

***Simplifying the Menu:
Food Regulation in Victoria***

**Victorian Competition and Efficiency Commission's
Final Report**

Victorian Government Response

January 2008

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Foreword

The Brumby Government is committed to ensuring that Victoria maintains a strong and growing economy. The food industry is a significant sector of the Victorian economy, contributing about 14 per cent of the State's workforce and 36 per cent of Victoria's total exports.

Food reaches consumers through supply chains including primary producers, manufacturers and retailers. A large proportion of the sector's activity takes place in regional Victoria and is spread across 86,000 large, medium and small businesses.

Food regulation plays an important role in protecting public health and promoting confidence in Victoria's food industries. Victoria pioneered outcome focused food regulation and Victorian initiatives, such as food safety programs, are now being adopted at the national level. However, food regulation is complex because it involves three levels of government and applies right along the supply chain.

The Victorian Government is committed to reducing the regulatory burden, a major factor in ensuring the competitiveness of Victorian businesses and the prosperity for the State. The key challenge with food regulation is to ensure that it is effective, appropriately targeted to risk, and does not impose unnecessary burdens on businesses or the community.

It is within this context that the Government asked the Victorian Competition and Efficiency Commission (VCEC) to assess the regulatory burdens of the Victorian food regulation framework. This is the fifth inquiry undertaken by the VCEC. Their final report, *Simplifying the Menu: Food Regulation in Victoria*, is being released after extensive consultation with stakeholders.

In its final report, the VCEC identified 37 recommendations in relation to three levels of government – national, state and local. The recommendations fall into six categories, which are: national issues, state issues, regulatory instruments, market incentives, local government issues and community groups.

The Government has closely examined each of the VCEC's recommendations, and is strongly supportive of the directions recommended in the VCEC's report. This document details how the Government will respond to each recommendation.

There was a pleasing level of interest and participation from stakeholders and other interested groups throughout the inquiry process, which I anticipate will continue throughout the implementation process. I would like to thank all those who participated in this inquiry.



John Lenders MP

Treasurer



Overview

The continued and sustainable development of the food industry in Victoria depends on a regulatory regime that supports and manages food safety, while allowing the food industry room to innovate and respond to market opportunities. Minimising the compliance and administrative burdens on regulated parties provides the flexibility needed to achieve these outcomes, while supporting industry competitiveness.

Victoria has led the way in food safety reforms, such as outcome focused food regulation. However, food regulation is complex and all systems can be improved. It is in this context that the Victorian Government directed the Victorian Competition and Efficiency Commission (VCEC) to undertake an inquiry into regulation of the food industry in Victoria.

In September 2007, the VCEC presented its final report, *Simplifying the Menu: Food Regulation in Victoria* to the Government. The final report contains 37 recommendations aimed at improving the framework and administration of food regulation in Victoria and nationally.

Consumers and businesses reasonably expect to be sold food that is safe and suitable for human consumption. The VCEC concluded that Victoria's food supply "appears to be generally safe", with low levels of reported foodborne illnesses. There are strong market incentives for food businesses to produce food that is safe for human consumption.

An important challenge for regulation and its implementation is achieving the right balance between reducing food safety risks to the community and imposing costs on food businesses and community activities. The VCEC report sets out a framework for meeting this challenge.

This document outlines the Victorian Government's response to the VCEC's recommendations. In some areas, while the intent of report's recommendations is fully supported, the Government will use an alternative implementation mechanism to that proposed. The Victorian Government believes that these changes will enhance the intended outcomes of food regulation, benefiting consumers, the food industry and the Victorian community.

National framework and scope of food regulation

Victoria's regulatory arrangements for the food sector operate within a national framework. The VCEC called for Victoria to advocate for changes at the national level that are designed to implement best practice approaches to assessing regulatory proposals and to improve the timeliness and quality of decisions relating to national food standards.

While Victoria does not control the development of policy and standards nationally, government leadership can influence change. The Victorian Government will advocate for more effective links and discussions across Ministerial Councils and the committees covering food regulation, nutrition and health promotion.

The Government will also continue to advocate at the national level for a greater focus on good regulatory practice, including rigorous benefit-cost analysis of food regulation and other strategies, such as alternatives to regulation. This will help determine the most effective strategy as well as the extent to which food safety regulation can, and should, be used to achieve broader public health objectives, like reducing the prevalence of obesity, diabetes or heart disease.

The Victorian Government is already taking the lead on a number of inter-jurisdictional issues, such as resolving the current inconsistencies between the maximum residue limits in food regulation and agriculture regulation.

The Government supports the VCEC's recommendation for a comprehensive review of food labelling standards and will advocate for such a review at the national level.

Clearer objectives, responsibility and accountability in Victoria's food Acts

A complex food regulation framework exists in which the Commonwealth and state governments jointly develop national food standards that are embodied in the Food Standards Code.

Victoria's food regulatory system includes the Department of Human Services and the Department of Primary Industries, local councils and the statutory authorities of PrimeSafe and Dairy Food Safety Victoria (referred to collectively as "food regulators"). Consumer Affairs Victoria regulates misleading conduct, as does the Australian Competition and Consumer Commission.

The VCEC concluded that the current institutional arrangements under the *Food Act 1984* (Vic.) (hereafter referred to as the *Food Act*) do not establish clear lines of responsibility, nor do they provide for effective accountability.

In the area of primary production and processing regulated by PrimeSafe and Dairy Food Safety Victoria, the VCEC concluded that the systems operating were already efficient and meeting industries' needs, but overall coordination of the State's food regulatory system could be improved.

This Government Response outlines a number of actions that the Government will take to clarify the objectives of food regulation and to improve the cohesiveness of the overall system across the health, primary industries and consumer affairs portfolios.

The primary objective of food regulation in Victoria and Australia is to ensure that food is safe and suitable for human consumption. The Victorian Government will amend the relevant food Acts to clarify that reducing foodborne illness and physical harm is the key enforcement priority for the food regulators.

The *Food Act* will be amended to strengthen the governance of the regulatory framework and clearly articulate the roles and responsibilities of local government and the Department of Human Services. To promote greater public accountability, the Victorian Government will amend the *Food Act* to require food regulation performance and trend data to be collected and published.

The Victorian Government will focus its leadership on the development of a statewide strategic plan, a revised memorandum of understanding and a fully operational committee of food regulators representing government agencies and local government. The partnership between the State and local government, in policy and planning, will also be strengthened by these mechanisms.

As recommended by the VCEC, a review of the effectiveness of the food safety framework will be undertaken five years after implementing the new arrangements, to assess whether the new institutional arrangements have improved the operation of the food regulatory framework.

Risk based regulation

The VCEC found that the current regulatory framework in Victoria is only partly differentiated according to the level of risk.

The Victorian Government will develop a new risk management framework to focus food regulation where safety risks are greatest. The risk management framework will allow the administrators of food regulation to better target their regulatory efforts and more effectively utilise their resources.

The Government will amend the *Food Act* to provide councils with additional mechanisms to reward good food safety performance and discourage poor food safety performance. Food Safety Programs, formal education requirements and the frequency of inspections or audits will be linked more clearly to the inherent risk profile of the business or not-for-profit organisation. Legislation will be proposed to give councils the authority to issue on-the-spot fines and to charge appropriately for individual inspections.

The VCEC found that a lack of public reporting by regulators made it difficult to assess the contribution of regulation to food safety outcomes. The Government will introduce a number of mechanisms to improve the information base on which policy and regulatory decisions are made, including a performance reporting system and a database of food sampling results.

Strengthening the capacity of local government

Councils are the primary regulators of food premises within their municipalities.

The VCEC found that there is a degree of inconsistency in the implementation of food regulation. The VCEC proposed a number of changes to achieve greater consistency in regulatory practice across local government.

Many of the initiatives put forward in the Government Response will strengthen the partnership between State and local government. The establishment of a risk management framework will assist councils to target their regulatory efforts and more effectively use their resources. Providing local governments with more enforcement options will enhance their capacity to regulate effectively and to recover costs from non-compliant businesses that require additional monitoring and inspections.

The Victorian Government will also take an active leadership role by providing councils with guidance on administering the *Food Act* and strengthening the communication lines between all food regulators.

The availability of a skilled workforce is key to local government implementation of food regulation. The VCEC and the Auditor-General have noted that workforce shortages affect local governments' capacity to fulfil their *Food Act* responsibilities. The Government will amend the *Food Act* to enable local government to approve a greater range of suitably qualified people as authorised officers, and is working with local government on broader workforce strengthening initiatives.

Reducing the regulatory burden

The VCEC estimated that the total cost of food regulation to business is approximately \$152 million per annum, comprising mostly administrative costs. The VCEC proposed a number of strategies to reduce the administrative burden of regulation, consistent with the Victorian Government's *Reducing the Regulatory Burden* initiative.

The Government Response contains a number of initiatives that will result in significant reductions in the regulatory burden imposed on businesses and not-for-profit organisations, without undermining the policy objectives of food regulation, or increasing risk to the community.

Under a new risk classification structure, a significant proportion of low risk businesses and not-for-profit organisations will no longer be required to fulfil all administrative requirements. Wherever possible, the administrative requirements will be simplified and any unnecessary duplication will be removed. For high risk operations, the Victorian classification system will be aligned with the national classification structure.

Councils will no longer be required to inspect businesses with an independent audit and accreditation process that complete a minimum of two audits a year. Businesses with staff who have completed accredited training will no longer be required to undertake duplicative training programs. Food Safety Programs, formal educational requirements and registration processes will be simplified for many businesses.

The Victorian Government will establish a central registration system for mobile food businesses and will develop a model registration template.

Improved education and information

The VCEC highlighted that education and information strategies aimed at raising the awareness of business, community groups and consumers about food safety issues can reinforce market incentives and regulation to improve food safety.

While effective communication of the new regulatory requirements will be essential, priority will initially be given to designing and implementing legislative and administrative reforms to the food regulation framework in consultation with local government, business and other key stakeholders.

Following the implementation of this Response, a wider program of education and information for business and the community will be developed by the Department of Human Services.

National issues

In Chapter 7 of the final report, the VCEC considers issues relating to the national framework governing food regulation. The Victorian Government supports the proposal to advocate for changes at the national level that are designed to implement best practice approaches to assessing regulatory proposals, and improve the timeliness and quality of decisions about national food standards.

Recommendation 7.1 That the Victorian Government advocate that national public health issues such as obesity, type 2 diabetes and heart disease be addressed at a national level by the Council of Australian Governments. In doing so, the Victorian Government should:

- encourage a strategic approach to public health issues that spans relevant policy areas, ensuring food regulation plays an appropriate role in addressing national public health issues
- support adherence to best practice regulatory principles, specifically those set out in the Council of Australian Governments' *Principles and guidelines for national standard setting and regulatory action*, to the development of national food standards by the Australia and New Zealand Food Regulation Ministerial Council and Food Standards Australia New Zealand
- support the use of national food standards to achieve public health objectives only where it can be clearly demonstrated that this is the most cost-effective means of achieving government objectives.

Response

Supported

In July 2006, the Council of Australian Governments (COAG) agreed to focus on type 2 diabetes as part of the National Reform Agenda's emphasis on human capital reform. The Victorian Government released its *Plan to Address the Growing Impact of Obesity and Type 2 Diabetes* in April 2007. Through this work, the Government will continue to advocate for a national focus on the prevention of obesity and diabetes.

The Victorian Government will continue to advocate for best practice in the development of national food standards, in accordance with COAG principles, through active leadership at the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council).

The Victorian Government will also encourage more effective links and discussions across Ministerial Councils and the committees covering food regulation, health, nutrition and health promotion. Victoria is already building these links at the state-level, with initiatives such as *Go For Your Life* and *Food For Life*.

In addressing public health goals such as obesity, the Government agrees that there should be rigorous assessment of strategies beyond food standards. Regulatory intervention in the food supply chain should only be supported when it is demonstrated to be the most effective approach and includes a positive benefit/cost assessment.

Recommendation 7.2 That the Victorian Government should advocate for extending the forthcoming review of country of origin labelling requirements to include a broad ranging and independent national review of the policy framework underpinning the labelling provisions of the Food Standards Code.

Response

Supported

The Victorian Government agrees that there should be a comprehensive review of the labelling regime that developed incrementally since the introduction of the combined *Australia New Zealand Food Standards Code* in December 2002.

The extended review should be conducted from first principles following the *COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. It should include an evaluation of whether or not labelling standards have achieved the stated objectives, an analysis of consumer understanding of the information provided and the use of labels in making purchase decisions.

Every proposal for continued, or new, mandatory labelling requirements should identify the policy outcomes the requirement is intended to achieve.

To strengthen the outcome of the extended review, Victoria will recommend strong industry involvement and the sharing of data across jurisdictions and stakeholders.

The Victorian Minister for Health will advocate for a comprehensive review at the Australia and New Zealand Food Regulation Ministerial Council.

Recommendation 7.3 To stimulate food industry innovation, the Victorian Government should propose further improvements in the governance arrangements for the Australia and New Zealand Food Regulation Ministerial Council. Improvements to the transparency and timeliness of decision making could be achieved by:

- encouraging jurisdictions to use existing consultation mechanisms to address their concerns prior to requesting a review of any Food Standards Code amendments prepared by Food Standards Australia New Zealand
- limiting the basis for a review of a proposed amendment prepared by Food Standards Australia New Zealand to two or more jurisdictions
- requiring jurisdictions to publicly release their reasons for requesting a review, and to meet the costs of any review

- pressing for further streamlining of the approval process, including greater recognition of overseas evidence on safety issues and allowing companies to be granted automatic approval to proceed with their proposal where they are willing to bear the potential costs arising from any subsequent rejection of their proposal.

Response

Supported-in-part

The Government agrees that the number of reviews requested by the Ministerial Council should be minimised to reduce time taken and resources required for developing food standards.

The Government acknowledges the strategies that are currently being implemented to improve the timeliness of the standards process. For example, recent amendments to the *Food Standards Australia New Zealand Act 1991* (Cwlth.) (effective from 1 October 2007) aim to improve the food standard development and amendment process. Some of these amendments should result in a reduction in the number of reviews and greater clarity of the review process.

Given that these changes are recent, the Victorian Government supports an evaluation starting two years after implementation of these amendments.

The Victorian Government agrees that additional streamlining is possible, through administrative actions and cooperation between jurisdictions and Food Standards Australia New Zealand (FSANZ). For example, stricter adherence by the Council to the existing terms of the Food Regulation Agreement, which stipulates the grounds that may be used to request a review, may reduce the number of reviews. Further legislative change is not supported at this stage.

In October 2007, the Ministerial Council agreed that it would publish the grounds for requesting a review and a summary of the Statement of Reasons provided by the jurisdiction(s). The Victorian Government considers it reasonable that FSANZ bear the cost of undertaking the review if the jurisdiction has provided sufficient evidence of the need for a review (and borne that cost).

The Government will encourage other jurisdictions to use their existing consultation mechanisms prior to requesting a review by FSANZ. The Victorian Government has already implemented a system of assessment and consultation, coordinated by the Department of Human Services with regard to standards, proposals and applications.

The Government will consult with FSANZ and industry on the feasibility of granting automatic approval for a proposal where there is overseas evidence on safety issues. The Government believes that to protect public health, FSANZ would need to make an assessment of the evidence prior to provisional approval being granted.

The Government does not support the recommendation to require two jurisdictions (instead of one) to call for a review as a means of reducing the number of reviews. There have been instances where Victoria has been a single voice on an issue and therefore would want to retain the ability for a single jurisdiction to call for a review of a draft standard.

Recommendation 7.4 That the Victorian Government support the rigorous assessment of the need for primary production standards and their adoption only where intervention is warranted, where it is the most effective form of intervention to manage risks, and where risks cannot be addressed more cost effectively at other points in the supply chain.

Response

Supported

The Victorian Government will continue to actively participate in the FSANZ process for developing primary production standards. However, the Government will only support the adoption of these standards where COAG principles of good regulatory practice have been demonstrated. The Government will continue to encourage the adoption and recognition of industry systems that effectively manage food safety, to reduce the need for government regulation.

The Department of Primary Industries will also continue to work with industry to help identify food safety hazards and develop suitable risk management strategies.

Recommendation 7.5 That the Victorian Government propose improved management of misleading and deceptive conduct relating to food by:

- pressing for the development of guidelines outlining the scientific information that Food Standards Australia New Zealand can provide to the Australian Competition and Consumer Commission to help it pursue its legislative objectives
- Consumer Affairs Victoria updating its memorandum of understanding with the Australian Competition and Consumer Commission for misleading and deceptive conduct, including communication and enforcement protocols
- Consumer Affairs Victoria developing (in the revised memorandum of understanding for Victorian regulators) protocols to help local government enforce that part of the *Food Act 1984* (Vic.) relating to misleading and deceptive conduct.

Response

Supported

Victoria has been actively involved in inter-jurisdictional forums to ensure that scientific guidelines are up-to-date and provide effective support to regulatory agencies' enforcement activities, and will continue to press for these outcomes.

Consumer Affairs Victoria is committed to working with the Australian Competition and Consumer Commission and other relevant agencies to improve the monitoring and enforcement of misleading and deceptive conduct provisions.

Consumer Affairs Victoria will initiate discussions with the Australian Competition and Consumer Commission on the memorandum of understanding, including communication and enforcement protocols.

The Victorian Government will investigate the most effective ways Consumer Affairs Victoria can assist local government to enforce misleading and deceptive conduct provisions through the development of the revised memorandum of understanding (recommendation 8.6).

Recommendation 7.6 That the Victorian Government support Food Standards Australia New Zealand and the Australian Pesticides and Veterinary Medicines Authority in the adoption of a more risk based approach to maximum residue limit requirements, and the harmonisation of the maximum residue limit requirements.

Response

Supported

The Government has taken the lead at the Ministerial Council level to resolve inconsistencies between maximum residue limits in food regulation and agricultural regulation.

The Department of Primary Industries will continue to work with FSANZ and the Agricultural Products and Veterinary Medicines Authority to ensure that the problems associated with inconsistent maximum residue limits are addressed.

The Department of Primary Industries has started consultation with FSANZ to assess options that take a more risk based approach to low level chemical residues in food that pose no risk to public health, rather than the current precautionary zero tolerance approach.

A recent example, requiring urgent amendment to the food standards code, was wine exports. Without an amendment to the standards the continued export of Australian wine would have been prevented because it was technically in breach of the food standards code.

Recommendation 7.7 That the Victorian Government support implementation of the average quantity system, as part of the development of a national trade measurement system, to align Australia with overseas trading partners.

Response

Supported

Consumer Affairs Victoria has been actively participating in national forums to introduce the Average Quantity System (for checking the measurement of pre-packed articles) into the national model Uniform Trade Measurement Legislation.

On 13 April 2007 the Council of Australian Governments endorsed a recommendation from the Ministerial Council on Consumer Affairs to develop a national trade measurement system delivered by the Commonwealth Government.

Given this decision, the proposal to introduce the Average Quantity System has been referred to the Commonwealth for inclusion in its new trade measurement legislation to be implemented on 1 July 2010.

Consumer Affairs Victoria now sits on a Commonwealth Legislation Working Group where all Commonwealth, State and Territory representatives are committed to the inclusion of Average Quantity System into the new Commonwealth trade measurement legislation.

State issues

Consumers and businesses reasonably expect they will be sold food that is safe and suitable for human consumption. Food regulations are designed to protect public health and foster public confidence in Victoria's food industries.

The Victorian Government supports the introduction of measures to improve the application of the food regulatory framework. The proposed measures will enhance the governance, accountability and transparency of the enforcement process, and establish a more targeted and risk based regulatory framework.

Recommendation 8.1 That the *Food Act 1984* (Vic.) be amended to clarify that regulators, in ensuring that food is safe and suitable for human consumption, should give priority to reducing the incidence of foodborne illness resulting from the sale of food.

Response

Supported

The Victorian *Food Act* currently has three objectives: to ensure the safety and suitability of food for sale; to prevent misleading conduct in connection with the sale of food; and to provide for the application of the Food Standards Code.

The *Food Act*, including the objectives of the Act, is based on the Model Food Provisions that all Australian jurisdictions have endorsed under the Food Regulation Agreement.

The Victorian Government agrees that the primary objective is to reduce the incidence of foodborne illness by ensuring food is safe and suitable for human consumption. This is reflected in practice, as Victorian regulators currently give priority to reducing the incidence of foodborne illness and physical harm in the application and enforcement of the *Food Act*.

The Government will amend the *Food Act* to include clarification that reducing foodborne illness and physical harm is the key enforcement priority for the regulators under the *Food Act*.

The Victorian Government will advocate for other jurisdictions to follow its approach, in the interests of national consistency.

Recommendation 8.2 That the *Food Act 1984* (Vic.) be amended to incorporate principles to guide Victorian regulators in implementing food regulation. Specifically, food regulation should be:

- the minimum necessary to achieve the desired objective
- risk based, to reduce the regulatory burden and improve resource allocation
- efficiently administered (minimising administrative and compliance costs)

- nationally consistent, so similar businesses are treated similarly
- evidence based
- mindful of international food regulations and market access implications.

Response

Supported-in-principle

The Victorian Government is fully committed to achieving best practice regulatory policy and review. The *Victorian Guide to Regulation* (Government of Victoria, 2007) is employed across government to ensure that regulation is well targeted, effective and appropriate.

The Victorian Government acknowledges that greater guidance could be provided to food regulators regarding best-practice implementation of regulation.

However, the Government considers that any principles that guide Victorian regulators in implementing food regulation should be inserted into the revised memorandum of understanding, rather than in legislation.

Recommendation 8.3

That the *Dairy Act 2000* (Vic.), *Meat Industry Act 1993* (Vic.) and *Seafood Safety Act 2003* (Vic.) be aligned with the objectives of the *Food Act 1984* (Vic.) and the guiding principles for regulators.

Response

Supported-in-principle

The Victorian Government supports the alignment of the objectives and guiding principles of food regulation across differing industries where appropriate.

Some variation between Victoria's food-related Acts is inevitable, reflecting the differences between industries. For example the key objective of the Acts governing the meat, seafood and dairy industries is to ensure safe food; an important secondary objective of these Acts is to ensure market access to food products, particularly in export markets.

The Government notes however that the objectives of the *Dairy Act 2000*, *Meat Industry Act 1993* and *Seafood Safety Act 2003* are currently expressed in terms of regulatory instruments rather than food safety outcomes.

The Government will request the Department of Primary Industries to advise on the incorporation of more outcome-based objectives into the Acts.

Recommendation 8.4

Given the accountability of the minister responsible for the *Food Act 1984* (Vic.) for achieving the overall objectives of the Act, the *Food Act* should be amended to establish that the minister is responsible for overseeing the performance of local governments in meeting their obligations under the Act.

Response

Supported-in-principle

The Government agrees that the governance of Victoria's food regulatory system needs to be strengthened. However, the Government believes that this strengthening is best pursued through changes to the *Food Act* to clarify the roles of the State and local government.

Councils are the primary regulators of food premises within their municipalities and the State Government has responsibility for matters of statewide significance (e.g. coordinating food recalls). The Chief Health Officer also has power to order the immediate closure of food premises that pose a direct risk to public health, although in practice this power is usually exercised at the request of councils.

To strengthen the governance, accountability and operation of the food regulation system, the Government will amend the *Food Act* to:

- clarify the roles and responsibilities of the Minister for Health, the Department of Human Services, and local councils;
- introduce a directions power into the Act to enable the Minister for Health to direct local government (recommendation 8.9); and
- require all councils to collect and submit data to the Department of Human Services about their activities under the *Food Act* (recommendation 8.10).

Under the enhanced *Food Act* governance framework, the Minister for Health, the Department of Human Services and local government will be publicly accountable for the matters for which they have been given statutory responsibility.

Recommendation 8.5	<p>That within 12 months of responding to this report the Victorian Government and food regulators collectively develop a strategic plan. Core plan elements should include:</p> <ul style="list-style-type: none">• specific short and medium term objectives• strategies and actions to realise these goals• a regular review of progress in achieving these objectives (identifying the information needed to assess progress).
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Response

Supported

The Victorian Government supports the recommendation that a statewide strategic plan encompassing all food regulators should be developed. The strategic plan will facilitate a more integrated approach and greater consistency to food safety regulation.

The strategic plan will be a key responsibility of the Committee of Food Regulators (recommendation 8.7). Once established, the Committee will develop a work program and prioritise its responsibilities. A timetable will be produced detailing how the strategic plan will be developed and how input from relevant stakeholders will be coordinated.

Recommendation 8.6 That the planned review of the memorandum of understanding among food regulators in Victoria should ensure that there are clear responsibilities relating to:

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

The review should also develop and incorporate into the revised memorandum:

- improved and complementary information sharing protocols among regulators
- operating rules for the coordinating committee of regulators.

The review should consult with the Food Safety Council and the Food Victoria Council. It should commence following the Victorian Government's response to this report, be completed within 12 months, and set out a timetable for implementing its recommendations.

Response

Supported

The planned review of the memorandum of understanding between Victorian food regulators will be expanded to encompass this recommendation. This review, to be undertaken by the Committee of Food Regulators and led by the Department of Human Services, will be completed within 12 months.

The terms of reference for the review will include mechanisms to improve objectives, accountabilities, performance reporting, coordination among regulators and a timetable for implementation of VCEC recommendations agreed to by the Government.

Recommendation 8.7 That the Ministers for Health and Agriculture agree to establish a committee of food regulators comprising representatives of the Department of Human Services, local government, Dairy Food Safety Victoria, PrimeSafe and Consumer Affairs Victoria. The committee would:

- oversee the memorandum of understanding and its ongoing operation
- regularly monitor performance of the food safety strategic plan and coordinate reports to responsible ministers
- oversee a common food safety performance reporting system
- identify and address any significant problems that require a coordinated or statewide response, with regulators to seek ministerial decisions when required

- examine the scope to use coordinated education and information strategies to complement regulation
- consult with the Food Safety Council and the Food Victoria Council on matters as appropriate
- serve as a forum to share knowledge, information and lessons.

The Victorian Government should review the effectiveness of the food safety framework and coordination arrangements after five years of operation.

Response

Supported

The Victorian Government supports the formalisation of discussions between the Victorian food regulators and will establish a Committee of Food Regulators.

The committee will include representatives from the Department of Human Services, local government, Dairy Food Safety Victoria, PrimeSafe, Consumer Affairs Victoria and the Department of Primary Industries.

Local government will be consulted about its representation on, and the terms of reference for, this committee.

It is important that there are well established mechanisms to facilitate ongoing engagement and dialogue between the regulators and key food industry and consumer stakeholders.

The Government supports a review of the effectiveness of the food safety framework after it has been in place and operating for five years. This five-year review will help determine whether the new institutional arrangements have improved the coordination and communication between Victoria's food regulators.

Recommendation 8.8

That the Department of Human Services conduct a trial of food safety service agreements involving a small sample of councils in Victoria. The Department should:

- prepare draft service agreements
- seek the participation of a sample of councils from metropolitan, regional and rural areas
- negotiate the terms and conditions of the service agreements with these councils
- seek ongoing input from the Municipal Association of Victoria
- evaluate and report the results of the trial.

The trial and its evaluation should be completed within three years from the Victorian Government's response to this report.

Response

Not supported

The VCEC envisages that service agreements might be a mechanism by which local government could be reimbursed for taking on additional responsibilities outside the scope of the regulatory functions vested in local government under the *Food Act*.

Service agreements may be an appropriate way to provide local councils with special project funding on a case-by-case basis. For example, the Government may consider service agreements with councils to assist them with design and trials of proposed new food safety education initiatives for businesses and the community, or new social marketing initiatives, as outlined in recommendation 10.1.

Therefore the Government will require the Department of Human Services to consider the appropriateness of a service agreement as the need arises. The Government therefore rejects the VCEC's recommendation of a three year trial.

Recommendation 8.9

That the *Food Act 1984* (Vic.) be amended to incorporate a new section that allows the minister to issue directions to councils to:

- clarify legislative objectives to promote national consistency
- require performance reporting in accordance with a specified format
- set parameters for specific operational matters relating to councils' powers and functions under the Act.

The new section should require that the minister should consider the principles of the *Food Act* (recommendation 8.2) and consult appropriately with local government or the relevant peak representative body before issuing directions.

The new section should also require ministerial directions, and the reasons for them, to be published in the *Government Gazette*. Finally, the section should provide that councils must comply with ministerial directions.

Response

Supported

The Victorian Government supports the recommendation to amend the *Food Act* to incorporate a power of direction.

The Victorian Government is committed to a consultative approach between the different food safety regulators. Local government will be an equal partner with State food regulators on the Food Regulators Committee. Completion of, and agreement to, the strategic plan and a revised memorandum of understanding should limit the need for ministerial directions.

However, the Victorian Government currently has no statutory power to give directions on important policy matters to local governments.

In a devolved regulatory system, such as Victoria's, it is important to have a statutory mechanism that can be invoked (if required) to ensure significant policy issues are addressed in a consistent way.

Careful consideration will be given to the scope of the power of ministerial direction. The framework governing the use of the Minister's power of direction, including requirements for consultation before the issuing of directions, will be explicitly stated within the *Food Act*. Local government will be consulted in the development of the legislation.

Recommendation 8.10	<p>That the Victorian Government require the Department of Human Services, councils, Dairy Food Safety Victoria and PrimeSafe to report publicly their food safety performance, based on a common performance reporting system overseen by the committee of food regulators. To ensure implementation:</p> <ul style="list-style-type: none">• the Minister for Health should issue a direction under the new section in the <i>Food Act 1984</i> (Vic.) to require councils to report their food safety performance to the Department of Human Services. Using this information, the department should prepare reports for local government and the public• the Minister for Agriculture should direct Dairy Food Safety Victoria and PrimeSafe to report publicly on their food safety performance• the Department of Human Services/Municipal Association of Victoria Food Safety Coordination Project should resolve implementation issues (such as those relating to reporting system design and funding).
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Response

Supported-in-principle

The Government supports the development of a statewide food safety performance reporting framework. Performance reporting will assist in a better targeted regulatory effort and provide the Government with the ability to monitor overall performance trends of the food regulators and trends in achievement of the objectives of food regulation.

Rather than directing regulators to report their food safety performance to the Department of Human Services, the Government proposes to amend the *Food Act* to require regulators to collect and submit specified data to enable the Department of Human Services to publish an annual report on the operation of the *Food Act*.

The Minister for Agriculture will ensure the new framework will encompass performance reporting under primary industries legislation administered by Dairy Food Safety Victoria and PrimeSafe.

The design of these reporting requirements and associated implementation will be addressed jointly by State and local government through the Department of Human Services/Municipal Association of Victoria Food Safety Coordination Project (established to address recommendations from the Auditor General's review of the *Food Act*) and will be overseen by the Committee of Food Regulators.

Recommendation 8.11 That the Department of Human Services and the Department of Primary Industries establish a joint committee to review the *Food Act 1984* (Vic.), *Dairy Act 2000* (Vic.), *Meat Industry Act 1993* (Vic.) and *Seafood Safety Act 2003* (Vic.), so as to identify and address legislative inconsistencies. The joint committee should submit its recommendations - within 12 months of the Victorian Government's response to this report - to the ministers for Health and Agriculture.

Response

Supported-in-part

The Victorian Government supports a review of the above named Acts to identify and address inconsistencies.

The Victorian food regulations are designed to be complementary, not overlapping, and to ensure that efficient and effective systems are implemented. Therefore, the Government acknowledges that some differences may remain to provide for regulatory requirements that reflect the differing needs of industry sectors.

The Victorian Government will undertake the review following the implementation of other recommendations agreed to by the Government. Given this, it is unlikely that such a review will be concluded within the 12 month timeframe suggested by the VCEC.

This decision is further supported by the VCEC's own admission that there is little evidence as to the costs these inconsistencies impose on business.

Recommendation 8.12 That the Victorian Government repeal the *Bread Industry Act 1959* (Vic.).

Response

Supported

The Victorian Government agrees that the *Bread Industry Act 1959* (Vic.) is redundant legislation.

The Victorian Government agrees that the objectives of the Act, which focus on the supply of bread making ingredients and equipment to manufacturers, can be achieved through alternative means such as the *Trade Practices Act 1974* (Cwlth.). The Victorian Government also agrees that today's market for bread inputs is not exceptional and therefore does not warrant industry-specific legislation to maintain competition.

The *Bread Industry Act 1959* (Vic.) will be repealed as part of the Victorian Government's 2008 legislative program.

Recommendation 9.1 That the Victorian Government focus food regulation where food safety risks are greatest, and lessen the regulatory burden on food businesses that represent a low food safety risk by:

- retaining the class 1 risk classification, but with class 1 containing those categories that the Australia and New Zealand Food Regulation Ministerial Council agreed should have food safety programs, and introducing class 2 medium and low risk categories to strengthen incentives for food businesses to maintain a good food safety track record

- outlining the criteria for determining low risk business activities in subordinate legislation
- having the Department of Human Services provide guidance on a consistent approach to assessing compliance and making decisions about moving businesses into a different risk category.

Response

Supported-in-principle

The Victorian Government supports the intent of this recommendation to focus food regulation where food safety risks are greatest and to lessen the regulatory burden on food operators.

However, rather than accepting the recommendation to introduce class 2 medium and low risk categories, the Government will develop a new risk classification system in consultation with industry and local government.

The VCEC noted that, "it does not have a firm view on ... establishing a new class 3 or having separate categories More important is the result of having greater risk differentiation based on a robust classification system" (VCEC, 2007, p207).

The existing Class 1 risk classification will be retained and aligned with the national system and additional classes will be introduced for medium, low and very low risk food businesses and community activities. These changes will be made through an amendment to the *Food Act*.

The criteria that councils must consider in determining the risk based classification of a business or not-for-profit organisation will be set out in the *Food Act*, rather than in subordinate legislation.

The *Food Act* will also be amended to require appropriate consultation with stakeholders prior to making changes to the classification of food businesses.

The Government believes that allocation of food businesses to a risk class should be based entirely on the risk inherent in their activities. This means that businesses will not be moved between risk categories unless the nature of their operation changes in a way that changes the inherent risk. Mechanisms such as altered inspection or audit frequency and capacity to charge for additional inspections, will be introduced to reward good food safety performance and to enable imposition of adverse consequences for poor food safety performance.

When the new risk classification system is developed, the Department of Human Services will provide policy guidance to ensure councils use a consistent approach in assessing the inherent risk of businesses and assigning them to suitable risk categories.

Recommendation 9.2 That the Victorian Government lessen the regulatory burden on food businesses by:

- establishing a central register covering all food businesses which would also enable mobile food businesses to register once rather than in multiple council areas
- amending the *Food Act 1984* (Vic.) to facilitate councils unbundling registration and inspection activities and charging separately for each.

Response

Supported-in-part

Temporary and mobile food businesses, such as food vans, farmers' market stalls, and community organisations engaged in fund raising events, operate in several municipalities. Currently, temporary and mobile operators are required to register with each individual municipal council.

The Government recognises the need to streamline this regulatory arrangement. A central database of temporary and mobile food businesses will be developed within the Department of Human Services, so that each operator will only need to register once through a relevant council.

Single registration will enable other councils to recognise the right for mobile and temporary businesses to operate in their municipalities. These new arrangements will deliver substantial savings to mobile businesses.

However, the Government does not support the establishment of a central register covering all food businesses. The Government is committed to retaining and strengthening the current devolved regulatory system and any moves to centralise to a statewide registration would be a shift away from the current system.

The Government agrees with the VCEC that councils should have greater powers to set inspection fees. The Government will prepare an amendment to the *Food Act* to allow councils to charge separately for registration and inspections to check compliance (in the same way as audits are separately charged for). This will provide a mechanism to target businesses that pose a greater risk to public health, as they will require more inspections, thereby incurring higher fees.

These changes to the *Food Act* will be developed in consultation with local government and other relevant stakeholders.

Recommendation 9.3 That the *Food Act 1984* (Vic.) be amended to require the registration of a food business rather than premises, and that references to food premises throughout the Act should, wherever necessary, be amended to references to food business.

Response

Not supported

The Government does not support the recommendation to require the registration of a food business rather than premises.

Currently, registration under the *Food Act* provides authority to sell food or prepare food for sale at specified (registered) premises. Local councils are the registration authorities and each council is responsible for food premises within its own municipality.

The Government is committed to retaining and strengthening the current devolved regulatory system and any moves to centralise through statewide registration would represent a shift away from the current system.

The Government will reduce the burden of regulation on large manufacturers, wholesalers and supermarkets by recognising independent third party audit and quality assurance programs that also meet the *Food Act* requirements. This will mean that councils will no longer be required to undertake an annual inspection if a third party audit has already been performed. Businesses with staff who have completed accredited training will no longer be required to undertake duplicative training programs.

Recommendation 9.4

That the Victorian Government streamline regulatory requirements for food businesses by:

- removing the requirement for a food safety program for all businesses other than class 1 businesses
- amending the *Food Act 1984* (Vic.) to provide councils with the authority to require a business premises proprietor to obtain approval for and implement a food safety program
- streamlining registration processes for low and medium risk food businesses
- providing more flexibility to class 2 businesses in meeting the record keeping requirements of the Food Standards Code.

Response

Supported-in-principle

The Government supports the intent of the VCEC recommendation to reduce the administrative burden on businesses through the streamlining of regulatory requirements while maintaining the policy objectives of the *Food Act*. However, the Government does not consider it appropriate to remove the requirement of food safety programs for all businesses other than class 1 businesses.

Under recommendation 9.1, the Government has committed to develop a new risk classification system to ensure that requirements imposed on businesses are proportionate to the inherent risk of the activities they undertake.

In developing the new system, the Government will determine which risk categories will require a food safety program and which could be exempt from this requirement.

It is anticipated that businesses and not-for-profit organisations in the low and very low risk categories will no longer be required to have food safety programs. The Government anticipates that the very low risk category would include, among others, all sessional kindergartens currently providing cut fruit for children, community groups' sausage sizzles, and retail outlets where pre-packaged food is sold.

Businesses and not-for-profit organisations that are no longer required to have food safety programs will be provided with easy-to-use food safety guidance and associated simple record keeping requirements to deal with critical hazards (e.g. temperature).

It is anticipated that most businesses and not-for-profit organisations in the medium to high risk categories will still be required to have food safety programs. However the Government will simplify the food safety templates and record keeping requirements to reduce the administrative burden on non-exempt food operators.

The Government will streamline the registration process for all food businesses and not-for-profit organisations by providing a model registration template and no longer requiring them to update and submit their food safety programs on an annual basis. Food businesses and not-for-profit organisations in the very low risk category will be required to notify, rather than register with, their local council.

Recommendation 9.5

That the Victorian Government develop more effective and targeted food safety training approaches by:

- relying on national standards relating to the skills and knowledge of food handlers
- removing the requirement for all premises to appoint a suitably qualified food safety supervisor
- amending the *Food Act 1984* (Vic.) to provide councils with the authority to require a business premises proprietor and/or their staff to undertake training in food safety
- giving the Department of Human Services the responsibility for coordinating the development and dissemination of tailored training and information for businesses that may have difficulty understanding and complying with food regulations.

Response

Supported

The Victorian Government will develop more effective and targeted food safety training approaches by:

- removing the food safety supervisor requirement where a business includes competency based or accredited staff training in its food safety or quality assurance program;
- deeming the food safety supervisor requirement to be met where one or more staff member has successfully completed accredited food safety training (e.g. Certificate IV in Commercial Cookery); and
- replacing the requirement for a food safety supervisor for low risk businesses with a requirement for all food handling staff to undertake a free on-line training program. Upon successful completion of the training, an applicant will receive a certificate that will aid employability in the food industry.

The Victorian Government will amend the *Food Act* to provide councils with the authority to require the proprietor of a business premises and/or the staff to undertake training in food safety.

The Department of Human Services will coordinate with the relevant Government agencies to develop and disseminate tailored training and information for businesses to enhance understanding of, and compliance with, food regulations.

Recommendation 9.6

That s39 of the *Food Act 1984 (Vic.)* be amended to remove the requirement for councils to inspect food premises before annual renewal of registration, and to make inspections discretionary under s39.

That the Department of Human Services be responsible for developing inspection guidelines that would facilitate consistency among councils.

Response

Supported-in-part

The Government supports the intent of the VCEC recommendation to reduce the amount of unnecessary duplication caused by multiple inspections.

However, the Government views minimum inspection or audit requirements as necessary to ensure a properly functioning and credible food safety system.

The Government will amend the *Food Act* to remove the statutory requirements for an annual council inspection for those businesses that have quality assurance systems audited by appropriate third parties and those in the very low risk category. Audit frequency requirements will be reviewed (recommendation 9.7).

Councils will retain the capacity to inspect all food premises in accordance with their risk management strategies, or when potential issues of concern have been identified.

The Government will also amend the *Food Act* to provide councils with the ability to stagger annual inspections of premises throughout the year.

Once the necessary amendments to the *Food Act* are made, the Department of Human Services will develop inspection guidelines to ensure consistency across the State.

Recommendation 9.7

That the Department of Human Services work with councils to strengthen the risk based approach to food regulation by:

- implementing a more flexible system of third party audit frequencies for food businesses that is consistent with national guidelines such as Food Standards Australia New Zealand's audit frequency model
- including further guidance in its *Food safety auditor's handbook* on using business risk and compliance history to determine third party audit frequencies.

That the *Food Act 1984* (Vic.) be amended to authorise the Secretary to declare a minimum period between third party audits of greater than 12 months, and to allow the frequency of food safety program audits for particular food businesses to be based on identified risk factors.

Response**Supported**

The Government supports a more flexible system of third party audit frequencies for food businesses that is consistent with national guidelines, such as the FSANZ audit frequency model.

In consultation with local government and other stakeholders, the Government will develop a revised auditing system that incorporates flexibility to reward good performers and deter poor performers. Such a system will allow the frequency of food safety program audits, for particular food businesses, to be based on identified risk factors.

Once the necessary amendments to the *Food Act* are made, the Department of Human Services will develop further guidance in its *Food safety auditor's handbook* on using business risk and compliance history to determine third party audit frequencies.

Recommendation 9.8

To provide a basis for assessing the effectiveness of food regulation in Victoria, that the Department of Human Services:

- establish and maintain a database of food sampling results from across the state
- analyse food sampling results and prepare reports at least annually
- seek input and advice from the Victorian Food Sampling Committee in undertaking these tasks.

Response**Supported**

The Victorian Government agrees that the collation of food sampling results from councils across the State would provide a valuable database for assessing the effectiveness of food regulation.

Victorian Government Response to VCEC's Final Report,
Simplifying the Menu: Food Regulation in Victoria

The Government will develop and maintain a database of food sampling results in conjunction with the public health laboratories. The Department of Human Services will undertake the task and be charged with the responsibility of interpreting the data and using that data to:

- analyse and develop policy;
- report on trends in food safety across the State; and
- provide guidance to local government in managing food safety risks across the State.

Currently under the *Food Act*, every council is required to submit a minimum of three food samples per thousand people (within its municipal district) for analysis.

In consultation with local government, the Victorian Government will develop a new food sampling framework that improves risk management and coordination of statewide sampling.

This new food sampling framework will replace the existing population-based criteria with new criteria that target risk and link the number of food samples to be taken by a council to the number of food premises in its municipality.

It is anticipated that the new food sampling framework will reduce the overall number of samples, providing cost savings to local government.

Amendments to the *Food Act* will be developed to implement this change.

The Government notes that the Victorian Food Sampling Committee is not a statutory committee. The Government will consider what committee structure would best assist with this new initiative.

Market incentives

Ensuring businesses identify and adequately manage risks can be achieved through market based incentives as well regulatory instruments. The Victorian Government supports increasing the range of options available to food regulators to encourage safe food practices and to reinforce regulation where necessary.

Recommendation 10.1 That the Victorian Government, within 12 months of responding to this report, develop (with input from councils and other stakeholders) a coordinated, cost-effective statewide approach to the provision of information and education to businesses and consumers that will support the greater emphasis on risk based regulation and changes to enforcement instruments recommended in this report.

Response

Supported

The Victorian Government believes that food safety information and education is a critical component in reducing the risk of potential food safety hazards.

To further reduce the risk of food safety hazards, the Government recognises the need for improved communication and coordination between the State, councils and other stakeholders.

The Department of Human Services has taken steps to address issues related to the communication of information and education of food safety issues to businesses, by introducing the joint Food Safety Coordination Project with the Municipal Association of Victoria in November 2006.

In addition, new institutional arrangements, such as the memorandum of understanding and the Committee of Regulators (recommendations 8.6 and 8.7) will help achieve a more coordinated and cost effective approach to communication.

While effective communication of the new regulatory requirements will be essential, priority will initially be given to designing and implementing legislative and administrative reforms to the food regulation framework, in consultation with local government, business and other key stakeholders.

Following the implementation of this Response, a wider program of education and information for business and the community will be developed by the Department of Human Services.

Recommendation 10.2 That the Victorian Government, within 12 months of responding to this report, place an increased emphasis on raising business and consumer awareness about food safety by:

- advocating at the national level for research into food handling practices in the home, to better understand (a) the extent of any gap between knowledge and food handling practices in the home and (b) the types of initiative that will close identified gaps
- developing an improved information base on food handling in Victoria, to direct future production of information resources by using the information base provided through improved reporting and food sampling analysis, assessing queries and complaints made to the food safety hotline, and drawing on research and experience from other jurisdictions.

Response

Supported

The Government agrees there is benefit in developing research based initiatives to address gaps in knowledge of food handling practices in the home and will advocate for national research in this area. This should be linked to existing national surveillance and reporting activities in relation to foodborne illness, such as OzFoodNet.

An improved information base is necessary to provide a foundation for the strategic planning process outlined in recommendation 8.5. The Government supports the VCEC's proposals regarding data collection and the creation of a database of food sampling results.

The Government will act on this recommendation following the development and implementation of the legislative and administrative reforms that are needed to strengthen the governance and operation of the food regulatory system and to mandate data collection.

Recommendation 10.3 That the *Food Act 1984* (Vic.) be amended to provide councils with the power to issue on-the-spot fines as part of a graduated system of enforcement options under the Act.

Response

Supported

The Victorian Government supports the best practice principle of providing a range of enforcement options to regulators. The Victorian Government will amend the *Food Act* to give councils the power to issue on-the-spot fines.

In a devolved regulatory system it is important that each council has the statutory authority to enable it to perform its role effectively. Penalty infringement notices will be a useful tool for councils.

The offences that will attract penalty infringement notices will be developed on a statewide basis under the auspices of the Department of Human Services/Municipal Association of Victoria Food Safety Coordination Project.

The Government will also consider any other suggestions made by local government for enhancing existing enforcement options available to councils.

To foster the consistent use and application of enforcement options, the Department of Human Services will develop and publish a *Food Act* enforcement policy framework, in consultation with local government and industry stakeholders.

Recommendation 10.4 That the *Food Act 1984* (Vic.), *Meat Industry Act 1993* (Vic.), *Dairy Act 2000* (Vic.) and *Seafood Safety Act 2003* (Vic.) be amended to provide for the establishment of a public register of businesses that have been successfully prosecuted under the relevant food safety legislation and those businesses that have been issued with a closure notice to ensure public health or safety.

Response

Supported-in-principle

The Government agrees with the spirit of the VCEC recommendation that there should be a mechanism to publish the names of businesses that have been convicted for breaches of food laws, or have been ordered by the Chief Health Officer to close.

The Government will examine amendments to the Acts to require the details of successfully prosecuted businesses under the relevant food safety legislation to be published in annual reports of food regulators.

In light of this initiative, the Government is not inclined at present to support the establishment of a central website of the results of council inspections of restaurants and cafes.

Local government issues

Local governments are responsible for inspecting, administering and enforcing regulation on Victoria's 45,000 registered food premises. Ensuring that councils incorporate the function of the legislation correctly and consistently is the responsibility of the State. The Victorian Government supports the introduction of initiatives to improve consistency in the implementation of food regulation by councils.

Recommendation 11.1 That the Department of Human Services develop a program to improve consistency in council implementation of the *Food Act 1984* (Vic.) and continue to seek to expand the supply of persons who can be authorised to undertake aspects of an environmental health officer's role. These initiatives should involve close consultation with councils and could include some or all of the following elements:

- updating the guidelines for councils in administering the *Food Act*. The guidelines should reflect any changes in regulatory arrangements since 2002 and any changes to the *Food Act* emerging from this inquiry
- assisting councils to identify initiatives that may help increase efficiency, particularly resource pooling
- developing, in consultation with key stakeholders, an environmental health officer and environmental health paraprofessional development program
- improving the exchange of information among officers and between officers and the department, including through better use of mentoring schemes and information and communication technology.

Response

Supported

The Victorian Government supports the continued development of programs to expand the number of people who can undertake aspects of a local government environmental health officer role, as well as developing a program to improve consistency in implementing the *Food Act* across councils.

To this end, the Government will:

- amend the *Food Act* to authorise the Department of Human Services to develop policies and guidelines regarding the application, interpretation and enforcement of the *Food Act*, to foster consistency of regulatory approach across councils;
- continue to work with the Municipal Association of Victoria and the Australian Institute of Environmental Health on broader workforce strengthening initiatives; and
- amend the *Food Act* to enable local government to approve and appoint other suitably qualified people as authorised officers under the Act.

Recommendation 11.2 That the Victorian Government require councils to develop and publish risk management strategies covering inspections and enforcement of food regulation.

The Department of Human Services should take a leadership role by providing guidance to councils to assist them in developing and publishing their risk management strategies.

The Department of Human Services' guidance to councils should:

- emphasise the importance of councils' role in providing information and advice to food businesses
- address surveillance strategies, including how inspection frequency is to be determined and the broad circumstances in which the various enforcement mechanisms will be used to encourage compliance.

Response

Supported-in-principle

The Victorian Government believes that there would be value in the publication by local governments of their risk management strategies. This would help to improve performance and consistency in the implementation of food regulation across the State. However, the Government believes that support, encouragement and collaboration is a better strategy than mandating councils to follow this practice.

The Department of Human Services will take a leadership role on this initiative by providing consistent risk management principles on:

- how to assess the inherent risk of a business and consequently which risk classification it should be placed in;
- how to determine whether a business has a good performance history and what mechanisms are available to reward good performance;
- the circumstances under which an annual inspection is necessary and how to determine whether a random inspection is required; and
- the circumstances under which the council should issue a process order to require training.

The Department of Human Services will develop a template for a risk management strategy that will be available to councils who would then establish a tailored risk management strategy reflecting specific needs of their local area.

Publication of risk management strategies would enable councils to provide food operators with clarification on regulatory requirements, thereby enabling them to better meet food safety standards.

Community groups

Over-regulation of the not-for-profit sector can have adverse effects on community activities and volunteering. The Victorian Government agrees with the VCEC that the extent of regulation must be linked to the risk of the activity, rather than whether it is a business or a not-for-profit organisation. The Victorian Government supports the recommendation to strengthen the knowledge and skills of community groups on how to deal with food safety issues.

Recommendation 12.1	<p>That the Victorian Government reduce regulatory burdens on not-for-profit and other businesses operating under multiple jurisdictions and improve the effectiveness of regulations where jurisdictional overlap occurs:</p> <ul style="list-style-type: none">• by ensuring no unnecessary duplication of regulatory administration as a result of overlapping state regulations• by seeking opportunities to reduce the aggregate regulatory burden on not-for-profit and other businesses by raising (at the national level) the issue of duplication of audits in premises requiring accreditation for Commonwealth Government funding, and to apply mutual recognition wherever possible• by establishing protocols for improved information exchange between responsible national and state authorities.
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Response

Supported-in-principle

The Victorian Government supports the objective of reducing the regulatory burden on not-for-profit organisations and other businesses. The Government will continue to seek opportunities to improve the effectiveness of regulation by reducing inter-jurisdictional duplication.

One area of perceived duplication relates to food safety in aged care services, which are regulated by the Commonwealth. The Government notes that the regulatory regime applicable to not-for-profit aged care enterprises focuses on the standard of personal care provided to residents and related issues such as residential amenity and the ability of residents to exercise choice in decision-making. They are not directed specifically at food safety, and aged care accreditation bodies do not have specific expertise in this area.

The Victorian Government has protocols with the Commonwealth Government in relation to management of foodborne illness and infectious diseases in aged care services.

Recommendation 12.2 That the Victorian Government streamline and reduce regulatory burdens for community groups other than those classified high risk (such as hospitals, aged care facilities and child care centres) by adopting the risk based approach set out in recommendations 9.1, 9.2, 9.4 and 9.5 and summarised in table 3 of this overview.

Response

Supported

The new regulatory framework, based on adoption of a risk based approach, will reduce the regulatory burden on a significant proportion of not-for-profit food operators. Initiatives such as exempting low risk operations from requiring food safety plans, simplifying the record-keeping and simplifying the educational requirements will benefit low risk not-for-profit operators.

Under the revised risk classification system (recommendation 9.1), it is expected that a large number of low risk activities undertaken by community groups (such as school fetes and sausage sizzles) will face minimal regulatory requirements.

Providing greater consistency in the implementation of regulation, providing clarification of regulatory requirements and improving the information available to all food operators will benefit the not-for-profit sector.

Recommendation 12.3 That within 12 months of responding to this report, the Victorian Government, in consultation with councils and community groups, develop an education and information strategy for the community sector that focuses on high risk food events:

- outlining the roles and responsibilities of the Department of Human Services, councils and relevant community sector bodies to develop and implement the strategy
- outlining an education and information campaign to aid more informed organisation and risk management of community events involving the sale of food
- identifying the types of material and delivery mechanism to be developed for community events, with an emphasis on them being accessible and user friendly
- outlining arrangements for funding these activities.

Response

Supported

The Victorian Government will continue to support the development of food safety initiatives at the local government level by providing information to councils on the importance of food safety, especially at high risk food events.

There are currently numerous information and education tools available to businesses regarding food safety, including information focusing on high risk events. For example, the City of Dandenong has developed risk based policies and procedures for dealing with complex food events.

The Government supports the development of a more focused strategy aimed at the community sector. This strategy will be developed by improving the flow of information between councils and community groups and ensuring councils are aware of the inherent risks associated with community food events.

This will be addressed following the design and implementation of the new risk classification system (recommendation 9.1).

Recommendation 12.4	<p>That the Victorian Government address impediments to kindergarten activities that have resulted from class 1 food regulations:</p> <ul style="list-style-type: none">• in the short term, by developing an assistance package for kindergartens to help them comply with food regulations. Options include developing a food safety program template suitable for the food safety risks relevant to kindergartens and allowing council inspections in place of third party audits• by advocating that the national standard 3.3.1 be amended to exclude kindergartens from the schedule of food businesses to which the standard applies.
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Response

Supported

The Government notes that sessional kindergartens are already excluded from standard 3.3.1 of the Food Standards Code. That is, sessional kindergartens that undertake activities with very low risk (e.g. washing and cutting fruit that is served to children and providing drinks) are not classified as class 1.

However, the Government recognises that currently, some low risk sessional kindergartens are mistakenly classified as class 1 and are subject to disproportionate regulatory requirements. The development of the new risk classification system (recommendation 9.1), will involve development by the Department of Human Services of policy guidance to ensure councils use a consistent approach in assessing the inherent risk of a business or not-for-profit organisation.

Long day care centres have a different level of risk and will be assessed against the national system to determine whether or not they meet the criteria for registration as a class 1 premises.