

SHORT FORM PUBLIC BENEFIT TEST REPORT ON THE REVIEW OF THE *FOOD ACT 1981*

EXECUTIVE SUMMARY

Food safety risks

The incidence of food-borne illness continues to increase in Australia. During 2001-02, there were an estimated 5.4 million incidents of gastroenteritis caused by contaminated food. This resulted in the loss of 6.5 million days of paid work, which cost Australia approximately \$3.75 billion per annum. Each year in Queensland, it is estimated that a person has a 22% chance of contracting a food-borne illness. The range of consequences arising from contracting a food-borne illness vary from mild physical discomfort to far more serious side effects including long-term illnesses or death. There are approximately 105 deaths a year caused by food-borne illnesses. Maintaining the safety of food is therefore a vital aspect of protecting the health and welfare of the public and justifies government regulatory intervention to secure a safe food supply and to ensure continued public confidence in food.

Proposed legislation

The proposed *Food Bill 2005* (the Bill) requires food businesses to be licensed, high-risk food businesses to have food safety programs and food businesses to comply with the National Food Safety Standards. These requirements are aimed at ensuring that food for sale is safe and suitable for human consumption. However, these provisions restrict competition in so far as operators who are not licensed, and for certain high-risk food businesses that do not have food safety programs, are prevented from selling food. Accordingly, a short form Public Benefit Test has been undertaken on these restrictions.

The Bill requires food manufacturers and retailers of unpackaged food, other than those that pose low or negligible risks to the public and certain not-for-profit organisations¹, to obtain a licence from their local government. Local governments are to conduct regular inspections of licensed food premises to ensure that the food business is selling safe food. In order to obtain a licence, a food business must satisfy certain objective criteria that indicates an ability to provide safe food. For example, a local government can consider the suitability of the premises for safely carrying out food business activities, the applicant's previous compliance with food legislation and the applicant's skills and knowledge in providing safe food.

Additionally, the Bill adopts the approach endorsed by the Australia New Zealand Food Regulation Ministerial Council that certain high-risk food businesses implement food safety programs. A food safety program is a pro-active measure designed to identify and eliminate food safety failures by the food business before the food

¹ For the purposes of the proposed Bill, a 'not-for-profit organisations' is to be defined as: "An association or other body, including an unincorporated association, that does not operate to make a profit or financial gain for its members, and is engaged in activities for a charitable, social welfare, educational, sporting, recreational, political, or cultural purpose."

reaches consumers. The Bill provides that approved food safety auditors will regularly check to ensure that food businesses are complying with their food safety programs.

Alternative regulatory options

Alternative legislative options to achieve a reduction in the incidence of food-borne illnesses were analysed. They include requirements for food businesses to register their food premises with the local government, no licensing or registration requirements ('negative licensing') or retaining the existing licensing of persons and registration of premises under the *Food Hygiene Regulation 1989*. These options are considered less effective than the approach proposed by the Bill. For example, in registering food premises, a local government is ensuring that the food premises are suitable for the activities to be undertaken. However, the suitability of premises is only one factor to be taken into account when assessing whether a food business can supply safe and suitable food. Other factors, including the business owner's previous compliance with food legislation and the skills and knowledge of the business owner to provide safe and suitable food must also be taken into account. Negative licensing fails to adequately address the risks associated with the sale of food because it relies upon corrective action occurring only after a food-borne illness has occurred. The existing licensing and registration requirements are ineffective in addressing the risks associated with the handling of food and increase the administrative and financial burdens on both local government and the food business.

Benefits and costs of proposed legislation

The Bill impacts on existing and potential food businesses, consumers and governments. The benefits of the proposed approach outweigh the costs in all areas. The benefits include:

- An anticipated reduction in the number of food-borne illness outbreaks through the requirement that food businesses are to be licensed and the mandatory implementation of food safety programs for certain high-risk food businesses;
- A corresponding increase in consumer protection from the risk of contracting a food-borne illness and an increase in consumer confidence in the food sector's ability to provide safe and suitable food;
- An anticipated reduction in health costs associated with providing services from or in publicly funded hospitals due to the reduction in the incidence of food-borne illnesses;
- Greater clarity for local government as to which food businesses are to be licensed thereby allowing local government to channel enforcement resources more efficiently into monitoring compliance with the National Food Safety Standards and the Bill by licensed food business;
- The rapid identification of the source of a food-borne illness outbreak, its containment and the early recall of foods suspected of being vehicles for food-borne diseases; and
- A reduction in the costs of operating a food business by removing the requirement to register food premises.

It is not expected that the licensing requirement will impose any additional costs as proprietors of existing food businesses are currently required under the *Food Hygiene Regulation 1989* to be licensed. There may be costs associated with the mandatory

implementation of food safety programs for certain high-risk food businesses. However, some of these high-risk food businesses currently have food safety programs or comparable quality assurance systems in place. For these food businesses, it is not expected that there will be any additional costs incurred.

Consultation

Public consultation has occurred on a national level through the release of a Regulatory Impact Statement on the Model Food Act and a cost benefit analysis of the National Food Safety Standards. Consultation was also undertaken on proposing the mandatory implementation of food safety programs for high-risk food businesses. Public consultation has occurred through the release of a Discussion Paper on the review of the *Food Act 1981*. There has also been consultation with the Minister for Health's Food Safety Stakeholders' Forum over an extended period.

1. BACKGROUND

1.1 *National framework for food regulation*

At the 1991 Premiers' Conference, agreement was reached that there should be a nationally consistent legislative approach to food regulation as well as the harmonisation of Australia's domestic and export food standards with international food standards. The Australia New Zealand Food Authority ("ANZFA")² was created to undertake the task of developing national food standards to be applied in all States and Territories. In 1999 ANZFA prepared and released for public comment a Regulatory Impact Statement for a Model Food Act that supported the licensing of food businesses and a separate cost benefit analysis of the implementation of four national food safety standards proposed to be adopted into the *Food Standards Code*³ (the "Code"). These four food safety standards (3.1.1 *Interpretation*, 3.2.1 *Food Safety Programs*, 3.2.2 *Food Safety Practices and General Requirements* and 3.2.3 *Food Premises and Equipment*) were intended to replace existing State and Territory food legislation which was inconsistent between jurisdictions, outdated and inappropriate for contemporary food handling processes. The inclusion of these food safety standards would achieve international best practice in the food industry.

On 24 August 2000 the Australia New Zealand Food Regulation Ministerial Council (the "Ministerial Council") authorised the adoption into the Code of three of the four food safety standards. The proposed food safety standard 3.2.1 *Food Safety Programs* was not adopted until the Commonwealth completed further research into the effect the mandatory implementation of the standard would have on food businesses.

On 3 November 2000 all States, Territories and the Commonwealth signed an Intergovernmental Agreement (IGA) on Food Regulation. In accordance with the IGA, all States and Territories agreed to adopt Annex A of the national Model Food Act. Annex A set out the policy principles and objectives, including the legal obligation not to sell or handle food that is unsafe and a requirement that food businesses comply with the Code.

Annex B of the national Model Food Act deals with a number of issues including registration of food businesses and food safety programs. Adoption of each provision in Annex B is discretionary.

In 2001, the Queensland Government endorsed a framework for a risk based food safety management system in the manufacturing, food services and retail sectors. This framework includes a preventative, risk-based approach to regulation, which must form the basis of any legislative review of the *Food Act 1981* (the "Act").

The Act was amended to bring the Annex A provisions into effect on 1 January 2002. A review of the remaining provisions of the Act has involved an assessment of what Annex B provisions should be adopted in Queensland. The review has also considered what other amendments should be made to ensure that an appropriate regulatory system is in place for the sale of safe and suitable food by Queensland food

² ANZFA is now known as Food Standards Australia New Zealand ("FSANZ").

³ The *Food Standards Code* is a collection of individual food standards. It is an offence under State and Territory food legislation to supply food which does not comply with relevant food standards.

businesses. As part of this process, the *Food Hygiene Regulation 1989* (which contains details about food business licensing and registration requirements) and the *Food Standards Regulation 1994* (which contains details about prescribed pathogens and the reporting of prescribed pathogens) have also been reviewed.

2. RISKS ASSOCIATED WITH THE PREPARATION AND SALE OF FOOD

2.1 *Adverse health effects for consumers*

Generally, consumers do not have sufficient technical expertise to evaluate the safety of food purchased from the food service sectors as both sight and smell alone are insufficient indicators⁴. This is evident when one considers that each year in Queensland it is estimated that a person has a 22% chance of contracting a food-borne illness⁵. During 2003 in Queensland⁶, there were 1821 reported cases of *Salmonella* (the second highest nationally behind Victoria) and more than 3200 reported cases of *Campylobacter*. On a national scale, the situation is starker. In a national survey of gastroenteritis conducted by OzFoodNet during 2001 – 2002, there were an estimated 5.4 million incidents of gastroenteritis each year caused by contaminated food⁷. This resulted in the loss of 6.5 million days of paid work, which cost Australia approximately \$3.75 billion per annum⁸.

Epidemiological evidence demonstrates that severe food-borne illnesses are most frequently caused by biological hazards (including bacteria and viruses). Viruses, such as Norwalk-like viruses and hepatitis A, are estimated to cause 30-40% of food-borne illnesses in Australia,⁹ whilst known pathogens like *Escherichia coli* (*E. Coli*), noroviruses, *Campylobacter* and *Salmonella* account for the largest number of cases of food-borne gastroenteritis each year¹⁰.

People who are affected by *Salmonella* poisoning experience unpleasant symptoms such as headache, diarrhoea, fever, nausea and abdominal cramps that may last between 6 and 72 hours. The very young, elderly and immuno-compromised are particularly likely to suffer badly from *Salmonella* poisoning with symptoms of severe dehydration, and where the infection develops – septicæmia or ophthalmic infection¹¹.

Not all cases of food-borne illness last a few hours or days where the affected person recovers and goes on to lead a healthy life. Long-term secondary complications may

⁴ ANZFA's 1999 publication *Food Safety Standards Costs and Benefits*, at p.88, (Australian Government Publishing Service, Canberra), estimates that 60 – 80% of food-borne illness originates from food purchased from the food service sector

⁵ This data was extrapolated from data contained in ANZFA's *Food Safety Standards: Costs and Benefits*.

⁶ Lawrence J., '*Alert on food poisoning*', Sunday Mail, 21 December 2003.

⁷ *Food-borne disease in Australia; incidence, notifications and outbreaks. Annual report of the OzFoodNet network, 2002* ("OzFood report"); Communicable Diseases Intelligence; Vol 27 No2, June 2003. OzFoodNet was established in 2000 by the Commonwealth Department of Health and Ageing to enhance surveillance of food-borne disease in Australia.

⁸ ANZFA analysis (based on work by Access Economics) suggests a cost of \$620 per incident incorporating health system costs and productivity losses.

⁹ Food Science Australia and Minter Ellison Consulting 2002, *National Risk Validation Project*, ("NRVP") p.18.

¹⁰ OzFood report p.213.

¹¹ NRVP, Appendix D p.32.

arise from these illnesses. For example, post infectious arthritis has been associated with infection by *Campylobacter jejuni*, *Yersinia* species, *Shigella* and *Salmonella*. *Campylobacter* infection may be an antecedent to ascending motor paralysis, the Guillain-Barre syndrome¹². In some cases of infection from enterohaemorrhagic *E. Coli* a person may develop haemolytic uremic syndrome (“HUS”) which is a life threatening disease¹³. It is estimated that there are 168 cases of long term illnesses caused by food-borne diseases each year¹⁴. People affected by *Listeria monocytogenes*¹⁵ (*L. monocytogenes*) may develop listerial gastroenteritis which is a flu-like illness characterised by diarrhoea, nausea, vomiting, abdominal cramps and fever. Some people develop more serious symptoms. Should the bacteria enter the bloodstream the person may develop septicaemia. Where the infection spreads to the nervous system, meningitis and encephalitis may occur.

Approximately 105 deaths a year are caused from food-borne illnesses¹⁶ with the fatality rate for the elderly up to 10 times higher than the general population¹⁷.

2.2 Impacts of food-borne illnesses on other sectors of the community

The impacts of food-borne illnesses on consumers also affects governments, the food industry and Australia’s reputation as a safe provider of food.

2.2.1 Government.

Government is affected through incurring costs associated with:

- providing free health services by or in public hospitals;
- investigation costs (including analysis and potential sampling);
- where fatalities occur, the possibility of coronial inquests into the death;
- the payment of Medicare benefits; and
- social welfare payments for people with long term secondary complications which prevent them from obtaining paid employment.

2.2.2 Food Industry.

The food industry faces the following costs associated with food-borne illnesses:

- *Loss of sales.* Generally, loss of sales will occur where the public’s perception of the safety of the food supplied by a particular food business is adversely affected. The loss of sales may not be restricted to the specific food product that caused the illness and may in fact impact on other businesses in the same or related industries due to loss of confidence in food safety by the general public. For example, following a food poisoning outbreak in South Australia in 1995 where, after eating contaminated mettwurst, approximately 150 people became ill and one child died, there was a significant decline in sales of smallgoods for

¹² Plant, A.G. 2000, *Clinical pathology of food-borne diseases: Notes on the patient with food-borne gastrointestinal illness*, Journal of Food Protection, 63, pp. 822 – 826.

¹³ Haemolytic uremic syndrome is characterised by red blood cell destruction, kidney failure and neurological complications. Patients who develop chronic kidney failure may require lifelong dialysis support or a kidney transplant.

¹⁴ Food Science Australia and Minter Ellison Consulting 2002, *National Risk Validation Project*, (“NRVP”) p.85.

¹⁵ *Listeria monocytogenes* causes listeriosis, a moderately rare disease with a high fatality rate. *L. monocytogenes* has been found in fresh and processed foods.

¹⁶ NRVP p.84.

¹⁷ NRVP p.86.

several years¹⁸. Mettwurst sales throughout Australia fell 40%, a reported 400–500 smallgoods manufacturers went out of business, and meat sales dropped 25% nationally¹⁹. Similarly, an outbreak of hepatitis A associated with oysters in 1997 cost the New South Wales seafood industry, as a whole²⁰, \$30 million with the outbreak even affecting sales to charter boat operators in the area of the outbreak²¹. The impacts of an outbreak could have serious economic consequences for smaller communities that derive a substantial part of their income from the affected industry.

- *Food recall and liability.* Costs are associated with the recall and destruction of food as well as the cost of administering the recall process. Litigation, both civil and criminal, imposes substantial costs in defending actions²². These costs combined with the attendant diversion of the owners' attention away from operating a business can be sufficient to cause bankruptcy.

2.2.3 *Australia's Reputation.*

Outbreaks of food-borne illnesses can potentially damage Australia's tourist and export trade. Australia has an image of an exporter of safe food because of its physical isolation and strict quarantine conditions which have excluded a large number of animal and plant diseases. However, past instances of chemical contamination of food have demonstrated the sensitivity of Australia's reputation with overseas importers. Equally, food poisoning outbreaks could damage Australia's reputation as a safe tourist destination²³.

2.3 *Emerging pathogens and their consequences*

There are a number of identified 'emerging' pathogens that pose significant major public health consequences. Some of these pathogens, for example *L. monocytogenes*, have not normally been recognised as food-borne pathogens until recently. *L. monocytogenes* causes the disease listeriosis and people with increased susceptibility, for example the aged and immuno-compromised, are primarily affected by this disease²⁴. Listeriosis has a fatality rate of approximately 51% for hospitalised immuno-compromised patients who contract the disease²⁵. The consequences for a pregnant woman and the child contracting this disease can be serious. For example,

¹⁸NRVP p.83.

¹⁹NRVP Appendix D, p 47.

²⁰The National Environmental Health Strategy 1999 estimated that the outbreak caused a 90% drop in oyster sales and a 50% drop in seafood sales in NSW.

²¹NRVP p.83.

²²A class action was instituted against an oyster producer responsible for an outbreak of hepatitis A. One of the victims was awarded \$30,000 in damages. Should similar damages be payable to other members of the class, the aggregate payout would be \$52.2 million. The size of the industry in the area was, on average, \$8 million a year. – *Draft Wallis Lake Catchment Management Plan*, volume 1, October 2001, p.25.

²³By way of example, in November 1996, a reported 488 passengers on 20 flights with the same airline from Cairns to Japan suffered food poisoning, with 56 passengers needing hospital treatment. There was extensive media coverage of the incident with reports in the Straits Times, in London and in Asia. Notably, the incident, when televised in Japan, was viewed by an estimated 10 million people – NRVP, Appendix D, p.34.

²⁴The elderly and/or immuno-compromised accounted for 97% of the reported infections during 2002 and 17% of non-pregnancy associated cases died– OzFood report p. 219.

²⁵NRVP p.3 citing - Paul, M.L., Dwyer, D.E., Chow, C., *et al* 1994, 'Listeriosis: Review of eighty-four cases', Medical Journal of Australia, 160, 18 April, pp. 489-493.

the disease may result in intra-uterine infection in the pregnant woman which can lead to spontaneous abortion in the second or third trimester, premature delivery, stillbirth or neonatal infection. Infection of a neonate at or soon after birth may also lead to septicaemia or meningitis. According to a study undertaken on the effects of listeriosis, the peri-natal case fatality rate is around 30-50%²⁶.

2.4 *Food-borne illness - trends*

Food-borne illness notifications have generally increased over time. Whilst this may be attributed to factors such as an increase in population, increased surveillance and an increase in knowledge of the various forms of food-borne illnesses, the figures are at least instructive. For example, in 2002, there was a 7.7% increase compared to the historical mean in notifications of eight potentially food-borne diseases, including:

- 1.2% increase in notifications of *Listeriosis*;
- 5.8% increase in notifications of *Campylobacter*;
- 9.7% increase in notifications of *Salmonella*; and
- 28% increase in notifications of *E. coli*²⁷.

There are several factors said to contribute towards the increased frequency of food-borne illnesses²⁸:

- different patterns of food consumption as a result of a greater availability of more diverse foods and changes in consumer demands;
- changes in the manner food businesses manufacture, retail, distribute and store food;
- emerging pathogens; and
- an increasing number of more susceptible individuals²⁹.

Figures 1 and 2 below represent the trends in notification rates for *Salmonella* and *Listeria*.

²⁶ Chin, J. 2000, *Control of communicable diseases manual*, 17th edn, American Public Health Association, Washington.

²⁷ OzFoodNet compared notification rates for 2002 with mean rates for 1998-2001 – OzFood report.

²⁸ Foodborne Disease Working Party 1997, *Towards reducing foodborne illness in Australia*, Technical Report Series no.2, Communicable Disease Network Australia and New Zealand, December.

²⁹ The elderly fall within the category of susceptible individuals, and because Australia has an ageing population this accounts to some extent for the increase in susceptible individuals.

Figure 1. Notification rates of *Salmonella* infections for 2002 compared to mean rates for 1998-2001, by location³⁰.

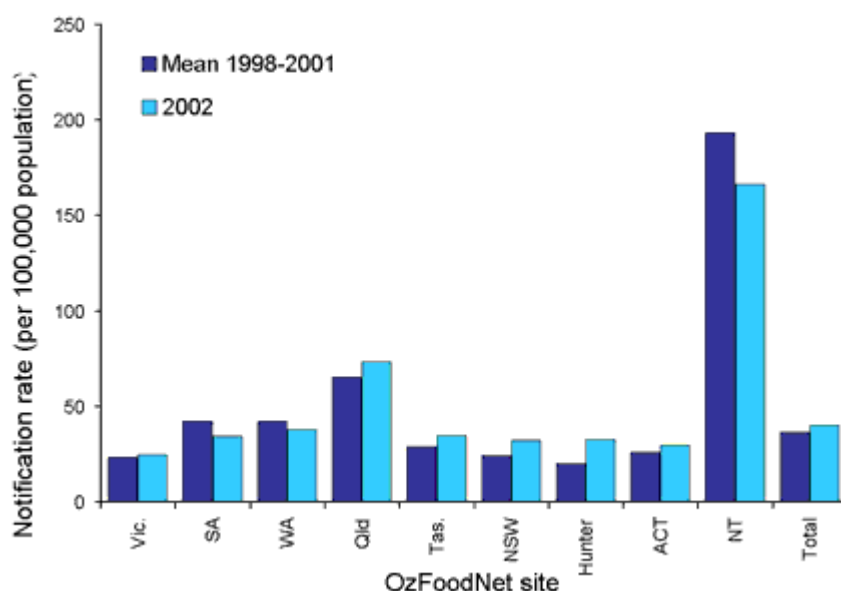
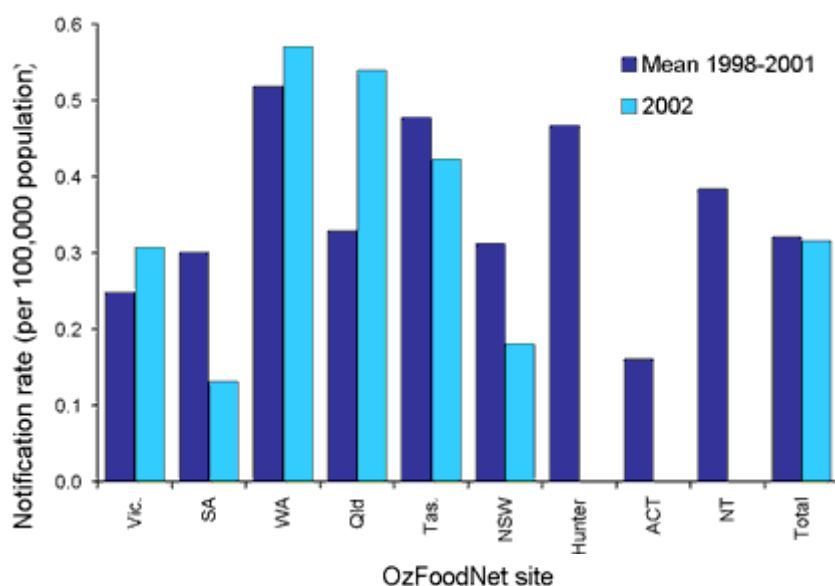


Figure 2. Notification rates of *Listeria* infections for 2002 compared to mean rates for 1998-2001, by location³¹.



2.5 Causes of food-borne illnesses

There are two main causes of food-borne illnesses – the hazards present in the food itself and the nature or activity of the food business providing the food.

Food-borne illnesses can result from a range of hazards present in food, including biological, chemical and physical hazards.

³⁰ OzFood report p. 213.

³¹ OzFood report p. 219.

The degree of risk associated with the handling and sale of food varies. Some food businesses have a higher degree of risk than others, depending on whether the food sold is potentially hazardous. The Food Safety Standards define “potentially hazardous food” as... *food that has to be kept at certain temperatures to minimise the growth of any pathogenic micro-organisms that may be present in the food or to prevent the formation of toxins in the food*³².

A number of factors influence the risk of food-borne illness occurring as a result of the consumption of food. ANZFA produced a priority classification system for food businesses, which categorises these factors into four elements³³:

(a) food type and intended customer use

- some foods (eg. those with high protein ingredients such as cream or eggs) are more likely to be contaminated with harmful micro-organisms and provide an environment for their growth. There are also a number of new means of food-borne disease transmission that have been implicated in illnesses³⁴:
 - (i) fruit juices and cut fruit act as vehicles for acid tolerant *Salmonella*, pathogenic *E. coli* and *L. monocytogenes*;
 - (ii) prepared salad-style items can act as vehicles for *L. monocytogenes*.
- if food is intended to be heat processed by the consumer prior to consumption, micro-organisms may be destroyed. Alternatively, if food is ready to eat, there may be a greater risk of food-borne illness.

(b) activity of the business

- the amount of handling involved in producing the food can have an impact on the risks associated with the food business activities. For example, extensive handling of food in the production process is more likely to contaminate food.
- whether or not food is packaged may also affect the level of risk. Businesses that handle unpackaged food have a greater risk of food contamination than those where the food is pre-packaged prior to handling by the business.

(c) method of processing

- processing methods may reduce the level of micro-organisms in or on food. For example, the use of a pathogen reduction process (such as cooking and pasteurising) during food processing reduces the risk of microbial hazards.

(d) customer base

- the overall number of people potentially exposed to a food hazard is important in assessing the severity of the risk associated with the operations of a food business. Risks are also increased if potential consumers are in vulnerable groups including children under the age of five, the elderly, pregnant women and people with an existing illness.

These risk factors are intended to provide objective criteria to allow a consistent approach to classifying food businesses according to the food safety risks presented by each business. However, it is recognised that other factors may be important in realistically determining the risks associated with the operations of particular food

³² Food Safety Standards – Standard 3.2.2 – Food Safety Practices and General Requirements.

³³ ANZFA *The Priority Classification System for Food Businesses* Publication 03/2000.

³⁴ NRVP p.14.

businesses. Other factors include pathogens associated with particular foods and the history of the business in complying with relevant food safety requirements.

2.6 Risks and food safety programs

2.6.1 ANZFA's Priority Risk Classification System

ANZFA's priority classification system categorises food businesses as low, medium or high-risk according to the potential risks they pose to public health and safety.

Whilst the system was primarily intended to determine a classification for audit frequency of individual food safety programs, it is useful in identifying low-risk food businesses. This is significant when considering any proposal to regulate food businesses as regulatory requirements must be commensurate with the public health risks arising from their food handling and selling activities. In summary, the system found the following food businesses were potentially lower risk:

- hotel bars selling only packet food (eg. chips, nuts);
- stores selling only packaged confectionery and drinks;
- stores selling only packaged bread and foodstuffs;
- greengrocers selling only whole fruit and vegetables; and
- newsagents and chemists selling only packaged confectionery and foodstuffs.

2.6.2 Review of the Mandatory Implementation of Food Safety Standard 3.2.1 – Food Safety Programs

As indicated above, the Ministerial Council authorised in August 2000 the adoption of three of the four national Food Safety Standards into the Australia New Zealand Food Standards Code. Some sectors of the food industry were concerned that the mandatory adoption of the fourth Food Safety Standard, Standard 3.2.1 *Food Safety Programs*³⁵, would impose appreciable costs on the food industry. The Ministerial Council requested the Commonwealth, through the Department of Health and Ageing, to provide research findings on the impact of Standard 3.2.1 on food businesses.

In December 2002, Food Science Australia completed the *National Risk Validation Project* ("NRVP") for the Commonwealth Department of Health and Ageing. The NRVP comprised two parts. The purpose of Part 1 was to identify high-risk food business/sectors, high-risk foods and at-risk populations. Part 2 involved a determination of costs and benefits of implementing food safety programs in high-risk food businesses/sectors – based on the Allen Consulting Group's *Food Safety Management System Costs, Benefits and Alternatives* (2002) (the "Allen Project") and research undertaken by Minter Ellison Consulting.

The epidemiological evidence studied by the NRVP suggested that the prevalence of food-borne illness has continued to increase over the years despite the adoption of Food Safety Standards 3.2.2 and 3.2.3. The NRVP considered that there were a range of factors that may explain this anomaly:

- there has been less than full compliance with these standards;

³⁵ A food safety program requires a food business to identify potential food safety hazards; implement and document measures that will control those hazards; and keep written records to demonstrate compliance with the food safety program to an approved food safety auditor.

- these standards are reactive and do not address the issues of monitoring potential hazards or implementing corrective actions;
- these standards were meant to complement Standard 3.2.1 – food safety programs.

The NRVP concluded that out of approximately 250 food-borne illness outbreaks, 156 could have been avoided if a food safety program had been implemented³⁶.

Using Australian and international epidemiological data, the NRVP identified food businesses that were consistently associated with outbreaks of food-borne illnesses. The results of this process allowed for the preliminary classification of identified food businesses as potentially high-risk. A risk assessment of these food businesses, augmented by a review of Australian epidemiological data from 1991 to 1999, was then undertaken to refine the initial risk assessment. The NRVP used three factors to assign levels of risk:

- food operation;
- probability/frequency of illness in terms of amount of food consumed; and
- severity of illness.

In combining these three factors, the following food businesses/sectors rank as high-risk 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; and
5. producers of manufactured and fermented meats³⁷.

The NRVP found that the costs of food-borne illnesses (on a per meal basis³⁸) varied widely across these high-risk food businesses. Of note, is the variance in the costs of food-borne illness per meal between the catering industry (49 cents per meal) and eating establishments (6 cents per meal).

Other food businesses which the NRVP found merit a high-risk ranking, based primarily on overseas data, are those producing, distributing and selling:

- processed raw foods not treated by heat to remove all bacteria;
- processed foods treated by heat to remove all bacteria but subject to potential recontamination during subsequent handling;
- cut fruit and vegetables;
- unpasteurised fruit and vegetable juice;
- sprouts; and
- vegetables in oil.

However, due to a lack of Australian data, the NRVP did not recommend the mandatory implementation of food safety programs for these food businesses.

³⁶ NRVP p.60.

³⁷ Commonwealth Department of Health and Ageing (2002), *National Food Safety Risk Validation Project*.

³⁸ The cost of food-borne illness per meal was arrived at by dividing the total annual cost of food-borne illness for a particular sector by the estimated number of meals consumed from that sector.

Table 1³⁹ illustrates the costs of food-borne illness for the high-risk food businesses mentioned above.

Table 1

COSTS OF FOODBORNE ILLNESS FOR HIGH-RISK INDUSTRIES

Industry	Total cost of food-borne illness (\$M/year)	Cost of food-borne illness per meal (\$)
1. Food service to sensitive populations	75	0.21
2. Raw ready to eat seafood	181	4.87
3. Catering for the general population	540	0.49
4. Eating establishments	169	0.06
5. Fermented and manufactured meats	77	0.39

2.6.3 Policy Guidelines – Risk Profiling and Food Safety Programs

The Food Regulation Standing Committee developed Policy Guidelines - *Risk Profiling and Food Safety Programs* (“Policy Guidelines”) based on evidence provided by OzFoodNet on the incidence and causes of food-borne illnesses and the findings of the NRVP and Allen Project. In December 2003 the Ministerial Council endorsed the recommendation made by the Policy Guidelines, that the following sectors, must implement food safety programs:

- food service, whereby potentially hazardous food is served to vulnerable populations (eg hospitals, nursing homes);
- producing, harvesting, processing and distributing raw oysters and other bivalves;
- catering operations serving food to the general public; and
- producing manufactured and fermented meat.

The Policy Guidelines recommended that those industry sectors, eg. aged care and child care, which have an accreditation system incorporating requirements for food safety, need not implement a duplicate food safety program if their existing plan or program under the accreditation is equivalent to a food safety program.

The Policy Guidelines define ‘catering operations’ as those businesses:

- which serve potentially hazardous food at a location other than where it has been prepared; or
- which provide potentially hazardous food simultaneously to all customers where the seating capacity of the food premises is 50 people or more⁴⁰.

Restaurants that occasionally conduct functions where food is served simultaneously to 50 people or more are not included in the definition as it could not be justified on a benefit to cost ratio basis.

Table 2⁴¹ details the NRVP findings on the costs of food-borne illness and the cost benefit ratios of implementing food safety programs.

³⁹ Table located at NRVP p.5.

⁴⁰ The Policy Guidelines, citing statistics from the NRVP, state that setting the seating capacity at 50 people would potentially prevent 65% of food-borne illness outbreaks associated with catering operations.

⁴¹ Table located at NRVP p.8.

Table 2**COSTS OF FOOD-BORNE ILLNESS AND COST BENEFIT RATIOS**

	Cost of food-borne illness per meal (\$)	Benefit to cost ratios
		Class 1 outbreaks
1. Food service for sensitive populations	0.21	6.5
2. Producers, harvesters, processors and vendors of raw ready to eat seafood	4.87	25.8
3. Catering operations serving food for the general population	0.49	9.9
4. Eating establishments	0.06	0.8
5. Producers of manufactured and fermented meats	0.39	115.9

Note: Class 1 outbreaks are those where it is reasonable to assume that the cause of illness would have been detected and remedied by measures put in place under a food safety program.

The Policy Guidelines stated that due to the low benefit to cost ratio, eating establishments (eg. restaurants)⁴², businesses serving potentially hazardous foods to five vulnerable people or less and non-government funded ‘family day care’ would not be required to implement food safety programs.

3. MARKET STRUCTURE

3.1 Sectors of the Market

The structure of the food industry is extremely diverse, including food services provided by:

- large supermarket and food retailing premises (often characterised by a range of activities including bakeries, delicatessen, butchery, fruit and vegetable preparation and sale as well as the sale of a range of pre-packaged foodstuffs);
- businesses which provide meals and other food services to the public (eg. restaurants and coffee shops);
- small business which sell food to the public (eg. general stores, take-away and sandwich businesses, fruit and hot bread shops);
- other small businesses which sell foodstuffs to the public as an adjunct to their major activities (eg. newsagents and garages);
- businesses in service industries which provide beverages and foodstuffs to their clients (eg. hairdressers, accountants, legal firms);
- training colleges that provide food services to the public using trainees as staff;
- mobile vendors that sell food to the public from vehicles (eg. ice cream vans, hotdog stands, fish vendors, pie carts etc.)
- facilities which provide food to persons who are members or employees (eg. staff canteens, sporting and social clubs);
- boarding schools, school tuckshops and childcare centres;
- charitable and community organisations which provide food to segments of the public as a form of community service (eg. soup kitchens, emergency shelters, foodbanks, meals-on-wheels services, poverty relief services);
- charitable and community organisations which sell foodstuffs prepared by their

⁴² Because the benefit to cost ratio for eating establishments was less than 1 (see Table 2), a requirement for eating establishments to have food safety programs could not be justified.

own facilities or donated by supporters to generate funds (eg. school fetes, charity cake stalls, fundraising functions);

- hospitals, nursing homes, day centres and respite care facilities;
- travel providers who provide food as part of a travel package (eg. airlines, bus proprietors, camping and trekking holiday providers);
- accommodation providers who provide meals as part of a range of services (eg. bed and breakfast and farm stay establishments, hotels and motels);
- stall holders who prepare food at home and sell at markets;
- large food processing operations (eg. canneries, frozen food factories, smallgoods producers, bakeries);
- small manufacturers of food (eg. small food businesses providing specialty lines to delicatessens);
- establishments providing ready to cook and ready to eat products for the restaurant, supermarket and direct consumer markets;
- milk processing and distributing companies;
- soft drink and bottled water producers;
- wholesalers who sell food to retail outlets and/or the restaurant and catering industries;
- manufacturer's agents who provide specialty food products to the retail, restaurant and catering industries;
- importers who may sell food which they import to retailers, or to wholesalers for resale; and
- businesses that own food vending machines or vehicles which transport food.

The food sector contributes significantly to Australia's overall economic output. For 2001-02, national retail turnover of food and liquor was estimated to be \$74.6 billion with the Australian food sector accounting for about 45% of the total national retail spending⁴³.

As a general guide to the national extent of certain food businesses, the Australian Bureau of Statistics produced the following data⁴⁴:

- As at 30 June 1999 there were 12,845 cafes and restaurants operated from 14,199 locations with an average seating capacity of 85 seats per location. This sector generated \$7,174m for the period under review, with 55% of that income generated by the sale of meals. The catering industry contributed \$1,265m to the total income. These industries employed, during this period, 152, 107 people; and
- As at 30 June 2001, there were 2911 clubs employing 64,990 people of which, 11,145 were catering staff. During the 2000 – 01 period, clubs earned \$6,297m with takings from the sale of food contributing \$547m (or 9%) towards total earnings. During that same period, there were 4,003 pubs, taverns and bars employing 84,158 people.

⁴³ Department of Agriculture, Fisheries And Forestry – Australia, 2003, 'Australian Food Statistics 2003' available at: http://www.daff.gov.au/corporate_docs/publications/pdf/food/austfoodstats2003.pdf

⁴⁴ Australian Bureau of Statistics (2003) *Year Book Australia 2003 – Service Industries Hospitality Industries*

The NRVP estimates that the number of food businesses grows at 2% compound a year, which is approximately double the rate of growth of Australia's population during the last decade⁴⁵.

3.2 Characteristics of the Queensland Market

During 2000 and 2001, information was collected by Queensland Health from local governments about the number of food businesses registered and/or licensed in their areas. This survey identified a total of approximately 30,000 food businesses that were actually registered and/or licensed by 90 local governments in the State. This number is an underestimate of the total number of food businesses actually operating in the State, because:

- Government properties are exempted from licensing and registration requirements;
- not all Local Governments currently license and/or register the range of premises listed in the schedule to the *Food Hygiene Regulation 1989* (the 'regulation'); and
- it is relatively common for local governments not to require licensing and/or registration of certain types of food businesses, including charitable and community organisations that handle food.

4. POLICY OBJECTIVES

The objectives of the proposed *Food Bill 2005* are:

- (a) ensuring food for sale is safe and suitable for human consumption;
- (b) preventing misleading conduct relating to the sale of food; and
- (c) applying the Food Standards Code.

These objectives will be achieved through maintaining the Annex A provisions (previously included in the *Food Act 1981*), incorporating relevant provisions of Annex B of the Model Food Act, and mandating food safety programs and revised licensing requirements for food businesses, based on the risk category of the food business.

5. CURRENT REGULATORY ARRANGEMENTS

In Queensland, the handling and sale of food is regulated by two Acts and associated subordinate legislation:

1. The *Food Production (Safety) Act 2000*, which is administered by the Minister for Primary Industries, regulates the production of primary produce⁴⁶. This Act was not part of the review covered by this report.
2. The *Food Act 1981* regulates all other food businesses in Queensland, and is administered by the Minister for Health. The Act encompasses two regulations:
 - the *Food Hygiene Regulation 1989*, which details food business licensing and registration requirements; and

⁴⁵ NRVP p. 99.

⁴⁶ Activities which are regulated under the *Food Production (Safety) Act 2000* include butchers shops; the growing, cultivation and harvesting of primary produce; meat processing; the pasteurisation or homogenisation of milk, or manufacturing of other dairy produce.

- the *Food Standards Regulation 1994*, which includes requirements about the sampling and analysis of food.

The Act does not currently apply to State food businesses and charities or community groups that give away food. These issues have been examined as part of the review.

Under the current regulatory arrangements local governments may license people who conduct food businesses specified in Schedule 1 of the regulation eg. bakers and pastry cooks, cafes, restaurants, canneries, food manufacturers, food shops handling or selling unpackaged food, and takeaway food bars. Local governments also register the premises, other places and vehicles, where food is prepared, packed and/or sold by these food businesses. No person is permitted to conduct a food business of a type specified in Schedule 1 of the regulation unless they hold a licence for the business and a registration for the premises at which the business is conducted.

A large part of the regulation was repealed, following adoption of the national outcome-focused Food Safety Standards on 1 July 2001. Only the licensing and registration provisions remain in the regulation and these have been reviewed in accordance with National Competition Policy principles.

5.1 *Current limitations of the Food Hygiene Regulation 1989*

There are a number of limitations with the regulation:

- it requires both registration of premises and licensing of people, with attendant administrative processes for businesses and local government and fees for businesses;
- Schedule 1 does not link licensing and registration requirements to identified risks that arise from the activities of these businesses. As a result, neither registration of premises nor licensing of people provides adequate assurance that food business activities conducted in those premises or by those people are producing safe food;
- as Schedule 1 is not comprehensive, a number of local governments have adopted alternative approaches to licensing and registration (eg. risk analysis, mandatory training requirements or including businesses which use particular types of equipment including freezers and refrigerators) to identify businesses which are then subject to regulation. A number of local governments use local laws and their own structural requirements to address perceived problems arising from the current regulations. This results in inconsistent approaches to licensing and registration requirements throughout the State, with a consequent cost burden to industry;
- differing requirements imposed upon food businesses result in difficulties for the food industry in complying with local government requirements. This is particularly important for those food businesses which operate in a number of locations throughout the State and which attempt to achieve economies of scale by adopting a standardised approach to premises, fit-out and operational practices;
- difficulties arise for mobile and temporary food businesses, which may be required to obtain licenses from a number of local governments, or which may escape regulatory requirements altogether;
- current enforcement is by inspection. However, current inspection processes are not risk-based and are inconsistent between local governments and even among different officers within a local government. Inconsistent approaches by local

governments to regulation and enforcement result in potential public health risks. Moreover, the absence of a statutory right of review or appeal of local government decisions relating to licensing and registration results in a possibility of businesses being subjected to the imposition of requirements for structural or operational changes at the discretion of the local government officer conducting the inspection or enforcement activity;

- current inspection processes also differ from the approach adopted by SafeFood Production Queensland, which has responsibility for primary produce. There is also potential for overlap and duplication in inspection and enforcement functions.

6. PROPOSED REGULATORY ARRANGEMENTS

As mentioned previously, the Queensland Government has decided that the framework for food safety management in the manufacturing, food services and retail sectors should be risk based and preventative. The regulatory response in the proposed *Food Bill 2005* (the “Bill”) strikes a balance between securing optimum public health outcomes and minimising compliance costs for businesses.

The proposed Bill incorporates a three-tiered regulatory approach directly linked to management of public health risks associated with the provision of food. This three-tiered system is founded on a universal food safety requirement that all food businesses that are not exempted from the proposed legislation must comply with the Food Safety Standards. The second tier requires food businesses that handle unpackaged foods, (eg. restaurants and other eating establishments, retailers of ready-to-eat food sold for eating elsewhere, caterers, delicatessens and food businesses that provide meals with accommodation), to be licensed. The third tier requires high-risk food businesses to prepare, implement and maintain food safety programs in addition to being licensed. This latter requirement is in conformity with the Policy Guidelines endorsed by the Ministerial Council.

6.1 Key features of the proposed approach

Specific matters about the regulatory proposals are dealt with further below. The key features of the Bill are:

- retention of the provisions that were inserted into the Act in 2001 that reflect the national Model Food Act, Annex A provisions;
- replacing the current dual-regulatory system of registration of premises and licensing of people with a single licensing regime⁴⁷;
- applicants for a food business license must provide details of a nominee responsible for the day-to-day food safety of the business and be the contact for local government for the purposes of inspections;
- food business/sectors identified as high-risk must develop, implement and maintain food safety programs as well as having those food safety programs regularly audited by qualified food safety auditors; and

⁴⁷ A reduction in the regulatory burden on the food sector is in accordance with the recommendations of the Blair Review “*Food a Growth Industry, Report of the Food Regulation Review*” August 1998, Chaired by Dr Bill Blair OAM, ISBN 0 642 34518 X.

- the administration and enforcement of certain parts of the Bill will remain the responsibility of local government (including licensing and compliance with the Food Standards Code).

The proposed approach incorporates two matters that are potentially anti-competitive - licensing and food safety programs.

6.2 Specific Regulatory Proposals

6.2.1 *Exemptions from the Bill*

The Crown

The current Act does not bind the State and the Bill proposes to maintain the *status quo* in this regard. The Crown Law Solicitor has advised that as a general principle, the Crown cannot be prosecuted criminally because the prosecutor in these matters is the Crown⁴⁸. In regard to the proposed Bill, the Crown will prosecute contraventions of the provisions of the proposed Bill and it would therefore be impractical for the Crown in the right of the State to prosecute itself.

However, it is proposed that existing administrative arrangements will be strengthened to ensure that State food businesses meet similar standards to those that will apply to their private sector counterparts. These administrative arrangements will require:

- State food businesses to comply with guidelines or Codes of Practice which require these food businesses to comply with the Food Standards Code;
- State food businesses to implement food safety programs (where the nature of the business undertaken is a high-risk business which would require a food safety program in the private sector); and
- Queensland Health conducting inspections and food safety audits (where applicable) of compliance with food safety programs in public hospitals and public residential aged care facilities, at least once a year.

These requirements will ensure State food businesses handle food safely and sell safe food, comparable with the requirements of their private sector counterparts. The administrative requirements would vary between State food businesses, depending on the level of risk associated with their food handling activities.

Examples of State food businesses that will not be subject to the Bill's requirements include public hospitals, residential aged care facilities, correctional centres, school tuckshops, Queensland Rail food services and accommodation provided to persons in need. These food businesses do not impact on market competition given the nature of the services provided, the people who receive these services and the lack of competition in the market in which these food businesses operate.

Certain not-for-profit organisations

Not-for-profit organisations that give away food to people in need are not currently covered by the Act and the proposed Bill maintains the *status quo* in this regard. Queensland Health will develop Codes of Practice for charities, community groups

⁴⁸ Citing *Cain v Doyle* (1946) 72 CLR 409, per Latham CJ at pp. 417-418.

and other not-for-profit organisations, to assist them to maintain and improve food safety.

The not-for-profit organisations that give away food include outreach services to homeless people (eg. Drug Arm offers tea, coffee and biscuits), parish groups providing emergency relief to homeless or low income people, food cooked for immediate consumption (eg. breakfast at West End for homeless people), and food donated by food businesses. The activities undertaken by these organisations do not impact on competition in the market place and their exclusion from the requirements of the proposed Bill will not affect the current food market.

6.2.2 *Licensing of food businesses*

The licensing of food businesses is the most effective way to regulate a food business's compliance with food safety requirements and ensure that food related activities are carried out by these businesses in a safe and competent manner.

The Bill proposes to license all food businesses other than those identified as low risk (exemptions are discussed below). It is proposed that the following food businesses are to be licensed:

- food manufacturers; and
- retailers of unpackaged food, eg. restaurants and other eating establishments, retailers of ready-to-eat food sold for eating elsewhere, caterers, delicatessens, carriers of water intended for human consumption and food businesses that provide meals with accommodation.

The not-for-profit sector provides vital services to the community on behalf of local, State and Federal governments. A number of factors militated against requiring certain types of not-for-profit organisations to be licensed:

- The nature of the food is generally low risk i.e., non-potentially hazardous food or food which is consumed immediately after thorough cooking eg. sausage sizzles, or cake stalls; or
- Unlike small food businesses, these not-for-profit organisations have limited capacity to pass on regulatory costs such as licence fees, and therefore their on-going viability becomes a real issue;
- The activities undertaken by these organisations do not impact (or have a negligible impact) on competition.

However, due to the nature of their activities or the frequency of their operations, other not-for-profit organisations will need to be licensed. The risk factors used in determining whether a not-for-profit organisation should be licensed are the same for commercial food businesses, including:

- the level of food handling (the more food handling that occurs the greater the potential is for a food safety failure eg. there is less preparation time and less handling performed in preparing a sandwich than in preparing a hot meal,);
- the preparation of food in bulk;
- the number of individuals potentially exposed to a food safety failure (a regular frequency of activity undertaken by a food business increases the client base); and
- the type of food sold and the client base.

A balance has been struck in the proposed Bill between optimising food safety outcomes and minimising compliance costs to the not-for-profit sector. Accordingly, the Bill proposes that not-for-profit organisations that provide meals on 12 or more occasions each financial year are required to be licensed.

To accommodate changes in food manufacturing, retailing, storage and distribution, regulations will prescribe other food businesses that emerge whose activities pose a sufficient risk of food-borne illness to justify licensing.

As with the current legislation, the proposed Bill requires the above-mentioned food businesses to apply to their local government for a licence. A mobile food business could apply to any local government for a licence, and the licensee will have the same obligations while in another local government area.

In reaching licensing decisions, local government may consider the premises, the applicant's background (including convictions under Queensland or other food safety legislation or convictions for an indictable offence), skills and knowledge⁴⁹, and for highest risk food businesses, the food safety program.

The suitability of premises for safely carrying out food business activities depends on the type and scale of activities being conducted. Following adoption of the Food Safety Standards in 2001, the Act requires compliance with the outcome-focused provisions of Standard 3.2.3, (*Food Premises and Equipment*). As this standard is outcome-focused it provides sufficient flexibility for food businesses to comply with the premises criteria, including smaller food businesses eg. bed and breakfasts and mobile and temporary food businesses.

The local government will decide the term of a food business license, for up to three years, and the licence is issued subject to standard conditions, eg. the licensee must comply with the Act and Food Safety Standards. Local government will also have the discretion to impose other reasonable conditions on a food business license. Licensed food businesses will be required to display their licence.

A local government may issue a provisional licence for a period of up to three months where, for example, a food business has not met all of the criteria for premises at the time of applying for the licence.

6.2.3 Exemptions from licensing

The Bill proposes a number of exemptions to licensing. There will, however, be a universal requirement that these food businesses comply with the requirements of the Food Safety Standards. Failure to comply will be an offence under the proposed Bill. The following food businesses are proposed to be exempt from the licensing requirements of the Bill:

⁴⁹ Or the applicant's capacity to obtain the services of people with appropriate skills and knowledge to provide safe food.

Low risk food businesses

The rationale underpinning the licensing of food businesses is to reduce the risk of incidents of food-borne illness outbreaks by monitoring the activities of food businesses. For food businesses that pose low risks of food-borne illnesses, licensing requirements are unlikely to result in a reduction in these risks. In accordance with ANZFA's Priority Classification System, the following lower risk food businesses will not require to be licensed:

- hotel bars selling only packet food (eg. chips, nuts);
- stores selling only packaged confectionery and drinks;
- stores selling only packaged bread and foodstuffs;
- greengrocers selling only whole fruit and vegetables; and
- newsagents and chemists selling only packaged confectionery and foodstuffs.

Certain Not-for-profit organisations

A not-for-profit organisation that does not sell meals on 12 or more occasions per annum is exempted from the licensing requirement. Accordingly, most fund raising activities by not-for-profit organisations which involve the sale of food would be exempt. In effect, this means that cake stalls, school tuckshops, sausage sizzles, fetes, lamington drives, some sport club canteens and other fund raising functions would be excluded from the licensing requirement. However, these fund raising activities would continue to be required to comply with the Act and the Food Safety Standards, and handle food safely.

Food businesses licensed under other laws

Where other laws impose food safety requirements on license holders these food businesses are proposed to be exempted from the requirement to be licensed under the Bill. This will avoid duplicating regulatory requirements, aimed at achieving a common objective – the supply of safe food⁵⁰.

6.2.4 Enforcement

As is presently the case under the Act, the Bill provides that local government will be responsible for enforcing the legislation. Monitoring and enforcement processes may be pro-active, through undertaking regular, random or targeted inspections of food businesses or reactive in response to complaints or information about non-compliance. Regulation and enforcement approaches will be congruent with those of Safe Food Production Queensland.

6.2.5 Food safety programs

Based on the findings of the NRVP, the Bill proposes that the following food business must develop, implement and maintain a food safety program:

- nursing homes and aged care hostels;
- private hospitals licensed under the *Private Health Facilities Act 1999* ;
- smallgoods manufacturers;
- a person who undertakes an off site catering activity; or
- a person who undertakes an on-site catering activity.

⁵⁰ This will include holders of an accreditation issued under *Food Production (Safety) Act 2000*, holders of a buyers licence under the *Fisheries Regulation 1995* or boarding houses and hostels accredited under the *Residential Standards (Accreditation) Act 2002*.

As indicated previously⁵¹, the Ministerial Policy Guidelines recommended that where industry sectors eg. child care, have an accreditation system incorporating requirements for food safety, need not implement a duplicate food safety program if their existing plan or program under the accreditation is equivalent to a food safety program. The recommendations of the Ministerial Policy Guidelines are assisting FSANZ in their current review of Food Safety Standard 3.2.1 *Food Safety Programs*. Depending on the outcome of that review, child care centres may either be required to implement a food safety program under the new Food Act, or similar requirements would be merged with their existing accreditation system. In its consideration of requirements for food safety programs, FSANZ is also examining whether there are alternatives to food safety programs for catering as a fundraising activity. Consequently, the proposed Bill will not require not-for-profit organisations which raise funds by catering to have a food safety program⁵². As the outcome of this review process may not be known until 2005, the Bill provides that regulations may prescribe other food businesses that are required to implement food safety programs.

The proposed Bill provides that food business, not required to have a food safety program, may voluntarily implement a food safety program.

6.2.6 *Certain high-risk food businesses not required to implement food safety programs*

The Policy Guidelines established that due to the low benefit to cost ratio, eating establishments and other vendors of raw oysters and bivalves would not be required to implement a food safety program for that activity. Accordingly, the requirement to adopt Standard 3.2.1 ceases at the 'back door' of a retailer's premises. On that basis, the proposed Bill will not require vendors of raw oysters and other bivalves to implement food safety programs. As such, the proposed Bill does not introduce any changes to the current regulatory arrangements under the Act and Regulation in this regard. It is also important to note that the *Food Production (Safety) Act 2000* regulates the producing, harvesting, processing and distributing of raw oysters and other bivalves.

6.2.7 *Auditing of food safety programs*

Food businesses required under the Bill to have food safety programs are required to have these food safety programs audited, at intervals determined by the local government, by approved auditors⁵³. The purpose of auditing is to ensure that the food business is complying with the requirements of its food safety program to avoid the risk of causing food-borne illness outbreaks. It is proposed that a food business may choose between a local government employee who is approved as an auditor and an independent person who has been approved as an auditor to conduct the required audits.

It will be the duty of an approved auditor to provide reports of the audit undertaken to the local government and to the food business. The approved auditor must advise both

⁵¹ See page 12 of this Report.

⁵² The proposal to include a regulation making power in the Bill for prescribing other food businesses that are required to have food safety programs will accommodate any national move to require food safety programs for certain not-for-profit organisations.

⁵³ The proposed Bill provides that the chief executive of Queensland Health will approve persons with appropriate skills and knowledge to be approved food safety auditors.

the local government and the food business of any non-conformance with the food safety program and recommend ways in which the non-conformance can be remedied. An approved auditor must immediately advise the local government of any serious breach of the food safety program which may cause an outbreak of food-borne illness.

7. REALISTIC ALTERNATIVE ARRANGEMENTS

The realistic alternative approaches that could be taken to achieve the policy objectives stated above are as follows:

Option 1 Retain the existing regulatory arrangements

As indicated previously, this regulatory approach does not adequately address food safety risks associated with the handling of food for sale. It requires both the registration of premises and licensing of persons, with attendant administrative processes for businesses and local government and fees for businesses. There is no link between licensing and registration requirements to identified risks that arise from the activities of these businesses. As a result, neither registration of premises nor licensing of persons provides adequate assurance that food business activities conducted in those premises or by those persons result in the production of safe food.

Enforcement of the legislation is undertaken by local government either through inspections or when a consumer has made a complaint about a food safety matter. This system relies upon inspection to minimise food contamination and responding to a complaint about a food safety failure as opposed to the systematic methods proposed under the Bill eg. inspection and auditing of food safety programs. The current regulatory arrangements do not require high-risk food businesses to implement and maintain food safety programs. Given the frequency of food-borne disease outbreaks associated with certain high-risk food businesses, the current regulatory arrangements will not protect the consumer from the risk of food-borne illness. For these reasons, the current regulatory arrangements are reactive in nature as opposed to the preventative approach under the proposed Bill.

It should also be borne in mind that Australia, as a food exporter, has an obligation under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, to demonstrate that its food safety measures achieve an appropriate level of protection.

Option 2 Notification and Registration of Food Businesses and Food Safety Programs for High-Risk Food Businesses

This is the regulatory arrangement proposed by Annex B of the Model Food Act. Under this proposal, a food business must notify the local government of its intention to commence operations. The exemption to the notification requirement is for those food businesses that are required by the legislation to be registered with their local government. The local government would register the business if satisfied that the premises, vehicles or equipment would not contaminate food and thereby pose a public health risk.

The notification requirement supplements the registration system. It provides the local government (or other appropriate enforcement agency) with information contained in Clause 4 of Food Safety Standard 3.2.2 (*Food Safety Practices and General Requirements*) to assist in the identification of food businesses (for the purposes of food recalls) and for monitoring changes in food safety risks. The appropriate enforcement agency also uses the information to assign a risk classification to determine whether the food business is required to implement a food safety program and the frequency of food audits and inspections.

The drawbacks associated with a notification and registration system are the:

- financial costs to local government and food businesses;
- potential for inconsistent approaches to registration of food businesses arising between different local governments; and
- inadequacy of the current registration system in addressing risks associated with the handling of food.

In regard to the costs to local government and food businesses, ANZFA's 1999 *Food Safety Standards Costs and Benefits* estimated implementation and on-going costs for local government and food businesses associated with a notification system. ANZFA estimated that the implementation costs for the notification system for local governments nationally (where the local government is the appropriate enforcement agency to receive notifications) would be \$6.900 million with on-going costs of \$8.900 million⁵⁴. Whilst ANZFA claim that the costs cited would be less where the local government already has in place a licensing or registration system, the fact remains that local government would still incur costs that may be passed on to ratepayers through higher rates⁵⁵. ANZFA also estimated that, on these 1999 figures, the one-off costs to Australian food businesses of a notification system would be \$3.2 million and on-going costs of \$657,550. In viewing these figures, it needs to be borne in mind that costs have increased since 1999 because of CPI increases and the number of food businesses that, as mentioned above, are estimated to grow at a rate of 2% compound per annum.

Option 2 permits the appropriate enforcement agency to register a food business after making an assessment of the risk the business poses to public health. Such an assessment may be based upon the priority classification system for food businesses. However, a similar situation will arise under this approach as currently occurs under the existing regulatory scheme where there is an inconsistent approach to food business registration due to individual interpretations of the legislation or priority classification system by local governments. In addition, there is potential for inconsistency across the State where it is discretionary for local government's to require the registration of food businesses including low risk food businesses.

The registration of food businesses was intended to protect public health by permitting assessment of the premises, vehicles or equipment of proposed food

⁵⁴ ANZFA's 1999 publication *Food Safety Standards Costs and Benefits*, pp. 68-69, (Australian Government Publishing Service, Canberra),

⁵⁵ As an indication of notification costs, section 6AA of the *Food Regulation 2001*(NSW) provides that a local government may charge a fee for notification not exceeding \$50 where the notification relates to five food premises or less and \$10 per premises where the notification relates to more than five premises.

business in terms of its capacity to provide safe food. However, the suitability of premises is only one factor to be taken into account when assessing a food business's capacity to provide safe food. Poor food handling practices and unhygienic or ineffective food processing can still occur in premises that meet building and structural requirements. Additionally, the registration system does not take into account potential risks associated with the owner of the food business eg. whether the owner has a history of non-compliance with food hygiene legislation or whether the owner has the requisite skills and knowledge to provide safe and suitable food.

For the reasons outlined above, Option 2 does not adequately address the risks associated with food handling by a food business.

Option 3 No Licensing or Registration Requirements – ‘Negative Licensing’

This approach is more targeted and less restrictive than the proposed approach or the current registration and licensing approach. This model would not require operators of food businesses to hold a licence to conduct a food business nor to register their premises. Food businesses would be required to comply with the requirements of the Food Standards Code. A person who fails to comply would be prosecuted for a contravention of the Code and, if found guilty, may be fined and/or prohibited from carrying on a food business or being employed in food businesses.

Enforcement of the Code would be reactive i.e in response to complaints from consumers about unsafe food or information about non-compliance with the Code.

This model is unacceptable for the following reasons:

- it is reactive in that risks of food poisoning will go unchecked until the local government acts upon a food complaint made by a victim of food poisoning or where it uncovers the non-compliance through an inspection;
- it will not reduce the incidence of food-borne illnesses in Queensland;
- local governments would not have revenue available from licensing and registration to fund enforcement functions and may be reluctant to conduct inspections, unless they receive fees or some other form of recompense to cover their costs;
- there is no assessment undertaken of the food business's ability to comply with the requirements of the Food Safety Standards (eg. ensuring that employees have skills and knowledge in food safety and hygiene matters). This will result in risks to public health.

It is considered that this option fails to address the risks associated with food handling and is inconsistent with the Queensland Government's endorsed framework for food safety management as previously discussed.

8. IMPACT OF PROPOSAL ON STAKEHOLDERS

8.1 Licensing of Food Businesses and Food Safety Programs for High-Risk Food Businesses

Community

Benefits

The primary benefits in licensing food businesses and requiring high-risk food businesses to implement food safety programs are:

- a reduction in the risk to consumers of contracting a food-borne illness; and
- an increase in public confidence in the availability of a safe food supply.

The range of consequences that arise from contracting food-borne illnesses depend upon the type of pathogen or virus causing the illness and the person affected by the illness. For some, the effects may be mild physical discomfort whereas for others, there are far more serious side effects of food-borne diseases including long-term illnesses or death. The very young, elderly, immuno-compromised and pregnant women are more vulnerable to food-borne disease than other members of society. Approximately 105 deaths a year are caused by food-borne diseases and the fatality rate for the elderly is up to 10 times higher than the general population.

Both short and long term food-borne illnesses impose costs on the consumer through time off work because of the illness or tending to a family member who has contracted the illness, and through the costs of seeking medical and pharmaceutical treatment for the illness. As mentioned at page 4 of this report, it is estimated that 60-80% of all food-borne illnesses originates from food purchased from the food service sector and each year in Queensland a person has a 22% chance of contracting a food-borne illness.

Whilst the costs of food-borne illnesses in terms of productivity losses and medical costs can be estimated, it is impossible to describe or quantify the effect that a food-borne disease has on a child or the family of a child, who dies as a consequence of contracting the disease.

Despite the legislative requirements for food businesses to comply with Food Safety Standards 3.2.2 (*Food Safety Practices and General Requirements*) and 3.2.3 (*Food Premises and Equipment*), there has been an increase in the prevalence of food-borne illness Australia-wide. Anecdotal evidence suggests that the prevalence of food-borne illnesses is because food businesses are not complying fully with the requirements of the Food Safety Standards.

As indicated earlier, during 2001- 02, there were an estimated 5.4 million incidents of gastroenteritis caused by contaminated food resulting in the loss of 6.5 million days of paid work and costing Australia approximately \$3.75 billion per annum. Due to the high cost of food-borne illnesses borne by the Australian community, governments must implement intervention strategies to improve the safety of food.

An effective means of improving the safety of food is to license food businesses (local governments will then conduct regular food safety inspections to ensure that food for sale to the consumer is safe and suitable) and require high-risk food businesses to implement food safety programs. The food safety programs will be audited frequently by food safety auditors to ensure food safety mechanisms are being complied with.

In regard to licensing, a business must satisfy certain requirements that indicate a minimum level of competence in relation to food safety before being granted a licence. For example, a local government will need to consider whether the applicant has the appropriate skills, knowledge and experience to provide safe and suitable food and that the food business premises comply with national industry standards designed to minimise opportunities for food contamination. Local government will also need to consider whether the applicant for a license has a history of compliance with food safety legislation.

Because a record will be kept by local government of each licensed business in its jurisdiction, a licensing regime will benefit the public by allowing for the identification of:

- the origins of food-borne illness outbreaks and, through regulatory responses, quickly contain the spread of the disease to other members of the public; and
- food businesses for the purposes of food recalls to avoid the spread of food-borne diseases.

The community may also benefit economically from the proposed licensing approach. The overhead costs of running a food business may be reduced by the proposed removal of registration fees and savings may be passed on to the consumer through reduced prices paid for goods and services. In addition, as food businesses are currently required to be licensed under the *Food Hygiene Regulation 1989*, there should be no additional costs passed on to the consumer by the proposed licensing approach.

The benefit to the public in requiring high-risk food businesses to implement and maintain food safety programs is a reduction in the incidence of food-borne illness. The NRVP estimated that out of approximately 250 food-borne illness outbreaks, 41 could have prevented if food businesses adhered to Food Safety Standard 3.2.2 (*Food Safety Practices and General Requirements*) and 156 outbreaks could have been avoided if a food safety program had been implemented⁵⁶. This is because food safety programs focus specifically on food safety risks and require a pro-active approach by business to achieve food safety outcomes.

Table 1 on page 13 of this report shows the estimated costs of food-borne illnesses directly attributable to these high-risk food businesses. A reduction in the incidence of food-borne illness following upon the implementation of food safety programs for these businesses will have a beneficial impact on the community as a whole. As indicated earlier, there are an estimated 5.4 million cases of food-borne illnesses annually. Based on this figure and estimating a reduction in food-borne illness of only

⁵⁶ It must be borne in mind that these figures relate to outbreaks. Outbreaks are defined in the NRVP (at p.15) to be two or more related cases of illness caused by the consumption of food which contains a toxin or infectious agent.

15% by the mandatory introduction of food safety programs for high-risk food business, there would be a resulting \$450 million per annum benefit to Australia⁵⁷.

Another beneficial consequence of making food safety programs mandatory is to raise the level of adherence with Food Safety Standard 3.2.2 by high-risk food businesses.

Costs

It is proposed that certain food businesses be licensed and pay a licence fee to the local government. Licence fees are a direct financial cost on food business and, in turn, the food business may pass these costs on to the consumer through higher prices paid for goods or services. However, under the existing legislation, food businesses are currently required to pay licence and registration fees. Consequently, the proposed legislation does not impose any additional financial burden on currently licensed food businesses.

In regard to food safety programs, there is potential for cost increases for food sold by high-risk food businesses as a flow-on from costs associated with the development, implementation and monitoring of food safety programs. However, it is not expected that consumers will experience increased costs from all high-risk food businesses. Certain high-risk food businesses currently have food safety programs, eg. smallgoods manufacturers, whilst other businesses have comparable quality assurance systems in place, eg. large supermarkets. Major retailers require suppliers to implement some form of food safety program to demonstrate that the food they produce is safe.

Industry

Benefits

Licensing offers a range of benefits to food businesses as it:

- is a visible means of assurance to the public that the food business possesses a minimum standard of competence to provide safe and suitable food. This will create greater public confidence in the quality of food and may result in increased productivity;
- will ensure that the reputation of food businesses as providers of safe food is protected by penalising unlicensed businesses that sell food;
- provides greater clarity to business owners and employees about acceptable standards; and
- will enhance information flows from State and local governments and industries to businesses regarding safe food responsibilities, links to industry support (eg industry guidelines), risk levels, training and compliance.

Further, as Schedule 1 of the *Food Hygiene Regulation 1989* does not clearly identify the types of food businesses that are to be licensed there has been an inconsistent application of the provision by various local governments. This has impacted on those food businesses that operate in a number of locations throughout the State, eg. one local government may require a food business that only sells packaged low risk foods to be licensed whilst another will not. The proposed Bill clearly identifies what food

⁵⁷ Policy Guidelines, Attachment 1 p.12.

businesses are to be licensed and avoids the current inconsistent approach to licensing.

There may be a reduction in the existing compliance costs to businesses by removing the requirement for food businesses to pay separate registration fees. Additionally, businesses that presently sell only packaged food will not be required to be licensed, resulting in cost savings for these businesses.

There are various benefits to those high-risk food businesses required to develop and maintain a food safety program:

- because of increased public confidence in the safety of food, there may well be increased sales;
- the record keeping required by a food safety program, for example, storage details, can result in reduced costs through improved shelf life and/or reduced wastage;
- savings in production;
- reduced maintenance costs;
- improved management practices;
- improved staff morale⁵⁸;
- an indication of due diligence which is currently a defence under the Act⁵⁹;
- the ability to obtain liability insurance at competitive rates⁶⁰; and
- reduces the business's risk of criminal and civil liability arising from the sale of unsafe or unsuitable food.

Costs

Licensing imposes a financial cost on food businesses. However, as food businesses currently incur licensing costs, the proposed Bill will not impose any additional costs on currently licensed food businesses.

There are a number of costs for high-risk food businesses associated with food safety programs, including:

- the development of the program;
- training staff to comply with the program;
- record keeping; and
- auditing of the program.

As indicated earlier, some high-risk food businesses, eg. smallgoods manufacturers, already have in place food safety programs. Other food businesses have instituted comparable quality assurance programs as part of their contractual supplier requirements with larger retail stores. For these businesses, the costs associated with food safety programs have already been met. For other food businesses, required under the Bill to implement food safety programs, the costs may be passed on to the consumer or recovered through increased sales and reduced wastage⁶¹.

⁵⁸ “Improved morale can result in increased productivity, a reduction in time-consuming disputes and confrontation, and higher retention rates.” NRVP p.109.

⁵⁹ NRVP p.109.

⁶⁰ NRVP p.110.

⁶¹ NRVP p.103.

The NRVP provided estimated initial and ongoing costs to develop, implement and maintain a food safety program for ‘higher risk’ food business sectors⁶². Table 3 provides these costs:

Table 3

INITIAL AND ONGOING COSTS OF FOOD SAFETY PROGRAMS		
Food business sector	Initial cost (\$)	Ongoing cost (\$) (per year)
Hospital/aged care	2180	1673
Catering operations	1500	1733
Producers of manufactured and fermented meat	1280	2826
Child care	700	710

The costs associated with implementing and maintaining food safety programs may be reduced by a number of factors:

- costs of developing a food safety program will be less where generic or industry specific food safety programs are used by a food business as an aid in developing their own program. For example, Queensland Health has developed a food safety program template for Commercial Food Services which may be used by caterers;
- in-house training of staff will reduce costs and will build upon the general skills and knowledge requirements imposed for food handlers in Food Safety Standard 3.2.2.;
- costs of maintaining records, as well as other activities specified in the food safety program, should form part of the normal staff functions and could be arranged to occur during idle times⁶³.
- whilst auditing costs are difficult to estimate, such costs could be reduced where the food business shows a history of compliance with its food safety program⁶⁴. It is also expected that food businesses with food safety programs will have their regular local government inspections replaced with audits, thereby saving food businesses inspection costs. It is likely that inspections by local government will be in response to complaints generated by the public.

It is important to note that any costs associated with the development, implementation and maintenance of a food safety program for high-risk food businesses are outweighed by the costs associated with food-borne illness outbreaks.

Government

Benefits

The licensing of food businesses increases public confidence in state and local government’s ability to protect consumers from food borne illnesses provided by incompetent or substandard food service providers. It provides a systematic way of ensuring those food businesses that pose a risk to public health or safety are prevented

⁶² NRVP p.111.

⁶³ NRVP p.101.

⁶⁴ The Bill provides that a local government may reduce the frequency of audits where a food business complies with its food safety program.

from operating. This is achieved through setting minimum licensing standards aimed at ensuring that food for sale is safe and suitable.

Licensing allows for the rapid identification of the source of a food-borne illness outbreak and for the quick containment of that outbreak. Licensing also facilitates the early recall of foods suspected of being vehicles for food-borne diseases. These preventative measures enable the minimisation of harm to the public and thereby lessening the demand on public sector health services.

As mentioned previously, food safety programs would have prevented at least 156 out of 250 recent food-borne disease outbreaks. Given the high costs of food-borne illnesses borne by all sectors of the community, a reduction in food-borne illnesses following mandating of food safety programs for high-risk food businesses will benefit the government by:

- improving public health;
- reducing health costs associated with providing services from, or in, publicly funded hospitals;
- increasing the public's confidence in the supply of safe and suitable food; and
- maintaining Australia's image as a producer of safe and suitable food and a safe tourist destination for overseas travellers.

As noted earlier, it is expected that food businesses with food safety programs will have their regular local government inspections replaced with audits. Accordingly, Local Government may benefit from reduced costs associated with inspections of these food businesses.

Costs

There are administrative as well as operational costs (including monitoring and enforcement costs) under the proposed licensing approach to local government. However, these costs are offset by the revenue raised through licensing fees and the local government's ability to set fees for providing a service or taking action under the legislation. In addition, fines imposed by a court as a result of a prosecution (eg. where a food business sells unsafe food or a licensee contravenes a condition of his or her licence) by local government will be payable to local government. Overall, the proposed approach will not impose additional costs on local governments.

In relation to food safety programs, government will incur a number of 'one-off' costs associated with the implementation of mandatory food safety programs, including:

- development of information resources for business and local governments, eg. the development and distribution of food safety program templates and interpretative guides to the Food Safety Standards; and
- training of staff and auditors (where the auditors are State or local government employees).

Queensland Health has undertaken some of these processes (eg. development of food safety program templates and information packages for businesses and Local Governments), so those costs have already been met.

Costs associated with improved administrative arrangements to ensure that State food businesses meet comparable standards of food safety imposed on their private sector counterparts have, in part, been met. For example:

- some State food businesses eg. Queensland Rail on-board catering services, and hospitals, have implemented food safety programs or have in place similar quality assurance systems. It is not expected that there will be any increase in costs for these food businesses;
- hospitals and residential aged care facilities are currently inspected by Queensland Health to ensure that the food provided is safe and suitable and that these facilities are complying with the Food Safety Standards. It is therefore expected that there will be no increase in costs in inspection and auditing of these food businesses; and
- Commonwealth and State initiatives aimed at improving food safety in public school tuckshops have been instituted. For example, a national school tuckshop food safety video and work book, *Looking after our kids*, has been developed.

The improved administrative arrangements will require State operated food business to comply with the Food Safety Standards. This includes compliance with Standard 3.2.3 (*Food Premises and Equipment*) which, amongst other matters, sets out requirements for the lay-out of food premises to minimise the opportunities for food contamination. However, the Standards are outcomes-based and provide sufficient flexibility for food businesses to implement cost-effective measures to facilitate compliance with the Standards. It is therefore not expected that State-operated food businesses will require capital expenditure to meet these requirements. Queensland Health continues to provide advice on measures to achieve the design and fit-out requirements of Food Safety Standard 3.2.3 for State operated food businesses including public school tuckshops.

9. CONCLUSION

The licensing model proposed by the Bill provides the most cost-effective method of achieving the policy objectives of the legislation. Equally, the costs associated with the mandating of food safety programs for high-risk businesses are outweighed by the tangible benefits in implementing these food safety programs. The Policy Guidelines state that the benefits of implementing food safety programs outweigh the costs under various scenarios and would stay positive if a minimum of 14% reduction in food-borne illnesses could be achieved⁶⁵.

10. APPROACHES IN OTHER JURISDICTIONS

In accordance with the IGA on Food Regulation, all States and Territories agreed to adopt Annex A of the national Model Food Act. Adoption of each provision in Annex B of the national Model Food Act is discretionary. There are various adaptations of these Annex B provisions by those Australian jurisdictions that have recently enacted food legislation.

Annex B of the Model Food Act requires food businesses to notify the appropriate enforcement agency (local government or Health Department) of the information

⁶⁵ Policy Guidelines – p. 9.

contained within Clause 4 (“Clause 4”) of Food Safety Standard 3.2.2⁶⁶, unless the food business is one that must be registered with the appropriate enforcement agency. It is an offence for a food business to begin operations without complying with the notification requirements. Where individual States and Territories have existing registration or licensing requirements for food businesses, the notification process can be incorporated into the existing arrangements. This could be achieved by incorporating the information required under Clause 4 within the existing applications for registration or licences of a food business.

Annex B also requires existing food businesses, that may or may not have been registered or licensed with their local government, to provide their local government with the information contained within Clause 4 within three months of the commencement of the notification provisions.

The notification system provides the appropriate enforcement agency with sufficient information to classify the food business, based on the food safety risks associated with the business, for the purposes of determining whether the business must implement a food safety program.

The following details the regulatory approaches in other States and Territories:

- The Australian Capital Territory has a notification and registration system. The *Food Act 2001* requires a person who wishes to operate a food business that sells non-potentially hazardous foods i.e. food that does not have to be kept under temperature control, to notify the chief health officer of the details required under Clause 4. All other food business operators must register their food business with the chief health officer. Registration fees vary from \$50 per year (low-risk businesses) to \$150 per year (high-risk businesses). Charities and community groups are exempt from paying fees. Regulations prescribe the classes of food businesses that are required to implement food safety programs.
- New South Wales has a notification and licensing system. The *Food Act 2003* requires food businesses to notify the New South Wales Food Authority of the details required under Clause 4 before operating a food business. New South Wales exempts from the notification requirements food businesses that are to be licensed under the Act and fundraising events for community or charitable causes. Regulations are yet to prescribe the food businesses that must be licensed with the New South Wales Food Authority. Local governments inspect food businesses and charge a fee for service, which is determined by the local government. Regulations may prescribe food safety schemes which may require classes of food businesses to implement food safety programs.
- The Northern Territory has a registration system only. The *Food Act 2004* requires all food businesses to be registered with the chief health officer. There is no express requirement for food businesses to notify the chief health officer of the information required by Clause 4. As indicated above, the registration process incorporates the notification requirements. The chief health officer may exempt from the registration requirements a person or classes of persons. Regulations will

⁶⁶ Clause 4 of Food Safety Standard 3.2.2 requires food businesses to provide to an appropriate enforcement agency details of the name, address and contact details of the food business, the nature of the food business and the location of all food premises of the food business within the jurisdiction of the enforcement agency.

prescribe the fees payable (if any) for registering a food business and the classes of food businesses that are required to implement food safety programs⁶⁷.

- South Australia has a notification system only. The *Food Act 2001* requires all food businesses to notify an appropriate enforcement agency of their intention to commence operation. Food businesses are not registered in South Australia. Inspections of food businesses are conducted by local governments who can charge up to \$80 per inspection for small businesses (i.e. no more than 20 full-time equivalent staff) and up to \$200 per inspection for larger businesses. Regulations will prescribe the classes of food businesses that are required to implement food safety programs and the fees payable for auditing food safety programs.
- Tasmania has a notification and registration system. The *Food Act 2003* requires all food businesses that are not required to be registered under the legislation to notify the local council of the details required under Clause 4 before operating a food business. Food businesses required to be registered under the Act must apply for registration with their local council. The Director of Public Health, by notice in the *Gazette*, may prescribe those food businesses that are to be registered with a local government. Regulations will prescribe the classes of food businesses that are required to implement food safety programs. Local governments may charge a food business a registration fee.
- Victoria has a notification and registration system. The *Food Act 1984* requires food businesses that are not currently registered with a local council or not required to be registered under the legislation, to notify their local council of the details required under Clause 4 before operating the food business. Food businesses required to be registered under the legislation must apply for registration with their local council. The Secretary of the Department of Human Services or a local government may exempt classes of food businesses from the registration requirements. The Governor-in-Council can set a maximum registration fee for classes of food businesses but has not done so. The Department of Human Services and the Municipal Association of Victoria have developed a fees policy which recommends that local governments charge food businesses 60% of the cost of services provided to the businesses (average is about \$350 per year), however local governments are not obliged to follow this model. Local governments are also required under the legislation to inspect each registered business at least once a year. Businesses including charity and community groups and those food businesses that sell pre-packaged foods eg. newsagents and chemists must be registered. The Secretary of the Department of Human Services may by notice in the *Gazette* declare that certain premises are required to implement a food safety program.
- Western Australia is currently reviewing its food legislation and has under consideration a notification and registration system. It is proposed that food businesses must notify their local government of the information required under Clause 4 and the local government will determine whether the food business is required to be registered and the fees to be charged for registration. It is proposed that regulations will cap registration fees to a maximum of \$500 and regulations

⁶⁷ During debate on the Bill the Minister for Health gave an assurance that *ad hoc* events like charity sausage sizzles would be exempt from the registration requirements. The Minister for Health also stated that food businesses at market stalls would not be required to pay a registration fee.

will also prescribe the classes of food business that are required to implement food safety programs.

Common to most jurisdictions are the dual requirements of notification and registration of food businesses and that high-risk food businesses are required to have food safety programs.

As indicated previously, the notification requirement permits an appropriate enforcement agency to keep a record of food businesses within its jurisdiction and assists with the assigning of a risk classification to the business for the purposes of determining whether the food business is required to implement a food safety program. The notification system complements the registration system, which involves an assessment of whether the premises of the proposed food business are suitable to produce safe food. However, as noted earlier, this type of assessment, on its own, does not address other risks associated with the provision of safe and suitable food eg. whether the owner has a history of non-compliance with food hygiene legislation or whether the owner has the requisite skills and knowledge to provide safe and suitable food.

It is important to bear in mind that whether it be under the Bill's proposed approach or the approach in other jurisdictions, an owner of a food business is required to pay a fee, be it a registration or licence fee to the local government before commencing operation as well as complying with other regulatory controls eg. ensuring the suitability of the premises for the safe handling of food⁶⁸.

In regard to food safety programs, for those jurisdictions (other than Victoria) that have adopted provisions similar to Annex B, the legislative approach has been to provide that regulations are to specify the types of food businesses that require food safety programs. These jurisdictions have not amended their legislation to specify these food businesses as they have been awaiting the Ministerial Council's 2003 decision about the research findings on the impact of food safety programs on food businesses. Given the Ministerial Council's recent adoption of the policy guidelines, it is expected that these jurisdictions will amend their legislation to reflect this fact.

11. CONSULTATION

11.1 *Queensland*

A Discussion Paper on the review of the *Food Act 1981* was released for public comment for a period of two months from August 2002. Information sessions on the Discussion Paper were presented at various locations throughout Queensland during the public discussion period, to encourage input from stakeholders. A total of 148 submissions were received, with the majority of submissions supporting the proposal to license all food businesses other than those identified as low risk. Equally, the majority of submissions supported the proposal that highest risk food businesses must develop, implement and maintain food safety programs.

⁶⁸ The South Australian legislation does not require a food business to register with a local government but does require a food business to notify the local government of its intention to commence business. The Northern Territory legislation requires a non-exempt food business to register with the chief health officer but does not require the payment of a registration fee.

The Minister for Health's Food Safety Stakeholders' Forum, which consists of key stakeholder representatives, met on numerous occasions to discuss the issues and provide a consistent response to the Discussion Paper. The Food Safety Stakeholders' Forum supported the proposals in the Discussion Paper that:

- organisations that give away food should not be caught by the legislation (which is the current situation under the Act);
- food businesses, other than low-risk food businesses, should be licensed; and
- prescribed high-risk food businesses are to develop, implement and maintain food safety programs.

11.2 *National*

There has been extensive consultation undertaken on the development of the Model Food Act including the release in April 1999 of a Regulatory Impact Statement on the Model Food Act. ANZFA received over 600 submissions in the four rounds of public comment on the Food Safety Standards.

A consultation paper *Food Safety Management in Australia – Risk Profiling and Food Safety Programs* developed by the Food Regulation Standing Committee ("FRSC") was released to seek comments on the draft policy guidelines which were based on the outcomes of the NRVP⁶⁹. Consultation commenced in March 2003 and closed on 17 April 2003 on the draft document. FRSC received 69 submissions on the consultation paper. The majority of respondents agreed that food business groups identified by the NRVP should implement food safety programs.

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⁶⁹ The Food Regulation Standing Committee comprises heads of departments for which individual ministers of the Ministerial Council have portfolio responsibility. It also includes a representative from the Australian Local Government Association.