are subject to requirements for quality assurance programs or food safety programs that adequately cover dairy food (s22A). In the case of a mixed business, where dairy and nondairy products are manufactured, packed or distributed, DFSV negotiates with the responsible council to determine the appropriate licensing authority (PrimeSafe 2004b, p. 6).

DFSV has issued more than 6000 current licences, most of which are held by dairy farmers. Table B.1 provides statistics on the number and types of licences held, issued, cancelled and transferred in 2005-06.

Table B.1 Licence statistics

<i>Licence types</i>	<i>30 June 2005</i>	<i>1 July 2005 to 30 June 2006</i>		<i>30 June 2006</i>	
	<i>No. of licences</i>	<i>Licence issued</i>	<i>Licence cancelled</i>	<i>Licence transferred</i>	<i>No. of licences</i>
Carriers	50		7	2	43
Dairy manufacturers (including goat/sheep)	141	16	9	9	148
Dairy farmers (including goat/sheep)	6108	23	202	123	5929
Milk broker	2		0	0	2
Distributor	139	3	4	8	138
Total	6440	42	222	142	6260

Source: DFSV 2006b, p. 19.

DFSV may fix the fees payable for the issue, renewal and transfer of licences, and while it must do so in consultation with the dairy industry, it is unnecessary for a regulatory impact statement to be prepared. The criteria for determining licence fees may include the value of services provided to a licensee, the value of industry wide benefits, and the scale of operations of each licensee (s24). There is no express constraint on the upper limit for the licensing fees as is the case for registration fees under the Food Act. The licence fees fund the operations of DFSV.

DFSV may impose conditions on licences (s25(1)(a)). The term of a licence is to be not more than two years (s25(1)(d)), and in practice, licences must be renewed and a licensing fee paid annually.

DFSV may refuse to issue, renew or transfer a licence and may suspend or revoke a licence on various grounds, including failure to meet the requirements of the Dairy Act, the Health Act or the Food Act, as applicable (s26). A person whose interests are affected by a licensing decision may appeal to the Victorian Civil and Administrative Tribunal for a review of the decision (s27).

Code of practice

With the approval of the minister, DFSV may develop a code of practice that confers authority and imposes duties on specified persons or classes of persons (s31). A code of practice must be developed in accordance with a procedure that requires DFSV to consult widely and give consideration to submissions received from the dairy industry (s32). The code must be published in the *Government Gazette* (s34).

Under these provisions and with the minister's approval, DFSV has developed the *Code of practice for dairy food safety*, which sets the minimum standards for the production, manufacture, storage and transport of milk and dairy foods to safeguard public health. These standards must be adhered to by all dairy premises, in conjunction with the *Food standards code: volume 2*, including chapter 3, Food safety standards (DFSV 2002, p. 5). The code of practice also adopts as mandatory requirements the *Australian manual for control of Listeria in the dairy industry* and the *Australian manual for control of Salmonella in the dairy industry* (DFSV 2002, p. 6). It is an offence for a person to sell, deliver or provide for human consumption dairy food that has not been treated, packed and sealed as required under a code of practice (s36).

Food safety programs

The Dairy Act provides that DFSV may develop food safety programs (s37) with which the minister may require classes of dairy industry licensees to comply (s38). Under the code of practice, all participants in the dairy industry must have a food safety program approved by DFSV which meets the requirements of the code (DFSV 2002, p. 5).

The code of practice sets out the individual requirements of food safety programs for each category of licensee. In the case of a dairy farm, the food safety program must meet requirements relating to contaminants, dairy milking premises, storage and equipment, hygienic milking, water supply and quality, cleaning and sanitising, traceability, and personnel competency. Further, all raw milk produced must comply with specified standards and records must be maintained to demonstrate that the food safety program has been complied with. There are corresponding requirements for other categories of licensees.

DFSV must monitor compliance with each approved food safety program (s40) and may require licensees to have the applicable program audited on a one-off basis or from time to time (s41). DFSV may withdraw or suspend approval for a food safety program by giving written notice to the licensee if it considers there has been a serious failure to comply with the program (s42): it is not an offence to fail to comply.

Surveillance and enforcement

DFSV may authorise officers to carry out surveillance and enforcement activities (s43) and may require holders of licences to provide any records relating to dairy food it wishes to inspect (s44(2)). For the purposes of administering the Dairy Act—and apparently not for the purposes of other legislation such as the Food Act—authorised officers have powers to inspect and make copies of documents (s44(2)); enter premises reasonably suspected to require a dairy licence; require the production of documents and answers to questions; and administer and monitor compliance with the Dairy Act, regulations, code of practice and licence conditions (s45).

Authorised officers also have power to make various orders—for example, that dairy premises be cleaned or disinfected and that specified dairy food be seized, detained, or if satisfied that any dairy food is unfit for human consumption, they may add colouring material to render it unsuitable for human consumption but not to make it unfit for use as food for animals (s46).

Authorised officers may prosecute contraventions of the Act (s57)—for example, where a person fails to destroy milk products when ordered to do so. Penalties may be ordered by the court. It is not an offence under the Act to sell milk products that are unsafe for human consumption, although such conduct would contravene the Food Act. It is unclear how such conduct could be investigated by DFSV authorised officers given their powers do not extend to monitoring compliance with the Act. In view of this restriction, it is also unclear who would be responsible for prosecuting the proprietor of dairy premises in the event of a breach of the Act, although the MOU contemplates that at least some enforcement action under the Act in the case of licensed premises is to be taken by DFSV and not by council officers.

Regulation of the meat industry

The key requirements affecting the meat industry—in addition to the Food Act—are the Meat Industry Act, the Meat Industry Regulations 2005 and the Food Standards Code, in particular, standard 2.2.1. The responsible minister is the Minister for Agriculture.

Meat (and the animals from which meat is derived) falls within the definition of food in the Food Act, and consequently a person who handles meat for sale or sells meat must comply with the provisions in this Act. A meat business, however, must only comply with this Act to the extent that it creates offences for unsafe handling and sale of food, and is therefore not bound by the provisions relating to the obligation to prepare a food safety program and be registered with a council.

The purposes of the Meat Industry Act include:

- setting standards for meat production for human consumption and pet food
- setting up a licensing and inspection system and a mechanism for adopting and implementing quality assurance programs to ensure those standards are maintained
- enabling the regulation of meat transport vehicles
- establishing the Victorian Meat Authority (VMA—now called PrimeSafe) to operate the licensing and inspection system and arrange for the adoption and monitoring of quality assurance programs
- empowering the VMA to perform the functions conferred on it by the Seafood Safety Act (s1).

The Meat Industry Act applies to food from numerous consumable animals, including poultry (not including emus and ostriches), game (including rabbit, hare, kangaroo, pig and goat) and cattle, sheep, goat, horse, donkey or deer (as long as they are not living in a wild state) (s3). The Act does not apply to meat products in a dwelling house, meat in a dried or sealed form in a retail shop, or meat slaughtered on a farm for consumption on the farm (s5).

The Act establishes PrimeSafe—formerly the VMA—as an independent statutory body (s43) to operate the licensing and inspection system established under the Act and to arrange for the adoption and monitoring of quality assurance programs (s1(d)). The functions of PrimeSafe include controlling and keeping under review the standards of meat, poultry meat and game meat produced for consumption or sale within Victoria, and meat processing and transport facilities (s44). It does not have an express function to promote food safety. PrimeSafe is also the principal regulator under the Seafood Safety Act. PrimeSafe may be directed by the Minister for Agriculture in the performance of its functions, and it must publish any direction in the *Government Gazette* and in its next report on operations (s46). The principal regulatory mechanisms available to PrimeSafe are the licensing of premises and vehicles; the provision of inspection services, quality assurance programs and codes of practice; and the enforcement of conduct obligations.

Licensing

PrimeSafe is responsible for licensing operators of meat processing facilities which satisfy the criteria specified in the Act, in particular, that the applicant is a fit and proper person (s16). Meat processing facilities include all abattoirs, poultry and game processing facilities, further meat processing facilities (that is, where meat is processed, packed or stored), retail butcher shops, pet meat and food processing facilities, and vehicles used for transportation of meat for sale for human consumption (s3).

A place is not a meat processing facility if it sells more manufactured meat, or products that contain some or no meat, than unmixed meat. Consequently, operators of supermarkets who sell many other products as well as meat are not required to be licensed or are not subject to certain other obligations under the Act. And places where meat is sold to be consumed at those places are not meat processing facilities (s3); for example, operators of restaurants who serve meat dishes are not licensed by PrimeSafe, but restaurants must be registered under the Food Act.

To streamline the regulatory system relating to food, PrimeSafe has authority to supervise the retail and wholesale operations of a business under a single licence. Where this occurs, PrimeSafe applies provisions of the Food Act when monitoring the retail operations of a business; it also applies the provisions of

the Meat Industry Act (PrimeSafe 2004b, p. 10). This will commonly apply in the case of mixed businesses—for example, where a butcher shop sells a number of grocery items in addition to meat and meat products.

Local government is responsible for the registration and supervision of food businesses, including meat and seafood preparation areas in supermarkets under the provisions of the Food Act. A supermarket is permitted to sell pet food as well as meat, although a butcher shop is prohibited from selling meat as pet food where the meat is unfit for human consumption (Meat Industry Act s37A). Where the principal activity of a food business is uncertain, PrimeSafe and local government negotiate the most appropriate authority to register it or license the proprietor (PrimeSafe 2004b, p. 10).

The Meat Industry Act provides that a licence is in force for the period (not exceeding three years) specified in the licence (s19). In practice, licences for operators of meat processing facilities and meat transport vehicles are renewed annually, subject to compliance with licensing requirements (PrimeSafe 2007b). PrimeSafe sets licensing fees without being required to prepare a regulatory impact statement (s44(h)). The most common category of licensee is ‘operator of a retail butcher shop’ (PrimeSafe 2007b). The *Meat Industry Regulations 2005* (Vic.) provide for the licensing of meat transport vehicles. PrimeSafe’s licensing decisions may be reviewed by the Victorian Civil and Administrative Tribunal (s24).

Inspection services

PrimeSafe must provide inspection services for each licensed meat processing facility and may charge the licensee a fee for providing the service (s6). PrimeSafe may approve persons who can provide approved inspection services (s7) and who can recover fees for their services from licensees (s9).

Quality assurance programs

PrimeSafe may declare that certain premises, such as a class of butcher shops, must have a quality assurance program (s10A) that provides for strategies to ensure standards required by the Meat Industry Act, regulations, and any applicable code of practice are maintained (s11). PrimeSafe keeps under review each approved quality assurance program (s12) and may require that it be audited on a one-off basis or from time to time (s12A).

Codes of practice

PrimeSafe may develop codes of practice that incorporate other standards and codes (s13A) and with which licensees must comply (s13E). Failure to comply with a code of practice is not an offence, but it is a ground for refusing to renew a licence or suspending or cancelling a licence. PrimeSafe has developed several codes of practice including the *Victorian standard for hygienic production of meat at retail premises*.

Surveillance and enforcement

PrimeSafe may appoint inspectors to undertake specified functions (s70). The inspectors may undertake surveillance and investigations by conducting inquiries, searching premises and questioning persons with a view to finding out whether the provisions of the Act, regulations, licences and quality assurance programs are being complied with (s72).

The Act prohibits various forms of conduct; for example, it bans the sale of certain meat for consumption (s34), the slaughter of animals at unlicensed premises (s38) and the use of unlicensed vehicles for the transport of meat (s42A). In addition to the general standards under the Food Standards Code, participants within the meat industry are required to comply with various industry specific provisions in the code.

Legal proceedings for contraventions of the Act may be instituted or conducted by the chair of PrimeSafe or by a person authorised by the chair either generally or in any particular case (s76). PrimeSafe does not publish particulars of the proceedings in its annual report or on its web site.

Additional Acts relevant to the regulation of the meat industry include:

- the *Broiler Chicken Industry Act 1978* (Vic.), which applies to chickens grown under intensive housing conditions specifically for consumption as poultry meat after processing
- the *Livestock Disease Act 1994* (Vic.), which provides mechanisms to prevent, monitor and control livestock diseases. It imposes an obligation on the owner of livestock or the owner of land on which livestock resides to report a suspicion that a livestock disease is present
- the *Prevention of Cruelty to Animals Act 1986* (Vic.), with its purpose being to prevent cruelty to animals, encourage the considerate treatment of animals and improve the level of community awareness about the prevention of cruelty to animals
- the *Stock (Seller Liability and Declarations) Act 1993* (Vic.), which operates to ensure certain species of stock are free from particular diseases and not in a particular condition when sold (s1). This Act applies to stock (a species used for food or producers of food products or fibre) and livestock products (milk, wool or honey).

Regulation of the seafood industry

The key legislative and regulatory instruments relating to the seafood industry are the Food Act, the Seafood Safety Act, and the Food Standards Code (particularly standard 2.2.3, Fish and fish products, and standard 4.2.1, Primary production and processing standard for seafood). PrimeSafe is currently developing a Victorian standard for seafood processing. When the Victorian standard is

approved, all seafood businesses will also be required to have an audited quality assurance program to ensure compliance with the standard. In the interim, seafood businesses must comply with the relevant provisions of the Food Standards Code. The responsible minister is the Minister for Agriculture.

Seafood is within the definition of food in the Food Act and consequently a person who handles seafood for sale or sells seafood must comply with the provisions in the Act. But a seafood business must only comply with the Act to the extent that it creates offences for unsafe handling and sale of food, and is therefore not bound by the provisions relating to the obligation to prepare a food safety program and be registered with council.

The Seafood Safety Act was enacted to complement the Food Act and to introduce a new system for managing food safety in the seafood industry. The Seafood Safety Act incorporates the whole seafood supply chain from fishing and fish farming through to retail sales of fish (s1(1)(a)).

‘Seafood’ includes any marine, estuary or freshwater fish, and any aquatic vertebrae animal (except crocodile) or aquatic invertebrate animal, including the products derived from these animals (s3). The Act applies to all ‘seafood businesses’, which means any business (retail or wholesale) involved in the handling of seafood intended for sale for human consumption. ‘Handling’ includes harvesting, aquaculture, processing, cooking (other than cooking for immediate sale), and packaging, storage and transport of seafood (s4).

PrimeSafe is the independent regulator with responsibility for seafood regulation (s6(1)). This responsibility is in addition to its responsibility for meat and poultry regulation under the Meat Industry Act. The regulatory mechanisms under the Seafood Safety Act include licensing of seafood businesses; development and application of codes of practice and food safety programs; and surveillance and enforcement of conduct provisions.

Licensing

A person who conducts a seafood business must hold a seafood safety licence issued by PrimeSafe, unless an exemption applies (s9). The penalty for a first offence is 100 penalty units (more than \$10 000); and 500 penalty units or 24 months imprisonment, or both, for subsequent offences.

A food business is exempt from the requirement to hold a seafood safety licence if the handling of seafood is not its main activity—for example, if it is a supermarket or a mixed food business (s4). A person who is the proprietor of a food business whose premises is registered under the Food Act, or the holder of a current and valid licence under the Meat Industry Act or the Dairy Act, is also not required to hold a licence under the Seafood Safety Act (s10).

The two principal categories of seafood business licensees are persons who conduct seafood processing facilities and persons who conduct seafood harvesting facilities. Seafood processing facilities include retailers, wholesalers, processors and further processors, while seafood harvesting facilities include aquaculture and wildcatch businesses.

PrimeSafe proposes to develop an MOU with local government to ensure consistent standards apply to supermarkets and mixed food businesses handling and processing seafood. These businesses will be subject to the Food Act and supervised by local government, and will be required to comply with the Victorian standard for seafood processing when it is developed (PrimeSafe 2007c).

Licence fees are set by PrimeSafe following consultation with the seafood industry about the criteria for and the structure of the fees (s12). The licence fees meet the costs of PrimeSafe in implementing the seafood safety system under the Act. They vary considerably in some categories according to the tonnage of seafood harvested or processed.

The term of a licence may be not more than three years (s13). In practice, licences are renewed annually.

A licensee has the right to be heard before PrimeSafe makes the decision to suspend or cancel a licence (s18), but the Act does not provide a similar right in the case of a decision to vary or refuse to issue a licence. The Act does not provide an express right of appeal for the suspension or cancellation of a licence.

Codes of practice

PrimeSafe is authorised to develop codes of practice for seafood businesses after following a procedure that involves public consultation and notification of the development of the code in the *Government Gazette* (s20). Licensees must comply with any applicable code of practice (s23). PrimeSafe has not yet developed a code of practice for seafood businesses.

Food safety programs

The minister has declared, in accordance with s24(1), that all persons who conduct seafood processing facilities are required to put in place a food safety program. Holders of seafood processing licences must therefore prepare and submit a food safety program to PrimeSafe (s24(3)) for its approval (s25). The contents of a food safety program are spelt out in some detail in the Act (s26); PrimeSafe has also published guidance material to ensure food safety programs include an organisational chart, a HACCP plan and programs for cleaning, maintenance, pest control, training, calibration, traceability and recall. Compliance with an applicable program is a condition of a seafood safety licence

(s27). PrimeSafe may require compliance to be audited on a one-off basis or from time to time (s29).

Surveillance and enforcement

Inspectors authorised by PrimeSafe under the Meat Industry Act (s70) may undertake surveillance and enforcement in respect of seafood businesses. Inspectors have a general power to take any action necessary to ascertain whether the provisions of the Act or regulations, a code of practice, seafood safety licence or a food safety program are being complied with (s30). Their powers under the Seafood Safety Act do not extend to monitoring compliance with provisions of the Food Act. They may seize seafood that is unfit for human consumption (s32) and may enter and search premises with the consent of the occupier (s33); in the absence of consent and where the inspector believes on reasonable grounds that there is evidence of a contravention of the Act, they may obtain a search warrant to enter and search premises (s34).

The principal offence under the Seafood Safety Act is conducting an unlicensed seafood business (s9). Other offences relate to hindering or obstructing authorised officers (s45), failing to provide information required by authorised officers (s46) or giving false or misleading information (s47), and refusing admission to an authorised officer (s48).

Legal proceedings may be instituted under the Act either by the chair of PrimeSafe or by a person authorised by the chair, either generally or in any particular case (s56). PrimeSafe does not publish particulars of proceedings it has instituted under the Act or the penalties imposed.

Other laws relevant to food regulation

Other Acts operating within the Victorian food regulatory environment include:

- the *Health Act 1958* (Vic.)—this Act vests municipal councils with responsibility to take action to prevent disease and to promote public health. The Department of Human Services has recently completed an extensive review of the Health Act, examining the adoption of broad health initiatives including the prevention of ‘lifestyle’ diseases such as obesity
- the *Control of Genetically Modified Crops Act 2004* (Vic.)—this Act prohibits or restricts the cultivation of genetically modified crops in designated areas of the state
- the *Gene Technology Act 2001* (Vic.)—this Act aims to protect the health and safety of people and the environment by identifying risks posed by, or as a result of, gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms

- the *Fair Trading Act 1999* (Vic.)—this Act is administered by CAV; it largely mirrors the consumer protection provisions of the Trade Practices Act and promotes fair trading practices, protects consumers and provides for the safety of goods (including food) or services supplied in trade or commerce and disclosure of information on them. The Fair Trading Act prohibits misleading and deceptive conduct and other unfair business practices
- the *Trade Measurement Act 1995* (Vic.)—this Act provides for the regulation of measurement of goods for sale, including food. It is uniform with the trade measurement Acts in the other states and territories.

Key authorities

The following section provides a brief profile of a number of the key stakeholder authorities involved in food regulation in Victoria.

Table B.2 outlines the responsibilities of the key regulatory agencies and the principal Acts of food regulation.

Table B.2 Victoria's key food safety regulatory agencies and principal Acts

<i>Agency</i>	<i>Principal Acts and regulations</i>
Department of Human Services	<i>Health Act 1958</i> <i>Food Act 1984</i>
Victorian municipal councils	<i>Health Act 1958</i> <i>Food Act 1984</i> <i>Local Government Act 1989</i>
Department of Primary Industries	<i>Dairy Act 2000</i> <i>Meat Industry Act 1993</i> <i>Seafood Safety Act 2003</i> Meat Industry Regulations
Dairy Food Safety Victoria	<i>Dairy Act 2000</i>
PrimeSafe	<i>Meat Industry Act 1993</i> <i>Seafood Safety Act 2003</i> Meat Industry Regulations

Source: DHS 2004d, p. 3.

The Food Safety Unit of the Department of Human Services

The Food Safety Unit is an operational unit within the Public Health Group of the Rural and Regional Health and Aged Care Services division of the

Department of Human Services. The unit is the key food safety and compliance body within Victoria and is responsible for developing and scrutinising legislative and regulatory reform proposals, and undertaking community and business education programs. Other functions include:

- registering food safety program templates and food safety auditors
- assisting with food recalls and investigations of foodborne illnesses
- monitoring food safety developments
- developing risk management tools and systems
- approving food safety auditors
- assisting with the development of national food safety and regulation policies.

The Food Safety Unit carries out its work in cooperation with local government, the Commonwealth, other national, state and international regulatory bodies and other State Government departments. It also works closely with industry bodies, community and consumer organisations and training providers.

The Department of Primary Industries

The Department of Primary Industries administers the policies which relate to Acts that regulate businesses in agriculture and primary production.

Dairy Food Safety Victoria

DFSV, the body established under the Dairy Act, is responsible for overseeing the licensing and quality control (safety and hygiene in plant and equipment, transport vehicles, and the manufacturing premises) of dairy producers, manufacturers and distributors (s6).

PrimeSafe

In July 2003 the name of the VMA was changed to PrimeSafe under the Seafood Safety Act (s63). PrimeSafe is responsible for overseeing the licensing and quality control of those within the meat, poultry and seafood businesses.

Coordination

To promote cooperation and transparency, as noted above, an MOU was entered into on 1 October 2004 between key regulatory bodies. Under the MOU, responsibility to ensure compliance in an industry rests with the relevant regulator (that is, DFSV or PrimeSafe). DFSV is responsible for overseeing a consistent application of food standards relating to the dairy industry, and achieves this by providing interpretive guidance on the scope and meaning of the standards. Further, DFSV has a role in communicating serious breaches of the Food Standards Code to the department, particularly where a breach may lead to the recall of a product manufactured on premises licensed by a regulator (PrimeSafe 2004b, p. 6).

Cooperation between Victorian regulators is also assisted by the Whole of Government Group (WOGG), a body established to consult on national regulatory matters and local matters if required. The WOGG consists of key people from the Department of Human Services, the Department of Primary Industries, the Department of Innovation, Industry and Regional Development, the Department of Premier and Cabinet, the Department of Justice, DFSV and PrimeSafe, and is coordinated by the Department of Human Services Food Safety Unit (DHS 2007a).

B.4 Local government

The 79 municipal councils within Victoria are responsible for the administration of many elements of the Food Act, most notably through the registration of food businesses to which the Act applies. The municipal councils are also responsible for the renewal, transfer, revocation and suspension of registration, and the setting of registration fees, the inspection of food businesses to monitor compliance with the Act and food safety programs, the submission of food samples for analysis, and taking proceedings against food businesses which contravene the Act. Further, some councils have made local laws that affect food businesses.

According to the Municipal Association of Victoria:

Local government registers approximately 40 000 food businesses each year across the state. As a consequence, local government has considerable knowledge and experience in working with food businesses on-the-ground across the state. It also provides a state-wide service where officers with local knowledge and experience in working with food businesses can respond quickly to food safety incidents. (sub. 41, p. 1)

Nonetheless, the Municipal Association of Victoria was careful not to overstate the significance of the regulatory role of councils:

In relation to food regulation, local government is just one of the regulatory authorities involved in the food safety system in Victoria. ... the magnitude of requirements imposed on business by local government is not significant in the overall context of regulatory administrative pressures on food businesses, such as complying with ever rising industry certification measures, quarantine issues, federal and State Government taxes and charges, and so on. (sub. 41, p. 1)

Council responsibilities for food regulation arise from the Act but they are not subject to direction from the Department of Human Services. And there are no sanctions that can be applied to councils if they do not meet their obligations under the Act or fail to report requested information on their activities to the department.

Registration of food businesses

Councils are responsible for registering food business premises in their municipality, unless an exemption applies (s35). Before registration is effected, a

council must inspect the premises and be satisfied that all relevant requirements of the Act (with respect to the premises) have been complied with (s39(1)). In addition, the council must be satisfied that there is a food safety program for the premises that complies with the requirements of the Act (s39(2)). Councils are also responsible for the renewal, transfer, revocation and suspension of registration of food premises (s40D) and must maintain a register book containing particulars of all registrations made under the Act (s43).

Councils set fees for registration of food premises in their municipality. The fees may vary according to the size or nature of the food premises but must not exceed the amount fixed by the Governor-in-Council (s41A). According to the Department of Human Services, the fees set by council fall well short of the actual costs of administering the requirements of the Act (sub. 48, p. 15).

Inspection of food premises

Councils may inspect a food premises at any time to determine whether the food business carried out at the premises is operating in accordance with a standard food safety program for the premises (s19HA). In the event of noncompliance, the council may require the proprietor of the food premises to take remedial action; failure to comply is a ground for refusal of registration or revocation or suspension of registration of the food premises (s19HB).

Surveillance and enforcement

Council officers have power to undertake investigations to ascertain whether the provisions of the Act are being complied with. They may enter premises, take samples, seize articles and take photographs and make sound recordings. They may also stop, detain and search vehicles and take other authorised actions in the course of making inquiries (s21(1)).

Submission of food samples for analysis

Annually, every council is required to submit for analysis not less than three samples of food for each thousand persons of the population of the municipal district (s32(1)). The number of samples required is independent of the number of food businesses in the municipality. Reports on the analysis of the samples are provided to each council (s32(2)).

Local laws

The role of councils under the Act is essentially administration and enforcement. Councils do not have a rule-making role, apart from a limited exception for making local laws.

Some councils have made local laws under the *Local Government Act 1989* (Vic.) which affect food businesses and which they oversee; for example, the Port Phillip City Council has passed Local Law no. 7, Footpath activities, to regulate and

control footpath activities including footpath trading. Nonetheless, the power of councils to make local laws affecting food businesses is limited. A council must not make a local law for which regulations are in force or may be made under the Food Act, or for which a prescribed food standard has effect (s63B(1)).

Appendix C: International and Australian studies

Previous international and Australian studies of regulation generally and food regulation specifically provide insights into the nature and magnitude of the burden of food regulation in Victoria. Those studies also provide insights into issues to consider when estimating the costs of regulation, but overseas studies need to be treated with caution because different institutional frameworks, industry structures and market conditions limit their applicability to Australia. This appendix summarises some of the more relevant studies.

C.1 International studies

Among the literature reviewed by the Victorian Competition and Efficiency Commission, the results of a UK study—*Food standards agency 2006: administrative burdens measurement exercise*—are particularly useful for understanding the cost of food regulation in Victoria. This study was part of a series aimed at estimating administrative costs (rather than compliance or policy costs) resulting from regulations imposed by central government (PwC 2006).

The study attempted to estimate the administrative costs imposed by food regulation. The UK Food Standards Agency, which was set up as an independent government department in 2000 to protect the public's health and consumer interests in food, provides advice and information to the public and government on food safety, including from 'farm to fork' and nutrition and diet. It also protects consumers through effective food enforcement and monitoring (PwC 2006, p. 8). Its regulatory cover is similar to the scope of this inquiry, although the agency's measurement exercise extended to farmers and fishermen (the regulation of which is largely outside the scope of that being considered by the Commission).

The measurement of costs was carried out in accordance with the standard cost model framework and method, and based on a snapshot of the administrative costs¹ imposed by regulation at May 2005. The study found:

- the majority of these costs were attributed to obligations of international origin; only £2.8 million (2 per cent) of the total administrative cost was attributed to obligations of domestic origin (PwC 2006, p. 44). (Note, however, that this is in the context of UK membership of the European

¹ The standard cost model relies on deriving estimates of the standard cost of meeting each information obligation/data requirement within a regulation for a 'normally efficient business' (PwC 2006, p. 8).

Community. As a result, Community obligations may supplant domestic obligations that would otherwise arise.)

- the total estimated administrative cost of 53 food regulations measured was £128 million,² representing less than 0.2 per cent of the gross value added for the food industries involved³
- a small proportion of regulations accounted for the majority of administrative costs; seven of the 53 regulations were estimated to account for 85 per cent of the total (PwC 2006, p. 49).

The study also indicated the types of obligation and administrative activity that businesses are required to undertake to comply with the agency's regulations. The results suggest the three highest obligation types carried out by businesses, as a percentage of total administrative cost, are:

- (1) keeping records (41 per cent)
- (2) statutory labelling for third parties (24 per cent)
- (3) returns and reports (8 per cent)

and the three highest obligation types by administrative activities (as a percentage of total administrative cost) are:

- (1) gathering and assessing relevant information/figures (28 per cent)
- (2) familiarisation with requirements (7 per cent)
- (3) reporting, including written descriptions, copying, filing, distributing or submitting information/reports (5 per cent) (PwC 2006, p. 11).

Although these results relate to nationwide regulations, some inferences about the administrative cost of food regulation in Victoria may be possible. First, most of the cost of food regulation is likely to result from a small subset of regulations. Second, in addition to state based regulations, regulation derived from international standards may be important in driving costs. Third, the total administrative cost of food regulation as a proportion of value added is likely to be small. And fourth, the obligation for keeping records and statutory labelling are likely to constitute the majority of administrative costs.

A 2006 study by the Commission of the European Communities to estimate the administrative costs of regulation for member countries also found a significant share of the total cost of regulation originated from international regulation (Commission of the European Communities 2006, p. 4). Among its findings, the

² To put this cost in context, the United Kingdom's Better Regulation Task Force reported that administrative costs are likely to comprise around 30 per cent of the total costs of regulation (BRTF 2005, p. 3).

³ PwC 2006, derived from figure 2 on p. 22.

Commission presented data for Denmark and the Netherlands to illustrate the substantial costs derived from national and international obligations (table C.1).

Table C.1 Distribution of administrative costs in Denmark and the Netherlands

	<i>Denmark</i>	<i>Netherlands</i>
Share of administrative costs by origin of legislation	<i>percent</i>	<i>percent</i>
Originates directly in international law	28	43
International origin but implemented nationally	15	13
National origin	57	44

Source: Commission of the European communities 2006, p. 4

Caution is needed in extending this finding to Australia, given the role that EU regulations assume for member states. Nonetheless, the findings suggest a material share of the administrative cost of food regulation in Victoria may come from international standards and obligations with which Australia has chosen to align its regulations.

C.2 Australian studies

Previous studies into food regulation generally in Australia, but particularly those assessing the merit of regulatory change, provide insights into the nature and magnitude of the cost of food regulation in Victoria. The Blair report (1998) highlighted the difficulty of quantifying the cost of food regulation for other than licence and inspection fees:

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. (Blair 1998, p. 51)

Notwithstanding this difficulty, the review provided estimates for small businesses, medium to large businesses, food exporters and food importers. While useful as an indication of the type and scale of costs incurred by specific companies, the estimates provide only limited insight into the likely average cost of food regulation to businesses generally. Only those results for small businesses provided insights in this regard.

The review reported the findings of a study commissioned in 1997—*Overcooked: a study of food compliance costs for small business*—that reported costs for 37 small

businesses in the four eastern states and in the Australian Capital Territory (Office of Small Business 1998). These businesses comprised mostly manufacturers and processors (but included some retailers), with half of the 28 manufacturers involved in exporting. The study found food regulation imposes a significant burden on small businesses:

- The average cost of food related regulatory compliance per firm was just over \$13 700, representing 0.28 per cent of the average annual turnover of \$4.8 million.
- The main elements of the regulatory burden include the cost of an owner's or a firm's 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 was highest for manufacturing at \$17 407, representing 0.3 per cent of turnover, while the average burden of \$2216 for retail firms was well below that, representing 0.1 per cent of turnover.
- Exporters had a higher average burden (\$19 967 or 0.35 per cent of average turnover) compared with non-exporters (\$14 847 or 0.25 per cent of turnover) (Blair 1998, p. 52).

Although the costs do not identify state and national regulation, they indicate the scale and relative significance of food regulation costs to business.

The review highlighted the difficulty of estimating the costs to governments of food regulation because of the large number of agencies involved. To estimate national costs and revenues associated with food regulation, the review commissioned a study involving the main food regulatory and local government agencies in all states and territories (including a sample of local governments) to provide statistical validity at a national level. Tables C.2 and C.3 present these results. While regulatory arrangements have changed significantly since 1996-97, these figures remain indicative of the relative role of Commonwealth, state and local governments.

Table C.2 **Estimated annual expenditure by governments on food regulation, 1996-97**

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

Source: Blair 1998, p. 56.

The total revenue collected by governments for food regulation is an indication of the financial cost incurred by business as a direct consequence of that regulation. Notwithstanding changes to regulatory arrangements since 1996-97, which have tended to reallocate costs across agencies, the results indicate a minimal role for state government agencies in imposing financial costs on food import and export businesses.

Table C.3 **Estimated annual revenue^a collected by governments for food regulation, 1996-97**

	<i>\$ million</i>
Domestic	
Commonwealth	10.1
State/territory	14.2
Local government	15.4
<i>Total</i>	<i>39.7</i>
Imports	
Commonwealth	2.6
State/territory	–
Local government	–
<i>Total</i>	<i>2.6</i>
Exports	
Commonwealth	58.2
State/territory	–
Local government	–
<i>Total</i>	<i>58.2</i>
Total revenue^a	100.5

^a Revenue means monies collected from industry through cost recovery arrangements and excludes monies provided through government appropriations.

Source: Blair 1998, p. 57.

As part of a 1999 analysis of the impact of proposed national reforms to food standards, Food Standards Australia New Zealand (FSANZ) estimated the cost of the then existing state and territory food hygiene regulations. FSANZ estimated the annual cost to industry of continuing the then system of food hygiene would amount to \$249 million across Australia, but if this system was replaced with voluntary self-regulation and consumer education, the annual cost to industry would be \$4 million (FSANZ 1999).⁴ This estimate implied an incremental cost to business of \$245 million for such regulation, and based on Victoria's share of national production and sales, an imputed total cost to Victorian business of about \$60–70 million in 1999 prices.

⁴ Derived from figure 20, 'Comparison of options for food safety regulation: cost to industry'.

FSANZ considered the proposed reforms⁵ (which form the basis of the current Victorian regulatory approach) would require business to adjust to a new style of regulation with new requirements and upfront costs, but that these new costs would not add to current costs, but rather partly replace them. The report also considered that the proposed standards would benefit industry by reducing costs (less prosecution and litigation, better staff management and delineation of responsibility, better stock management and less waste) and removing outdated, prescriptive and nationally inconsistent regulations.

The report provided some measure of the initial and ongoing (lower) costs associated with the proposed standards. It estimated the proposed standards to have an average initial cost of approximately \$300 per business with an annual ongoing cost of \$1080. Further studies estimated the annual cost of compliance for a small business at \$1071 (FSANZ 1999).

The likely cost of the reforms considered by FSANZ was assessed by The Allen Consulting Group in 2002. The main focus of the consultant's report was on the costs and benefits of meeting the proposed standard 3.2.1, with an emphasis on small businesses across a range of activities including food service (takeaway, cafés, catering); food transport; retail (milk bar, deli); school canteens; not-for-profit; manufacturing; primary industry; child care; aged care; and family day care (ACG 2002, p. 2). Current food regulation in Victoria embodies the essence of this standard, and the report provides additional evidence of the likely costs that this regulation may be imposing on Victorian businesses.

The report found that the costs to introduce standard 3.2.1 and its requirement for food safety programs comprised:

- one-off aggregate development costs of \$1440 per business
- aggregate ongoing costs (including audit costs) of about \$1700 per business per year (ACG 2002, p. 2).

The report found that 'underpinning the cost burden to industry is the time involved in developing a FSPs [food safety program], and training staff in the new requirements' (The Allen Consulting Group 2002, p. 7). It found relatively little difference in average business costs between industries, thus concluding that the cost burden is relatively large for micro businesses (ACG 2002, p. 3). But for higher risk food operations, the costs could be significantly more.

⁵ The proposed reforms were to introduce standard 3.1.1, Interpretation and Application, standard 3.2.1, Food Safety Programs, standard 3.2.2, Food Safety Practices and General Requirements, and standard 3.2.3, Food Premises and Equipment.

The report noted, for example, that:

The Victorian Department of Human Services ... undertook a survey of the implementation issues surrounding the introduction of FSPs for 'class A' businesses, the highest risk classification that was required to introduce FSPs by March 1999. The class A premises comprised nursing homes and aged care, hospitals, and child care operations ... The survey results [identified costs of developing a food safety program]: total costs ranged from a minimum of \$792 for day care centres through \$1300 for a private child care centre, to \$10 700 for a hospital and \$18 435 for a cook chill operation. (ACG 2002, p. 33)

The Banks review (2006), which encompassed food regulation as part of its brief, identified the most visible costs to business of regulation as the paperwork burden and related compliance costs:

- providing management and staff time to fill in forms and assist with audits and the like;
- recruiting and training additional staff, where needed to meet compliance burdens;
- purchasing and maintaining reporting and information technology systems;
- obtaining advice from external sources (such as accountants and lawyers) to assist with compliance; and
- obtaining licences and/or attending courses to meet regulatory requirements. (Banks 2006, p. 9)

The review also identified food regulations such as mandatory food safety programs and new country of origin labelling requirements,⁶ where analysis suggested they imposed a net cost (Banks 2006, p. 57). Victorian businesses indicated to the review that monitoring and record keeping associated with the food safety program generated significant costs. The review reported the finding of the Office of Small Business, for example, which found food service businesses spend an average of four hours a week complying with food safety programs (Banks 2006, p. 59).

There are a number of reports on the cost of regulation to business, but little is available on the cost to government of food regulation. One exception is the study of food safety service costs delivered by local government under the provisions of the *Food Act 1984* (Vic.), conducted by the Municipal Associations of Victoria in 2001. The study consisted of two separate surveys. The first collected data from 14 councils early in 2001, at which time the legislative amendments affected only class A and B1 food businesses. The survey costed 70

⁶ Country of origin labelling requirements are national rather than state based regulations.

food safety activities and was based on actual 1999-2000 expenditure across 8955 registered food premises. The survey found:

- councils deployed 47 full time staff equivalents and spent \$3.72 million, at a mean cost of \$415 per premises
- if costs are apportioned on the basis of business, community and corporate components,⁷ the business component accounted for 58 per cent (\$2.17 million) of the total cost of \$3.72 million
- the \$2.15 million income from registration fees accounted for 99 per cent of the business component of food safety activity costs
- the average cost to council per registered business premises (excluding food safety program assessments) in 1999-2000 was \$197 and the average cost per food safety program assessment was \$302 (MAV 2002, p. 5).

The report found substantial variation in food safety service costs, partly due to variations in charge-out rates for staff, staffing structures and the responsibilities of surveyed councils. The mean and median costs per registered premises for the general undertaking of responsibilities under the Food Act, however, varied by only about 6 per cent (MAV 2002, p. 6).

The second survey estimated the costs to four councils of delivering food safety services associated with the full implementation of the legislation as amended by the *Food (Amendment) Act 1997* (Vic.) and the *Food (Amendment) Act 2001* (Vic.), and found:

- estimated total costs for delivering services under the legislative provisions were approximately \$1.3 million (with an average cost to councils of \$469 per business) compared with \$1.2 million (and \$431 per business) for these four councils in the first survey
- if costs are apportioned on the basis of business, community and corporate components, business costs accounted for 61.5 per cent of the total cost, community costs accounted for 20.5 per cent and corporate costs accounted for 18 per cent
- cost per registered premises would increase by 8.8 per cent, with the majority of this increase to be in the business cost component, which would increase to 11.2 per cent

⁷ Business costs are defined as those associated with managing individual registration, renewal of registration and transfer of registration processes. These costs included inspections of premises and assessment of food safety programs as they formed part of registration processes. Community costs relate to those services that focus on consumer protection (public health) or responding on behalf of the community, such as complaint investigation and food recalls. Corporate costs consist of those associated with the management processes for the service, including information technology, service planning and quality assurance (MAV 2002, p. 16).

- most of the estimated increase associated with business costs comes from service changes in food safety monitoring strategies (13 per cent) and renewal of registration activities (19.4 per cent), and is based on a 10 per cent noncompliance rate (MAV 2002, p. 6).

The costs indicated in the second survey more accurately reflect the costs local councils are likely to incur in Victoria's current regulatory environment.

Appendix D: Basis for estimated savings

In chapter 9 the Commission described the estimated savings that could accrue from changes it proposed. The basis for savings from the proposed single register for mobile businesses, targeted training requirements, and more targeted audit and inspection arrangements were set out in section 9.11.

Savings from proposed changes for establishing a low risk category of registered businesses (class 3) and introducing simplified food safety program templates and streamlined or exception based record keeping requirements (for remaining class 1 and class 2 businesses) were only summarised in that section. This appendix outlines the basis for the Commission's estimated savings for these latter two proposed changes and concludes with a summary of the savings for each of the proposed changes set out in section 9.11.

D.1 Reducing regulatory requirements for low risk businesses

Reducing regulatory requirements for low risk businesses is expected to deliver savings of about \$16.1 million to businesses and councils, combined.

D.1.1 Business savings

The Commission has estimated savings of \$13.4 million in the first year of operation, based on assumptions about:

- the number of businesses affected
- implementation and ongoing administrative costs of the new arrangements relative to what is currently the case
- the cost to businesses of introducing and becoming familiar with the new arrangements.

Number of businesses

The Commission envisages that candidates for the class 3 category would be initially drawn from low risk retailing and manufacturing firms with existing quality assurance programs. At least half the retail and manufacturing/processing businesses registered by local government are likely to be eligible to be reclassified, and the Commission envisages that these would all seek to be reclassified. This represents about 7800 retail businesses and 850 manufacturers. These numbers exclude businesses registered by PrimeSafe and Dairy Food Safety Victoria. In addition, the Commission considers that a third of businesses

in the cafés/bars/restaurants industry group would likely qualify to migrate to the new class 3 category. This represents about 5500 businesses.¹

The Commission has assumed that businesses, on average, would regularly revisit their food safety programs, making small adjustments as necessary, but revise them significantly once every five years. This means that in any one year, 20 per cent of incumbent businesses would consider a ‘new’ food safety program. Further, the Commission has assumed that economic growth will result in new entrants equal to 5 per cent of incumbent business numbers. These new entrants will require a ‘new’ food safety program.

Implementation and ongoing costs

Existing implementation² and ongoing administrative costs for instituting a food safety program and qualifying for council registration are adopted from table 6.5 (chapter 6). Allowing for inflation in the period to 2006-07, the Commission has used implementation costs of \$1450 for manufacturing, \$1700 for retailing and \$1700 for cafés/bars/restaurants. For ongoing costs, it has used \$3050, \$1400 and \$1800 respectively.

The ongoing costs of the reduced regulatory arrangements are assumed to involve significantly less record keeping, with the result that these ongoing costs could be halved on average for each business. For manufacturing businesses eligible to be reclassified to the class 3 category, the new arrangements represent a saving of \$1525. For retail businesses, they represent a saving of \$700. For cafés/bars/restaurants, they represent a saving of \$900.

The implementation costs of the reduced regulatory arrangements are assumed to involve 2 hours of familiarisation (at a cost of \$54 per hour) to read and fill out a simplified ‘registration’ form. For the 80 per cent of businesses that would not otherwise have adopted a ‘new’ food safety program, this is an implementation cost of \$108 per business. For the 20 per cent of businesses adopting a ‘new’ food safety program and for new entrants, the new arrangements will also cost \$108, but will allow them to avoid incurring the average implementation cost of the previous regime. This represents a net saving of \$1342, \$1592 and \$1592 for manufacturing, retailing and café/bar/restaurant businesses respectively.

Education and training costs

In addition to these costs, the Commission considers businesses would require additional education and training to understand their responsibilities under the new, simpler regime. The Commission has assumed four hours per business would be sufficient (\$216). As all eligible businesses are expected to accept being

¹ Business numbers are adopted from table 6.6 in chapter 6.

² This is the initial cost of developing and implementing a food safety program and associated requirements.

reclassified, this cost would be incurred by all incumbent and new businesses in the first year in which the new arrangements were instituted.

Potential savings

The potential net savings in the first year is the sum of the implementation savings for some firms and ongoing savings for all firms, minus added implementation costs for some firms and education/training costs for all firms.

Using the food retailing industry as an example, this may be expressed as:

$$\text{Total savings} = ([7800 * 0.25] * [\$1700-\$108]) + ([7800 * 1.05] * [\$1400/2]) \\ \text{minus } ([7800 * 0.8] * \$108) + ([7800 * 1.05] * \$216)$$

D.1.2 Council savings

Estimated gross savings of about \$2.7 million are based on assumptions that councils will derive savings from:

- reduced frequency of inspections for businesses in the new low risk class 3 category
- less time spent on assessing individual food safety programs.

The Commission has assumed councils will inspect 10 per cent of class 3 businesses each year under a more targeted inspection strategy. Given the number of new and incumbent businesses noted above, this would result in a reduction in council inspections of about 13 300 businesses in the first year of implementation. The Commission has used an average cost to councils of \$150 for each inspection. Accordingly, the gross saving to councils of conducting over 13 300 fewer inspections under the proposed arrangements is an estimated reduction in costs of about \$2 million.

The proposed certification procedures for low risk businesses and allowing businesses to choose to use a (simpler) food safety program would mean councils having to spend less time in assessing food safety programs. The Commission has assumed an average cost to council of \$100 for assessing a food safety program, and that the proposed arrangements would result in only half this being required. On this basis the proposed changes could deliver gross saving to councils of about \$740 000.

D.2 Simplified template and record keeping

The Commission has estimated that introducing simplified food safety program templates and streamlined or exception based record keeping requirements could deliver savings to the main food industries of about \$12.9 million in the first year of operation. This estimate is based on a number of assumptions:

- the number of businesses which might qualify to implement the requirements
- implementation and ongoing costs of the proposed requirements relative to what is currently the case.

Number of businesses

The number of manufacturing, retail and café/bar/restaurant businesses eligible to adopt the proposed requirements is the remainder of businesses which do not transfer to the class 3 category (844, 7794 and 10 930 respectively). One-eighth of the manufacturing numbers (105), and half the retailing numbers (3897) and half of the café/bar/restaurant numbers are assumed to adopt the simplified arrangements. Of the number of wholesaling businesses (3271, from table 6.6) half are assumed to adopt the new arrangements (1635). New entrants willing to adopt the new arrangements are assumed to contribute an additional 5 per cent of businesses to these numbers.

The Commission has assumed that businesses, on average, would revisit their food safety programs regularly, but revise them significantly once every five years. This means that in any one year, 20 per cent of incumbent businesses would consider a ‘new’ food safety program. Further, the Commission has assumed that economic growth will result in new entrants equal to 5 per cent of incumbent business numbers. These new entrants will require a ‘new’ food safety program.

Implementation and ongoing administrative costs

Existing implementation costs for instituting a food safety program are adopted from table 6.5. Allowing for inflation in the period to 2006-07, the Commission has used implementation costs of \$1450 for manufacturing and \$1700 for the retailing, wholesaling and cafés/bars/restaurants industries.

Existing ongoing administrative costs (mostly record keeping costs) are adopted from table 6.5. Allowing for inflation in the period to 2006-07, the Commission has used ongoing administrative costs of \$3050 for manufacturing businesses, \$1400 for wholesaling, \$1400 for retailing and \$1800 for cafés/bars/restaurants. The Commission has assumed streamlined record keeping requirements would most likely halve these costs. Across the four industries, the saving to businesses in the first year of operation is expected to be about \$9.4 million.

The implementation costs of the proposed simplified templates are assumed to involve 2 hours of familiarisation (at a cost of \$54 per hour). For the 80 per cent of businesses that would not otherwise have adopted a ‘new’ food safety program, this is an implementation cost of \$108 per business. Across the four main industries, this is expected to impose a cost of almost \$1 million. For the 20 per cent of business adopting a ‘new’ food safety program and for new entrants, the new arrangements will also cost \$108, but avoid incurring the

average implementation cost for the previous regime. This represents a net saving of \$1342 for manufacturing businesses and \$1592 for retailing, wholesaling and café/bar/restaurant businesses. Across the four industries, this is expected to generate savings of about \$4.4 million. The net savings in the first year of operation is, thus, about \$3.5 million.

Potential savings

The potential net savings in the first year is thus the implementation savings for some firms and ongoing savings for all firms, minus the added cost of implementation for some firms.

Using the cafés/bars/restaurants industry as an example, this may be expressed as:

$$\text{Total savings} = ([8200 * 0.25] * [\$1700 - \$108]) + ([8200 * 1.05] * [\$1800/2]) \\ \text{minus } (8200 * 0.8) * \$108$$

D.3 Summary of savings from proposed changes

The Commission estimates that the proposed changes listed in section 9.11 offer the potential to deliver net savings to businesses and councils of about \$37.6 million (table D.1).

Table D.1 **Estimated savings**

<i>Proposed changes</i>	<i>Estimated net saving in first year</i> \$m
Reduced regulatory requirements for low risk businesses	16.1
Simplified FSP templates and record keeping	12.9
Single register for mobile premises	2.5
More targeted training requirements (mid range est.)	2.1
More targeted inspection and audit arrangements	4.0
Total estimated net savings	37.6

Source: VCEC estimates.

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