

Simplifying the Menu: Food Regulation in Victoria

Final Report September 2007



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About the Victorian Competition and Efficiency Commission

The Victorian Competition and Efficiency Commission, which is supported by a secretariat, provides the Victorian Government with independent advice on business regulation reform and opportunities for improving Victoria's competitive position.

VCEC has three core functions:

- reviewing regulatory impact statements, measurements of the administrative burden of regulation and business impact assessments of significant new legislation
- undertaking inquiries referred to it by the Treasurer; and
- operating Victoria's Competitive Neutrality Unit.

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

Disclosure of interests

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



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10 September 2007

Mr. John Lenders MP
Treasurer
Level 4, 1 Treasury Place
East Melbourne VIC 3002

Dear Treasurer

VCEC Inquiry into Food Regulation in Victoria

In accordance with the terms of reference received by the Commission on 14 September 2006, we have pleasure in submitting the Commission's final report *Simplifying the Menu: Food Regulation in Victoria*.

Yours sincerely

Three handwritten signatures in black ink, corresponding to the names listed below: Graham Evans, Robert Kerr, and Alice Williams.

Graham Evans AO
Chair

Robert Kerr
Commissioner

Alice Williams
Commissioner



Terms of reference

VCEC Inquiry into Food Regulation in Victoria

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

Background

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

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

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

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

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

Scope of the inquiry

The Commission is to inquire and report upon:

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

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

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

Inquiry process

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

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

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

JOHN BRUMBY MP

Treasurer

14 September 2006

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Abbreviations

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

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

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

Glossary

Act	A Bill that has been passed by Parliament, received Royal Assent and become law
advisory body	A Victorian body providing independent and/or expert advice to ministers, regulators or departments to inform regulatory decision making and function as a standing consultative mechanism
business impact assessment (BIA)	A formal assessment of the impacts of a new or amended primary legislative proposal that is expected to have a significant effect on business and/or competition. A BIA is a Cabinet-in-confidence document that assesses the costs and benefits of a legislative proposal to address a clearly defined problem, compares these with feasible alternative solutions, and recommends the most effective and efficient option
codes of practice	Rules of practice and conduct that an industry or professional association adopts that may or may not be legally enforceable
competitive neutrality	A policy designed to offset or remove any net competitive advantages of publicly-owned businesses resulting from government ownership
cost recovery	Specific purpose charges used by government agencies to recoup some or all of the costs of particular government activities
food safety risk management strategy	A council strategy that identifies food safety risks in the municipality and sets out inspection and enforcement strategies to mitigate those risks
food safety program	A documented plan developed by a business that describes how it will manage food safety through the identification and control of hazards in the production, manufacturing and handling of food as described in the Hazard Analysis and Critical Control Point (HACCP) system. The plan also specifies the records that the business maintains to demonstrate the implementation of this plan and actions taken to keep food safe.

food safety scheme	Regulations, based around enterprise-level food safety programs, for specific industries in NSW, based on scientific risk analysis
hypothecation	Mechanism that uses the revenue collected from a particular tax to fund a specific type of expenditure. That is, the revenue is ‘earmarked’ for a specific purpose or use
legislation	Laws passed by Parliament, as distinct from statutory rules made under powers delegated by Parliament
notification	Informing the NSW Food Authority of basic details such as business type, nature of business, food types handled, physical address and contact details
regulation	The imposition of some rules, supported by government authority, intended to influence behaviour and outcomes. The Organisation for Economic Co-operation and Development defines the term as ‘the instruments by which governments place requirements on enterprises, citizens and government itself, including laws, orders and other rules issued by all levels of government and by bodies to which governments have delegated regulatory powers’
regulator	A government entity (either independent or within a department) in Victoria that draws from primary or subordinate legislation one or more of the following powers in relation to businesses and/or occupations—inspection, referral, advice to third parties, licensing and accreditation or enforcement
regulatory impact statement (RIS)	A public document that articulates the costs and benefits of a regulatory proposal to address a clearly defined problem, compares these with feasible alternative solutions, and recommends the most effective and efficient option. The <i>Subordinate Legislation Act 1994</i> (Vic.) requires such a statement to be prepared by the responsible government department or agency if the proposal is likely to impose ‘an appreciable economic or social burden on a sector of the public’

**subordinate
legislation**

Statutory rules or regulations made under the authority of an Act

sunsetting

Automatic lapsing of a law or subordinate regulation after a fixed period, unless something happens to keep it in place

Key messages

- The Victorian Government has targets for reducing red tape, and it chose Victorian food regulation for its first ‘hotspot’ review of regulation.
- Victorian businesses and not-for-profit groups face strong market incentives to provide safe food; many must also meet stringent customer and export requirements that exceed regulated standards. The costs of meeting Victorian regulations are thus relatively low: around \$138 million annually for the business sector (a small fraction of food sector turnover) and \$6–13 million for the not-for-profit sector (hospitals, aged care, child care and community activities). These figures exclude the costs of meeting national food standards (such as labelling requirements), and of constraints on innovation. Paperwork costs are felt most keenly by Victoria’s small food businesses and community groups.
- To streamline regulatory requirements and encourage innovation, without undermining food safety, the Victorian Competition and Efficiency Commission has proposed changes at the state and local government levels, and also other changes Victoria should pursue nationally. At state level, the government can reduce regulatory costs by at least \$34 million per year, while providing a basis for improving food safety by:
 - focusing regulatory effort on higher risk activities (such as serving food to vulnerable groups), while lightening administrative burdens for lower risk activities (such as community events involving food)
 - improving monitoring and analysis to identify and target problem areas
 - implementing a statewide strategy for the provision of information on food safety issues to business, community groups and consumers.
- Additional measures that will promote ongoing improvements in the implementation of food regulation at the state and local levels include:
 - strengthening ‘rewards’ for good performers with less paperwork and fewer council inspections, and providing more ‘sticks’ such as on-the-spot fines
 - clarifying food regulation objectives and implementing statewide performance monitoring and reporting to ensure objectives are achieved
 - establishing stronger accountability and coordination arrangements for Victoria’s food safety regulators (79 councils and the three state based regulators)
 - helping councils administer food regulation more consistently.
- At the national level, there is scope to improve the quality and timeliness of decisions on national standards by:
 - moving to a strategic approach across relevant policy areas and across governments, so food regulation plays an appropriate role in addressing long term public health concerns
 - applying best practice regulatory principles to the development of national standards (including labelling and health claims), to foster innovation
 - improving coordination of consumer protection laws.

Overview

The food industry employs about 370 000 people in Victoria (14 per cent of the workforce) and generates \$6.8 billion in exports (36 per cent of Victoria's total exports). Food reaches consumers through supply chains, from primary production, manufacturing, and through retailers, cafés, bars and restaurants (figure 1). A large proportion of the industry's activity takes place in provincial Victoria and is spread across 86 000 large, medium and small businesses.

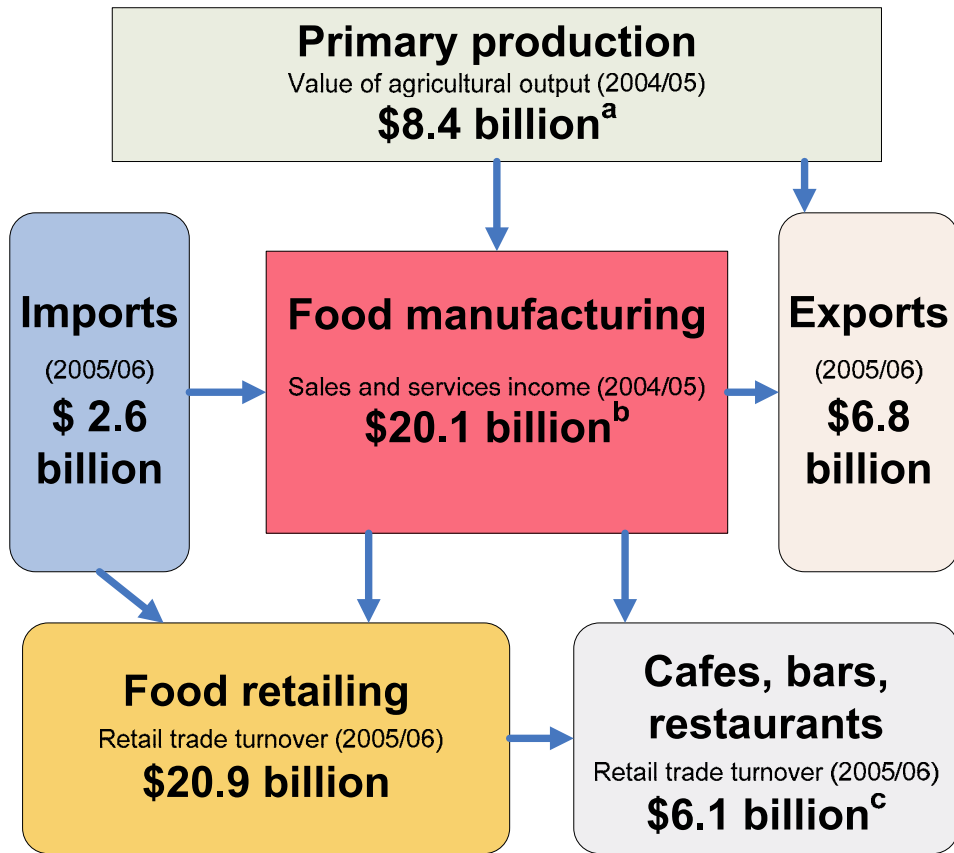
Reflecting the food industry's importance, the Victorian Government has chosen food regulation as the first major area of regulation to undergo a 'hotspot' review to identify opportunities to streamline the regulatory burden without undermining overall policy objectives. This inquiry originated from the Victorian Government's 'Reducing the regulatory burden' initiative, which was launched in August 2006. This initiative aims to cut red tape for the business and not-for-profit sectors, and to develop new approaches to lower regulatory costs.

In September 2006, the government directed the Victorian Competition and Efficiency Commission to undertake an inquiry into Victorian food regulation. The key aims of the inquiry are to:

- examine ways to reduce the regulatory burden for business and the not-for-profit sectors without undermining the objectives of food regulation
- look at strategies to reduce the regulatory burden on small food businesses and community activities such as cake stalls and fêtes
- examine aspects of the national framework governing food safety regulation, and assess the capacity of food standards and labelling regulation to adapt to emerging food technologies.

In undertaking this review, the Commission looked at the arguments for government regulation of food safety, as well as the nature of the problems that food regulations seek to address. It also identified the current costs of Victorian food regulations to businesses and community activities. It then examined policy options to identify and evaluate measures that could reduce these costs without undermining food safety. In the process of identifying opportunities to streamline regulation, the Commission has also pointed to areas for improving the implementation and enforcement of food regulation to enhance the safety of food produced and sold in Victoria.

Figure 1 The Victorian food supply chain



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

Why regulate food safety?

There are strong market incentives for food businesses to produce food that is safe for human consumption. The loss of reputation from an incident can devastate a business. And each business in the chain of supply has a crucial interest in ensuring its supplies are safe. However, there are at least three reasons that governments may sometimes need to intervene to increase the safety of the food supply:

- (1) Consumers have less information than producers have about the safety of the food being consumed—that is, consumers cannot necessarily tell before they purchase food whether it has been produced or handled safely. A long

lead time between exposure and illness may occur, and samples of the contaminated food or beverage may not be available, thereby compounding problems in linking foodborne illness to the precise cause. These traceability problems can dampen market incentives to ensure food is safe and can undermine the confidence of domestic and foreign consumers in food safety.

- (2) Consumers, businesses and community groups may lack appropriate knowledge about how to choose, handle, store and prepare food correctly. Some new start-ups and small businesses with a high turnover of casual staff may face particular challenges. They may also be unaware of, or understate, the risks of contracting or causing foodborne illness. Governments may have a role to play in providing these groups with information that can help them to identify and manage food safety risks appropriately.
- (3) Outbreaks of foodborne illness may cause third party impacts. The sale of unsafe food by one business can damage the reputation of others. If businesses do not account for the effects on other businesses when deciding how much to spend on food safety, they may spend less than is desirable from a communitywide perspective. Threatened export sales are an example of third party impact, and maintaining access to international markets is sometimes presented as a reason for government intervention to encourage food safety. It appears to be particularly significant for some products (such as meat exports).

Governments have also intervened via food regulation to restrict misleading and deceptive conduct in relation to food. For consumer choice and markets to work effectively, purchasers need to be able to rely on information that businesses provide on labels and in other forms of advertising. Regulation that governs misleading and deceptive conduct thus needs to work effectively for food products. Also important are the incentive and capacity for businesses to solve the information deficiencies and complexities facing consumers.

Notwithstanding these broad arguments, the case for government intervention relies on its benefits outweighing the costs to the community. Introducing more stringent regulations when the risk of foodborne illness is low will add to business costs and have an impact on consumer prices and choice without providing offsetting benefits. Implementing extra regulation will also require government resources that may yield larger benefits if employed elsewhere. This implies there is an efficient level of food safety that balances the community's interests in access to safe food but at a reasonable price.

While increasing food safety has been a traditional focus of food regulation, there is debate about the extent to which food safety regulation can and should be used to achieve broader public health objectives, such as reducing the prevalence of obesity, diabetes and heart disease. This is a more challenging issue

because the dividing line between a food safety issue and broader public health objectives is often unclear—for example, consuming a small amount of a food that is high in saturated fats may pose little or no health risk for many people, but consuming a lot of high fat foods over a prolonged period contributes to obesity, and an increased risk of developing type 2 diabetes and heart disease (areas of increasing concern in Australia).

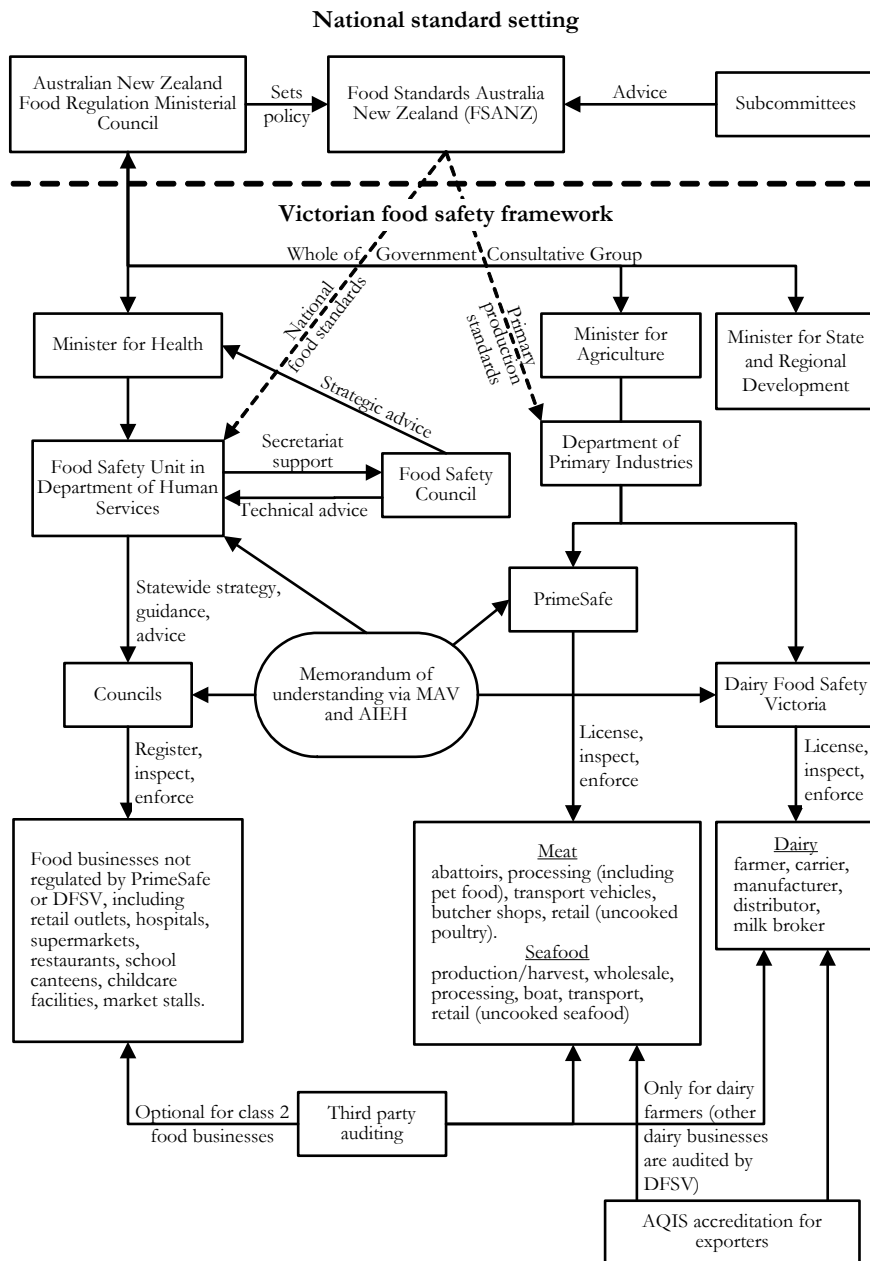
Food regulation

All three levels of government share responsibility for developing and administering food regulation, but within a framework that endeavours to harmonise regulatory requirements facing a widely dispersed and varied food industry. A complex food regulation framework exists (figure 2), whereby the Commonwealth and state governments jointly develop national food standards, which are embodied in the Food Standards Code. These standards are given force through state legislation that allocates, in Victoria’s case, significant enforcement responsibility to local government.

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

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

Figure 2 Food safety regulatory framework^a

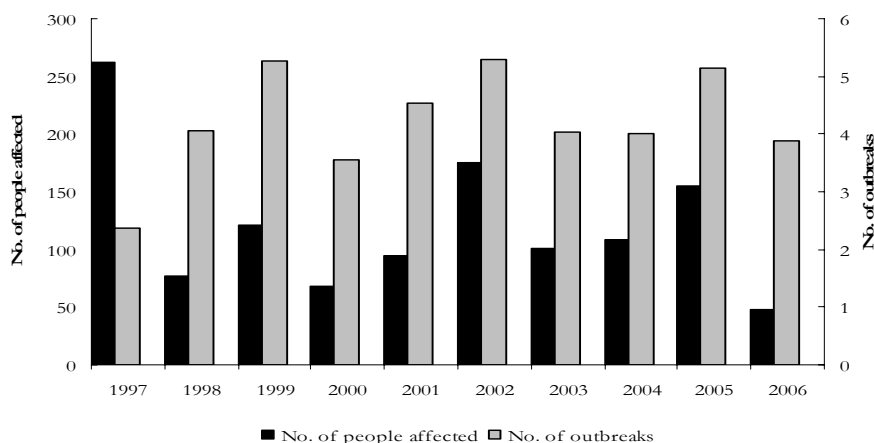


^a This regulatory framework is supported by general provisions covering misleading and deceptive conduct (administered by the ACCC and the CAV), as well as specific provisions in the Food Act that councils administer.

How effective is food safety regulation?

Victoria’s food supply appears to be generally safe, based on the available data. Official statistics, while subject to some major gaps, show about 250 people were reported to have been affected in an outbreak of foodborne illness in 2006, down from 780 in 2005 (figure 3). These figures understate the true extent of foodborne illness in Victoria, given the way an outbreak is defined (two or more cases) and also underreporting of outbreaks. The degree of underreporting can be gauged by considering the number of people affected by salmonella and campylobacter (two bacteria commonly implicated in food poisoning incidents). In 2006 Victorian doctors notified over 7000 cases of salmonella and campylobacter—one Australian study suggested around 80 per cent of these cases might have been food related.

Figure 3 **Outbreaks and people affected by food related illness, Victoria (per million population)^a**



^a The number of outbreaks and people affected per million population are calculated by dividing the DHS data by Victoria’s population (accessed from the Australian Bureau of Statistics).

These data are hard to reconcile with estimates of the costs of foodborne illness in Australia. A recent study estimated that the total cost to the community of foodborne illness in Australia is around \$1.2 billion per year. This figure was based on another study that claimed around 5.4 million people are affected by foodborne illness each year. If spread evenly across Australia’s population, these figures imply there could be approximately 1.3 million cases of foodborne illness in Victoria each year, imposing a cost on the community of around \$400 million per year. The difference between this estimate and the official statistics may be due to nonreporting of a large number of relatively minor food related cases of gastroenteritis.

Whatever the true extent of foodborne illness in Victoria, consumer surveys indicate that Victorian consumers have confidence in the safety of food. The latest available survey of consumer confidence by DHS found 94 per cent of Victorians surveyed in 2005 were extremely confident, very confident or confident that the food they buy and eat in Victoria is safe.

What impact has food regulation had on food safety in Victoria? In short, there is no reliable way to estimate the contribution of food regulation to food safety. Despite the introduction of stricter regulations in 1997, the available data on foodborne illness do not show any clear trends. Comparisons with other states are also inconclusive. And there is no way of knowing what would have happened in the absence of changes in regulation.

The lack of public reporting by regulators compounds difficulties in assessing the contribution of regulation to food safety outcomes: councils, PrimeSafe and DFSV provide little public information about their food safety achievements or even their activities. Councils have legal obligations to inspect all registered premises (around 45 000) and to undertake food sampling programs. In practice, however, some councils target high risk areas with their inspection activity, which means businesses and community activities judged to represent a low risk are inspected less frequently than once per year.

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

Given the current state of performance reporting and evaluation, it is not possible to assess the contribution of market incentives to the safety of Victoria's food supply. But there are reasons to believe that the market imperative to provide safe food is an important driver of food safety outcomes:

- A business that fails to provide safe food will incur significant costs from the loss of reputation domestically and overseas. As the Department of Primary Industries noted, 'food safety is a condition of entry into, and survival in, the marketplace' (sub. DR144, p. 1). In the business and community sectors, food safety outcomes are determined by the day-to-day behaviour of food handlers, as well as the quality and safety of production and distribution processes. Councils cannot constantly monitor safety practices in each of Victoria's 45 000 registered food premises.

- Evidence gathered during this inquiry suggests many firms have safety standards that exceed regulated standards—for example, a number of respondents to a survey on business food safety costs reported that they do more than required by current food regulations (see below).
- The review of industry structures, supply chains and contractual arrangements in the food industry done for this inquiry, shows that the food industry has developed complex relationships that help to improve food safety outcomes. Major supermarkets, for example, closely monitor the safety of food supplied to them. There is thus less need for regulation to promote food safety when industry arrangements are working effectively.

Despite the importance of markets to determining the overall safety of Victoria's food supply, there are some shortcomings that need to be addressed. Some businesses do not respond to the market incentives because they lack skills, they underestimate risks or they face short term pressures (such as profitability, poor facilities and staff turnover). These problems can result in food safety standards falling below necessary levels. It is hard to estimate the proportion of businesses needing closer regulatory oversight. The City of Melbourne reported that approximately 40 per cent of the almost 3000 food premises in its municipality were found, in the past three to four years, to have breached the food safety standards during the initial inspection and to have required follow-up visits. Approximately 4 per cent of all businesses inspected had a serious enough breach to require 'immediate' remedial action. Most of these businesses are followed up until compliance is satisfactory. In a small percentage of cases, however, the City of Melbourne prosecutes businesses: the council reported that in the two years to 2007 it initiated 11 prosecutions and deregistered one business. To the extent that this experience is representative, it suggests that regular inspections are important to promoting compliance with food safety requirements, but that a small proportion of businesses need stronger forms of enforcement.

Several councils informed the Commission that they have the capacity to identify the likely good and bad performers in terms of food safety, and thus can target their regulatory activities at the latter. With councils facing challenges in acquiring the resources and skills to undertake food safety regulation, the regulatory framework must allow resources to be targeted at major problem areas and shifted as priorities and risks change.

Approaches to managing risks

The challenge for regulatory authorities is to identify and target regulatory resources at those areas where risks are greatest. In this context, risk has multiple dimensions. It relates not just to the type of food but also to factors such as the number of people potentially at risk and the strength of market and other

incentives to ensure businesses provide safe food. Risk also relates to the vulnerability of those consuming food, with groups such as very young children and frail elderly people typically most at risk.

Further, because risks change over time, the regulatory system must be flexible enough to respond quickly by, for example, increasing vigilance in some areas and reducing it in others. Risks can change as new foods are developed and released for sale, as new businesses are established and as knowledge evolves about how to mitigate risks—for example, 75 per cent of the many thousands of packaged products on Australian supermarket shelves were introduced in the five years to 2000.

The regulatory framework in Victoria is only partly differentiated according to the level of risk:

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

As noted, the Commission is aware of councils that are implementing food regulation in a more targeted fashion, albeit at odds with the requirements under the Food Act. Some councils indicated, for example, that they do not inspect all premises annually as required by the Food Act; some inspect low risk premises less frequently than once per year, while inspecting poor performing (and consequently higher risk) businesses more frequently. Also, most councils indicated that they do not regularly inspect many community group activities such as those undertaken at sporting clubs and community centres.

What are the costs of regulation?

The Commission undertook research into the costs of Victorian food regulation. If the costs are well understood, government has a benchmark for judging the level of benefits needed for intervention to be warranted, and it can better assess the savings that could be achieved from more sharply focusing regulation on areas where there is a lack of awareness about food safety skills or where there is resistance to compliance.

Businesses incur costs in administering and complying with food regulations. The Commission is unaware of any previous attempts to estimate the aggregate costs that Victorian food regulation imposes on businesses. The lack of estimates is probably due to:

- the complexities of undertaking such an analysis across industry groups covering such a disparate range of food activities and many thousands of regulated food premises
- the difficulties in estimating the *additional* costs caused by regulation, given that most firms would undertake safe food practices even if there were no regulation.

To provide a measure of the costs, the Commission reviewed relevant Australian and overseas reports, and commissioned a survey of 29 businesses spread across the main food industry sectors. This research formed the basis for estimating the total costs to business (from paying licence and registration fees, dealing with red tape and complying with Victorian regulation) of about \$138 million, and much of this cost would likely be passed on to consumers or back to suppliers (table 1).

State and local government agencies incur costs to implement and enforce regulation: their expenditure totals \$36.5 million per year, of which local government spends about \$28.5 million. Accounting for revenue from licensing and other fees, the net cost to state and local governments is around \$14 million.

Table 1 Estimated costs of Victorian food regulation

Net costs to government	\$14 million
Costs to business	
Financial costs	\$22 million
Administrative costs	\$82 million
Compliance costs	\$34 million
Total costs to business	\$138 million
Total costs	\$152 million

There are caveats on these results. First, many companies had difficulty isolating their food safety costs from other aspects of their operations. Second, the estimates reflect only those costs arising from Victorian Government regulations, so do not include costs imposed by national food safety standards such as labelling requirements. Third, the costs derived from the sample survey are based on a small number of businesses. Nevertheless, the results indicate that the costs of food regulation are small relative to industry turnover (less than 0.3 per cent). This is partly due to estimated compliance costs (such as the costs of modifying premises or buying new equipment to meet regulatory requirements) being relatively low, because regulation has little effect on the behaviour of many

businesses whose food safety practices are driven by international standards, ‘business as usual’ practices and market disciplines. The administrative cost of regulation is thus the single largest cost component. To the extent that firms’ normal commercial practices meet or exceed regulatory requirements, the administrative costs of regulation are harder to justify.

The Commission has been unable to quantify the indirect costs of regulation, such as its impact on innovation or its impact on the willingness of volunteers to become involved in the community sector. A number of submissions pointed to examples where regulation and its implementation impacts have had an adverse effect on the level of some activities. These submissions and the available evidence on cost impacts suggest that the effects of regulation are proportionately larger for small firms and community groups (see below) than for larger firms.

Possible improvements

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

- at the national level, for the Victorian Government to advocate the adoption of best practice approaches to assessing regulatory proposals and improvements in the timeliness and quality of decisions about national food standards
- at the state level, to clarify regulatory objectives, improve accountability and transparency, and establish a more risk based regulatory framework
- at the local government level, to achieve more consistent implementation of regulation focused on higher risk activities.

Improving the national framework

As noted, Victoria’s food regulatory arrangements operate within a national framework. In a number of recent cases, the development and amendment of national food standards have fallen well short of the best practice principles for regulation agreed to by all Australian governments. The Australia and New Zealand Food Regulation Ministerial Council, for example, recently agreed to a new food standard mandating the fortification of bread with folate. But it did so without having comprehensively considered alternative policy options and their relative cost effectiveness. Similar failures occurred in relation to the development of country of origin labelling requirements. Failing to adhere to best practice processes for developing food regulation may undermine community and industry confidence in food regulation, impose unnecessary costs on industry and consumers, and deter industry innovation.

While Victoria does not control the arrangements for developing national food standards, it can use its influence to bring about change, and the Commission considers that it should do so in four areas:

- (1) Support a strategic and coordinated approach to addressing national public health issues such as obesity and diabetes—one that spans jurisdictions and relevant policy areas of government (such as education, health, industry and finance) through a process that adheres to nationally agreed best practice regulatory principles. These principles require that the need for government intervention be established and that all possible forms of intervention are assessed, including regulation via food standards and nonregulatory alternatives such as education. National standards should be used to achieve public health objectives only where they are demonstrated to be the most cost-effective approach (recommendation 7.1).
- (2) Extend the forthcoming review of country of origin labelling requirements to consider the policy framework underpinning labelling, the best ways of providing information to consumers, and the relevant provisions of the Food Standards Code. There are pressures to extend labelling requirements to cover environmental and other issues unrelated to food safety. Mandatory requirements may not always be the most cost-effective instrument for this purpose, and their use might crowd out more cost-effective industry initiatives (recommendation 7.2).
- (3) Advocate for further streamlining of processes for approving new products developed by the food industry. Some approvals have taken up to four years, risking the loss of market opportunities in Australia and overseas (recommendation 7.3).
- (4) Encourage a more flexible and integrated approach by the Australian Competition and Consumer Commission to enforcing the misleading conduct provisions of the *Trade Practices Act 1974* (Cwlth.) in relation to food. To achieve this, the Victorian Government should advocate for Food Standards Australia New Zealand to issue scientific guidelines outlining how to assess claims about the content of foods (recommendation 7.5).

Improving state arrangements

There is scope to lighten the regulatory burden on the Victorian food industry, without undermining food safety, by adopting a more risk focused approach to food regulation that targets resources at high risk areas and aligns the regulatory tools applied in Victoria with national approaches. This would involve the following:

- Retain the current two class risk classification system, but with class 1 containing those categories that the Australia and New Zealand Food

Regulation Ministerial Council agreed should have FSPs and with class 2 containing businesses and community activities with low inherent risk or that represent, in practice, a low food safety risk (recommendation 9.1).

- Have DHS facilitate this classification approach by undertaking further analysis of food sampling, complaints and council performance reporting information. Councils would have the capacity and authority to decide which businesses are low risk, subject to guidelines.
- To ease the paperwork burden (especially for small business and community activities), establish a single registration system for all food businesses, which would also enable temporary and mobile food businesses (such as caterers and food vans) to register once rather than in multiple council areas. Also, simplify the re-registration process—for example, when re-registering, a business would need to provide detailed information only if there was a material change in business details, such as changes in food related activities (recommendations 9.2 and 9.4).
- Implement more targeted FSP requirements by retaining the requirement for FSPs with third party food safety audits for class 1 premises only (such as aged care facilities, child care centres, Meals on Wheels and other activities involving vulnerable persons). All other businesses would not be required to prepare FSPs, but would identify the persons responsible for food safety and certify to councils that they have taken appropriate steps to identify and manage food safety risks. Councils would also have the capacity to require a business to prepare an FSP in certain circumstances (recommendation 9.4).
- Develop more effective and targeted training approaches by removing the food safety supervisor requirements and, instead, relying on the requirements of the national Food Standards Code. This change should be supported with a more targeted regime of providing equivalent information and training for businesses that lack knowledge and skills in food safety, and for food businesses that have failed to comply with food safety standards (recommendation 9.5).
- Remove the requirement for annual council inspections of class 2 premises if those premises are low risk or third party audited (and that auditing covers food safety), relying instead on a structured system of lower frequency inspections developed from the results of councils' food sampling programs and other data (recommendation 9.6).

Table 2 summarises the proposed model.

Table 2 Proposed framework for food safety regulation

<i>Instruments</i>	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	
Food safety risk	High	Medium	Low
Examples	Hospitals, aged care facilities, child care centres	Food processing, restaurants and cafes, large food fairs	Green grocers, service stations, most community activities
Registration	Yes, but with simplified paperwork requiring business details or indicating any changes in ownership, location and activities	Yes, but with simplified paperwork requiring business details or indicating any changes in ownership, location and activities	Yes, but with simplified paperwork requiring business details or indicating any changes in ownership, location and activities
Food safety program	Yes, customised food safety program to be developed and implemented	Replaced by certification requiring business to: (1) identify the person responsible for food safety and (2) certify that they understand and apply basic food safety principles	Replaced by certification requiring business to: (1) identify the person responsible for food safety and (2) certify that they understand and apply basic food safety principles
Food safety supervisor	No requirements additional to those set out in the food safety program	No requirements additional to those set out in the Food Standards Code	No requirements additional to those set out in the Food Standards Code
Record keeping requirements	Yes, as required under the customised food safety program	No requirements additional to those set out in the Food Standards Code	No requirements additional to those set out in the Food Standards Code
Council inspections	Risk based, as set out in published council risk management strategies (for example, random or in response to a complaint)	Risk based, as set out in published council risk management strategies (for example, annual inspection unless the business has accreditation under a quality assurance process)	Risk based, as set out in published council risk management strategies (for example, random or in response to complaints)
Third party audit	Compulsory (with the audit frequency based on performance)	Not required by legislation	Not required by legislation
Food sampling	High frequency, as set out in published council risk management strategies	Moderate frequency, as set out in published council risk management strategies	Lower frequency, as set out in published council risk management strategies
Information and education	Resources targeted at specific businesses such as aged care	Resources targeted at specific risks such as retailers of certain foods (for example, pork rolls and sushi)	Basic information on the key rules of food safety applicable in a broad range of businesses
Enforcement options	See figure 4	See figure 4	See figure 4

The Commission considers that the proposed changes to food regulation could reduce the administrative burden of Victorian food regulation by up to \$34 million per year, while reinforcing market incentives to produce food safely. But the changes would impose costs in other areas. On-the-spot fines, for example, would impose costs on noncompliant businesses. And implementing

the Commission's proposals would involve costs for state and local government. Key departments were unable to quantify the implementation costs but pointed to the costs of implementing a previous round of changes to Victorian food regulations: extensive changes to Victorian food regulation in 2001 were facilitated by an additional State Government budget allocation of about \$2 million (or around \$3 million in today's terms).

The improved targeting brought about by the Commission's proposed changes to Victorian food regulation is expected to increase the effectiveness of regulatory effort compared to current arrangements. But there is scope to undertake further changes that will assist in achieving improved food safety outcomes.

Enhancing incentives to comply with food standards

Education and information strategies aimed at raising business, community group and consumer awareness about food safety issues can reinforce market incentives to ensure food safety. Such strategies can complement food regulation (for example, by raising awareness about regulatory requirements) and can reduce the need for regulation (for example, by alerting people to risks and ways to manage them).

A strength of the current regulatory system is that councils initially attempt to address any food safety shortcomings detected by providing information and advice to businesses and community groups. Councils' reliance on this approach is highlighted by a DHS survey of 47 Victorian councils, which found in the two years before 2007 that councils deregistered 23 premises and initiated 96 prosecutions of businesses for breaching food regulations. This total represents a very small proportion of the 45 000 registered food premises in Victoria and indicates that most food safety problems identified by councils are addressed without the need for heavier handed approaches.

There is scope to enhance the effectiveness of councils' educative role in the food safety regulatory system by developing more coordinated and effective approaches to the provision of information to food businesses and community activities. Some councils, such as the City of Greater Dandenong, have developed innovative information resources targeted at particular food businesses. DHS should take the lead by promoting greater sharing of knowledge and resources, and by streamlining, strengthening and coordinating information resources developed by itself and councils (recommendation 10.1).

More could also be done with information and education for consumers. The efforts of businesses to produce safe food can be undermined if consumers do not employ basic safe food behaviours, and some estimates suggest around one quarter of foodborne illness occurs in the home. It is not clear, however, who

has responsibility for informing consumers about food safety issues. Councils do little to inform consumers. And DHS, while seeming best placed to take responsibility, has reduced the amount of resources directed at improving food safety information for consumers. This reduction reflects a view, based on surveys, that consumers generally possess a good understanding of basic food safety behaviour. A potential shortcoming of such surveys, however, is that they do not cover actual consumer behaviour: where consumers systematically understate risks, they may fail to employ safe food behaviours.

Recognising the national importance of consumer awareness about food safety, there is scope for the Victorian Government to encourage jurisdictions to identify and support opportunities for raising awareness about food safety in the home. A key step is to develop better information about food handling knowledge and behaviour in the home, and about the extent and causes of any gap between the two. This would enable the development of relevant, well targeted and consistent state and national strategies for raising household awareness about food safety. The value of such strategies could be enhanced if tied to an information strategy about diet related issues (recommendation 10.2).

Enforcement options

The effectiveness of efforts to inform and advise businesses about food safety could be strengthened by providing councils with enforcement options that are proportionate to the problems encountered. Councils' current options for encouraging or enforcing compliance with food regulations range from the provision of information and advice through to prosecution (figure 4). In addition, the Chief Health Officer can, in certain circumstances, order that a premises be closed. But there is scope to expand the range of remedies available to councils, to create a more comprehensive spectrum of enforcement options.

As noted, the Commission considers that councils should have the capacity to impose process orders on a noncompliant business that require that business to develop an FSP or undertake further training. The aim of process orders is to address food safety problems caused by a lack of knowledge and skills. Administered effectively, they have the potential to be more cost effective in addressing some problems than are the current broadly applicable FSP and training requirements for lower risk (class 2) businesses.

Although nationally agreed model food legislation provides for the power to impose on-the-spot fines (referred to as penalty infringement notices in the Model Food Act), Victoria did not enact these provisions. Giving councils the power to impose on-the-spot fines would reinforce existing market incentives to produce safe food; councils would have more graduated leverage over businesses that repeatedly fail to address food safety concerns. The fines are not intended to replace the educational role of council inspections, but they would provide an

additional incentive for businesses to heed advice. In line with other areas of regulation that provide for on-the-spot fines (such as traffic infringements), affected businesses should have the opportunity to seek a review of decisions to impose fines (recommendation 10.3).

Figure 4 **Enforcement options for councils**



^a The measure is available under the Food Act.

During the inquiry, the New South Wales and Queensland governments announced that they would strengthen the use of name-and-shame policies as a further remedy for food regulators. Inquiry participants, including a number of councils, expressed concerns about name-and-shame schemes that publish the results of council inspections. Although such disclosure could have some benefits by providing consumers with more information about food safety attributes, it was considered that the disadvantages outweigh these benefits. Releasing the results of council inspections, which may be dated and inconsistent, would undermine councils' current approach of providing information and advice to businesses, and also discourage businesses from notifying or admitting to problems. Further, alternative forms of disclosure deliver benefits to consumers without the problems associated with releasing inspection results.

Currently, information about successful prosecutions of food businesses and closure notices issued by DHS are publicly available in Victoria, although the information is difficult for the public to access. The Commission considers that the power to name and shame food businesses should be limited to the outcomes of court proceedings and orders to close food premises. The Victorian Government should improve access to this information by consolidating and publishing it on the DHS website (recommendation 10.4). This approach would sharpen incentives to comply with safe food objectives, ensure greater national consistency, and be consistent with the improvements in transparency and performance reporting recommended by the Commission (see below).

Some councils already use a star rating system for cafés and restaurants, and some inquiry participants advocated increased use of this approach. There is, however, no barrier to either councils or industry associations using this approach. Accordingly, the Commission supports the current approach, which allows councils to recognise good performers.

The community sector

Victoria's community sector comprises a wide variety of organisations and makes an important contribution to the economy and to community welfare and social cohesion more generally. Most community organisations are quite small, but they range from large welfare groups (such as Anglicare, St Vincent de Paul and the Australian Red Cross) that operate nationally, through to small local church and sporting groups. The community sector is also extremely diverse in the types of activity undertaken and customers served. Given this diversity, food plays a much more important role in some groups than in others.

Several characteristics of the community sector mean the impacts of food regulation are greater in it than in the commercial sector. Many community organisations' small size and their reliance on occasional volunteers, combined with the fixed costs of meeting food regulations, means their activities may be sensitive to regulatory costs. Moreover, many of the organisations involved in service to vulnerable populations—such as hospitals, aged care homes, seniors clubs, child care centres and kindergartens, which must meet the heavier regulatory requirements applicable to class 1 premises—are community based, not-for-profit organisations. Overall, the capacity of many community groups to identify, understand and comply with food regulations may be much more limited than that of most businesses, depending on the background and experience of their volunteers.

The Commission observed that the task of complying with Victoria's food regulations is made harder for community groups by the high level of uncertainty around the application of the regulations. Exemptions and exceptions for the community sector reduce food regulation compliance obligations for some

activities, but this relief is not risk based and interpretation of the regulations is unclear. Anecdotal information suggests some councils are more active than others in raising awareness of and enforcing Victorian food regulation applying to community activities.

Food regulations applying to community groups are also stricter in Victoria than in other states and territories. Community groups in Victoria are required to have FSPs, for example, but groups in other states are not. Also, the activities of seniors groups (such as senior citizens clubs) are subject to the onerous obligations of class 1 premises in Victoria but not elsewhere in Australia. This is because Victoria's definition of vulnerable persons is broader than the national standard.

Information is sparse on the levels of food related activities undertaken in the community sector, but council figures suggest around 17 400 premises and events each year must meet Victorian food regulations, with an unknown number operating outside the regulatory requirements. The Commission is unaware of previous attempts to quantify the costs of food regulation of the community sector. But based on a survey that the Commission co-sponsored, it estimates the cost of Victorian food regulations ranges from \$330 to \$764 per year for most Victorian community groups and is \$5.7–13.3 million per year for the whole community sector. There may be indirect costs too, because community groups react to regulation by doing things differently or dropping regulated activities. Over one quarter of survey respondents indicated, for example, that the costs of regulation had led them to cancel or reduce the number of food related events they organise. The Commission also heard that some kindergartens, given the onerous class 1 regulations applying to their activities, have ceased providing fruit and milk to the children. Further, having to cope with regulation may discourage people from volunteering, or community groups may choose to ignore the regulatory requirements if they judge the risk is low. Some councils even chose not to actively enforce food regulations relating to community activities, reflecting an assessment of the relative risks and costs.

Consistent with the general principle that regulation should focus on areas of high risk to health and safety, the Commission has not offered specific changes to food regulations that would apply only to community activities. Instead, it has indicated how its proposed risk based framework would apply to community activities (table 3). The proposals to remove FSP and food safety supervisor requirements would significantly simplify food regulations for the large number of community activities that operate class 2 premises and events. The proposed changes would also remove confusion about food regulations for community groups (recommendation 12.2).

Table 3 Assigning regulatory instruments according to food safety risks for community activities

<i>Instruments</i>	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	
	High	Medium	Low
Examples	Hospitals, aged care facilities, child care centres, kindergartens, meals on wheels	Large food fairs, school canteens, senior citizens clubs	Cake stalls, sausage sizzles, school fêtes, sporting clubs
Registration	Yes, but with simplified paperwork requiring business details or indicating any changes in ownership, location and activities	Yes, but with simplified paperwork requiring details about the food to be provided and the organisation of the event	Yes, but with simplified paperwork requiring details about the food to be provided and the organisation of the event
Food safety program	Yes, customised food safety program to be developed and implemented	Replaced by certification requiring the community group to: (1) identify the person responsible for food safety and (2) certify that they understand and apply basic food safety principles	Replaced by certification requiring the community group to: (1) identify the person responsible for food safety and (2) certify that they understand and apply basic food safety principles
Food safety supervisor	No requirements additional to those set out in the food safety program	No requirements additional to those set out in the Food Standards Code	No requirements additional to those set out in the Food Standards Code
Record keeping requirements	Yes, as required under the customised food safety program	No requirements additional to those set out in the Food Standards Code (record of suppliers)	No requirements additional to those set out in the Food Standards Code (record of suppliers)
Council inspection	As set out in published council risk management strategies	As set out in published council risk management strategies	As set out in published council risk management strategies
Third party audit	Compulsory (with the audit frequency based on performance)	Not required by legislation	Not required by legislation
Food sampling	High frequency, as set out in published council risk management strategies	Moderate frequency, as set out in published council risk management strategies	Lower frequency, as set out in published council risk management strategies
Information and education	Resources targeted at specific activities such as kindergartens	Resources targeted at specific risks such as complex community events or those run by culturally diverse groups	Basic information on the key rules of food safety applicable to a broad range of community activities

Under the Commission’s proposals, information and education resources for community groups would be the preferred method of managing their food safety risk. The Commission considers, within the broader proposals for the Victorian Government to develop an education and information strategy, that the needs of the community sector require particular attention. The strategy should draw on areas of local government expertise and outline arrangements for funding

educational activities for community groups. It should also provide relevant information on food safety tailored to the needs of particular groups such as those catering to vulnerable groups, organisers of large and complex events such as food fairs, and those running small scale, community based events such as fêtes and cake stalls (recommendation 12.3).

The Commission also considers that Victoria should align the definition of vulnerable persons with the national standard, which would resolve issues for senior citizens clubs. Applying the national standard would clarify that senior citizens groups are not required to meet the more stringent regulatory requirements facing high risk class 1 activities. In addition, the Victorian Government should address the impediments to kindergarten activities that have resulted from class 1 food regulations, by developing an assistance package and advocating amendment to the national standard to exclude preschools (recommendation 12.4). This would help address the anomaly that a kindergarten preparing low risk food for children is required to have a third party audited FSP.

The Commission anticipates that these changes would reduce the time that community groups spend on complying with regulatory requirements. Based on a saving of around one half of the current estimated cost, the saving for the community sector could total \$2.9–6.7 million per year. An additional advantage would result from greater certainty about the intended application of the regulations and thus potentially higher levels of compliance.

Improving the regulatory architecture

Partly to ensure the gains from any changes to the regulatory framework are ‘locked in’ and to address inquiry participants’ concerns about accountability, coordination and consistency, the Commission also examined aspects of the regulatory architecture in Victoria. The framework of food safety regulation in Victoria would be improved by:

- clarifying the food safety objectives for which the responsible ministers are accountable
- the responsible ministers approving a strategic plan that outlines food safety priorities for all food safety regulators and the outcomes sought
- enhancing the role of DHS in monitoring the implementation of food regulation (The Department of Primary Industries performs this role for the other industry Acts.)
- improving performance reporting by all food safety regulators
- redesigning the organisational arrangements to deliver food safety outcomes.

Clearer objectives

The stated objectives of the Food Act are:

- to ensure food for sale is safe and suitable for human consumption
- to prevent misleading and deceptive conduct in relation to the sale of food
- to provide for the application in Victoria of the Food Standards Code.

There is a debate about whether the objectives of the Food Act encompass promoting public health. To the extent that national food standards reflect agreed public health regulation, Victoria would apply those through the application of the Food Standards Code. Beyond that, this debate reflects some ambiguity about the meaning of the first objective of the Food Act. The Commission understands that an original intent of the Act was to reduce the incidence of foodborne illness, and the Act is being implemented primarily with this purpose in mind.

To make this clearer, the Victorian Government should amend the Food Act to clarify that regulators, in ensuring food is safe and suitable for human consumption, should give priority to reducing the incidence of foodborne illness resulting from the sale of food (recommendation 8.1). It should provide additional clarity by specifying principles to guide regulators in implementing food regulation. The principles would require that food regulation be risk based, efficiently administered and nationally consistent (recommendation 8.2). The dairy, meat and seafood Acts should be aligned with the amended Food Act, by incorporating similar objectives and key principles (recommendation 8.3).

Adopting this approach would still allow governments to pursue additional public health objectives through other state legislation such as the *Health Act 1958* (Vic.). As noted, the Commission has advocated that the Victorian Government take the lead in raising food related public health issues at the national level.

Responsibility and accountability matters

The Commission considers that the current institutional arrangements do not establish clear lines of responsibility or encourage regulators to focus on areas of greatest risk where regulation could generate the greatest benefit. Public performance reporting is also lacking, and strategies for allocating resources across and within regulators have not been published, despite the Auditor-General recommending improvements in this area in 2002. The Commission has not received explanations of why progress in these areas has been so slow. Guidance and incentives appear to be weak.

The Commission has considered, therefore, whether improvements are needed, in support of the clearer objectives discussed above. The first requirement is to

correct the gap noted by the Auditor-General in 2002 in the responsibility arrangements under the Food Act—namely, that ‘the legislation does not specifically address how or which government agency is responsible for overseeing the performance of the local government sector with respect to meeting its food safety responsibilities’ (AGV 2002, p. 75). The Food Act should be amended to specify that the Minister for Health is responsible for overseeing the performance of local councils in meeting their obligations under the Act (recommendation 8.4).

In addition to monitoring the performance of local government, DHS should provide regular advice to the minister on whether regulatory effort is being directed across the state to the areas and activities where it can generate the largest benefits. This requires further strategic planning to indicate how the Victorian Government’s food safety priorities will be achieved (recommendation 8.5). An improvement in performance reporting arrangements is also needed, so progress against these priorities can be monitored (recommendation 8.10).

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

- (1) merging all food safety regulators into a single entity
- (2) setting up service agreements directly between the Victorian Government and local governments
- (3) reviewing the memorandum of understanding (MOU) among regulators and establishing a committee of food regulators (figure 5).

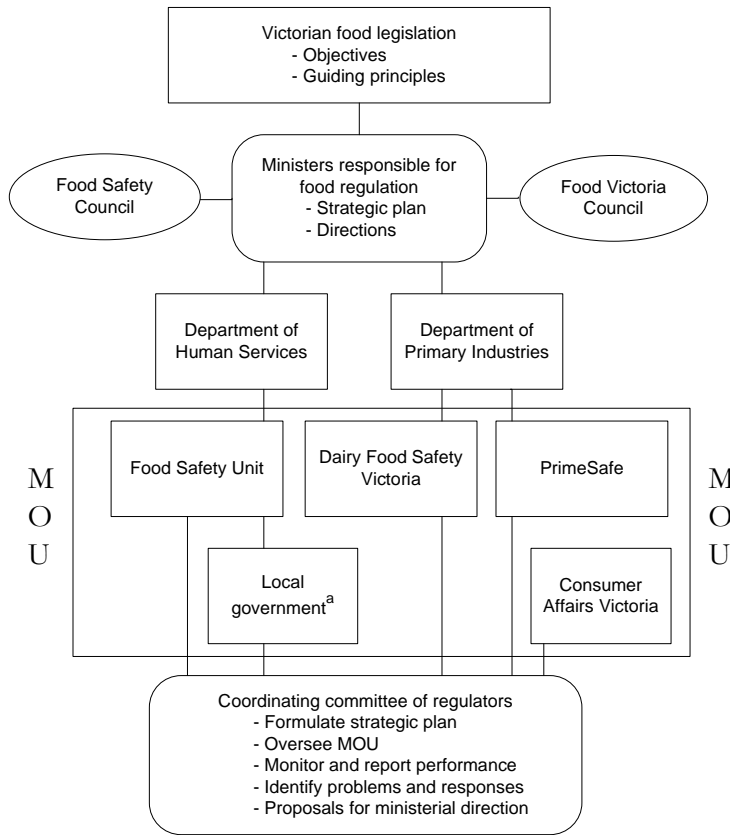
Reflecting the feedback from inquiry participants, the Commission favours the third option (recommendations 8.6 and 8.7), which it expects could be achieved with the lowest transition costs. There was strong support from industry for retaining DFSV and PrimeSafe. The Commission also considers that councils are best placed to judge local food safety performance (which is central to the more risk based proposed regulatory arrangements). Greater consistency across councils can be achieved by DHS taking a leadership role. DHS should also trial service agreements that set out the roles and responsibilities (for service delivery and funding) of councils and the Victorian Government (recommendation 8.8).

This approach (figure 5) relies on cooperation by regulators to coordinate their roles effectively when inconsistencies or gaps arise, and to reallocate resources for changing priorities. A risk is that some councils will fall short if the Minister for Health attempts to press for more consistency in councils’ administration of regulation. To address this risk, the minister should be given the capacity to issue directions to councils (for the purpose of clarifying legislative objectives to promote national consistency), require performance reporting according to a

specified format, and set parameters for operational matters relating to councils' functions under the Food Act (recommendation 8.9).

The implementation of the Commission's proposed changes to the regulatory architecture should be evaluated after five years of operation (recommendation 8.7).

Figure 5 Accountability and the food safety framework



^a Represented by an officer from the Municipal Association of Victoria and two officers from local councils.

In examining the regulatory architecture, the Commission identified apparent inconsistencies in Victorian food legislation relating to registration/licensing, disclosure of information, immunity and protection from liability, investigation procedures and penalties. Although submissions presented little evidence on the costs these inconsistencies impose, consistency in legislation is an element of good regulatory design and a prerequisite for consistent implementation of

regulation across the food industry. The Commission has identified a process for dealing with legislative inconsistencies (recommendation 8.11).

In addition to inconsistencies within major Victorian food legislation, the Commission identified issues with other food-specific legislation. Stemming from its review of the *Labour and Industry Act 1958* (Vic.), the Commission identified the *Bread Industry Act 1959* (Vic.) as a potentially redundant piece of food regulation. The Bread Industry Act was put in place before the creation of the Trade Practices Act—which deals with behaviour that the Bread Industry Act is intended to regulate—and while the bread industry was undergoing significant structural change. In light of the Trade Practices Act, the competitive nature of the bread industry, and the ineffectiveness of the Bread Industry Act in practice, the Commission considers that the Act should be repealed (recommendation 8.12).

Improving local government administration

Several inquiry participants were concerned about inconsistent approaches by councils to registration and enforcement, and the determination of fees and charges. Inconsistent administration of food regulation can impose unnecessary costs on food businesses and the community if it (a) leads to poorer health outcomes in areas where enforcement is less robust and (b) makes it harder for mobile food businesses and those operating in multiple jurisdictions to understand and comply with regulation.

The Commission considers that DHS should improve the consistency of councils' implementation of food regulation by improving guidance on risk assessment and inspection frequency (recommendation 11.1). This guidance would be supported by a more centralised system for gathering information about food companies and food regulation implementation. Addressing council workforce issues by developing a paraprofessional stream, providing improved training for environmental health officers and mentoring new employees would also help (recommendation 11.1). Without improved guidance, support and training for environmental health officers, the intent of the Commission's proposed changes to food regulation may be undermined.

In addition, councils can encourage food safety by running education campaigns, working one on one with businesses, varying the frequency of inspections, hosting food safety business awards, and undertaking prosecution and deregistration. The frequency of inspections should be guided by risk assessments, and DHS should assist councils to develop and publish their risk management strategies (recommendation 11.2).

Conclusion

The Commission considers that the changes to food regulation outlined in this report offer potential benefits to consumers and businesses. Consistent with the Victorian Government's targets for reducing the regulatory burden, the Commission estimates that the proposed changes to the regulatory framework would reduce administrative costs to business by at least \$34 million per year (table 4). If savings to community groups are factored in the total savings would be higher.

Table 4 **Estimated savings from proposed changes**

<i>Proposed changes</i>	<i>Estimated net saving in first year</i>
	<i>\$m</i>
Reduced regulatory requirements for low risk businesses	0.0
Removal of the FSP requirement for class 2 businesses	30.5
Single register for all (including mobile) premises	2.0
More targeted training requirements (mid range estimate)	1.7
Removing annual inspection requirement	0.0
Total estimated administrative cost savings	34.2

The proposals would also impose some extra costs on the Victorian Government and business. Previous experience with extensive changes to Victoria's food regulations suggests the implementation costs to government might amount to around \$3 million. For business, the proposal to allow on-the-spot fines could result in costs of about \$1.5 million each year, depending on the number and size of fines.

Reflecting the extensive gaps in information about the implementation of food safety regulation, these cost savings are based on simplifying assumptions. The Commission set out the assumptions underlying its estimates in its draft report. Where inquiry participants questioned these assumptions and suggested more conservative alternatives, the Commission has incorporated the alternatives into its estimates.

In addition to yielding overall savings to business, the measures proposed by the Commission will facilitate improved targeting of regulation. While this will create opportunities for an overall reduction in costs to business, the Commission has assumed that there will be no net savings to food businesses from either of the proposed reductions in regulatory requirements for low risk businesses and the removal of the annual inspection requirement (table 4). Instead, it is assumed

that the burden of regulation shifts from low risk activities to those businesses that are not responsive to market incentives (given a lack of knowledge or a resistance to meeting food safety standards).

While the proposed changes to Victorian food regulation are intended to lessen the regulatory burden, they would also give discretionary powers to councils—to move businesses between risk categories, require FSPs, impose training orders, and alter inspection frequency. While councils might over-exercise their discretion, the Commission considers that this risk is low for a number of reasons:

- Councils generally aim to encourage a vibrant local business and community environment, and an excessive use of discretionary powers would be at odds with this goal.
- Councils already have considerable discretion in their exercise of regulatory powers, and submissions did not identify abuse of these powers as an issue.
- Experience shows many councils do not recover the full cost of their regulatory effort, which is behaviour inconsistent with an inclination to use any discretionary powers to excess.
- Performance reporting that covers outcomes as well as inputs will provide some transparency in councils' use of their discretionary powers and highlight any excessive use.
- Appeal mechanisms—for example, against decisions to allocate businesses to one risk category or another, or against training orders—will constrain the unnecessary use of council discretion.
- The provision by DHS of robust guidelines for the use of councils' discretionary powers could be expected to limit any excessive use.

While the proposed changes to food regulation would reduce the regulatory burden, they would do so without undermining food safety. Improvements in the implementation of regulation are expected over time with the greater focus on risk, resulting in improved food safety and public health—for example, giving councils the capacity to impose fines, as well as training and FSP orders on businesses, would enhance the already strong market incentives facing businesses to comply with national food standards. And improved performance reporting would be useful for, among other things, ensuring regulatory resources are well targeted as risks change.

Additional measures outlined in this report also seek to promote ongoing improvements in the implementation of food regulation at the state and local levels. Key among these improvements is the need to ensure stronger accountability by, and coordination among, Victoria's food safety regulators and to clarify food regulation objectives. At the local government level, the recommendations are likely to improve the consistent implementation and

enforcement of Victoria's Food Act, and sharpen councils' focus on areas of higher risk. Neither the resulting improvements in food safety nor the potential cost savings to community groups have been factored into assessments of food safety impacts or savings.

Implementing some of the changes proposed by the Commission would impose upfront and recurrent costs on the Victorian Government and councils. There would be costs associated with implementing and explaining changes to businesses and community groups. When the Food Act was last changed (2001), DHS received additional one-off funding of around \$3 million (in today's dollars) to fund implementation. Further, extending existing information technology systems to create a single registration system for food businesses could cost several hundred thousand dollars. And if a new risk classification system were implemented, resources would be needed to develop and explain the new arrangements to councils, business and community groups. And councils would need to devote additional resources to data gathering (such as sampling) and performance reporting.

Where possible, the Commission has factored these implementation costs into savings estimates. It has also assumed that councils would choose to maintain, rather than reduce, the level of resources devoted to administering food regulation. Eliminating the requirement that councils inspect every registered food premises in Victoria, and removing the obligation to encourage compliance with FSP and food safety supervisor requirements, could reduce councils' costs. The decision to not include such potential savings to councils reflects the choices facing councils about the use of these savings. Councils may choose, for example, to undertake fewer inspections overall and pass on savings to registered food businesses. Alternatively, they may decide to maintain the overall level of food regulatory activity but concentrate their activities on higher risk and noncompliant businesses.

In summary, 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 and, in the longer term, consumers. This challenge is common to a variety of policy areas where safety is a key issue. This report suggests that a regime that targets high risk activities and reduces burdens on low risk businesses and community activities need not reduce food safety, and that it may, if well implemented, enhance safety. To improve food safety over time, this report has also highlighted the importance of establishing clear accountabilities and improving performance reporting. The same outcomes might be achieved in other areas of the Victorian regulatory system.

Recommendations

The 37 recommendations are listed in the order they appear in the report, and they need to be understood in the context of the discussion in respective chapters. Recommendations are separated as they apply to the three levels of government—national, state and local. They seek to enhance regulatory performance at each level of government by improving (rather than fundamentally altering) the regulatory architecture. Recommendations that require agreement at the national level or that need legislative change will take more time to implement than some others. The Commission has attempted to indicate priorities in some places by indicating a timeframe for implementing the recommendations.

National issues

The Commission has proposed that the Victorian Government take the lead in pushing 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 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. (see pages 143–52)

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. (see pages 143–52)

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. (*see pages 152–6*)

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. (*see pages 156–7*)

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. (*see pages 157–60*)

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. *(see pages 161–3)*

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. *(see pages 163–5)*

State issues

The Commission has proposed that the Victorian Government clarify regulatory objectives, improve accountability and transparency, and establish a more 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. *(see pages 168–72)*

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. *(see pages 168–72)*

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. *(see pages 168–72)*

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. (*see pages 173–4*)

Recommendation 8.5

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:

- 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). (*see pages 174–6*)

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. (*see pages 178–91*)

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. *(see pages 178–91)*

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. *(see pages 178–91)*

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. (*see pages 178–91*)

Recommendation 8.10

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:

- the Minister for Health should issue a direction under the new section in the *Food Act 1984* (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). (*see pages 193–8*)

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. (*see page 199*)

Recommendation 8.12

That the Victorian Government repeal the *Bread Industry Act 1959* (Vic.). (*see pages 200–2*)

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. (*see pages 204–9*)

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. (*see pages 209–17*)

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. (*see pages 209–17*)

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. (*see pages 217–26*)

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. (*see pages 226–31*)

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. (*see pages 232–7*)

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. (*see pages 237–40*)

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. (*see pages 240–2*)

Market incentives

The Commission has proposed increasing the range of instruments available to regulators to encourage safe food practices—with particular emphasis on information and education—and to enforce regulation when that is 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. (*see pages 253–9*)

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. (*see pages 253–9*)

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. (*see pages 261–3*)

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. (see pages 266–8)

Local government issues

The Commission has proposed changes at the local government level, recognising the key role of this level of government in this area, to achieve more consistent implementation of regulation.

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. (see pages 275–81)

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. *(see pages 283–6)*

Community groups

The Commission recognises the importance of the community sector and the disproportionate burden that food regulation places on community activities. The proposed reforms to Victorian food regulation will significantly reduce this burden, thereby benefiting not-for-profit organisations and community groups.

Recommendation 12.1

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:

- 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. *(see pages 301–2)*

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. *(see pages 312–6)*

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. *(see pages 316–9)*

Recommendation 12.4

That the Victorian Government address impediments to kindergarten activities that have resulted from class 1 food regulations:

- 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. *(see pages 319–20)*

1 Introduction

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

1.1 Background to the inquiry

Food regulation aims to benefit the community by improving food safety, providing information to facilitate consumer choice and discouraging misleading behaviour by food suppliers. However, regulation also imposes costs on businesses and consumers, and can dampen incentives to innovate. Accordingly, the cost impact of regulation should be the minimum consistent with achieving its purpose. Regulation should deliver efficient outcomes while minimising compliance and administrative burdens and allowing industry the flexibility to innovate to meet changing market conditions.

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

- the compliance and administrative burdens of food regulation and whether the objectives of current food regulation are being met
- the impact of food regulation on the competitiveness and trade performance of Victorian industries
- opportunities for reducing or streamlining regulations and the applicability of alternative regulatory models
- food regulation to support community activities and expectations, and appropriate risk management strategies
- the flexibility of food standards and labelling regulations to adapt to emerging food technologies and products, and accurately reflect relevant health information
- strategies to reduce the burden of regulation on small businesses in the food industry.

The inquiry is required to examine both state based regulations and the coordinated national food regulatory system, and to identify improvements to the development and implementation of those regulations.

The Commission understands the term food regulation to mean:

Actions by government which affect the safety or quality of, or the information available in relation to food; encompassing all types of government regulation making, industry self-regulation, compliance and enforcement activities; and covering relevant activities of all businesses in the food supply chain, including primary producers, food processors, retailers and food preparation businesses. (Blair 1998, p. 26)

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

While beverages, including water, are within the scope of the inquiry, the Commission has treated tap water as out of scope. The Commission also views general regulation that affects establishments selling food or beverages—such as regulation relating to occupational health and safety, liquor licensing and smoking in eating places—as out of scope. Regulations in related areas that overlap with food safety regulation are examined when the impact is significant.

1.1.1 Recent reports

The inquiry has drawn on several previous reviews of food regulation. An important review of the national system (Blair 1998) found that food regulation was characterised by:

- a lack of uniform legislation
- a lack of clarity and consistency in agency roles and responsibilities
- overlap and duplication of agency responsibilities
- a lack of coordination across government agencies
- inadequate and uncoordinated enforcement effort
- multiple audits by industry and governments
- inefficient food standard setting processes (Blair 1998, p. 14).

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

- The institutional framework was appropriate in principle, but may not achieve its purpose, as a result of the inadequacy of the compliance activities of councils.
- Only a few councils were fulfilling all of their legislative responsibilities. The majority complied poorly with key elements of the regulatory framework.

- Roles, responsibilities and priorities of food safety stakeholders were not clearly defined. The Food Act did not address which government agency is responsible for overseeing the performance of local government in relation to food safety, and the Department of Human Services (DHS) did not know the extent to which councils meet their legislative responsibilities.

A follow-up study released in October 2005 found some of the 2002 audit recommendations had been implemented, and performance had somewhat improved since the audit, but noted:

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

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

The Commission's own 2005 report on regulation and regional Victoria examined issues such as the scope for reducing the number of food safety regulators, reducing overlap with Australian Quarantine and Inspection Service (AQIS) requirements, reducing overlap with private food safety requirements and increasing the transparency of audit decisions (VCEC 2005a, pp. 263–9). The Commission also identified important concerns about inconsistencies across councils in the ways in which they interpret and enforce the Food Act (VCEC 2005a, p. 249). It made recommendations to address these areas and help deliver food regulatory services at lower cost (box 1.1).

In January 2007, the Commonwealth Government commissioned Mr Mark Bethwaite to identify how the food regulatory framework can be streamlined and made nationally consistent to improve the competitiveness of Australia's food industry. The outcomes of the Bethwaite review were not publicly available at the time this inquiry was finalised.

1.2 Conduct of the inquiry

The Commission advertised the inquiry in the daily press and by circular to interested parties, inviting them to make submissions to the inquiry. The terms of reference and inquiry particulars were also listed on the Commission's website at www.vcec.vic.gov.au.

The Commission received 152 submissions from regulators, consumers, food businesses and policy analysts. In addition, it had discussions with a wide range of interested parties to identify and assess issues relevant to the inquiry and to obtain feedback on the draft report. The Commission also held roundtables with representatives of community groups, business and government. It engaged three

contractors/consultants. Appendix A lists those with whom the Commission met, and the contractors/consultants.

Box 1.1 Regulation and regional Victoria

In its report on the impact of regulation on regional Victoria, the Commission made five recommendations relating to food safety regulation and its implementation:

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

In its response to the report, the Victorian Government supported or supported in principle recommendations 2, 3 and 5. While it supported the first recommendation (that councils should report against their obligations under the Food Act), it did not agree that reporting should be made mandatory. The Government did not accept the fourth recommendation, because it viewed the existing approach for setting these fees as being consistent with the spirit of the regulatory impact statement process (Government of Victoria 2005b, pp. 12–15).

Source: VCEC 2005a, pp. 248–68.

1.2.1 The Commission's approach

In approaching the issues, the Commission has endeavoured to understand the nature of the problems that food safety regulation is designed to address and the tools available to government. There is vigorous debate about the purpose of food safety regulation, with some arguing that it goes beyond traditional concerns such as food safety and misleading and deceptive conduct to encompass various public health issues, including obesity and diabetes. Focusing

on the traditional goal of food safety, the Commission considers that regulation is one of several instruments available to government to reinforce the strong market incentives facing businesses to produce safe food (chapter 2).¹ Other instruments such as training, education and information provision can also play a role, either as complements or, in some cases, direct substitutes for regulation.

The choice of which instrument or combination of measures to use to tackle food safety concerns depends on the strength of market incentives to provide the ‘optimal’ level of food safety. Most businesses are aware of, and highly responsive to, strong commercial imperatives to produce safe food and to help consumers make choices. As the Department of Primary Industries noted, ‘food safety is a condition of entry into, and survival in, the marketplace’ (sub. DR144, p. 1). Many market based arrangements have been developed to manage food safety risks (chapter 4), and the evidence suggests many firms go beyond the minimum standards established in Australia to ensure food safety (chapter 6).

Faced with the strong market incentive to produce safe food, a key challenge for regulators is to target their efforts at those businesses that do not respond to the market because they lack knowledge or capacity, or are unwilling to meet minimum standards. It is hard to estimate the proportion of businesses needing close regulatory oversight from regulators. Based on four years of data, the City of Melbourne reported that an average of 40 per cent of the almost 3000 food premises in its municipality were found to be in breach of aspects of food regulations on an initial inspection. In approximately 4 per cent of premises, these breaches were considered to be serious enough to require ‘immediate’ remedial action such as a follow up inspection within 14 days. The City of Melbourne also stated that the vast majority of businesses rectified shortcomings to the satisfaction of the council. Only in small number of cases was stronger action, such as prosecution, required; in the two years prior to 2007 the City of Melbourne initiated 11 prosecutions and deregistered one business (DHS 2007d).

Although similar information on rates of compliance with food regulations in other municipalities is unavailable, discussions with a number of councils suggest that the experience of the City of Melbourne is representative of the situation across the state, thus supporting the conclusion that a small proportion of food businesses account for a large proportion of councils’ food safety concerns.

Several councils also informed the Commission that they have the capacity to identify the likely good and bad performers in terms of food safety, and thus can target their regulatory activities towards the latter. With councils facing challenges in acquiring the resources and skills to undertake food safety

¹ Chapters 7 and 8 discuss issues with the objectives of food regulation at the national and state levels respectively.

regulation, it is important that the regulatory framework is designed so resources can be targeted at major problem areas and also shifted as priorities change or new problems emerge. The Commission has thus examined the regulatory architecture and the regulatory and nonregulatory tools available to regulators (chapters 8 and 9).

The Commission approached this inquiry by:

- considering why and when regulation of the food sector may be justified (chapter 2)
- reviewing current regulatory arrangements (chapter 3)
- analysing characteristics of the food sector relevant to regulatory design and implementation (chapter 4)
- assessing whether regulation is meeting its objectives (chapter 5)
- estimating the costs of Victorian food regulation (chapter 6)
- suggesting ways in which national, state and local regulation of the food sector could be streamlined and simplified (chapters 7, 8, 9, 10 and 11)
- considering specific improvements to regulation of food related activities in the community sector (chapter 12).

Supporting appendices provide:

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

Further reports and working papers are available on the Commission's website (www.vcec.vic.gov.au), including:

- a review of international and Australian studies of the costs of food regulation
- a working paper on possible performance reporting arrangements for food safety regulation in Victoria
- a consultation paper outlining the key provisions of the *Bread Act 1959* (Vic.) and the arguments for repealing it
- a discussion paper (prepared by Inquit Pty Ltd) on the impact of international regulation in the food industry
- a paper (prepared by Dench McClean Carlson) on the impact of food regulation on the dairy industry
- a KPMG report estimating the cost to business of food regulation in Victoria
- a description of the approach to food safety regulation in New South Wales
- a bibliography of relevant references.

2 Rationales and instruments for food regulation

2.1 Introduction

This chapter assesses the arguments for government intervention to improve food safety and prevent misleading conduct in the sale of food—the two most important objectives of relevant food legislation in Victoria. While Chapter 3 addresses the debate about whether providing food safety means ensuring the level of foodborne disease is acceptable or should also actively promote public health, this chapter focuses on the former narrower interpretation.

Foodborne illness costs Australians around \$1.3–\$2.6 billion per year (chapter 5). It is difficult to assess, however, to what extent the community’s resources should be used to reduce this cost. Reducing exposure to foodborne illness is the objective of food safety regulation at all levels of government. On the other hand, from a communitywide perspective there is a point at which the cost of further improving food safety would exceed the benefits.¹ It is not possible to remove risk; the objective has to be to reduce risk to an efficient level. But is government intervention needed to move the community towards this level? If so, what form should the intervention take?

Section 2.2 describes commercial incentives to provide safe food, yet acknowledges that markets may sometimes provide less safety than is efficient. Section 2.3 explains that this can happen in the community sector too. Whether government intervention is justified, however, depends on whether its benefits exceed its costs (section 2.4), and on the form of intervention (section 2.5).

2.2 Incentives to provide safe food in the commercial sector

To analyse whether government intervention is necessary to increase food safety it is necessary to explore the factors influencing it, including the strength of business incentives to produce food that is safe.

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

2.2.1 Characteristics of food safety

Factors influencing food safety include:

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

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

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

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

² Potential errors include: the use of contaminated raw food, cross-contamination of prepared food by contaminated raw food, poor personal hygiene by infected food handlers, inadequate cleaning of equipment, inadequate cleaning or reheating, improper holding temperatures, cooling food too slowly after heating, eating food too long after preparation and insufficient fermentation, acidification, salting or sweetening during processing (Bryan, Guzewich & Todd 1997, cited in Buzby, Frenzen & Rasco 2001, p. 4).

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

reduce this risk would depend on several factors, including their susceptibility to the risks of unsafe food.⁴

Among the population as a whole, the market demand for a food varies inversely with that food's perceived health risk in the population and its actual risk (Antle 1998, pp. 16–7). In principle, food safety 'can be regarded as a good like any other, with supply and demand interacting to determine a market clearing price' (Henson et al. 1999, p. 3). In a perfectly informed, competitive market, businesses would produce as much safety as consumers are willing to pay for, in the sense that the marginal cost of food safety is equated with its marginal benefit (Antle 1995, p. 44). The policy issue is how close 'real world' markets are to this ideal and whether government intervention can improve on market outcomes.

2.2.2 Market incentives to provide safe food

Consumers have incentives to seek food that is safe and to follow safe food storage and handling practices. They can manage risk in many ways, including selecting safe suppliers, avoiding products that may damage their health and cleaning or cooking food to reduce contaminants (Ravenswaay & Hoehn 1996, p. 1291).⁵ Some consumers (such as those with allergies, and the elderly and frail) pay more attention to food safety than others do. Such different attitudes towards risk may be rational responses to factors such as the different consequences of eating 'unsafe' food. While food suppliers are responsible for ensuring food is safe, consumers have a responsibility to manage their own health and, via their food choices, to influence suppliers' behaviour.

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

Reputation and profit incentives

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

⁴ Antle (1998, pp. 11–5) showed the price premium consumers will pay for a safe food (for example, pesticide free food), if other attributes of the food are held constant, is determined by their perceived susceptibility to the risk, which depends on the marginal utility of health, the marginal health effect of exposure, the marginal effect of risk on exposure and the marginal effect of food consumption on health risk.

⁵ Ravenswaay and Hoehn (1996, p. 1292) noted a fourth action that consumers can take: treating the consequences of illness, which they call 'mitigation'.

Businesses may also see opportunities to increase profits by establishing a reputation for producing food more safely than competitors. For this to be an effective marketing strategy, the claim needs to be verifiable. Approaches to verification include accepting third party accreditation (for example, the National Heart Foundation ‘tick’), following industry codes of practice, and allowing customers to inspect their premises. Some restaurants, for example, make their kitchens visible to customers, to demonstrate their food preparation is safe.

Corporate structures can influence the strength of reputation protection as an incentive to provide safe food (chapter 4). Jin and Leslie (2004, p. 6) found that chain restaurants in Los Angeles have stronger incentives to maintain hygiene than independent restaurants, because a failure by one damages the reputation of the chain as a whole. In Australia, major retailers such as Woolworths and Coles seem likely to have strong reputation incentives, given the serious national consequences if one of their stores is found to have sold unsafe food.

Food producers also typically sell to other businesses further down the supply chain. These other businesses are often sophisticated judges of food safety, with strong incentives to monitor the quality of their inputs. The Victorian Farmers’ Federation noted, for example, that the major supermarkets require their suppliers to comply with their own food safety plans (sub. 16, p. 2). The Australian Industry Group commented that ‘the very high standards demanded by the large retail food chains are such that the need for government regulation was becoming somewhat secondary’ (sub. 32, p. 1).

If the transaction costs involved in addressing quality issues through contracts become excessive, vertical integration of activities within the one business may become attractive. Chapter 4 describes business arrangements in the food sector.

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

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

General law

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

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

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

Insurance markets

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

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

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

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

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

How strong are incentives in the commercial sector?

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

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

Moreover, the hurdle should not be set too high when assessing how well markets perform in this area. Market transactions will not remove risk entirely, because consumers will not be willing to bear the costs involved. Further, if markets do not provide each person with exactly the amount of food safety they want, this need not indicate inefficiency:

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

2.2.3 How incentives may be incomplete⁶

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

Information asymmetries

Consumers may be less well informed than producers about safety characteristics of food: there may be an information asymmetry between them. While consumers can discern some characteristics of food (such as smell and appearance) before purchase, whether food is safe usually becomes evident only after it is consumed. Sometimes problems are quickly apparent and easily traceable to their source. Some problems, however, do not become evident until a long time after purchase and consumption, or ever, because it may be prohibitively costly for consumers to trace a problem to its source.⁷

⁶ Some of the issues discussed in this section may also apply to the broader public health consequences of consumption of some foods that could, for example, contribute to obesity or illnesses such as diabetes. Consumers may have difficulty understanding the health risks associated with consuming some foods; markets may under-provide information about these risks; and consumers may pay too little attention to these risks if they do not bear all of the costs of inappropriate food consumption; for example, if medical insurance arrangements require others to bear part of the health costs of those who become ill.

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

There is a spectrum of possibilities, and where a particular case sits on this spectrum affects market incentives to provide food safety. If consumers can assess the safety of food soon after purchase and trace any problems to their source, businesses have strong incentives to provide the amount of safety that consumers want, particularly where consumers can exchange information about food quality at low cost. In other cases, it may not be possible to trace a foodborne illness to its source, perhaps because lead times are long and links may not be scientifically proven.

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

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

... firms may still be able to establish high quality reputations by identifying their products with the use of quality control processes. An example of this is the recent adoption by a prominent seafood firm (legal seafood) in the United States that advertises its use of HACCP [Hazard Analysis and Critical Control Point

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

⁹ These consumers can inform others in a number of ways. For example, in a strange city, customers gravitate towards well patronised restaurants, relying on the judgement of others.

system]. By identifying its product with a quality control process, a firm may be able to convey product quality information to consumers and a separating equilibrium may be attained that efficiently sorts consumers and producers into markets for different qualities with corresponding prices. (Antle 1998, p. 37)

Even when consumers are not sophisticated in their judgements about food safety, businesses have incentives to innovate around these limitations. The Australian Food and Grocery Council has developed, for example, a simplified front of pack labelling system which is intended to help consumers to make balanced dietary choices (chapter 7).

Symmetric imperfect information

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

Tort law limitations

The extent to which legal liability encourages businesses to produce safe food may be diminished when it is difficult to trace a problem to its source. A US study found that plaintiffs are unlikely to receive awards in foodborne injury trials. Incubation periods, the absence of physical evidence of contamination, and difficulties in identifying the particular food item that caused the problem¹¹ make it difficult for plaintiffs to mount a convincing case. Awards in successful cases were not large, and legal fees and court costs usually absorbed one third or more of the award. Given most foodborne illnesses are relatively mild, and the costs are often shared (through insurance and other mechanisms) among the individuals concerned, their employers and the broader community, monetary incentives to pursue damages are frequently weak (although stronger for a mass outbreak of foodborne illness). The study concluded that the direct impact of

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

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

litigation on businesses is small, although the small proportion of trials resolved in public may have an ‘indirect, possibly significant’ impact on businesses’ behaviour (Buzby, Frenzen & Rasco 2001, pp. 24–7).¹²

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

Consumers’ knowledge about food safety

Understanding risk

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

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

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

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

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

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

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

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

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

Understanding other information

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

Public goods

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

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

The large amount of information available on safety, however, raises doubts about the severity of this problem in practice. There are many suppliers of such information, as indicated by the plethora of food articles in magazines, cookery

books, charitable organisations such as the National Heart Foundation, and the internet. A Google search for ‘food safety’, for example, provides 190 million hits.

Spillover effects

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

Box 2.1 Food safety externalities in the Mexican green onion industry

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

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

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

In addition to production externalities, there may be spillovers in the consumption of unsafe food—for example, medical insurance arrangements require others to bear part of the health care costs of people who become ill, while sick leave arrangements require employers to bear part of the lost productivity when employees have to take time off work. Whether this materially

affects consumers' incentives is an empirical matter. Buzby, Frenzen and Rasco argued that in the US:

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

Access to international markets

Access to international markets is sometimes advanced as a reason for government intervention to encourage food safety. In another manifestation of the information asymmetry noted above, overseas purchasers of Australian products may be poorly informed about their safety. In addition, a business that exports unsafe products may damage the market for other exporters—an example of the spillovers noted above. The policy issue is whether net benefits arise from government intervention to help Australian exporters convince customers that their products are safe. This issue appears to be particularly significant for meat exports.

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

2.3.1 Defining the sector

The inquiry terms of reference require the Commission to report on the magnitude and nature of the regulatory burden on the not-for-profit sector, and also on food regulation to support community activities and expectations. As outlined in chapter 12, this sector is diverse, including:

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

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

- While many of those in hospitals, schools and aged care facilities are particularly at risk from unsafe food, they may not purchase food directly from the supplier. Rather, a relatively sophisticated purchaser, such as a hospital, will often arrange food on their behalf.

- Fund raising activities involving food are usually undertaken by volunteers, who engage in commercial transactions with customers usually drawn from the general population.
- Charities sometimes give rather than sell food to their customers, who are typically poor, not well informed and, in some cases, not able to process information to make rational decisions.

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

2.3.2 Incentives in the not-for-profit sector

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

2.3.3 Incentives in fund raising activities

There is no obvious reason why consumers would be less concerned about food safety when purchasing from a fund raiser rather than from a business¹⁴, nor why information asymmetries would be more or less evident. As noted, when information asymmetries exist and legal remedies are limited, businesses may underprovide safety. Would the situation be any different for fund raisers? Volunteers who prepare food for fund raising often do so only occasionally, so may have less knowledge of food safety requirements. Further, they may need to recover the fixed costs of implementing safe production processes from a small volume of sales. If this would substantially reduce their ‘profit margin’ (because they are competing with commercial producers that can recover the fixed costs over a larger volume of sales), they may be tempted to cut corners. On the other hand, fund raising often takes place within a local school, church or sporting community, so the person supplying the food often knows the people who buy it, which seems a likely strong incentive for safe practices. Moreover, most community organisations hope to be in business for the long term, which provides an incentive to protect their reputation.

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

¹⁴ Research prepared for the Department of Human Services suggests Victorians have less confidence in food retail outlets such as community events and fêtes (Campbell Research & Consulting 2005a, p. 1).

2.3.4 Incentives in charities

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

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

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

- Large and small charities exist to improve the wellbeing of their clients, which is inconsistent with supplying them unsafe food.
- Large charities compete for the philanthropic dollar, and their capacity to raise money would be compromised if they were found to be making their clients ill.
- Large charities may feel exposed to legal action, perhaps through a class action.

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

2.4 What role for government?

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

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

2.4.1 Benefits of intervention

The benefits of intervention need to be considered in the context of the problem that it is intended to correct. To the extent that intervention is intended to reduce foodborne illness, the benefits are essentially the reduction in costs associated with those illnesses.¹⁵ Assessing such benefits can be difficult:

- Often, little information is available on the proportions of people who behaved in a way consistent with the regulation before it was introduced and who do not comply after the regulation is introduced. For this reason, in its initial analysis of the benefits and costs of applying HACCP in the US meat and poultry industry, the US Food Safety and Inspection Service used effectiveness estimates ranging from 10 per cent to 100 per cent reduction in pathogen levels (Crutchfield et al. 1997, p. 9).
- It may be difficult to disentangle the effects of a regulation from other factors. For example, suppose that in addition to introducing a regulation to address a food safety problem, the government publishes information about the illness source. Simply publishing the information encourages consumers, for example, to switch brands or food types. Estimates of the effects of the regulation will thus overstate its benefits, unless accounting for the effects of the additional information on consumer behaviour (Ravenswaay and Hoehn 1996, p. 1295).
- Information is required about the value that consumers place on the outcome of the intervention. Successful food safety regulation should reduce morbidity and costs including loss of workplace and household productivity, and medical costs. It should also reduce pain and suffering. Some studies (for example, Abelson, Forbes & Hall 2006) estimated these costs and, by implication, the benefits that intervention may create. They included estimates of the amount consumers would be willing to pay to avoid illness, including those illnesses that can be associated with food.

2.4.2 Costs of intervention

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

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

Direct costs

These costs, described in chapter 6, include:

- costs to government
- administrative ('red tape') and compliance costs.

In principle, it is the *additional costs* caused by regulation that ought to be measured, yet these could be assessed against quite different baselines, leading to very different cost estimates. These baselines include:

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

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

A second issue is whether to assess costs according to what businesses actually do or what the most efficient business would do (OECD 1997, p. 21). A further complication is that some costs of complying with a regulation may be unavoidable, while for others, businesses may choose whether to incur them in complying with the regulation. Compliance costs can also differ substantially among businesses, depending on factors such as business size, the production processes employed, the scope and stringency of the regulation and the existing level of compliance (OECD 1997, p. 22).

Given such an array of considerations and factors that may influence compliance costs, estimation is problematic. The OECD noted that 'the measurement of compliance costs is generally conducted in a rather simplistic fashion, on the assumption that these costs are additive to the costs of production' (1997, p. 26).¹⁶ Chapter 6 estimates the direct costs of food safety regulation in Victoria.

¹⁶ Two studies illustrate approaches to measuring compliance costs.

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

Indirect effects

Regulation can have indirect effects too:

- It may affect variables other than the one being targeted.
- It may reduce consumers' incentives to protect themselves:
If the government creates a sense of complacency by making consumers believe that the government processes are better at discovery than they actually are, then consumers may lack the incentives to be more diligent in consumption choice and food preparation. (Skees, Botts & Zeuli 1996, p. 105)
- It may discourage commercial activities that promote food safety. Government provision of food safety information, for example, could reduce incentives for businesses to provide such information.
- It may change consumption patterns, by changing the relative prices of different foods.
- It may affect industry structure. If, for example, some fixed costs of regulation do not vary with business size, relatively large businesses may be favoured. This situation could lead to more concentration and less competition, with consequently less pressure on businesses to minimise their costs. Industry structure could also be affected if some providers that would otherwise produce at close to required standards decide that the costs of achieving the standards are less than the benefits, while other providers that are well short of meeting the standard continue producing because they anticipate a sufficiently low likelihood of the regulation being enforced. This could be why, as the inquiry was told, some of the major charities are no longer providing food while smaller groups are filling the gap.

Dynamic costs

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

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

- Compliance induced innovation can allow a business to produce products at lower costs than its overseas competitors.

- Businesses can create an early mover advantage by implementing a regulation before competitors.
- Regulation can create demand pressures to lower costs.

2.4.3 Distributional issues

Individuals, not businesses, ultimately bear the costs of regulation, and both the costs and benefits of regulation can be spread in complex ways:

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

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

2.5 Framework for analysis

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

Where consumers are well informed before consumption or purchase (because safety issues are discernible by sight, touch and/or smell), market forces should provide an efficient level of food safety and no government intervention is necessary (column 1). Where there is asymmetric information (column 2) before

consumption or purchase, market outcomes should still be efficient if safety problems can be traced back to their source and if the information can be spread quickly among consumers at low cost. Consumers will desert businesses that provide unsafe food.

Table 2.1 Efficient policy tools in the market for food safety

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

A small number of very well informed ‘consumers’ may also exert a powerful influence on the provision of food safety, even if some other consumers are not well informed. The examples of large retailers and franchised fast food outlets were discussed earlier. Another example is a small country town, in which word of mouth is likely to more be powerful than in a large city.

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

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

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

- Labelling information about product content and characteristics can assist consumers to make informed choices.

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

If these measures cannot reduce safety risks to an efficient level, government may decide to intervene in other ways, discussed in the next section.

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

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

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

2.6 Mechanisms to promote food safety

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

2.6.1 Nonregulatory measures

Information and education

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

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

As noted, however, consumer and businesses may be poorly informed about safe food handling practices, and consumers may also have difficulty interpreting information about risks. Conducting research, providing information to businesses and/or consumers and running educational programs may help to address these information gaps.¹⁷ The provision of information may be particularly useful for households, given that many food safety problems originate within the home and thus are beyond the reach of some other forms of intervention. It can also help consumers to understand mandatory food labels (see below).

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

For education policies to be effective, consumers must pay attention to the information, understand its relevance to them, and apply it in accordance with the recommendation. They may not follow these steps if, for example, they do not think they are at risk, perhaps because they believe regulation makes the risks minimal, or they have ingrained practices or they feel that the recommended cooking makes food less appealing. While consumers may be perfectly capable of rational analysis they may nevertheless make decisions intuitively. Equally, some information may be too complicated for consumers to understand—for example,

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

the health implications of different concentrations of pesticides. These considerations suggest education policies (chapter 10) may need to be supplemented by other approaches to improving food safety (Crutchfield et al. 1997, pp. 16–7).

Legal liability

Earlier sections described how legal liability encourages food safety and how its potency is reduced by high transaction costs and difficulties in tracing a food event to its source. Law reform is beyond the scope of this inquiry, but Skees, Botts and Zeuli (2001, p. 101) noted that emerging technologies may increase the scope to trace contamination to its source.¹⁸ Reports by government inspectors could be made available to inform court proceedings. Further, penalties that are enforceable and provide sufficient incentives for legal behaviour are an important contributor to well functioning legal liability. Chapter 10 discusses penalties imposed under the *Food Act 1984* (Vic.).

Facilitation of markets

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

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

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

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

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

inspectors. In practice, the majority of insurers set liability premiums using a class system where businesses are grouped according to risk and charged similar premiums. This reduces the ability of insurance markets to provide incentives for businesses to pursue safe food handling practices (Office of Fair Trading 2003, p. 34).

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

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

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

Market instruments

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

2.6.2 Regulatory measures

Information measures

Information measures include labelling requirements, legal prohibitions on providing misleading information, and controls over advertising. They range in their level of prescription. Law against misleading consumers focuses on outcomes, while labelling requirements can mandate the disclosure of food characteristics such as weight, volume, ingredients and name of manufacturer/distributor, and prescribe the size and location of this information on the label. Caswell and Padberg (1992, p. 462) described this form of regulation as 'shopping aids', which help to guide buying decisions when there

are limits on consumers' information processing abilities.²⁰ As well as influencing the information provided to consumers, such regulation can affect product design—for example, a requirement to disclose product ingredients can influence the manufacturer's choice of ingredients.

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

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

Self-regulation and co-regulation

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

Licensing and registration

Governments may control entry into the food sector by requiring participants to be either licensed or registered. Conditions are typically attached, to enforce behaviour consistent with the government's objectives.²² A policy challenge is to

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

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

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

design licensing and regulation arrangements that do not exclude effective competitors, yet strengthen incentives for good performance. Chapter 3 explains that licensing and registration are the cornerstone of food safety regulation in Victoria.

Performance standards

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

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

Design standards

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

Antle (1996, pp. 1245–7) noted the considerable efficiency differences between a HACCP that businesses adopt voluntarily and tailor to their needs, and one that governments mandate and enforce. The latter approach can become a form of command and control regulation, prescribing how the production process should be designed and managed. It is impossible, however, to tailor design standards that would be efficient for every business, while inflexible design standards discourage innovation. Antle (1995, p. 91) thus proposed that HACCP systems be defined as performance standards at each stage of production, rather than as design standards.

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

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

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

2.6.3 Choosing among instruments

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

3 The regulatory and institutional framework

3.1 Introduction

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

3.2 The framework

3.2.1 The context

During the 1990s, a number of imperatives drove the development of a national food safety regulatory system. These imperatives included:

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

In 1998, the Blair review of the national food regulatory system found that approximately 150 Acts and regulations control food in Australia, and concluded that the regulatory framework for food was 'complicated, fragmented, inconsistent and wasteful' at that time. The review recommended an integrated and coordinated national food regulatory system with nationally uniform laws. It proposed a co-regulatory approach, whereby governments set minimum performance based standards through consultation, and business has greater flexibility in how it meets the standards but with no less responsibility for meeting them (Blair 1998, pp. 14–5).

Following this review, the Commonwealth, state and territory governments agreed to move towards a national system of food regulation. The Food Regulation Agreement (2000) aims to give effect to a national approach to food regulation within Australia with the objectives of protecting public health and safety, while reducing the burden of regulation, providing cost-effective compliance and enforcement, harmonising domestic and export food standards and providing a consistent approach to regulation across Australia. State and territory governments agreed to enact legislation which reflected the provisions of the Model Food Act listed in Annex A to the Food Regulation Agreement and which included chosen administrative provisions from Annex B.

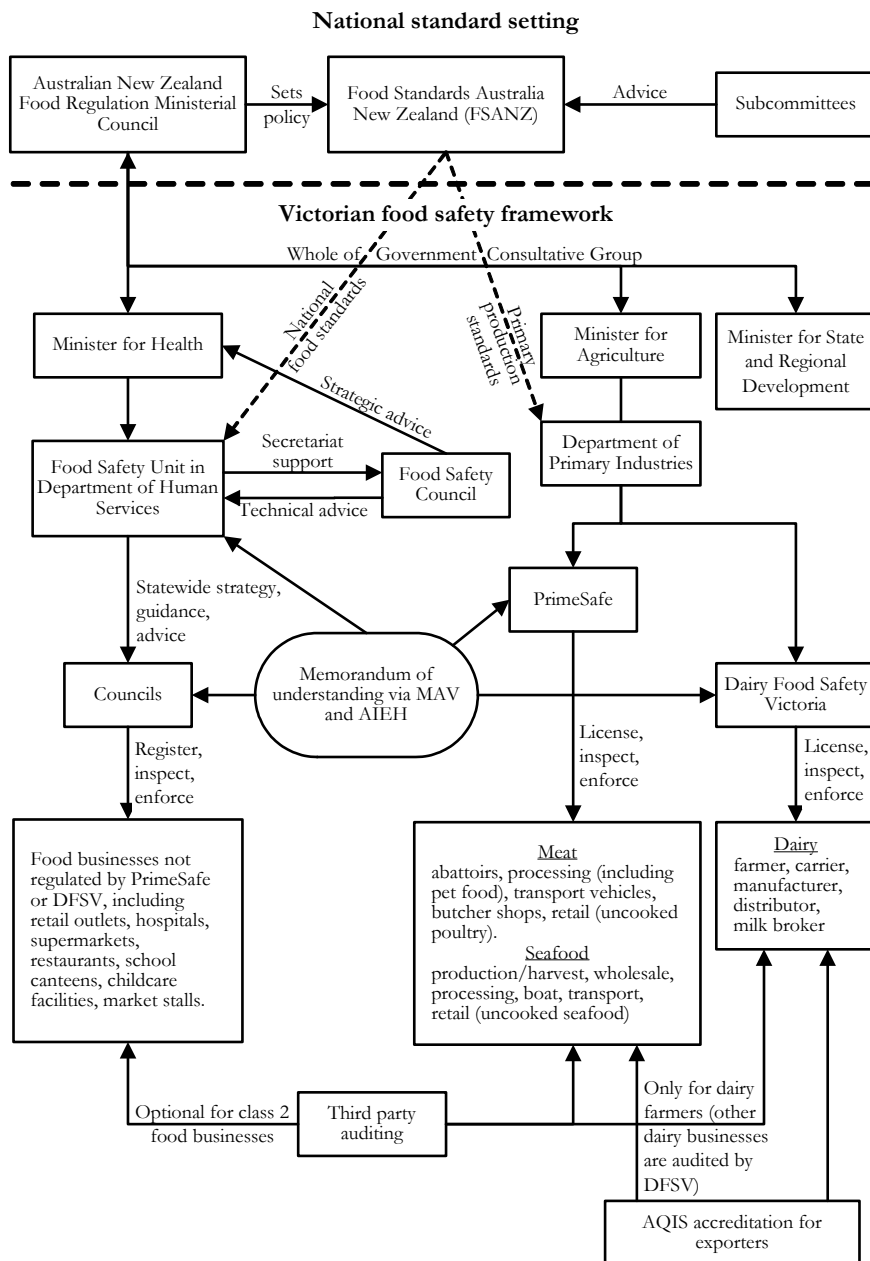
In late 2006, the Commonwealth Government commissioned another independent review, the Bethwaite review, to identify how the food regulatory framework can be streamlined and made nationally consistent to improve the competitiveness of the Australian food industry. Today, despite the differences in some requirements across Australia (for example, only Victoria requires declared food premises to have food safety programs), Victoria's Department of Human Services (DHS) considers that there are not 'any major inconsistencies (with food regulation) between Victoria and the other states/territories that are having an adverse effect on Victorian consumers and businesses' (DHS 2007a, p. 12). This may be so, but the inconsistent enactment by states and territories of the administrative provisions of Annex B of the Model Food Act has led to regulatory complexity that is likely to increase the compliance costs of businesses that operate in more than one jurisdiction.

3.2.2 National regulators and advisory bodies

Food Standards Australia New Zealand (FSANZ), a bi-national statutory authority, develops uniform food standards, which the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) approves (figure 3.1). ANZFRMC decides on policy guidelines, which FSANZ must consider when setting food standards. It also promotes harmonisation with global food standards (principally derived from Codex Alimentarius, a global reference body committed to achieving streamlined standards of food regulation).¹

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

Figure 3.1 Food safety regulatory framework^a



^a This regulatory framework is supported by general provisions covering misleading and deceptive conduct (administered by the ACCC and CAV), as well as specific provisions in the Food Act that are administered by councils.

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

The three Victorian representatives on the ANZFRMC are the Minister for Health, the Minister for Primary Industries and the Minister for State and Regional Development (DHA 2006c). FSANZ receives advice from a range of advisory bodies, including the Implementation Subcommittee and the Food Regulation Standing Committee. A joint arrangement between Australia and New Zealand has been in place since 1996 to help remove regulatory barriers to trade in food.

Food standards provide legally enforceable obligations relating to the composition, production, handling and labelling of food. Collectively, the standards are known as the Food Standards Code. They are detailed and, in many cases, prescriptive, and they are implemented by legislation in each state and territory. In Victoria, the Food Standards Code is adopted through the *Food Act 1984* (Vic.) (s16).

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

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

3.2.3 Victorian legislation

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

establishes licensing powers. In addition, other Acts (listed in appendix B) have a limited impact on food regulation.

Although the Food Act regulates conduct in relation to food for sale—and not for food that is handled in the home, for example—it adopts a broad definition of ‘sale’. Sale includes not only transactions involving food where consideration is provided, but also other transactions, such as giving away food as advertisement or to further trade or business, and supplying food to hospital patients (s4). Nevertheless, this definition excludes food that is provided charitably; the donation of food by charities is thus excluded from food regulation in Victoria, while the sale of food in fund raising activities is included.²

Some requirements of the Food Act apply generally to persons involved in the handling of food for sale—for example, the requirement that a person must not handle food intended for sale in a manner that they know will render the food unsafe (s8(1)). Other requirements, such as the requirement that declared food premises³ must have food safety programs (s19C), do not apply to businesses involved in ‘primary food production’,⁴ which are regulated through the Dairy Act, Meat Industry Act and Seafood Safety Act (discussed below). Exceptions from the application of the Food Act may also arise under s5, which provides that the minister may declare any premises not to be food premises for the purposes of the Act (s5(3)) and exempt specified food premises from some or all provisions of the Act (s5(3A)).

The Commission’s draft report on Victorian food regulation identified the *Bread Industry Act 1959* (Vic.) as potentially imposing undue costs on Victorian food businesses and community activities. The Commission released a working paper in June 2007 seeking comment from stakeholders on whether the Act should be retained. Of the seven submissions that followed (subs. DR136–137, DR140–143 and DR150), six offered no objections to repealing the Act. On the basis of its analysis and the submissions, the Commission recommends in section 8.8 of this report that the Act be repealed.

In addition to the food-specific legislation, the *Fair Trading Act 1999* (Vic.) prohibits false, misleading and deceptive conduct, while the *Trade Measurement Act 1995* (Vic.) is intended to create ‘consumer and business confidence about the

² Restricting the coverage of regulation to food that is for sale avoids difficult definitional issues that would otherwise be faced to prevent, for example, regulation extending into homes.

³ Section 19C(1) of the Food Act provides that classes of food premises declared by the Secretary of DHS must have a food safety program. Under a declaration made by the Secretary in 2001, food premises at which only pre-packaged low risk food is handled or sold are exempt from the requirement.

⁴ The Food Act defines primary production as ‘growing, raising, cultivating, picking, harvesting, collecting or catching food’ (s4C).

accuracy of measuring instruments used in trade, transactions by measurement, and pre-packaged articles' (CAV, sub. 53, p. 7).

The focus of the Commission in this report is on Victoria's Food Act and the three industry-specific Acts. There is also a brief discussion of the *Bread Industry Act 1959* (Vic.)⁵.

3.2.4 Key Victorian regulators and advisory bodies

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

Department of Primary Industries

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

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

PrimeSafe

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

⁵ The Bread Industry Act makes it an offence for bread industry suppliers to refuse to supply any bread manufacturer or persons proposing to commence business as a manufacturer with supplies necessary to manufacture bread. The Act also makes it an offence for any persons to enter into agreements which would preclude or hinder compliance with the Act. The Act, which is industry specific, is likely to be redundant given that restrictions on trade and issues dealing with suppliers will be covered by the more general provisions of the Trade Practices Act.

Dairy Food Safety Victoria

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

Food Safety Unit of the Department of Human Services

The Food Safety Unit, in conjunction with other units within DHS, coordinates and manages the statewide strategy for ensuring the provision of safe food supply in Victoria by food businesses not regulated by DFSV and PrimeSafe (such as restaurants and supermarkets). With an annual budget of about \$2.7 million (DHS 2006c, p. 8), the unit is involved in food recalls and closure of unclean food premises,⁶ investigates foodborne illnesses and provides education on food safety issues (DHS 2004c). It is involved in developing regulation, policies and strategies for food safety at the state and national levels, and coordinating a whole of government group (including the departments of Human Services, Primary Industries, Innovation, and Industry and Regional Development, and Consumer Affairs Victoria (CAV)) (DHS, sub. 48, p. 13).

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

Consumer Affairs Victoria

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

Local government

Local government administers and enforces the Food Act. All food premises in municipal districts—excluding primary food production—must register with councils and, in most cases, have a food safety program. Councils register more

⁶ The Chief Health Officer, with the authority of the Secretary of DHS, is the only person who may make closure orders under s19(2) of the Food Act. The Food Safety Unit has advised the Commission that closure orders, in urgent cases, may be made within 24 hours of the receipt of the request for closure from a council.

than 45 000 fixed food premises in Victoria each year. Under the Food Act, they are responsible for:

- inspecting food premises before registering, renewing or transferring the registration
- obtaining food samples for analysis and investigating noncompliance with food standards
- monitoring commercial food preparation, hygiene and safety standards, and taking preventative and remedial action in the event of noncompliance with the legislation
- investigating reported noncompliance detected by DHS approved third party auditors and ensuring businesses are audited with the set audit frequency (AGV 2002, p. 31).

Council environmental health officers (EHOs) undertake most of these functions.

3.2.5 The approach to regulation—a summary

Table 3.1 summarises the approaches of the various regulators. Food businesses are responsible for food safety. Food premises are required to be registered and generally to have food safety programs, which are (or will be) required to be audited, sometimes by a third party auditor. (The exceptions are class 2 food businesses that choose to use a standard food safety program, which may be inspected by council EHOs).⁷ Regulators check whether the measures implemented by the businesses to maintain food safety are adequate, and enforce compliance with food legislation. Businesses in the meat, dairy and seafood industries face a similar approach to licensing, auditing and the requirement for food safety programs.

⁷ Section 19HA provides that council EHOs may inspect food premises to determine whether a food business is operating in accordance with the standard food safety program for that premises. A food safety program audit, on the other hand, is conducted by an approved food safety auditor to determine whether the food business has complied with a customised food safety program during the period covered by the audit and whether the program is still adequate (s19J).

Table 3.1 Food safety requirements for Victorian businesses

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

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

Source: VCEC 2005a, p. 245

3.3 Features of the regulatory arrangements

This section describes features of the regulatory arrangements, using a checklist for assessing regulatory quality that draws on previous reports by the Victorian Competition and Efficiency Commission and the recent *Report of the Taskforce on Reducing Regulatory Burdens on Business* (Regulation Taskforce 2006). Features examined in sections 3.3.1–3.3.14 are:

- the consistency and clarity of objectives
- roles and responsibilities
- unclear responsibilities and duplication
- subsidiarity

- integration with other legislation
- whether the approach is prescriptive or outcome oriented
- whether the approach is risk based
- whether unnecessary costs are avoided
- flexibility
- simplicity
- compliance and enforceability
- performance reporting
- transparency
- education.

This section reports inquiry participants' views on the performance of the framework in these areas, to identify potential areas for improvement. Chapters 7–12 assess options and propose recommendations for making improvements.

3.3.1 Consistent and clearly defined objectives

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

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

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

Consistency

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

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

BOX 3.1 Objectives of the Food Regulation Agreement

The objectives of the Food Regulation Agreement are to:

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

Source: COAG 2002.

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

In its submission to the Commission, DHS stated that it:

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

The National Heart Foundation of Australia expressed a similar view. It noted that the primary objectives for food regulation in Australia as defined in the Food Standards Code are the protection of public health and safety, the provision of adequate information relating to food to enable consumers to make informed choices and the prevention of misleading and deceptive conduct. It proposed that the Food Act should be amended to reflect these objectives and added that 'the interest of the public must be placed above the interests of the food industry' (sub. DR103, p. 1). It further proposed that the protection of public health 'should be defined to include protecting the public from long-term harm caused by chronic diseases associated with inappropriate food consumption' (sub. DR103, p. 3).

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

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

Clarity

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

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

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

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

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

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

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

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

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

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

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

3.3.2 Roles and responsibilities

Victoria's Auditor-General argued that:

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

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

- facilitating key provisions of the Food Act
- registering food safety program templates and food safety auditors
- facilitating (in conjunction with other parts of the department) food recalls and investigations of foodborne illnesses
- monitoring food safety developments
- developing risk management tools and systems
- facilitating whole of government input into development of national food safety and regulation policies
- informing and educating businesses and the community about food safety matters (FSU 2004b, p. 1).

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

Given the multiple Victorian Government departments, regulators and Acts involved in food regulation, overlaps, inconsistencies and poor resource allocation are possible. Ensuring agencies have clearly defined roles and responsibilities will help them to take a more coordinated approach. Also helping is the drafting of legislation to reduce the risk of overlapping responsibilities. The Dairy Act, for example, requires dairy farmers, manufacturers, transporters, food carriers or distributors (such as a milk bar) to be licensed unless an exemption applies to reduce overlaps with other regulators. Exemptions apply to food businesses registered under the Food Act and to licensees under the Meat Industry Act and the Seafood Safety Act, which must have quality assurance programs or food safety programs that adequately cover dairy food (Dairy Act s22A). In addition, food regulators have negotiated a Memorandum of Understanding (MOU) to clarify responsibilities and reduce duplication (PrimeSafe 2004b).

Nonetheless, despite the legislative provisions and the MOU, inquiry participants pointed to a lack of clarity about the roles and responsibilities of food regulators in some areas, including:

- multiple points of contact
- mixed food businesses
- waste management
- complaints and investigations
- misleading and deceptive conduct.

Multiple points of contact

Some food businesses may have to deal with multiple regulators. Although the MOU is intended to promote cooperation and clarify regulators' responsibilities, some submissions proposed a 'one-stop shop'—for example, George Weston Foods supported such a structure because 'it makes it easier for industry' (sub. 52, p. 10). The Australian Food and Grocery Council urged the Commission to consider the merits of a 'virtual shopfront' for the ease of use by consumers, industry and other stakeholders (sub. DR106, p. 13). The option of a single food regulator for Victoria is discussed in chapter 8.

Mixed food businesses

In the case of a mixed business which manufactures, packs or distributes dairy and non-dairy products along with other business lines, the MOU provides that DFSV negotiates with the responsible council to determine the appropriate licensing authority (PrimeSafe 2004b, p. 5). The MOU provides for local government to register and supervise meat and seafood preparation areas in supermarkets (under the provisions of the Food Act) (PrimeSafe 2004b, p. 10). If a food business's principal activity is uncertain, PrimeSafe and local government

negotiate the most appropriate authority to register it or license the proprietor (PrimeSafe 2004b, p. 10).

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

The current approach to food safety management in Victoria lacks a coordinated, holistic focus. For instance, the registration of meat processing premises by PrimeSafe and dairy product manufacture by Dairy Food Safe Victoria has led to differing compliance processes, standards and costs ... the current fragmented and inconsistent approach has resulted in increased costs to councils. (sub. 51, p. 7)

Waste management

Some submissions raised the issue of which regulatory authority is responsible for overseeing compliance with waste management requirements (that is, the storage and disposal of garbage) at food premises. AIEH reported that councils frequently attend to complaints concerning waste management by businesses registered by PrimeSafe and DFSV—an issue these agencies refuse to deal with (sub. 10, p. 10). Several councils, including the City of Greater Dandenong (sub. 12, pp. 6–7) and Moreland City Council (sub. 51, p. 8), also raised this issue.

Local government's responsibilities extend beyond the Food Act to include provisions of the *Health Act 1958* (Vic.) as well as local and state laws regarding waste disposal. Under the Health Act, for example, EHOs may investigate complaints relating to noise, smells and smoke. The City of Yarra considered that nuisance complaints about commercial premises should continue to be investigated by local government (sub. DR132, p. 1). According to PrimeSafe, all complaints regarding foodborne illness or nuisances are to be investigated by local councils in the first instance (PrimeSafe 2006, p. 23).

In summary, despite the MOU between food regulators, there is some lack of clarity over regulators' roles in respect of waste management.

Complaints and investigations

Some submissions noted public confusion about which regulator to contact regarding complaints about a food premises. Maroondah City Council noted that consumers generally perceive local government as the first point of contact (sub. 33, p. 2), with consumers less likely to know about the role of DFSV and PrimeSafe.

According to DHS, councils are responsible for investigating foodborne illness under the Food Act (DHS 2002c, p. 7). Woolworths claimed, however, there is no coordinated approach to investigating food poisoning incidents

(sub. 50, p. 5). The City of Whittlesea claimed that it must carry out an investigation until the problem is proven to have originated from another municipality (sub. 31, p. 2). This approach can result in multiple investigations by different councils, and thus additional costs. Again, it is difficult to assess the frequency of boundary issues.

Misleading and deceptive conduct

CAV and councils administer provisions in the Fair Trading Act and Food Act respectively relating to misleading and deceptive conduct. This situation has given rise to concerns about a lack of action against misleading and deceptive conduct in relation to food (chapters 7 and 8).

3.3.3 Subsidiarity

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

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

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

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

3.3.4 Integration with other legislation

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

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

- The Trade Practices Act extends into areas that could be covered under Victorian legislation—for example, successful applications for damages for food poisoning have been made under sections of the Trade Practices Act relating to a product not being fit for purpose (s74B), not being of merchantable quality (s74D) and having a defect (s75AD).⁸
- The Trade Practices Act and Victoria’s Fair Trading Act address some issues addressed in the Food Act relating to misleading conduct.

CAV argued that the Food Act’s and Fair Trading Act’s provisions on misleading and deceptive conduct could ‘cause confusion about which agency is responsible’, although the provisions in the Food Act are ‘never used’, because more specific provisions suitable for safety issues are available.⁹ To avoid confusion, it argued that ‘all claims on food products could be efficiently dealt with by one organisation’ (CAV, sub. 53, p. 17).

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

⁸ For example, the case of *Harry Georgiou v Old England Hotel Pty Ltd* in the Federal Court of Australia, Victoria District Registry, 2004.

⁹ DHS confirmed this, noting that it is ‘not aware of any cases prosecuted under the Food Act for deceptive and misleading conduct’ (DHS 2007b, p. 10). For contraventions, it explained that a staged approach is taken, and that businesses are not prosecuted for misleading and deceptive conduct when they take acceptable remedial action.

3.3.5 Prescriptive or outcome oriented approach

The Food Act gives effect to the food standards, which are often prescriptive. Chapter 1 of the standards, for example, lists permitted additives; specific and detailed requirements for labelling and naming ingredients, and legibility; and maximum residue limits.¹⁰ Chapter 2 is similarly prescriptive, defining and setting out compositional requirements for cereals; meat, eggs and fish; fruit and vegetable; edible oils; dairy products; non-alcoholic beverages; alcoholic beverages; sugars and honey; and special purpose foods. For some of these products, it specifies special labelling requirements. Standard 2.1.1 requires the mandatory fortification of bread making flour with thiamin.

Inquiry participants had contrasting views about labelling. Jenny Mikakos MP, Member for Northern Metropolitan Region, supported more informative labelling on food products to improve consumer choice and minimise potential health risks:

The use of informative labelling equips consumers to make informed choices about the impact some foods may have on their health (sub. DR90, p 1).

DHS considered that current food labelling requirements ‘are not hugely different to those in place for the past 16 years’, apart from the mandatory introduction of nutrition information panels on labels in 2000 (DHS 2006c, p. 5). CHOICE had a different perspective, arguing that labelling requirements are less prescriptive than the previous approach, which prescribed the content of many food products (sub. 49, p. 5).¹¹ CHOICE supported all the mandatory information requirements on food labels and submitted that, with consumers increasingly interested in how and where their food is produced and a variety of other matters regulation is necessary ‘to ensure that consumers know what they are getting and get what they pay for’ (sub. 49, p. 5). By contrast, the City of Moonee Valley commented that labelling legislation is ‘extremely complex’ (sub. 18, p. 2), the City of Stonnington referred to ‘the complex, highly technical nature of the labelling and compositional standards’ and the City of Yarra similarly noted that labelling ‘requirements are very prescriptive and detailed’ (sub. 43, p. 3).

Other parts of the Food Act are oriented towards self-regulation and prevention, with outcome based provisions; in these areas, the law becomes less clear about what is required to comply with the Act. Section 11(1), for example, provides

¹⁰ The majority of these standards have an impact on public health, although country of origin labelling appears to be an exception.

¹¹ ‘For example, where the Food Standards Code once required canned fish products to have a minimum of 51 per cent fish, the new standard allows any amount of fish to be added but requires the percentage of fish to be stated in the ingredients list’ (sub. 49, p. 5).

that ‘a person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsafe’. While this provision sets out a desired outcome in relation to the safe handling of food, it does not clarify what is required for safe handling, although standard 3.2.2 provides some guidance. Another example of the orientation towards self-regulation is that the Food Act allows most businesses to choose between writing a food safety program specific to their business or using a government approved template.

DHS noted that the regulatory framework permits councils to innovate—for example:

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

Inquiry participants also held different views on food safety programs. DHS perceived them as preventative, involving:

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

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

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

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

3.3.6 Focus on risks

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

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

Woolworths commented that:

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

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

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

¹² DHS pointed out that between 1998 and 2000 Victoria had seven classes of food business for the purpose of implementing food safety programs. The system, however, demonstrated the complexity of defining which businesses should be included in each category (DHS 2006c, p. 6).

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

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

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

- The division of classes of food business premises into just two risk classes is not finely tuned.
- Councils have a legal obligation to register and inspect all food premises each year (s39), unless the premises comes within a class for which the Minister has declared that the registration is to be for a longer period (s40B). Several councils argued that this discourages risk based enforcement; for example, a newsagent selling packaged milk is meant to have a food safety program in the same way as is a restaurant or takeaway outlet (sub. 43, p. 1), although the content of the programs may differ.
- The regulatory structure does not seem to reflect differences across business areas in the intensity of their commercial incentives to provide safe food.

3.3.7 Avoidance of unnecessary costs

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

- The Food Act permits recognition of food safety or quality assurance programs developed by industry, provided that the auditor is approved under the Food Act (sub. 48, p. 6).¹³ DHS argued that this recognition ‘demonstrates the positive orientation within the regulatory structure towards minimising compliance costs’ (sub.48, p. 6). Woolworths commented that third party auditing also:

¹³ If the food safety auditor forms the opinion that a food business has not complied with its food safety program, or the program is not adequate, they must advise the proprietor of the remedial action to be taken (s19M).

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

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

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

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

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

Registration of ‘temporary premises’ is dubious as the Food Act (the ‘Act’) enables only annual registration. In circumstances where operations want only one day or a series of consecutive days, conditional annual registration appears the only means and the legal standing of this approach is uncertain. The issue of

a ‘permit’ as mentioned in the Department of Human Services (‘DHS’) Events Food Safety Template has no basis in law. (sub. 37, p. 2)

AIEH noted that the Food Safety Unit has produced a guideline:

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

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

Fourth, businesses operating in more than one state may face additional costs in complying with different regulatory requirements. The varying costs may arise from jurisdictions adopting different parts of the Food Standards Code. At present, state and territory authorities determine which businesses must have FSPs. Victoria was the first Australian jurisdiction to implement these programs (sub. 38, p. 4), following ‘a substantial number of outbreaks of foodborne illness in relation to the smallgoods industry and certain other manufactured food sectors within a very short period of time (approximately several months)’ (DHS 2007b, p. 11). Victoria is at present the only jurisdiction to require food businesses—with a small number of exceptions—to implement FSPs, and the only state imposing food safety programs on charitable groups (DHS 2006c, p. 2).¹⁴ This position will change, however, in October 2008 when standard 3.3.1 will require food businesses that process food for service to vulnerable persons to implement a documented and audited FSP.

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

Fund raising events, which raise funds from food sold at community or charitable events and not for personal financial gain, do not have to prepare a FSP under the Food Standards Code. In Victoria, however, such events must

¹⁴ Victoria has not adopted standard 3.2.1 of the Food Standards Code, which is the standard that imposes the requirement for types of business to implement FSPs. The Victorian Government’s decision in 1997, reaffirmed in 2001, to introduce FSPs was made before the Food Standards Code was introduced. DHS noted that the Food Act would need to be amended to adopt standard 3.2.1 (DHS 2006c, p. 2).

have food safety programs.¹⁵ The different requirements in Victoria need not imply that the state government is imposing unnecessary costs; the additional costs of more extensive requirements may be less than their additional benefits. A regulatory impact statement would have indicated whether this is so, but the Commission understands that one was not prepared.¹⁶ If data limitations (see chapters 5 and 6) prevented the quantification of costs and benefits, an incremental approach might have generated information on whether applying FSPs more extensively was subsequently justified.

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

Sixth, inquiry participants noted that differing council interpretations of legal requirements add to the costs of businesses operating in more than one municipality. Councils generate their own food safety guidelines on what is needed to comply with the outcome based provisions of the Food Act. The relevant council may, for example, issue a guideline on the minimum temperature requirements for frozen foods, set out personal hygiene practices required of food handlers (for example, to tie back or cover long hair) or establish minimum cleaning procedures (such as washing surfaces with hot water of at least 45°C).¹⁷ In addition, many councils have made local laws relating to food under the *Local Government Act 1989* (Vic.). Port Phillip City Council, for example, has passed a local law¹⁸ to regulate and control footpath activities, including footpath trading. The City of Yarra argued that some councils have introduced local laws to overcome perceived difficulties with administering the Food Act. While councils are legally constrained in making local laws relating to food (s63B), the City of Yarra considered that DHS does not enforce this constraint (sub. 43, p. 4).

¹⁵ Providers can elect to develop their own program or use a template developed by DHS.

¹⁶ A regulatory impact statement was not required under the *Subordinate Legislation Act 1994* (Vic.) because changing the businesses covered by FSPs did not require a statutory rule.

¹⁷ See council information at www.vicnet.net.au/government/localgovt/.

¹⁸ Local law no. 7, Footpath Activities.

3.3.8 Flexibility

Some inquiry participants suggested that the system for approving new food products under the Food Standards Code (box 3.2) is insufficiently flexible. The Australian Industry Group commented that the process for approving new activities can be protracted and take a number of years (sub. 32, p. 2). The Australian Food and Grocery Council noted that the health benefits of food are a key driver for innovation, but that the regulatory process—including the ‘cumbersome legislative process for developing or amending a standard’—works against effective innovation (sub. 17, p. 5). On the other hand, CHOICE submitted that proposed changes to the process would remove public consultation, threaten the integrity of the process and undermine its primary objectives (sub. 49, p. 3). The *Food Standards Australia New Zealand Amendment Act 2007*, passed by the Commonwealth Parliament in June 2007, provides for new and stricter timeframes for dealing with applications to amend the Food Standards Code, with effect from 1 October 2007.

Box 3.2 Previous process for seeking a food standard

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

Source: Based on the Commission’s understanding of the process under the FSANZ Act.

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

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

3.3.9 Simplicity

Unnecessarily complicated regulation adds costs and reduces compliance. DHS, noting a general 'lack of understanding of the Food Standards Code, particularly by small business', commented:

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

George Weston Foods noted that the increasing number of Acts and Regulations make it hard for businesses to identify relevant laws, understand their practical application and know whom to deal with (sub. 52, p. 5). While the introduction of template FSPs helps, the Commission was advised of small firms and community groups that found templates long and complicated (chapter 12).

3.3.10 Compliance and enforceability

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

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

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

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

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

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

Third, many submissions supported DHS’s view that:

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

Coles Myer pointed out that non-uniform enforcement of labelling requirements can cause distortions between food businesses (sub. 7, p. 3). While a key task in enforcing the Food Act is to ensure all food businesses understand their obligations and responsibilities, the Commission’s review of council websites revealed significant differences in councils’ approach to food safety compliance education. The City of Casey, for example, provided relatively specific, user friendly guidelines for complying with regulatory obligations, whereas the City of Port Phillip appeared to provide only more general guidelines on specialised areas (mobile food vehicles, footpath trading and temporary food premises) (City of Casey 2007; City of Port Phillip 2007).¹⁹ This issue is particularly significant for food businesses operating in several municipalities.

¹⁹ This observation is based on a search for ‘food safety’ on the websites of the relevant local councils.

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

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

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

3.3.11 Performance reporting

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

DHS performance measures include the number of food recalls, the number of complaints resolved, food safety confidence surveys and the number of FSPs registered. DHS does not measure performance against objects of the Food Act, for which local government is responsible (DHS 2006c, p. 2). It advises councils on performing their obligations under the Food Act, but it does not collect data on council activities (for example, data on the number of registered premises in each municipality, the number of inspections or particulars of enforcement action). Further, DHS does not normally publish information about food

contamination incidents and has no legal obligation to report the outcomes of regulatory activities to promote public health. And it does not normally report breaches of the Food Act, even when such reporting might assist compensation claims regarding losses caused by the consumption of contaminated food. In the view of Restaurant and Catering Victoria (sub. 36, p. 7), ‘how well the system is delivering its desired outcomes is not placed on the public record at any stage’.

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

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

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

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

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

Restaurant & Catering Victoria pointed out that the current situation:

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

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

3.3.12 Transparency

As noted in chapter 2, information asymmetries facing consumers provide a possible rationale for government intervention. Therefore measures that improve the ability of consumers to differentiate between high and lower safety providers of food can reinforce the strong market incentives facing businesses.

A number of participants considered that insufficient information is available to judge the safety of food retail premises such as restaurants and cafes. It was argued that the results of regulatory inspections and audits should be publicly available to enable consumers to make informed choices.

The Food Act, as presently drafted, restricts the disclosure of information gained in its administration to limited circumstances, such as with the consent of the person from whom the information has been obtained. Chapter 10 makes a recommendation to modify this restriction and permit disclosure of successful prosecutions and closure notices.

3.3.13 Education

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

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

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

Education is discussed further in chapter 10.

3.4 Conclusion

The regulatory framework in Australia is still evolving, following a significant review in the late 1990s. Inquiry participants have identified areas in which there is scope to improve the framework, and later chapters discuss possible improvements. The chapters are organised by tier of government—national, state and local—although the regulatory arrangements are interlinked. At the national level, comments are made on possible improvements to the operation of ANZFRMC (chapter 7). At the state level, an important issue remains one that Victoria’s Auditor-General identified in 2002, namely, because the Food Act does not assign responsibility for overseeing the performance of local government, the extent to which councils and the sector as a whole meet their legislative responsibilities is not known (AGV 2002, p. 75). Chapters 8, 9 and 10 discuss suggestions for improving this and other aspects of the state regulatory framework, and chapter 11 discusses local government issues.

4 The food sector

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

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

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

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

4.1 Victoria's food sector

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

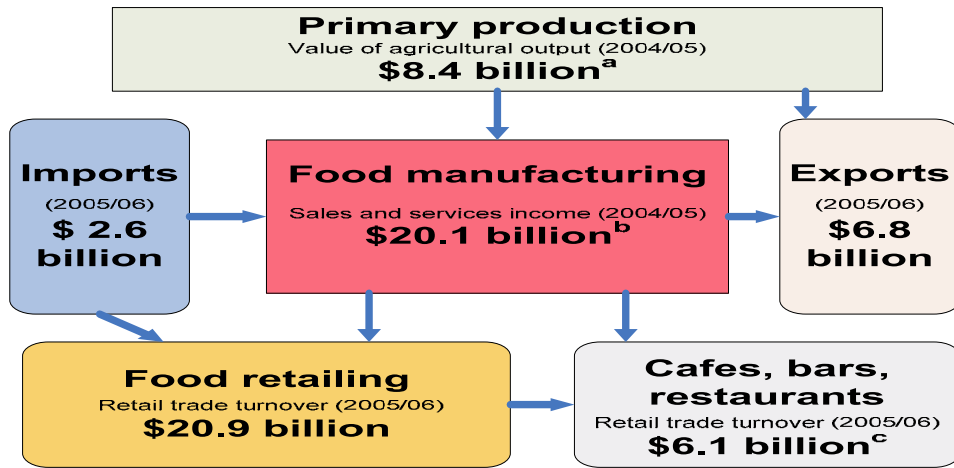
¹ The food sector is defined as:

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

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

not entirely comparable and should not be taken to reflect the value that is added at each stage.²

Figure 4.1 The Victorian food supply chain



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

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

Figure 4.2 illustrates how the shares of total sector employment in the various stages of the supply chain have changed over the past 10 years.³ Food retailing currently provides over 35 per cent of total food sector employment. The next largest employer is cafés, bars and restaurants at 23 per cent, up from 16 per cent in 1996. The share of primary production fell from 27 per cent in 1996 to under 19 per cent in 2006.

The Australian Food and Grocery Council (AFGC) highlighted that:

Australia’s food, drink and grocery products industry...has an annual sales and service income in excess of \$68 billion and employs 200 000 people – almost

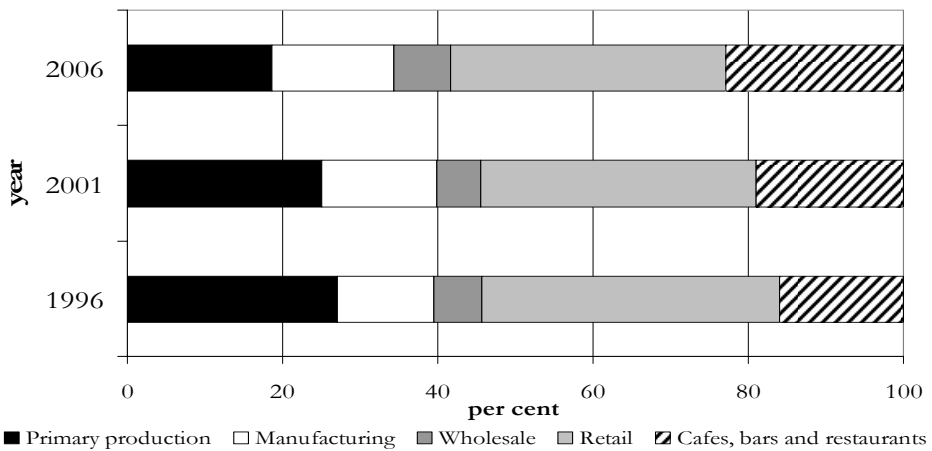
² This figure presents the major components of the domestic food supply chain, along with measures of output (not value added) that each component generates, and the value of imports and exports for Victoria. The output measures are not entirely comparable and without value added data, figure 4.1 should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

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

one in five of the nation’s manufacturing workforce. Of all Australians working in the industry, half are based in rural and regional Australia, and the processed food sector sources more than 90 per cent of its ingredients from Australian agriculture. (sub. DR106, p. 3)

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

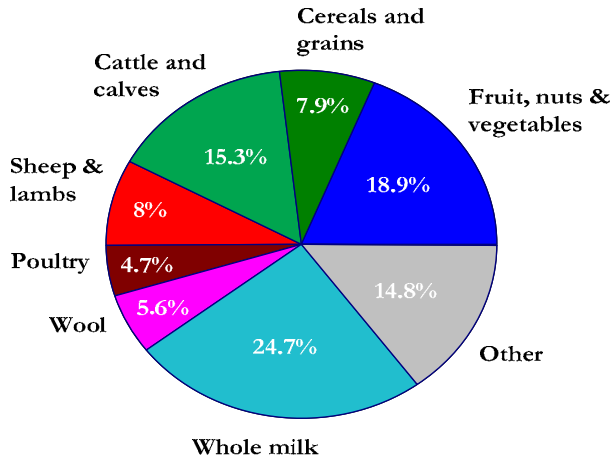
Figure 4.2 Victorian food sector employment, shares by industry



Source: ABS 2006a.

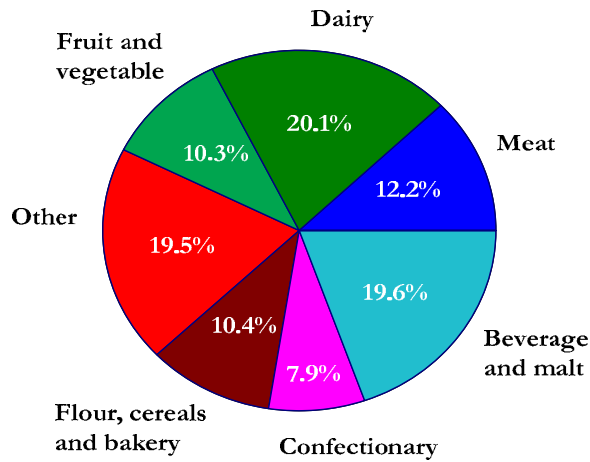
Each stage in the supply chain involves a wide range of activities and varies greatly in its relative size. Whole milk and meat production make up 53 per cent of Victoria’s gross agricultural output (figure 4.3) and dairy and meat together contribute 32 per cent of food manufacturing value added (figure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

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



Source: ABS 2006c.

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

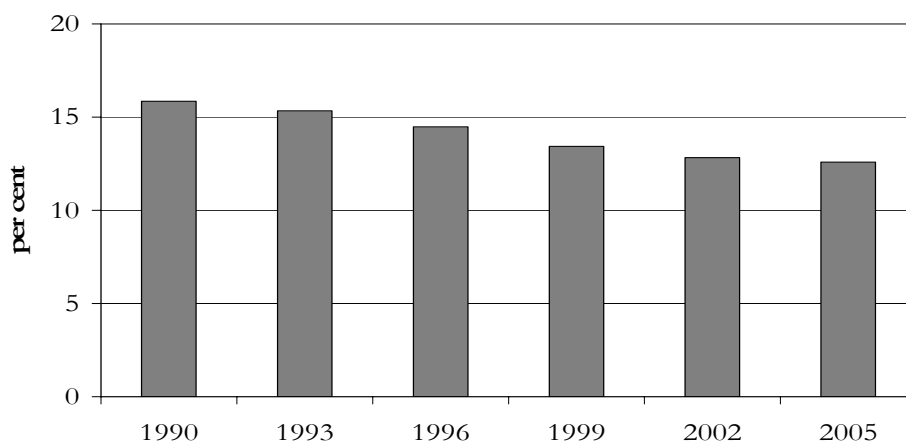


Source: ABS 2005a.

4.2 Changing consumer preferences

Consumer spending on food and beverages⁴ in Victoria grew at an average annual rate of 1.8 per cent (constant prices) between 1990 and 2005—a low rate relative to gross state product (3 per cent) and overall household spending (3.4 per cent) (ABS 2006f, 2006g). Consequently, food and beverages' share of total household consumption expenditure declined from 15.9 per cent in 1990 to 12.6 per cent in 2005 (figure 4.5). On the other hand, Victorians have been eating out more in recent years, with an increase in per household spending (expressed in 1989-90 dollars) on meals out and takeaways between 1994-95 and 2003-04 (though spending fell between 1998-99 and 2003-04) (figure 4.6).

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

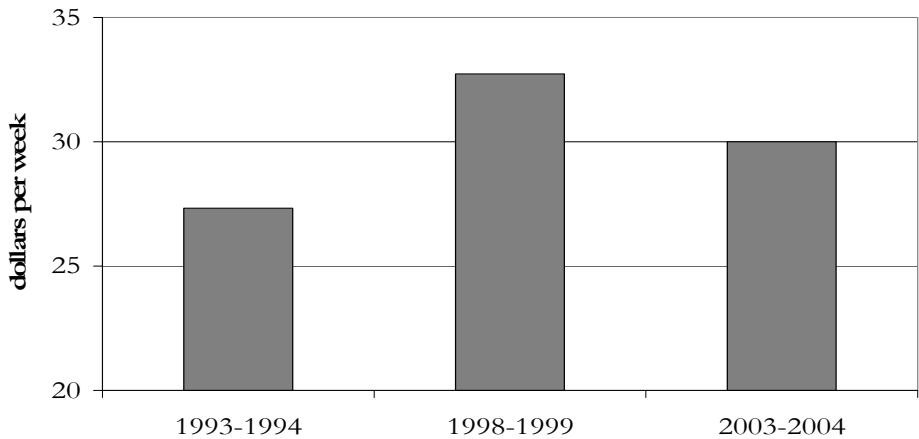


^a Excludes household spending on food and beverages outdoors (for example, bars and restaurants).

Source: ABS 2006f.

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

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



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

Source: ABS 2006h.

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

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

And, as noted in chapter 3, health conscious consumers are increasingly demanding 'healthy' foods. Table 4.1 reports changing Australian preferences for food over the second half of the twentieth century.

Implications for regulation

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

Table 4.1 **Apparent per person consumption of selected foods^a**

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

^a 'Consumption' is not 'intake'. Apparent consumption data for most items are derived using supply information (production, change in stocks, and imports), and utilisation (exports, non-food use, and use in processed food) of foodstuffs. ^b Excludes canned meat, bacon and ham. ^c Expressed as milk solids fat and non-fat equivalent. ^d Fruit and vegetables expressed as fresh product equivalent. ^e Expressed as fat content equivalent. **na** Not available.

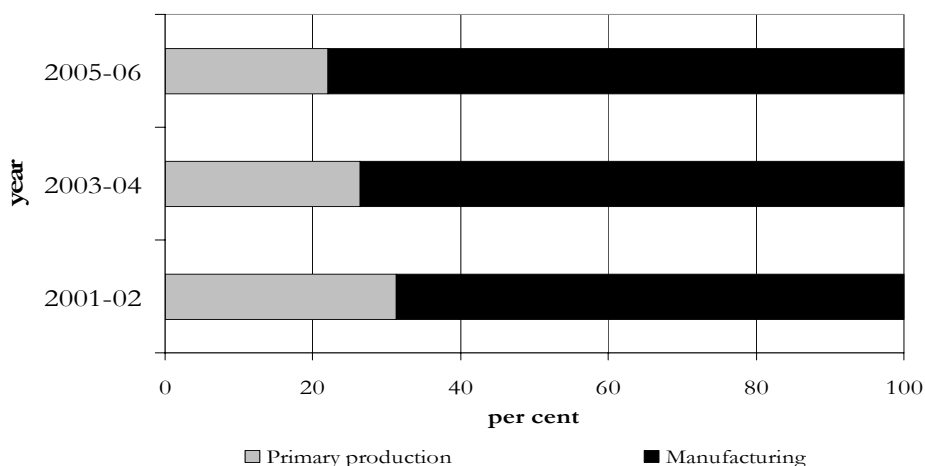
Source: ABS 2000c.

4.3 International trade opportunities

Victoria is a net exporter of food. In the year to June 2006, Victoria's food and beverage exports were worth \$6.8 billion—\$1.5 billion in primary produce and \$5.3 billion in manufactured products. The share of food manufacturing in Victoria's food exports has increased in recent years (figure 4.7). Dairy products contribute over 40 per cent of food manufacturing exports.⁵ Export growth in the beverage and malt manufacturing segment has been particularly significant (driven by wine), increasing by over 70 per cent (in nominal terms) between 2001-02 and 2005-06 (ABS 2006b).

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

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



Source: ABS 2006b.

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

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

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

- 18 per cent of the survey respondents nominated food safety as the most important attribute of food products (ranked third after price and quality)

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

- food safety ranks as the most important of the ‘credence’ attributes of food products
- high importance is attached to the ability to handle food safety incidents. (DPI 2004, pp. 3–5)

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

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

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

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

Implications for regulation

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

4.4 The importance of innovation

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

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

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

Developing genuinely new food products can require significant expenditure on basic research and development (R&D) and involve considerable risk. Product innovation, however, often involves incremental change, which may not need large R&D spending (AFFA 2002, p. 15). As well, R&D may be undertaken overseas. Consequently, food manufacturing tends to be less R&D intensive than other manufacturing industries. Reflecting their dominance in food manufacturing⁷, New South Wales and Victoria accounted for over 70 per cent of national R&D expenditure in the food sector in 2004-05 (ABS 2006i).

Implications for regulation

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

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

Box 4.1 Innovation in the food sector

Fonterra

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

Buttercup Wonder White

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

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

Whey protein isolate

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

Production of WPI began in 2000 and customers have responded favourably. The largest use for WPI is in powdered form in health beverages.

Sources: AFFA 2001; Invest Australia 2006.

Box 4.2 Innovation and regulation

Plant sterols

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

Cadbury Schweppes

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

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

4.5 Diverse firm sizes

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

Primary production

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

Victoria has over 48 000 farms, of which almost 34 000 are run by the farmer, with no employees. There are 912 commercial fishing operations, of which 570

are run by the proprietor. Of the almost 50 000 businesses in primary production, only 6200 (dairy farms, aquaculture businesses and wildcatch harvest enterprises) are required to register under Victoria's food legislation (DFSV 2006b, p. 19; PrimeSafe 2006, p. 51).

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

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

np: not published

Source: ABS 2005d.

Food manufacturing

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

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

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

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

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

Food wholesaling

Food wholesalers purchase food products for resale. While employment is small in the Victorian food wholesale industry compared with manufacturing, it is

more fragmented, with many more businesses. Over 5700 food and farm produce wholesalers⁸ operate in Victoria, and most have fewer than 20 employees.

Food retailing

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

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

Cafés, bars and restaurants

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

Implications for regulation

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

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

⁸ This figure includes tobacco product wholesalers.

4.6 Diverse supply chains

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

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

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

Implications for regulation

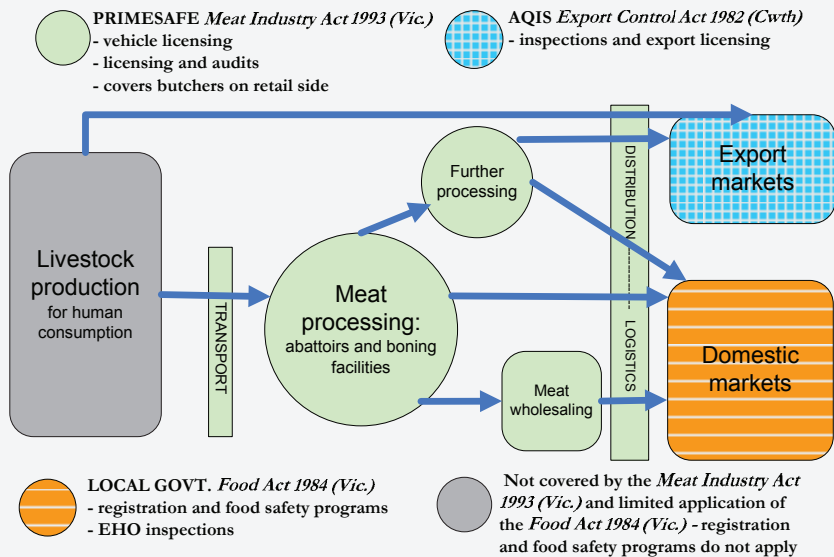
The length and complexity of food supply chains, and the points at which food safety hazards can enter the chain, differ across industries. Regulatory systems need to account for these differences in complexity and risk. Regulation could be more effective if it targets the points of food supply chains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

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

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

Regulation of the meat supply chain (Victoria)

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



Core provisions of the *Food Act 1984* (Vic.) apply across the chain

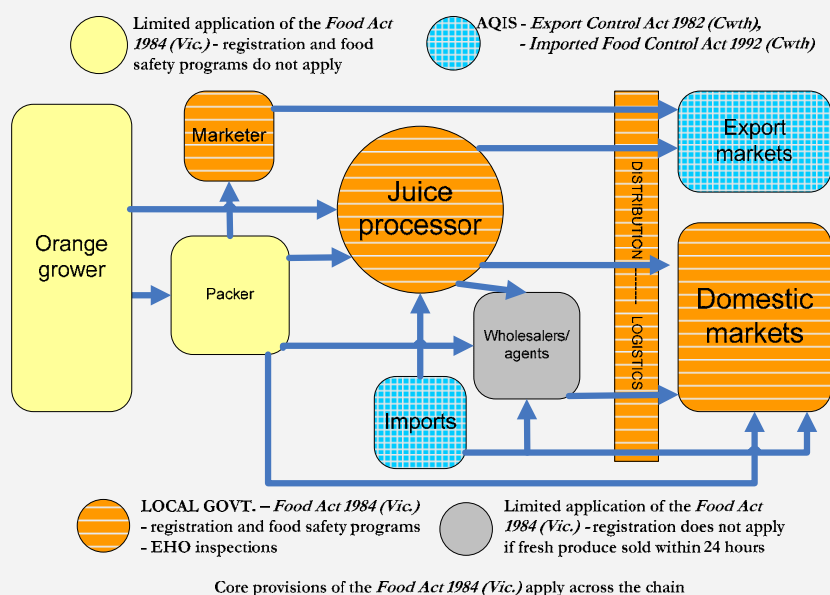
Sources: Short, Chester & Berry 2006; Spencer 2004.

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

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

Regulation of the orange supply chain (Victoria)

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



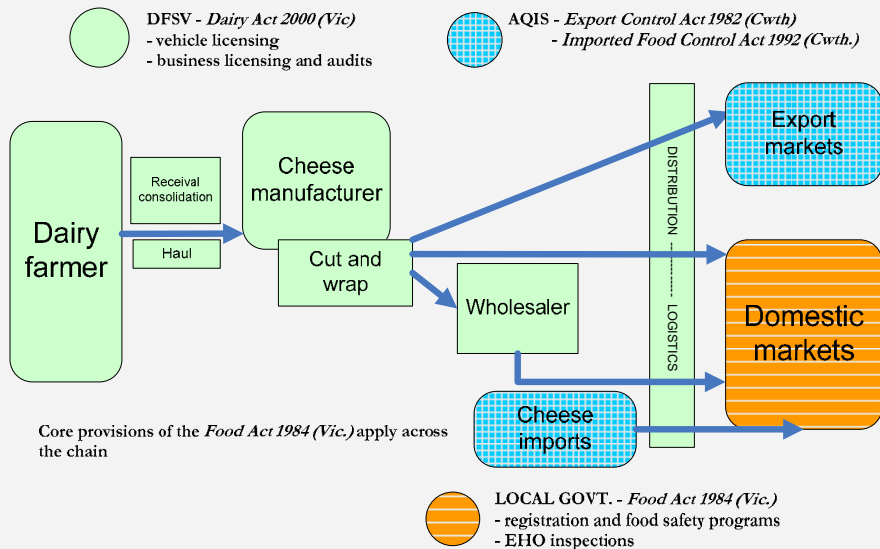
Sources: Parliament of NSW 2005; Retailworks 2001; Spencer 2004.

Box 4.5 Case study: the supply chain for cheddar cheese

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

Regulation of the cheese supply chain (Victoria)

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



Sources: Business Victoria 2007; Spencer 2004.

4.7 Trends in business structures, governance and contracts

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

Vertical integration

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

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

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

- Many businesses in the pigmeat industry are vertically integrated, in some cases extending from pig production to secondary processing of pigmeat into bacon, ham and smallgoods. In Victoria, KR Castlemaine Foods is involved throughout the supply chain, while Gumby is involved in pig farm operations, abattoirs and boning rooms (PC 2005b, p. 192).
- Victoria is the second largest producer of chicken meat, most of which is sold through retail outlets. The Australian industry is dominated by two large, vertically integrated companies (Inghams Enterprises and Barter Enterprises), which own breeding farms, multiplication farms, hatcheries, feed mills, some growing farms and processing plants. Vertical integration permits control over the costs and timing of all operations in the supply chain (ACCC 2004b, pp. 3–5).

Contracts

Supply contracts between participants in the food supply chain are another way to provide predictable arrangements and encourage commitment and investment. Stable arrangements between food suppliers can contribute significantly to food

safety. Contracts may include specifications to encourage food safety—for example:

- While much of the chicken meat industry is vertically integrated, growing services are typically outsourced, although the processors control the inputs and rearing specifications. The Victorian Farmers Federation stated that contracts between chicken growers and processors cover safety issues such as temperature monitoring and veterinary product use (sub. 40, p. 6).
- The supply of vegetables to processors of beans, peas and potatoes is made under contracts between growers and processors. These contracts specify yield performance, product specifications, timing, area, price and terms. There are strict penalties for not meeting product specifications to avoid wastage (Spencer 2004, p. 69).
- Between 50 per cent and 70 per cent of fresh fruit and vegetables sold by major retailers is sourced through direct contracts with growers, which can ‘influence the adoption of better farm level production processes that produce a more sustainable, higher quality output’ (AFRG 2006, p. 71).

Purchaser audits

Locally, Woolworths requires its suppliers to implement a quality management system that meets the Woolworths Quality Assurance Standard, and to be regularly audited by a Woolworths certified auditor (Woolworths 2005). Coles also imposes requirements on its suppliers. Proprietary brand suppliers⁹ must adhere to general standards, such as compliance with all relevant government regulation, appropriate temperature requirements in food transportation and operational product recall procedures. Coles’ housebrand suppliers¹⁰ must comply with more specific, internationally recognised standards (such as the British Retail Consortium Global Standard for Food) backed by independent third party audits. Coles requires, for example, that all suppliers of fresh produce (such as fruit, vegetables and nuts) have a Hazard Analysis and Critical Control Points (HACCP) food safety program that is audited and certified by an accredited third party (Coles Myer 2007).

DAFF noted:

... leading retailers are also developing proprietary safety certification standards that exceed government requirements for food safety. An example is the

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

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

EUREPGAP standard, which is becoming a requirement for entry to some important, high value markets in Europe. (DAFF 2005, p. 12)

Foreign ownership

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

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

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

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

Horizontal integration

Chapter 2 noted that larger businesses may achieve lower unit costs by spreading the fixed costs of food safety across larger sales volumes. Firms may integrate horizontally for many reasons, but having to meet food safety obligations may occasionally contribute. The Meat Research Corporation (cited in PC 1998, p. 2) suggested, for example, that the imposition of stricter hygiene and slaughter standards contributed to the rationalisation of meat processing plants.

Industry codes of practice

Voluntary codes of practice may encourage food safety. For example:

- the food industry, in conjunction with the Australia New Zealand Food Authority (now FSANZ) developed a code of practice for voluntary self-regulation of business claims about the nutrient content of food (the Code of Practice on Nutrient Claims) (chapter 7).
- the Australasian Bottled Water Institute (ABWI) has a voluntary 'model code' that sets minimum standards for its members in the bottled water business, in areas such as sanitary operations, hygienic design and source

water monitoring. Requirements set out in the model code ‘exceed those of mandatory food law as set out in the Australian and New Zealand Food Standards Code’ (ABWI 2005, p. 4). Compliance with the model code is a condition of ABWI membership, and it is enforced through a plant inspection program. Members must achieve a certain score from inspections: those who pass can use the ‘Certified Bottler’ logo, and those who achieve high scores are also advertised by ABWI as achieving ‘standards of excellence’.

The scope to address food safety and related issues through the use of voluntary codes of practices is explored in chapter 7.

External accreditation

Food businesses can strengthen their reputation for safe food products by seeking accreditation under proprietary quality assurance programs. These programs require participants to identify and address risks to product quality and safety. Dairy company Murray Goulburn’s processing plants are accredited to ISO 9001:2000 and NSF HACCP 9000 standards, for example. The company states that ‘quality and safety are the foundation of Murray Goulburn’s reputation’ (Murray Goulburn 2007). Another dairy company, Parmalat, has ISO 9001 Quality Management Systems at its plants, and operates internal audits for all its manufacturing and laboratory operations (Parmalat Australia 2007).

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

Insurance

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

Implications for regulation

Many different types of business arrangements in the food sector, while having evolved for many reasons, either directly or indirectly contribute to managing food safety. There may be less need for regulation to promote food safety when,

for example, firms are already complying with internationally recognised standards as part of their commercial arrangements. In such cases, regulation may add costs while providing few, if any, benefits. In addition to imposing unnecessary costs on the businesses concerned, regulating such businesses may reduce regulators' capability to focus on areas where regulation is needed. Ways to focus regulatory effort are discussed in chapter 9.

4.8 The location of food businesses throughout Victoria

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

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

Implications for regulation

Regulated food businesses are likely to be located in every region of Victoria. Given that many of these businesses will be small, and that there are over 40 000 businesses across Victoria in the food sector to which the licensing framework applies, regulators face a considerable enforcement challenge. Strategies for focusing regulatory effort on high risk industry segments are likely to be particularly important in such a complex environment involving such a large number of firms spread across Victoria. Chapter 9 describes the development of such strategies.

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

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

Source: ACIL Tasman 2004.

4.9 Conclusion

The food sector is a complex, continually evolving network of businesses of widely divergent types and sizes, interconnected through a multitude of business relationships and arrangements. Innovation is often vital for commercial success in both domestic and export food markets and regulatory arrangements therefore need to be able to accommodate the development of new food products. Food safety risks are not uniform across businesses, but a significant array of commercial practices and arrangements promote food safety. Given the variability of food safety risks and the number of businesses in the food industry, it is important that regulators focus their limited resources on higher risk food safety issues. Chapters 8 to 12 provide proposals for better targeting of regulatory effort.

5 Are the objectives of Victorian food regulation being met?

5.1 Introduction

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

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

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

5.2 Reducing foodborne illness

5.2.1 Inquiry participants' views

Inquiry participants had a range of views on whether regulation reduces foodborne illness. Nearly all of the comments related to inquiry participants' perceptions; few submissions provided specific evidence.

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

Mr Roger Pierotti, while noting ways in which regulation could be improved, commented that mandatory food safety programs requirements have not only led to a reduction in significant food poisoning outbreaks in Victoria but also improved the skills and competencies of the food handling workforce (sub. 30, p. 1). The President of the Parents Association of St Bede's Primary School (North Balwyn) agreed that food regulations have reduced outbreaks and made people more health and safety conscious when preparing food (sub. 15, p. 2). And the Municipal Association of Victoria made similar comments (sub. 41, p. 9). Several councils made positive comments on how current food regulation is effective in regulating the food industry (Moonee Valley City Council, sub. 18, p. 1) and has had positive effects on the food sector (City of Whittlesea, sub. 31, p. 1; Maroondah City Council, sub. 33, p. 1) with no negative impacts on consumer confidence (Brimbank City Council, sub. 5, p. 2).

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

The City of Melbourne suggested that the introduction of food safety programs has yet to demonstrate an improvement in food safety standards within its municipality, because its records demonstrated that in the past three years approximately 40 per cent of food premises were found to be less than satisfactory, and that only a relatively small proportion of businesses effectively implement their programs (sub. 16, p. 1). The City of Greater Dandenong expressed similar views, noting that 50 per cent or more of food businesses do not implement their food safety programs in their daily management of food

operations (sub. 12, p. 3). Several other councils raised concerns that food safety programs work well for larger businesses but have not been effective in reducing food safety risks in smaller food manufacturers and suppliers (Moreland City Council, sub. 51, p. 2; City of Stonnington, sub. 25, p. 3), and that the system is failing to meet the objectives of food regulation (City of Port Phillip, sub. 13, p. 1).

5.2.2 Trends in foodborne illness

Given the lack of consensus among submissions, the Commission reviewed three sets of data about foodborne illness, to assess whether improvement has occurred in the following areas since the 2001 introduction of the current regulatory framework:

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

Trends in foodborne illness are a potential indicator of regulatory effectiveness.¹ The Food Standards Agency in the United Kingdom (UK) established as its ‘key aim to reduce the incidence of foodborne disease in the UK by 20 per cent by April 2006’ (Bell 2006, p. 4). Before the agency adopted this target, it determined a baseline measure of foodborne disease in the UK for five pathogens. It has recorded comparable data for each subsequent year to monitor changes against the baseline (Bell 2006, pp. 10–1).

Food sampling results could also be used to assess the effectiveness of regulation. Despite s32 of the Food Act requiring councils to submit at least three samples of food each year per thousand persons of population in the municipal district, and 15 000 food samples being collected annually statewide, the results are not reported to the Department of Human Services (DHS) or publicly released. Chapter 9 further discusses food sampling.

Notifications of foodborne illness

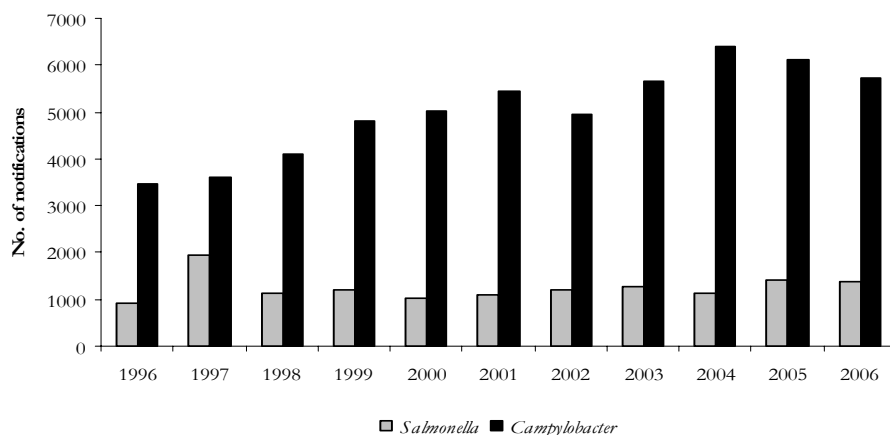
Medical practitioners have a legal obligation to notify Victoria’s DHS of cases of specified diseases, including various pathogens. Figure 5.1 illustrates notifications of *Campylobacter* and *Salmonella* infections—the most commonly notified foodborne pathogens in Victoria—between 1996 and 2005.² OzFoodNet, a

¹ If, however, food safety outcomes such as the incidence of foodborne illness are determined primarily by industry incentives and not by regulation, then aggregate trends will be a poor indicator of regulatory effectiveness.

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

national network of epidemiologists established in 2000 and funded by the Commonwealth Government Department of Health and Ageing, estimated that about 87 per cent of *Salmonella* infections and 75 per cent of *Campylobacter* infections are acquired through foodborne transmission (DHS 2007b, p. 1). Figure 5.1 suggests a steady increase in notifications of *Campylobacter* since 1996, while notifications of *Salmonella* are reasonably stable.

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



Source: DHS 2007b, p. 2.

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

Outbreaks of foodborne illness

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

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

		2001	2002	2003	2004	2005
Outbreaks	Australia	4.39	4.65	4.95	5.83	4.99
	Victoria	4.74	5.30	4.04	4.20	5.34
People affected	Australia	99.11	91.93	84.26	102.62	96.42
	Victoria	163.78	175.20	100.85	109.95	159.92
Hospitalisations	Australia	3.57	5.21	5.25	5.73	9.14
	Victoria	3.91	5.91	5.46	7.40	7.92

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

Sources: OzFoodNet 2002, 2003, 2005, 2005, 2006.

DHS has provided a longer time series of information, covering 206 outbreaks³ in Victoria that affected 5857 people between 1997 and 2006 (DHS 2007b, p. 5). This time series does not reveal a clear trend⁴ (figure 5.2).

Implications for the effectiveness of regulation

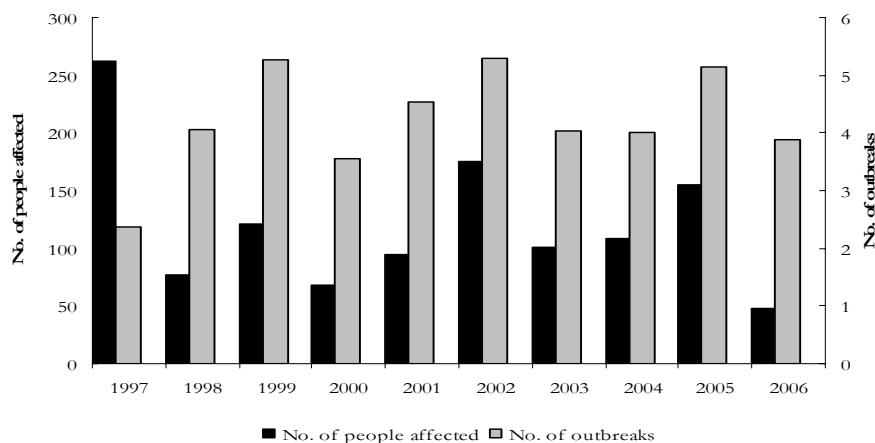
It is difficult to draw strong conclusions from notification or outbreak data about the effectiveness of regulation in reducing foodborne illness. Given factors such as the rising proportion of the population aged over 65 (up from 12.8 per cent to 13.5 per cent between 2000 and 2005), the number of reported notifications and outbreaks might have been expected to increase. Cultural shifts in food preferences and warmer weather might also influence foodborne illness. In addition, DHS noted that an increasing proportion of foodborne illnesses are being reported, suggesting the data in figure 5.2 may underestimate the effectiveness of regulation (sub. 48, p. 7). On the other hand, spending on restaurant meals and takeaway foods fell by 9 per cent in real terms between 1998–99 and 2003–04 (ABS 1999a, 2006h), which might be expected to reduce

³ An additional three multi-state outbreaks occurred in 1996, 1997 and 1998 (DHS 2007b, p. 3) and may not have originated from Victoria.

⁴ The number of outbreaks per million in figure 5.2 is calculated using the number provided by DHS, divided by the Victorian population from 1996 to 2005. While that rate has been quite stable, the number of outbreaks has been volatile since 1999. Also, the numbers of outbreaks/cases per million for 2001–05 in figure 5.2 slightly differ from the numbers in table 5.1, because the OzFoodNet numbers capture some waterborne illness outbreaks/cases, which DHS excluded.

the number of food outbreaks, given that food prepared in restaurants is the largest source of food outbreaks (table 5.3). Also, the proportion of the population under 4 years old—another vulnerable group—fell from 6.5 per cent to 6.1 per cent between 2000 and 2005 (ABS 2000a, 2005c).

Figure 5.2 **Outbreaks and people affected by food related illness, Victoria (per million population)^a**



^a The number of outbreaks and people affected per million population are calculated by dividing the DHS data by Victoria's population (accessed from the Australian Bureau of Statistics).

Sources: ABS 1997, 1998, 1999b, 2000b, 2001b, 2002b, 2003, 2004, 2005b; DHS 2007b.

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

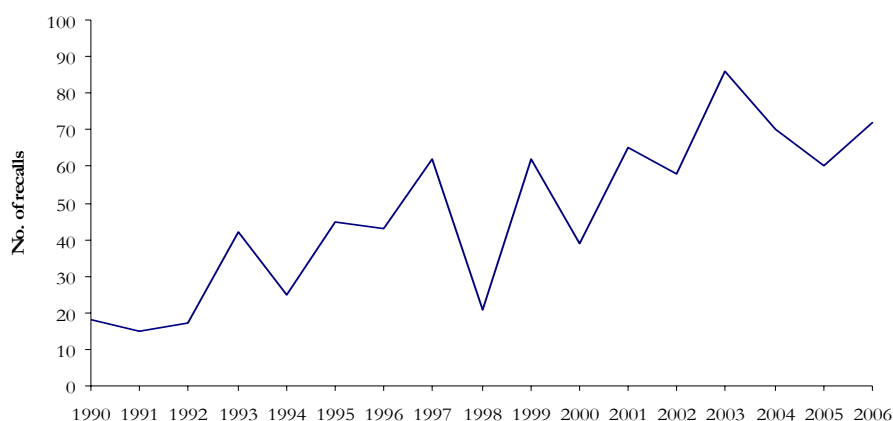
Interstate comparison of notification and outbreak data do not show Victoria performing consistently better than other states and territories despite its stricter food regulation.⁵ However, such comparisons are of little value due to the short timeframe covered by the data and difficulties in determining whether changes in outbreaks and notifications are due to natural variability, the impact of regulation or other factors.

⁵ Outbreak and notification data for the states and territories was sourced from OzFoodNet (2002–06) annual reports.

National recalls

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

Figure 5.3 Food recalls, Australia^a



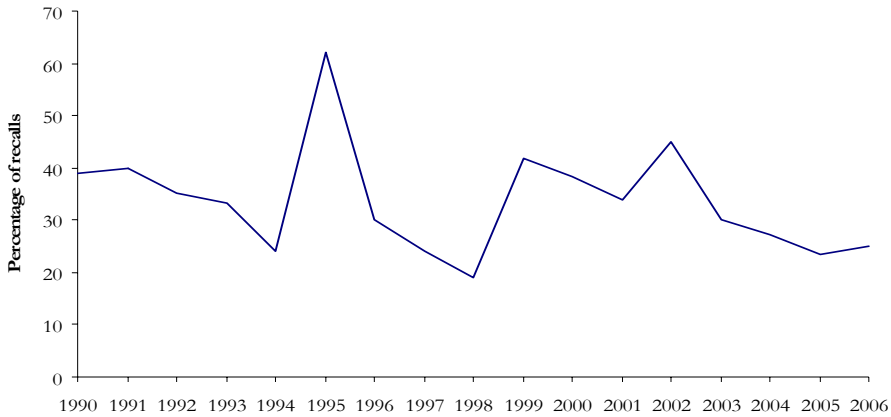
^a A food recall is defined as 'an action taken to remove from sale, distribution and consumption foods which may pose an unacceptable safety risk to consumers' (FSANZ 2004f). It may be initiated by a variety of sources (e.g. manufacturers, government agencies and consumers) and are often precautionary in nature.

Source: FSANZ 2004f.

Figure 5.4 shows that the proportion of recalls due to microbiological hazards has been reasonably stable, so the increase in recalls is probably not due to worsening food safety performance. Three other causes of recalls (foreign matter, processing faults/product deterioration and 'other') appear to be declining over the long term, while recalls due to chemical contamination show a slight increase. On the other hand, since December 2002 (when mandatory food allergen warnings on labels were introduced), the proportion of recalls caused by labelling problems has risen sharply, notwithstanding declines in 2005 and 2006 (figure 5.5). The increase in total recall numbers in recent years can thus be largely attributed to failure to meet new labelling requirements. Overall, however,

it is difficult to draw conclusions from recall data about the effectiveness of food safety regulation.

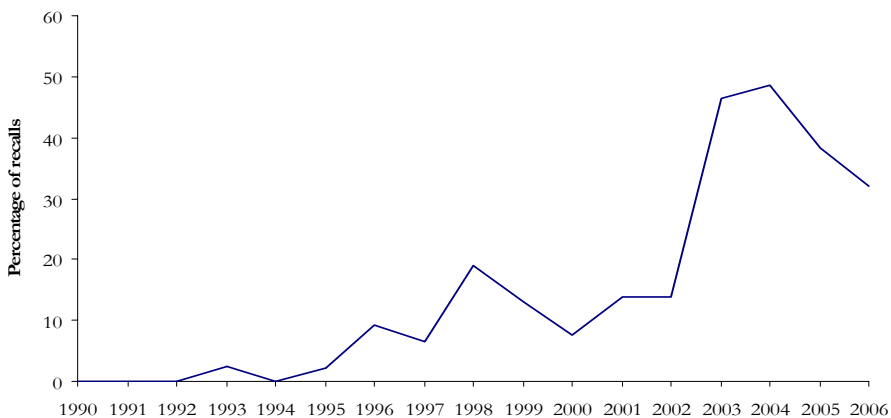
Figure 5.4 Percentage of food recalls due to microbiological contamination, Australia^a



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

Source: FSANZ 2004f.

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



Source: FSANZ 2004f.

5.2.3 The contribution of specific regulations to reducing foodborne illness

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

Nationally, Food Standards Australia New Zealand (FSANZ) has designed evaluation projects to assess the impact of various food standards, but results are not yet available. In Victoria, DHS assesses the impact of regulation through regular surveys (box 5.1). Like the FSANZ work, these studies have examined the impacts of food regulations on intermediate indicators rather than on actual food safety. They indicate that consumers are moderately confident about the safety of food from restaurants, that food businesses are better equipped to prepare safe food and that food safety knowledge has improved significantly among staff handling food.

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

5.2.4 Performance reporting by regulators

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

⁶ Deighton-Smith (2006, pp. 12–5) gave examples from food and other regulation of a 'failure of regulators to produce logical, mutually supportive combinations of process, performance and/or prescriptive regulation'.

Box 5.1 Surveys by the Department of Human Services

A 2005 survey indicated that consumer confidence in the safety of food had not changed since 2002. Victorians continued to be almost unanimously confident in the complete safety of food prepared in their homes, moderately confident in the safety of food from restaurants, and not confident in the safety of food prepared at takeaways and community events. In 2005, 94 per cent of Victorians indicated they were extremely confident, very confident or confident that the food they buy and eat in Victoria is safe. Demographic differences in the level of confidence also remained unchanged. Older, blue collar and female demographic groups continued to be less confident in the safety of food from most sources, compared with younger, white collar males.

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

Surveys suggest food handlers' awareness of food safety practices increased significantly between 2002 and 2004, although this could have resulted from an increase in the number of food safety supervisors qualified with diploma/TAFE certificates in full time employment. Results from the 2006 survey suggest that knowledge of food safety has reached a plateau. The results indicated no evidence that changes in food safety knowledge among junior food handlers can be directly attributed to knowledge transfer from food safety supervisors. The survey also found barriers to good food safety practice, even when staff have high levels of knowledge about food safety and when clear company guidelines exist.

Sources: DHS 2002a, 2002b, 2004a, 2004b, 2005a, sub. 48, pp. 8–9; IPSOS 2006a.

Food Safety Unit

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

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

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

Given the Food Safety Unit's comments on its progress, the Commission has not sought further performance information from it.⁷

Local government

There is no consolidated report on local government's effectiveness in encouraging food safety, so the Commission undertook an online search of 25 (out of 79) local councils' 2005–06 annual reports (approximately 32 per cent of all local councils). This research revealed local government publicly reports little information on food safety issues. Eight councils did not provide any information on food safety issues. And of councils that did provide information, they generally reported only inspections of food premises, investigations into food complaints and the collection of food samples. Twelve councils provided some quantitative data, but only Bass Coast Shire Council provided data for a sequence of years. Of those councils reporting food safety figures, all used different reporting formats and none reported its contribution to the two objectives of the Food Act.⁸ Table 5.2 provides more details.

⁷ The Commission understands that the timeline of the project has been extended pending the finalisation of this inquiry.

⁸ This result is similar to that obtained by the Auditor-General (AGV 2005b, p. 29).

Table 5.2 Food safety reporting by local government in 2005-06 annual reports, Victoria

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

^a Docklands Authority's latest annual report available online is 2002-03. ^b Annual report unavailable online; a hard copy can be obtained. ^c Melbourne City Council's latest annual report available online is 2004-05. **na** Not available.

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

PrimeSafe and Dairy Food Safety Victoria

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

- PrimeSafe’s corporate plan and annual report do not specify performance indicators on the extent to which the organisation’s activities have reduced foodborne illness. They comment on some activities, but not in a way that readily permits assessment of the organisation’s success.⁹ Detail on activities (for example, the number of audits and inspections, and the number of complaints handled) is not provided. PrimeSafe has committed, however, to develop and apply a ‘comprehensive set of performance benchmarks which measure the effectiveness, efficiency and impact of the PrimeSafe system to ensure its integrity and capacity for control’ (PrimeSafe 2005b, p. 3).
- DFSV also does not specify performance indicators on foodborne illness. Its corporate plan (2004–07) specifies measures for some intermediate indicators, such as ‘improved awareness and understanding of the Dairy Food Safety Scheme’ (DFS 2004c, p. 1), but DFSV does not report against such indicators in its annual report.

In conclusion, Victorian regulators do not appear to publish information that would permit an assessment of whether their regulatory activity is reducing foodborne illness. Chapter 8 discusses the potential to improve performance reporting.

5.2.5 Valuing improvements in food safety

The indicators reported thus far have been about changes in foodborne illness. But given the costs involved in reducing illness, an important perspective is whether the value to consumers from less foodborne illness exceeds the costs of delivering the reductions. (Chapter 6 outlines these costs.) One technique for measuring the value of increases in food safety is to assess consumers’ ‘willingness to pay’ for the reduced risk of illness, morbidity or mortality. This is, however, difficult to measure.¹⁰

⁹ The following comments are examples:

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

¹⁰ Empirical approaches to quantifying ‘willingness to pay’ include contingent valuation, experimental markets, conjoint analysis and prices paid in markets. The main difference across these approaches is that some use realised data while others do not. The validity of estimates from approaches that do not use realised data is often questioned, while approaches that use realised data are plagued with experimental design issues. It is doubtful whether the valuations extracted (even from realised data) accurately estimate consumers’

Cost of foodborne illness

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

- FSANZ estimated the total cost of foodborne illness was \$2.6 billion (ANZFA 1999)
- Food Science Australia and Minter Ellison Consulting (FSA & MEC 2002) estimated the aggregate cost was above \$1.67 billion^{11,12}
- Abelson, Forbes and Hall (2006) estimated the cost is about \$1.25 billion a year.

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

5.3 Preventing misleading conduct

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

willingness to pay. For this reason, these approaches have not been used to value reductions in morbidity in government cost–benefit analyses overseas or in Australia.

¹¹ This figure comprised: direct medical costs (including consultations, prescriptions, hospitalisation and salary lost), nonmedical costs, the cost of fatalities, and costs to government and industry incurred in responding to foodborne illness, including medical and health care costs and legal costs.

¹² The study estimated that a little over \$1 billion of the costs could be attributed to the following industries: food service to sensitive populations (\$75 million), raw and ready-to-eat seafood (\$181 million), catering for the general population (\$540 million) and eating establishments (\$169 million).

5.3.1 Inquiry participants' views

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

Information such as date marking, storage suggestions, allergen labelling, ingredient lists and nutrition information panels protect the health and safety of consumers and allow them to make informed choices about the content of the foods they eat and the impact it may have on their health. (sub. 49, p. 4)

Mrs N Chapman supported the labelling of preservatives, to protect people with allergies, and argued labelling should be extended to pre-cooked meals at delicatessens (sub. 1, p. 2). The president of the Parents Association at St Bede's primary school, while commenting that regulation including labelling had reduced the use of fund raising through cake stalls to an 'absolute minimum', noted that purchasers of baked goods can now check labels for allergens and have greater assurance that items were prepared in hygienic conditions, which an honesty system cannot guarantee (sub. 15, p. 1).

Other inquiry participants were sceptical, however, of the benefits of food labelling. The City of Yarra noted that labelling 'requirements are very prescriptive and detailed' and that many are 'probably not important to most people and are not always related to food safety issues' (sub. 43, p. 3). The Australian Medical Association Victoria noted that most participants in a survey conducted by FSANZ in 2003 'were not confident that they could use the available information to make healthy dietary choices' (sub. 22, p. 2). The association also noted that a NSW Food Authority study revealed considerable discrepancy between the stated and actual composition of certain packaged foods which defeated the purpose of the labelling system and constituted misleading behaviour (sub. 22, p. 3).

DHS commented that labelling complaints generally arise from competitors of the manufacturer rather than from consumers, which suggests requirements are functioning as a means to secure competitive advantage rather than providing consumer benefits (sub. 48, p. 19). Further, George Weston Foods noted that most information is not read by consumers, and even if it is, much of it would be irrelevant to making informed decisions regarding products or have confused or misled consumers (sub. 52, p. 5).

Several inquiry participants considered that food labelling is given a low priority by those responsible for enforcement. The Victorian Farmers Federation argued that DHS has indicated that labelling requirements do not pose a threat to public health and hence limited resources have been allocated to labelling enforcement (sub. 40, p. 11). DHS confirmed this view, saying that provisions regulating health claims should be the concern of ACCC because the essential concern

underlying regulatory proposals in this area appears to be with the prevention of misleading statements (sub. 48, p. 19).

The City of Stonnington pointed out that:

The average EHO [environmental health officer] has neither the technical expertise, nor the time to determine whether a food business was fully complying with these regulations... Because of the lack of resources and expertise in this area, local government has not placed a great deal of emphasis on enforcing these requirements for small business, beyond the bare minimum. (sub. 25, pp. 6–7)

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

It appears that AQIS [the Australian Quarantine and Inspection Service] doesn't have the resources to properly police these requirements. It is the federal government's role to ensure imported foods comply with food standards, not local government. (sub. 31, p. 2)

5.3.2 Performance indicators

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

... researched and commissioned a survey, carried out in March 2006, of the types of problem consumers encounter in Victoria and how much this 'consumer detriment' is costing individuals and the economy (CAV research report, forthcoming; IPSOS 2006b¹³)....The research showed that of all the categories of goods and services, 'food and drink' is where the highest number of problems occur, costing a total per annum of approximately \$46 million. However, the average unit cost of each problem is relatively low (\$38), compared with problems in industries such as building (\$1600) and transport (\$540). Unit costs include following up and resolving problems; repairing and replacing items; and personal time. (sub. 53, p. 9)

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

¹³ The report has been released and is now available from Consumer Affairs Victoria's website.

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

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

5.4 Implications

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

- Clarification of the objectives of regulation, in a form that lends itself to measurement, is critical. Clearly stating the end to be achieved helps to identify the best approach to achieve the objective and ‘enable more effective monitoring to assess the success of the regulation in achieving its stated aim’ (Government of Victoria 2007, p. 3–5). For this chapter, the assumed principal objectives of food safety regulation are to reduce foodborne illness and to prevent misleading conduct. As noted, however, if the government’s broader aim is to promote public health and nutrition, this would need to be evaluated using different indicators. If the government wishes to achieve more than one objective through the legislation, clarifying the priority that it attaches to each would enable regulators to focus their efforts accordingly. Chapter 8 further discusses the issue of objectives for food safety regulation.
- Clearer overarching objectives in Victoria’s food legislation that ‘cascade down’ to specific regulations would enable regulators to develop performance indicators that demonstrate each regulator’s contribution to the common objectives (be it reducing foodborne illness, preventing misleading conduct or promoting public health). In addition, a common set of statewide performance measures across regulators would make it easier to compare each regulator’s performance and would help them learn from each other. Currently, regulators develop their performance indicators in isolation. As discussed in chapter 8, a set of statewide performance indicators would also allow the public to evaluate local councils’ performance.

- Clarifying the source of the problem that regulation is intended to address will help to identify the mix of regulatory and nonregulatory instruments that make up the best solution. Further, a more precisely defined instrument is likely to have more specific objectives that are more capable of measurement. Targeted regulatory instruments aimed at achieving clearly defined objectives are also likely to be easier to enforce and, consequently, more effective in achieving the objectives.
- Performing baseline research before introducing new regulations would provide a benchmark against which comparisons can be made, to permit an indicative assessment of a regulation's impact. Where regulatory impact statements are required, an evaluation strategy could include the baseline data. The *Victorian guide to regulation* (Government of Victoria 2007, p. 3–10) already indicates that it is good practice for regulatory impact statements to include an evaluation strategy.

Finally, to the extent that regulation is aimed at reducing foodborne illness, the net benefits of regulation may be greatest when the risks of illness are greatest.¹⁴ Data on the location of outbreaks can be useful in identifying where to target resources. Table 5.3 shows that 59 per cent of the outbreaks occurring in 1996–2006 were sourced to restaurants, commercial caterers and aged care facilities; only 2.4 per cent were sourced to community groups. These data, while revealing, are only part indicators of risk because they do not show either the severity of the illnesses or the number of meals served in each setting.

Overseas studies suggest the proportion of outbreaks resulting from food produced at home is much higher in other countries than the 11 per cent in Victoria. In the Netherlands, Germany and Spain, more than 50 per cent of reported foodborne outbreaks occur in the home (Beumer et al. 1998; Scott 1996). Households have also been implicated in 32 per cent of outbreaks in Denmark, 77 per cent in Hungary, 46 per cent in Romania, 44 per cent in the former Yugoslavia, 24 per cent in Finland and 52 per cent in Poland (Todd 1996).

The data in table 5.3 are for outbreaks (defined as two or more foodborne cases attributed to the same source) rather than illnesses, and may not reveal the true contribution of home made food to the incidence of foodborne illness. Many cases of illness caused in the home may be either not outbreak related (if only one person is involved) or not reported.

¹⁴ This could be incorrect if either the costs of regulation were higher or regulation's effectiveness was lower in such areas.

Table 5.3 Settings of outbreaks of foodborne illness, Victoria, 1996–2006

<i>Setting where food was prepared</i>	<i>Outbreaks</i>		<i>Cases</i>	
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>
Restaurant	59	28.37	1691	28.54
Commercial caterer ^a	39	18.75	1080	18.22
Aged care facility	24	11.54	394	6.65
Private residence	22	10.58	243	4.10
Contaminated primary produce ^b	13	6.25	138	2.33
Takeaway food premises	7	3.27	215	3.63
Bakery	6	2.88	93	1.57
Asian bakery	5	2.40	1262	21.30
Community	5	2.40	34	0.57
Camp	4	1.92	66	1.11
Festival	4	1.92	385	6.50
Hospital	4	1.92	59	1.00
Commercially manufactured food	4	1.92	64	1.08
Private residence and takeaway food	3	1.44	85	1.43
Delicatessen	2	0.96	18	0.30
School	2	0.96	37	0.62
Child care centre	1	0.48	7	0.12
Cruise	1	0.48	18	0.30
Imported food	1	0.48	23	0.39
Fish shop	2	0.96	14	0.24
Total	208	100^c	5926	100^d

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

Source: DHS 2007b.

Up-to-date data on the proportion of foodborne illnesses caused in homes in Victoria are not available. However, the NSW Food Authority indicated in discussions with the Commission that around 23.8 per cent of foodborne illness in New South Wales is linked to unsafe food handling and preparation in the home. The NSW Food Authority referred to a US figure of 19.8 per cent of foodborne illness cases (both outbreaks and singles cases) attributed to food prepared and/or consumed in home based setting, and attributed a further 4 per cent to food prepared elsewhere but mishandled and consumed at home to arrive at the estimate.

The focus of the NSW Food Authority (2006a) and the Food Standards Agency United Kingdom (2001) on educating consumers on safe food handling is further recognition that home prepared food is not only a significant contributor to foodborne illness but also perceived to be preventable through education. Education has the potential to correct market failures such as information asymmetry, as well as target a large portion of foodborne illness that regulation alone cannot prevent. (Chapter 10 discusses issues on information/education strategies.)

As discussed in chapters 8 and 9, a great deal of information is already collected in Victoria but is not reported in a coordinated manner by regulators or councils.

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

6 Cost of food regulation in Victoria

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

6.1 What are the various costs of regulation?

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

Government costs

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

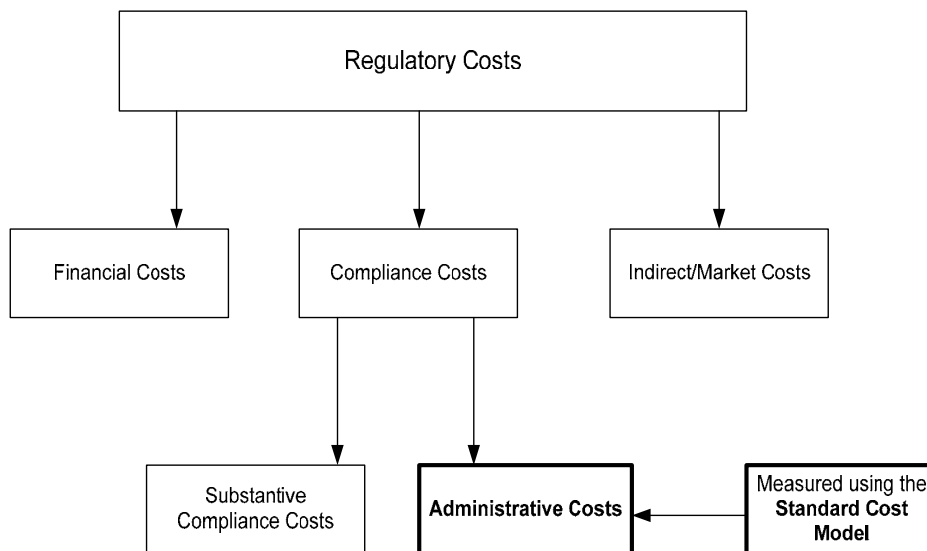
Financial costs

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

Administrative costs

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

Figure 6.1 Framework of regulatory costs to businesses^a



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

Source: VCEC 2006b, p. 18.

Box 6.1 What is an administrative cost?

Determining whether a cost is an administrative burden requires clear definitions of information obligations and government legislation.

Information obligation

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

Government legislation

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

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

Substantive compliance costs

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

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

Indirect/market costs

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

6.2 Lessons from previous studies

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

- most of the cost of food regulation is likely to derive from a small subset of regulations
- regulation derived from or aligned with international standards (in addition to state based regulation) is often important in driving costs
- in aggregate, the administrative cost of food regulation is likely to be small as a proportion of turnover and value added

- the obligations for record keeping and statutory labelling are likely to constitute the majority of administrative costs (PwC 2006, pp. 44 & 49, Commission for European Communities 2006, p. 4).

Australian studies indicate:

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

An information paper on the Commission's inquiry web site summarises relevant international and Australian studies.

6.3 Current costs of food regulation in Victoria

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

BOX 6.2 Survey of the cost of food regulation

To better understand the costs of food regulation in Victoria, the Commission engaged KPMG to survey food businesses operating in Victoria and report the findings (KPMG 2007).¹ The Commission selected a sample of 29 businesses from the food manufacturing, food wholesaling, food retailing, and cafés/bars/restaurants industries. The industry groups surveyed accord with the Australian and New Zealand Standard Industrial Classification.

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

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

6.3.1 Government costs

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

Victorian Government food regulatory agencies

As discussed in chapter 3, the main state agencies involved in regulating food safety in Victoria are:

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

¹ The KPMG report is available on the Commission's website.

Dairy Food Safety Victoria

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

Table 6.1 DFSV costs and revenue

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

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

PrimeSafe

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

Table 6.2 PrimeSafe operating costs and revenue^a

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

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

Source: PrimeSafe 2006, p. 26.

Food Safety Unit of the Department of Human Services

The estimated cost of operating the Food Safety Unit is not available. The Department of Human Services has advised the Commission, however, that the unit's annual budget is approximately \$2.7 million. The unit is funded from an allocation within the public health budget, not from fees or charges levied on businesses (DHS 2006c, p. 8).

Local government

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

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

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

A 2002 Municipal Association of Victoria (MAV) report on the costing of local government food safety services accounted for this issue in estimating the council costs of food regulation. It thus provides a reasonable basis for deriving aggregate costs for local government. The study found the cost of food regulation to councils (under amended legislation), for all premises it regulated, averaged \$469 per registered food premises in 1999-2000 (MAV 2002, p. 6). MAV’s submission noted that local government registers about 40 000 food premises each year across the state (sub. 41, p. 1). More recent information from a survey of 47 councils in January 2007 indicates the number of registered food premises is more likely to be around 45 000 (DHS 2007d). Applying the \$469 average cost—adjusted for 35 per cent inflation in local government costs over the period—to 45 000 registered premises suggests a cost to local government in 2005-06 of about \$28.5 million.² The 35 per cent increase for the period is an acknowledgment that local government cost inflation significantly exceeded the CPI (sub. DR128, p. 6, Koops and Harvey-Beavis 2007, p. 4).

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

² The average cost for the MAV study was derived by dividing the total cost to councils of their entire food regulatory functions (e.g. for both registered food premises and temporary premises) by the number of registered food premises. Applying this average to the 2005-06 registered premises, to derive a total cost for that year, assumes a constant ratio of the aggregate cost of registered premises to temporary premises.

Table 6.3 State/local government costs of food regulation

	<i>2005-06</i>
	\$
Dairy Food Safety Victoria	3 690 962
PrimeSafe	1 528 923
Food Safety Unit	2 700 000
Local government	28 500 000
Total	36 419 885

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

6.3.2 Business costs

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

Financial costs

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

Submissions did not provide estimates of the total financial cost borne by businesses throughout Victoria. The Commission is able, however, to derive such estimates from the annual reports of state regulators and from the local government costs described above. DFSV and PrimeSafe operate on a full cost recovery basis; their annual reports list total revenue collected from businesses and the share of licence and audit and inspection fees in that total. In 2005-06, DFSV licence fees (\$3 271 131) and audit and inspection fees (\$201 293) accounted for 89 per cent of total revenue³ (DFSV 2006b, p. 34); for PrimeSafe,

³ Includes licence/registration fees for dairy farms (of which there were 5929 at 30 June 2006). Other income (\$422 000) included payment for the Australian Milk Residue Survey, interest received and other income.

licence and registration fees (\$1 074 939) accounted for about 90 per cent (PrimeSafe 2006, p. 26).

Local government also operates on a cost recovery basis. But unlike the state agencies, its cost recovery averages around 60 per cent—although the proportion varies considerably across councils and the types of food business/activity registered (see AIEH, sub. 10, pp. 17–8). On this basis, the Commission estimates local government imposes a financial cost on business of about \$17 million. The Food Safety Unit does not charge for its activities, so its operations impose no direct financial cost on businesses.

Aggregating total annual licence and registration fees of these regulators indicates the annual financial cost to Victorian business is about \$22 million (table 6.4). This figure would be no more than 0.04 per cent of the \$47 billion turnover of the food manufacturing, wholesaling, retailing and cafés/bars/restaurants industries in 2004-05 (chapter 4).⁴

Table 6.4 Annual financial cost to business from fees and charges of state and local government regulators

	<i>2005-06</i>
	\$
Dairy Food Safety Victoria ^a	3 472 424
PrimeSafe	1 074 939
Food Safety Unit	na
Local government ^b	17 000 000
Total	21 547 363

^a Includes dairy farm licence fees. ^b Derived from 60 per cent of the local government cost in table 6.3. **na** Not applicable.

Source: VCEC estimates 2007.

Some inquiry participants suggested the financial costs imposed by DFSV and PrimeSafe are too high. The Victorian Government expects industry to pay for the delivery of food regulation. And in the case of dairy, red meat, poultry and seafood, it also expects each industry segment to bear the costs of regulating that segment without cross-subsidisation from another industry (DPI 2007a). But the

⁴ This financial cost relates to all registered or licensed premises (for example, food premises of hospitals, aged care facilities, school canteens etc., which are not included in the Australian Bureau of Statistics classification of food manufacturing, wholesaling, retailing and cafés/bars/restaurants). Accordingly, it will overstate the financial cost incurred by those four main industries.

Victorian Rock Lobster Association argued this approach imposes a disproportionate burden on their industry:

The level of fees charged to the rock lobster wildcatch sector has caused considerable angst in the industry. The main issue is that the level of fees bears no relationship to the level of food safety risk. ... The current PrimeSafe fee schedule generally charges the rock lobster wildcatch sector the highest fees on a per kilo basis of any licensed Victorian wild catch sector, when it actually has the lowest food safety risk. [Food Standards Australia New Zealand] could not even find evidence of food poisoning from the consumption of locally caught lobster. (sub. 24, pp. 1–2)

Graham Grant similarly argued that the fee levied on him as a nominated diver in the abalone industry was totally inappropriate, and an unnecessary cost imposed on the industry (sub. 4, pp. 1–2).

Submissions also drew attention to inappropriate financial costs imposed by local government. The City of Melbourne (sub. 16, p. 4) and the City of Yarra (sub. 43, p. 2) considered that the annual inspection of low risk premises is an unwarranted impost on businesses. The City of Melbourne considered other registration costs are also unnecessary and could be reduced, referring to the registration and inspection of temporary premises in every municipality in which they sell food (sub. 16, p. 4). Chapter 9 discusses possible regulatory reforms to address these ‘unnecessary’ costs.

In a 2002 review of local government food regulation, the Victorian Auditor-General expressed concern that some food businesses may be avoiding council registration/licensing fees: ‘The 2002 audit found that many councils failed to systematically identify and register all food businesses’ (AGV 2005a, p. 11). This finding implies that a more rigorous approach by councils might materially increase the cost to (local) government and the financial cost to businesses, relative to that indicated in tables 6.3 and 6.4.

Results of a follow-up study in 2005, however, suggest councils’ approach to identifying food businesses, while still not universally systematic, was unlikely to result in a significant number of omissions overall (AGV 2005a, pp. 12–4). Moreover, the MAV submission (drawing on results of a 2006 workshop of councils and responses to a questionnaire it circulated to councils) noted ‘council officers report that the process of registering businesses under the Food Act generally works well’ (sub. 41, p. 6). Accordingly, the Commission considers that a more rigorous registration of businesses would be unlikely to result in any material difference to the costs associated with local government regulation.

Administrative costs

Information from inquiry participants on the administrative burden of food regulation in Victoria was generally qualitative and did not estimate the magnitude of that cost (on either a firm or an industry basis). Coles Myer stated:

that the licensing and approvals processes are complex, and often require a large amount of paperwork and documentation. This effort is time consuming and costly, especially when specialist advice is required (sub. 7, p. 2).

The City of Port Phillip also acknowledged that the time needed to complete food safety program records is taxing, particularly for small businesses (sub. 13, p. 1). Similarly, Moonee Valley City Council noted that the level of record keeping required for the ongoing maintenance of food safety program records is particularly onerous for small businesses (sub. 18, p. 1). More generally, the Victorian Farmers Federation observed that record keeping can be administratively complex and time consuming, particularly in relation to process temperature logs, goods receiving and goods storage temperature (sub. 40, p. 14). And Restaurant & Catering Victoria claimed restaurant businesses require substantial resources to satisfy the record keeping requirements of food safety programs (sub. 36, p. 7).

Not all submissions claimed the administrative burden is significant:

There are administrative costs to business ... While the MAV is aware that some businesses find these requirements onerous, the experience of environmental health officers undertaking inspections is that those businesses which fully embrace the intent of the food safety programs and have a food safety supervisor do not find them onerous. (MAV, sub. 41, p. 8)

Without estimates from inquiry participants, the Commission used findings from previous studies and its survey of businesses to estimate administrative costs. Of previous studies, The Allen Consulting Group's report (ACG 2002) on the introduction of food safety management systems is most useful. It identified (one-off) implementation and ongoing administrative costs of a food safety program for small businesses across industry categories (table 6.5). This program requirement is akin to that for food safety programs or a quality assurance program as a condition for licensing or registration in the four main food Acts in Victoria. Although the costs in table 6.5 are average estimates for Australia, the Allen Consulting Group study found no significant variation across businesses in different jurisdictions. Accordingly, the results may be taken as representative for Victoria.

An indication of the administrative costs associated with food regulation in Victoria can be obtained by applying these median ongoing costs to the number of businesses in the main food industries (table 6.6) and adjusting numbers to account for those premises that are exempt from the food safety program (FSP) requirement.⁵ Given this estimate is based on the administrative costs of small businesses (for which the average revenue was generally between \$500 000 and \$600 000 in 2001—ACG 2002, p. 103) and for ongoing costs only (that is, excluding one-off implementation costs), it is a lower bound of likely costs. Moreover, as the most recent ABS data on business numbers for the first four industries is for June 2004 and does not necessarily reflect the current number of business premises, a ‘growth factor’ is needed to account for these. For this purpose, the Commission has applied an increase of 10 per cent, consistent with information from the Department of Human Services (DHS 2007d).

Table 6.5 Median cost to business of food safety programs^a

<i>Industry category</i>	<i>Implementation cost of training and development per business premise (\$)</i>	<i>Ongoing [administrative] cost of record keeping and review per business premise (\$ per year)</i>	
		<i>Record keeping</i>	<i>Review</i>
Manufacturing	1 280	2 640	53
Retail	1 510	1 170	60
Supermarket	1 450	1 140	60
Specialised food store	1 550	1 180	80
Food service	1 500	1 540	60
Takeaway	1 440	1 370	60
Restaurant	1 600	1 550	100
Hotel	2 000	1 900	150
Primary industry	2 100	1 800	100

^a Data were mostly collected in 2001. Median costs have been used because the study did not report mean (average) costs.

Source: ACG 2002, pp. 136–7.

⁵ Information from DHS indicates that, in 2001, 2500 of 38 000 registered food businesses regulated under the Food Act were not required to have an FSP. This represents about 6.6 per cent of premises (DHS 2001).

Table 6.6 Annual ongoing administrative costs for major food industries

<i>Industry</i>	<i>Ongoing admin cost (\$ per year)</i>	<i>Number of businesses</i>	<i>Likely number of premises^a</i>	<i>Estimated admin. cost (\$)</i>
Manufacturing/processing ^b	2 693	2 362	2 430	6 536 000
Food wholesaling ^{c, d}	1 230	3 271	3 360	4 133 000
Food retailing ^e	1 230	16 842	17 300	21 283 000
Cafés/bars/restaurants ^f	1 600	16 401	16 850	26 962 000
Dairy farming ^g	1 900	5 929	5 929	11 265 000
Aquaculture/wildcatch ^h	1 900	316	316	600 000
Total (in 2001 prices)				70 779 000

^a The number of businesses for manufacturing, wholesaling, retailing and cafés/ bars/restaurants was increased by a 10 per cent growth factor. This was then reduced by 6.6 per cent to account for registered premises exempt from the FSP requirement. ^b Contains businesses within ANZSIC subdivision 57 (food, beverages and tobacco manufacturing), but excludes animal and bird feed manufacturing, and tobacco manufacturing. ^c The Allen Consulting Group survey did not separately identify wholesale businesses. The cost for the food retail industry has been used as a proxy. ^d Contains businesses within the ANZSIC group 471 (food, drink and tobacco wholesaling), but excludes tobacco wholesaling businesses. ^e Contains all businesses within ANZSIC subdivision 51 (food retailing). ^f Contains all businesses within ANZSIC subdivision 57 (accommodation, cafés and restaurants). ^g Actual number of dairy farms licensed by DFSV at 30 June 2006. Meat and seafood processors are captured in manufacturing numbers reported by the Australian Bureau of Statistics. ^h Actual number of aquaculture and wildcatch seafood harvest premises licensed by PrimeSafe. The cost for dairy farming has been used as a proxy.

Sources: VCEC estimates derived from ABS 2005a; ACG 2002; DFSV 2006b, p. 19; PrimeSafe 2006, p. 51.

Allowing for inflation, the Commission estimates the administrative burden of Victoria's food safety systems required under the four main Acts would have cost these industries about \$82 million in 2006.⁶ (This figure excludes costs associated with registered premises in hospitals, aged care facilities, school canteens, not-for-profit bodies, child care facilities etc.)

Based on Australian Bureau of Statistics data on turnover (chapter 4)—available only for the food manufacturing, retailing and cafés/bars/restaurants industries—the total ongoing administrative cost for these three industries (estimated at \$63 million in 2006) represented a minimum of about 0.14 per cent of their aggregate turnover in 2005-06. Based on Australian Bureau of Statistics

⁶ This represents \$71 million in 2001 prices, adjusted for the consumer price index increase of 15 per cent over the period June 2001 to June 2006 since The Allen Consulting Group estimates were made.

data for value added—available only for the manufacturing industry—administrative costs represented about 0.15 per cent of that industry’s value added for 2004-05. The size of costs relative to profits would be much higher, but data are not available to derive this.

Implementation costs are essentially sunk costs and, as such, were excluded from annual costs.⁷ The Commission considers their exclusion does not significantly alter the likely scale of costs. The reasoning is that while the reported one-off implementation costs per firm are broadly equal to ongoing costs (except for manufacturing, for which they are half the ongoing cost—see table 6.5), they would be amortised over a number of years. Allowing for a 10 year amortisation, implementation costs would add about 10 per cent to ongoing administrative costs. Moreover, recent experience has seen the general use of FSP templates, for which the implementation costs are minor. Accordingly, excluding these costs makes little difference to the level of annual costs faced by business.

The survey information on initial (that is, implementation) administrative costs helps little in forming a view of total costs, given respondents’ poor recall of the costs incurred. The survey found that initial costs relative to ongoing costs (and allowing for a 10 year amortisation) for manufacturing, wholesaling, retail and cafés/bars/restaurants were 15 per cent, 8 per cent, 89 per cent and 12 per cent respectively. Except for the retail sector, these results coincide with the Commission’s view that such costs are relatively small (KPMG 2007, pp. 11, 13).

Compliance costs

Inquiry participants provided examples of the compliance costs of food regulation in Victoria, including some aggregate industry estimates. Joe White Maltings supplied information on local council audit costs (which, it argued, were an unnecessary cost on its business):

Joe White Maltings (JWM) operates two facilities in Ballarat ... Each of these premises is audited yearly by the City of Ballarat Council to ensure compliance to the Food Act 1984. The audit and subsequent certification costs JWM over \$800 annually for both plants along with the additional expense associated with JWM personnel’s participation in the audit.

... this regulatory burden placed on its operations in Victoria is unnecessary. Both of these facilities are already externally certified by NCSI to Codex Alimentarius Alinorm: 97/13A ... that includes the identification of food safety risks and the placement of controls. An accredited external food safety auditor reviews this system annually along with an internal auditor and AQIS inspectors six monthly to verify compliance to HACCP and international exporting

⁷ These costs are not sunk for new entrants to the industries.

standards. Additionally a number of domestic and international customers throughout the year conduct their own supplier audits of these facilities with a focus on food safety. ... the above audits are in greater detail than the Food Act audits currently undertaken by local council. (sub. 11, p. 1)

Infocus Management Group (sub. 38) gave examples of compliance costs associated with developing or introducing FSPs. It claimed that training a person to be a food safety supervisor costs \$200–400, not including the costs of that person being absent from work. High mobility and exit rates mean this is commonly an ongoing cost (sub. 38, p. 5). Often, staff are required to have food handling skills, so they sometimes must attend training courses, which can cost \$100–150 a person (sub. 38, p. 5). In terms of developing food safety programs, class 2 businesses (that is, medium to low risk) can access a standard template online for no cost, or obtain a hard copy for about \$30. To develop their own program using a consultant would cost a business about \$1500, and an annual audit (required for these plans) would cost about \$400 (sub. 38, p. 5). Infocus Management Group concluded:

Thus, for a class 2 business using a departmental program template, which is the majority of businesses, the cost for complying with the legislation is around \$1000 at start up this cost is at the lower end of costs when compared to other fees levied by government. (sub. 38, p. 5)

Comments from Restaurant & Catering Victoria suggested compliance costs associated with the Food Act are generally minimal for restaurants:

It is the view of Restaurant & Catering Victoria that the ‘good’ restaurant businesses have procedures and policies in place that produce safe food without the prescriptive obligations placed upon the business by a [food safety program]. (sub. 36, p. 7)

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

In a similar vein, MAV observed:

The substantive compliance costs imposed by local government are not of a high order. The sorts of capital items required by businesses to comply with the Food Act 1984 are thermometers and cleaning equipment ... (sub. 41, p. 9)

For businesses in a high risk category, however, costs can be substantially more. A survey of high risk businesses required to introduce food safety programs in March 1999, for example, identified program development costs of \$10 700 for a hospital and \$18 435 for a cook chill operation (ACG 2002, p. 33). Similarly,

other Victorian food regulations can impose substantial costs on individual firms. Meat industry regulations, for example, require meat to be branded as having been inspected as fit for human consumption. The regulatory impact statement assessing the cost of this requirement before its adoption estimated it would cost about \$67 600 a year for a medium to large abattoir (DPI 2005, p. 23).

The Australian Industry Group provided estimates that suggest the cost of food regulations to some industries is high. Its spot surveying of Victorian food processors found the cost of food regulations equated to 0.7 per cent of sales, or around \$100 million a year. Per employee, this represents about 36 hours of compliance work each year (sub. 32, p. 1). This cost, however, includes all food regulation (not just Victorian) and does not account for the incremental cost of regulation. Regarding the latter, the Australian Industry Group acknowledged that commercial requirements are overtaking minimum regulatory requirements:

Many food companies advised Ai Group that the very high standards demanded by the large retail food chains are such that the need for government regulation was becoming somewhat secondary. ... each retailer conducted their own audits, creating a complex array of different rules and requirements, and operated in parallel with the government standards. (sub. 32, p. 1)

Such developments would mean, for these firms, that regulation is becoming less responsible for driving the incremental costs of achieving food safety. The Australian Industry Group's estimates, therefore, considerably overstate the cost of food regulation in Victoria, although they are useful in suggesting an upper bound to costs incurred by food processors.

The estimates illustrate the need to treat carefully any estimates of compliance costs. As noted, compliance costs represent the additional costs of regulation to business. Estimating them for food regulation in Victoria requires separating costs that are attributable to that regulation from costs that a business might otherwise incur. The latter could derive from other types of regulation or general business costs—for example, costs from parent company directives, a desire to achieve product quality or the need to protect and promote corporate reputation.

To judge compliance costs, therefore, it is necessary to assume the costs or share of costs that can validly be attributed to the regulations. The choice of a baseline against which compliance costs are measured is thus critical to any cost estimate. But, as the Centre for International Economics found in its report on food regulation, 'There appears to be no one universal systematic approach to estimating the extent of compliance costs' (CIE 2002, p. 24). Estimating costs is thus complicated by there being no uniform approach to selecting the baseline against which incremental costs are measured. On this matter, an Organisation for Economic Cooperation and Development report examining food safety regulations within the European Union and in the United Kingdom

(OECD 1997) noted the necessity of considering how the market would develop without the regulation and how the market will respond to the regulation (chapter 2).

Compliance costs also depend on the extent to which firms comply with regulatory requirements in the most cost-effective manner. Relatively inefficient firms tend to have higher compliance costs than those of firms that have invested in new technology. Further, firms choosing very inefficient ways to comply with regulatory requirements can significantly affect estimates of compliance costs (OECD 1997, p. 2).

Estimates are thus highly sensitive to assumptions about baseline costs or market scenarios, as The Allen Consulting Group estimates for implementing standard 3.2.1 (food safety programs) illustrate:

The costs are calculated to have been in the order of \$200–600 million per annum Australia-wide, depending on the assumptions made about how much activity is directly attributable to the food regulations as opposed to being part of standard business practice. (ACG 2002, p. 5)

Information reviewed by the Commission suggests that incremental compliance costs are relatively small. For example, Lingham Foods Pty Ltd commented that many companies buying food demand that their supplier have a certified Hazard Analysis and Critical Control Point system (HACCP) as the price of doing business with them (sub. DR116, p. 1). Similarly, the Victorian Farmers Federation, for example, acknowledged the incremental cost of some food regulation is minimal:

The major supermarkets require their suppliers to comply with the supermarkets' food safety plans. These plans are usually designed to fit with the risk management strategy of the supermarkets. These risks are usually higher than the risks of many of their suppliers ... (sub. 40, p. 4)

It also drew attention to industry programs that essentially replicate the food safety objectives of food regulation.

Chapters 2 and 4 describe the strong commercial incentives to deliver safe food that derive from contractual obligations between suppliers and their customers. Examples are contracts between the large supermarket chains and their food suppliers or between vegetable processors and their grower suppliers. As well, firms operate to achieve food safety levels necessary to access the national market. In this regard, Woolworths Limited noted:

As a national business, state boundaries are irrelevant to Woolworths' operations and in most cases, our own systems for managing food safety need to consider the most stringent of state regulations, then for consistency implement this requirement throughout all supermarkets. (sub. 50, p. 5)

More generally, the Department of Primary Industries observed ‘food safety is a condition of entry into, and survival in, the marketplace’ (sub. 56, p. 1). In discussions with PrimeSafe, the Commission was told that many companies (particularly larger firms with a national presence) operate to a higher level of food safety than required by regulations. Such cases suggest the incremental cost of complying with food regulation is, for those firms, a minimal burden (box 6.3).

BOX 6.3 **The Australian Food Group: a case study of incremental costs**

PrimeSafe, in its 2005-06 annual report, cited the Australian Food Group’s experience of incremental costs:

We use [quality assurance] as a radar. It drives and sets the direction of the business. To us, the customer is the ultimate regulator. If you work back from this point you realise [quality assurance] is the best tool to provide high quality and safe products to the customer. ... Our food safety systems are well in excess of the [quality assurance] and accreditation required. [Quality assurance] allows us to 100 per cent guarantee our product, which is important for customers such as Woolworths and Coles that have a considerable social responsibility.

Source: PrimeSafe 2006, p. 16.

Likewise, firms exporting goods prescribed by the *Export Control Act 1982* (Cwlth.) must meet requirements of that Act and stipulated importing country requirements. These requirements are equal to or greater than Victorian regulated standards. The Department of Primary Industries noted, for example, that ‘Harmonisation with export requirements and international standards ... is of critical importance to industry’ (sub. 56, p. 5). In such cases, firms may face little or no additional cost to comply with Victorian food regulations.

In this regard, Inquit Pty Ltd (engaged by the Commission to report on the impact of international regulations on the Victorian food industry⁸) found:

Because two thirds of Victorian produce is exported, achieving an international standard of production and quality is essential. Food standards in Victoria are consistent, therefore, with international standards but they are made under Australian laws and in accordance with Australian conditions. (Inquit 2006, p. 1)

It also observed ‘Other food regulations in Victoria arise from Commonwealth laws regulating exports and imports and from firms’ participation in export or import markets’ (Inquit 2006, p. 1). Accordingly, Victorian businesses selling into export markets are effectively subject to the applicable international regulations (and to the related cost) if they wish to access those markets.

⁸ The report by Inquit Pty Ltd, on the dairy industry, is available on the Commission’s website.

To better understand the costs regulation imposes on industry, the Commission engaged a contractor to provide a case study of the impact of food regulation on Victoria's dairy industry.⁹ That study found:

Compliance with current food regulations is a major cost to the sector. The efficiency and effectiveness of the nature and application of these regulations are fundamental to the dairy sector's competitiveness and viability into the future. (Dench McLean Carlson 2006, p. 3)

It found that many of the food regulations the dairy industry faces are based on the international Codex standard, and reported that 'Most manufacturers indicated that if the DFSV regime didn't exist they would have to meet similar requirements for their customers anyway' (Dench McClean Carlson 2006, p. 22). It is reasonable to conclude that such regulations impose little, if any, additional cost over that which a business would need to incur to meet the international standards.

The Commission's survey of food businesses gives some indication of the aggregate costs for Victorian food industries. A 'scaling up' of survey results for the manufacturing, wholesaling, retailing and cafés/bars/restaurants industries suggests aggregate compliance costs for these industries amounted to about \$34 million in 2006. But this aggregate should be treated with caution. Of necessity, it was extrapolated from a small sample (29 firms) that did not mirror the composition of the four industries, and it is highly sensitive to the weighting ascribed to the sample firms. Moreover, the estimate attributes no compliance costs for wholesaling as sample businesses from this industry gave a nil response for this cost. (That is, they were unable to offer an estimate of the cost, rather than offering a response that stated they incurred no compliance cost.)

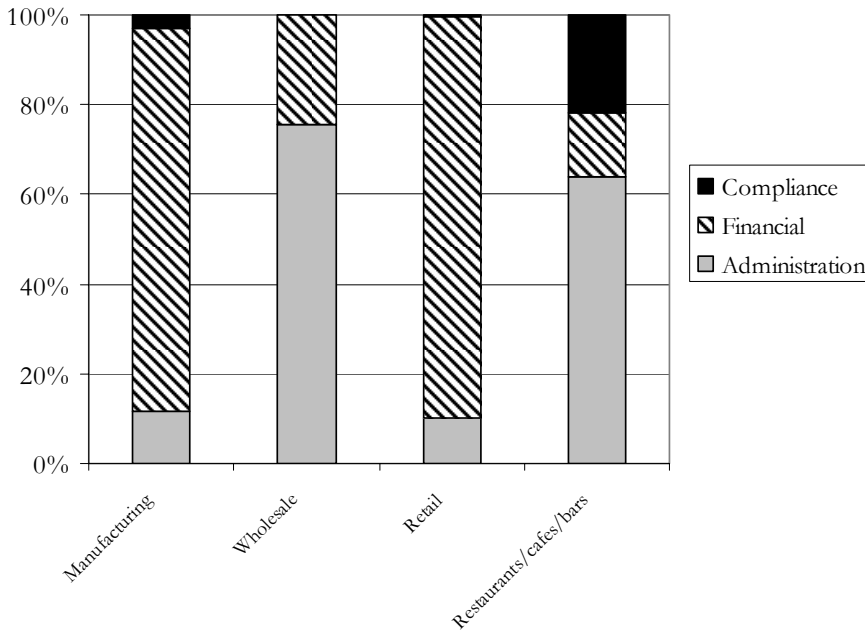
Notwithstanding the sample response from wholesaling firms, the survey results provide an insight into the relative significance of ongoing compliance costs for each of the main food industries (figure 6.2).

These results highlighted, for the surveyed firms, the relatively small proportion of ongoing compliance costs for food manufacturers, wholesalers and retailers. This is consistent with expectations where, for example, industry generally comprises medium–large firms with reputations to protect, or interstate and/or export sales are likely to be a significant share of total sales. The cafés/bars/restaurants industry displayed a markedly higher share of compliance costs (albeit still not the largest cost). This too is consistent with expectations. The industry essentially sells into local (intra-Victoria) markets, so it would not be subject to standards required in other (Australian or international) markets.

⁹ The report is available on the Commission's website.

Accordingly, it would be expected to be relatively more affected by Victorian food regulations, with commensurately higher incremental compliance costs.

Figure 6.2 Proportion of ongoing costs,^a by food industry



^a The zero compliance cost recorded for the wholesale industry is the result of respondents being unable to provide an estimate. It does not reflect respondents attributing no cost for compliance.

Source: KPMG 2007, p. 20.

The Commission’s survey also highlighted, for the sample businesses, the extent to which regulatory costs differ across the four industries sampled (box 6.4).

Indirect/market costs

Indirect or market costs arise from the impact of regulation on market structure or consumption patterns. The Allen Consulting Group indicated the nature of these costs, when it posed the following questions:

- Are there any distortionary impacts that may arise from intended or unintended impacts on the incentives of regulated entities (for example, a regulation may promote a particular type of production process that is less efficient than other options)?

- Are there any impacts on competition in an industry? An unintended consequence may be that regulations prevent new firms from entering the market, thus reducing competitive pressures.
- What is the impact on innovation and the facilitation of improvements and advances into the future? (ACG 2000, p. 19)

Box 6.4 The share of ongoing costs by industry

The following discussion covers the ongoing costs of food safety regulation to each industry, and provides some context for why the individual cost components vary in each industry.

Manufacturing

The major costs for the manufacturing industry sample include registration and licence renewal and, to a lesser extent, annual maintenance of the food safety program document. For the manufacturing industry, national and international requirements often require, regardless of Victorian regulations, costs associated with compliance, audits and inspections, and training. The marginal cost associated with Victorian food regulations for manufacturing is thus low.

Wholesaling

Based on a sample of three wholesaling businesses, the major costs associated with Victorian regulations include training, maintenance of food safety programs, and registration and licence renewal. As for manufacturing, the wholesaling sample faces relatively low compliance. Audits and inspections are also noticeable contributors to the overall costs of the wholesaling industry.

Retail

The costs of the retail industry primarily include those associated with registration and licence renewal, and the maintenance of food safety programs, including record keeping (for example, fridge temperatures, cleaning logs etc.). Compliance costs are also noticeable, representing around 10 per cent of the total costs of the Victorian food regulations for most firms sampled. The difference in the proportion of the cost elements for manufacturing and wholesaling relative to retailing is indicative of a change in market exposure—for example, the retail sample primarily consisted of smaller businesses with little or no national or international exposure.

Cafés/bars/restaurants

The costs for the cafés/bars/restaurants industry are relatively similar to the breakdown for the retail industry. Cafés/bars/restaurants tend to operate in a local market and often have limited exposure to national and international markets. The sample of businesses in this industry indicates that the major costs stem from having to maintain food safety programs (including record and log keeping) and from compliance costs. Licence costs represented about 15 per cent of total Victorian food regulatory costs to the sample businesses.

Source: KPMG 2007, pp. 22–3.

Inquiry participants provided examples of adverse indirect or market effects of food regulation, although with limited quantification. The paucity of information on indirect costs meant the Commission could not estimate their magnitude.

The Victorian Farmers Federation noted a member who decided against producing a product that is unavailable in Australia because the cost of establishing a ‘best before date’ for that product is prohibitive (sub. 40, p. 5). Similarly, George Weston Foods was critical of both the costs and time involved in approving food standards (sub. 52, p. 5).

The City of Wodonga noted that ‘smaller food operators have fewer resources to implement the food safety program’ (sub. 29, p. 2), implying that this could impede new entrants to some markets. Woolworths suggested Victoria’s seafood regulation impeded some markets:

... PrimeSafe restricts the sale of seafood and does not permit the retailer to display whole fish or whole gutted fish on ice for customer inspection and self service. ... no other Australian jurisdiction has the same interpretation for the sale of seafood. (sub. 50, p. 5)

Restaurant & Catering Victoria argued that the process for dealing with temporary food premises is costly to operators and impedes participation in community festivals, major exhibitions and events. It noted a similar impediment for businesses that specialise in catering:

... [they] are faced with the problem of potentially having to register multiple food premises such as a production kitchen and also the venue/s where the function takes place. This requires multiple [food safety programs] which add considerably to the cost of doing business ... Such instances are compounded when they are across local council boundaries. (sub. 36, p. 12)

The Dench McClean Carlson case study of the dairy industry identified overly restrictive labelling laws as a brake on innovation, significantly restricting the dairy industry’s ability to make general health claims:

The inability of enterprises to make clear claims in terms of health benefits and labelling ... restricts the level of investment they apply within their businesses and the degree of diversification achieved. This is especially the case in terms of creating a base in the domestic market off which manufacturers can launch value added products internationally. As a result the industry believes it fails to match the value adding of other developed dairy producing regions around the world and the production base remains predominantly commodities.

... The cost of not being able to make even the most simple and broad claims relating to the value of dairy products and components (especially in terms of health)—at least domestically is seen as significant. All major companies interviewed believed this creates a lack of incentive to invest in R&D and innovation, and as a result impacts on their long term ability to compete—

especially internationally, and to a degree domestically when competing against overseas importing companies who do not have these same limitations in their own home markets. (Dench McClean Carlson 2006, pp. 22–3)

Most examples of restrictions on innovation related to the adverse effect of delays in approvals for changed food standards. The Australian Food and Grocery Council (sub. 17, p. 7) and MasterFoods (sub. 55, p. 6) gave examples of delays in the approval of additives to some products and of a new product line respectively. The Australian Industry Group too identified the lengthy approval time to obtain new food standards as imposing a cost on food manufacturers:

With product innovation being critical to market competitiveness, there is likely to emerge a range of new products with new additives to support healthy living objectives. ... Ai Group understands that the process of approval for new additives can be protracted and take up to a number of years. ... Speeding up the process of approval, and making use of overseas experience, should be facilitated so that food manufacturers are not hampered in using product innovation to develop new markets and competitive advantage. (sub. 32, p. 2)

Similarly, the Australian Beverages Council commented:

Australia is a single market and the food and beverages sector is on the one hand encouraged to be innovative and export oriented and on the other hand is stymied by a system that not only has in-built delays but is also open to artificially generated delays where philosophy contradicts with the business community's needs for innovation and progressive market developments both locally and overseas. (sub. 47, p. 6)

It and Cadbury Schweppes (sub. 20, p. 2) noted the slow pace of regulatory change to address a situation whereby New Zealand regulations—in conjunction with the free trade and mutual recognition between Australia and New Zealand—allow some fortified beverages produced in New Zealand to be sold in Australia while Australian production of such products was prohibited. The Australian Beverages Council stated that the approval process took 65 months and:

The cost in sales has been estimated over this period by the NSW Government at \$260 million. Given that Victoria represents approximately one third of total beverage production, this represents a loss in production and sales for Victorian beverage makers of almost \$90 million. (sub. 47, p. 7)

The Banks review also identified the time taken to develop or amend food standards impeding innovation in the industry. It observed that the average time taken between January 2002 and May 2005 to approve an unpaid proposal was 35 months (Banks 2006, p. 58). While such examples point to significant costs from the regulatory arrangements for setting food standards, those arrangements

are essentially national, and not ones that the Victorian Government is unilaterally able to control.¹⁰ (Chapter 7 discusses this issue.)

Additionally, the estimated cost noted by the Australian Beverages Council from delaying innovation raises the issue of how to interpret such costs. The \$260 million cited by the Council is for gross sales forgone; the estimate did not measure the net cost to beverage makers (of incremental sales and profit forgone) or to the economy. The value of sales cited might, for example, fully cannibalise local sales of other beverages (or other discretionary food or other products in consumers' basket of goods). In that sense, it might represent only a re-ordering of market share within a company's product range, within the beverage industry generally or of domestic consumption generally. It is unclear whether the aggregate sales foregone include sales that might displace imports, or include exports that might displace non-Australian products sold in international markets. Moreover, 'estimation of the cost to society is complicated because costs to one business may be offset by gains to a competitor' (CIE 2006, p. 6). Determining the net effect of such 'forgone' sales opportunities would thus require detailed economic modelling.

Regarding any indirect impact of Victoria's food regulation on competition in the food industry, previous national competition policy reviews suggest this is not a material concern. As part of Victoria's commitment to national competition policy, the Dairy Industry Act and Meat Industry Act were reviewed in 1999 and 2001 respectively. The review of the Dairy Industry Act resulted in deregulation of market milk to facilitate competition and the establishment of DFSV as a statutory authority to deliver the food safety functions carried out by the (former) Victorian Dairy Industry Authority. The national competition policy review also concluded:

The [Victorian Dairy Industry Authority's] statutory public health objective does not restrict competition. In fact, it can be considered pro-competitive by minimising any adverse effects of a potential hygiene breakdown by one supplier from spilling over to other suppliers to the market. This is particularly important in the case of export sales. (DPI 2007a, p. 1)

These comments highlight the need to consider the positive effects of regulation on competitiveness and trade—for example, regulation may facilitate Victorian businesses' access to markets.

The review of the Meat Industry Act recommended only minor changes, suggesting the legislation had only minimal (if any) adverse effects on competition. More recently, the regulatory impact statement for the (then)

¹⁰ Amendments to the Food Standards Australia New Zealand Act, which became law on 1 July 2007, address this issue.

proposed Meat Regulations concluded the costs to businesses of licence fees for meat transport vehicles (\$83 per year) form a relatively small proportion of the operating costs of a meat transport vehicle. For the approximately 3000 meat transport vehicles in Victoria, this cost would amount to \$249 000 per year, but is unlikely to be significant enough to deter entry to the industry. The cost is unlikely, therefore, to influence the number of competitors in the industry (DPI 2005, p. 25).

While these comments highlight the potential for food regulation in Victoria to impose indirect costs on businesses, the Commission was unable to quantify the extent of indirect/market costs attributable to Victorian food regulations.

6.4 Effect on competitiveness and trade

The preceding discussion suggests the direct ongoing cost of Victorian food regulation to the four main food industries affected—manufacturing/processing, wholesaling, retailing, and cafés/bars/restaurants—is at least \$138 million. This annual cost is the estimated aggregate of:

- financial costs of around \$22 million
- administrative costs of at least \$82 million
- compliance costs of at least \$34 million.

This cost would represent less than 0.3 per cent of the four industries' turnover.¹¹

The Commission's survey of businesses also found the cost is likely to be a relatively small burden on food businesses. That survey reported the total annual ongoing costs of food regulation in Victoria were relatively small for the firms sampled, ranging from 0.001 per cent relative to turnover for wholesalers to 0.25 per cent for cafés/bars/restaurants (KPMG 2007, p. 24). The case studies of small businesses reported by DIIRD came to a similar conclusion. In those studies, ongoing costs were on average 0.17 per cent of turnover (sub. DR152, p. 3) In the Commission's view, costs of this scale for these industries are generally likely to have little short term effect on the competitiveness and trade

¹¹ The \$138 million includes some costs incurred by other industry groups (such as registration fees for food premises of hospitals, aged care facilities, school canteens etc.). Also, as Australian Bureau of Statistics data for wholesale turnover is not available, only turnover for the other three industry groups (\$47 billion, from chapter 4) has been used as a denominator. The combined effect suggests the costs of regulation would be less than 0.3 per cent of the four industries' turnover. As the financial cost of food regulation is not available on an industry basis, the Commission can provide only a combined estimate for the four food industries mainly affected by Victorian food regulation. For the same reason, it is not possible to provide a total cost for food manufacturing or to identify its significance relative to (available) manufacturing value added.

of many businesses. This does not mean, however, that reducing such costs is not important. As the Victorian Farmers Federation noted:

Reducing not only the level of regulation, but more importantly the red tape and compliance costs of regulation, will enhance Victoria's competitiveness, and promote economic growth and investment. (sub. 40, p. 4)

A common assumption in estimating costs and their effect on firms is that business bears the full cost burden. But this is seldom the case. The impact of costs of food regulation will depend on whether those costs are borne by businesses (in the form of lower profits), passed on to input providers in the form of lower prices or wages, or passed on to intermediate and final consumers via higher prices. Who bears the costs will depend on factors including:

- supply capacity relative to demand in the market
- the level and form of market competition
- firm size
- industry demand and supply elasticities (OECD 1997, p. 25).

The Centre for International Economics observed that compliance costs are likely to be shared between food manufacturers and consumers and between each stage of the processing chain (CIE 2002, p. 26). While the inquiry cannot determine the ultimate incidence of food regulation costs, general observations are possible:

- Where product is destined for export markets, Victorian producers are likely to be price takers and less able to pass on costs.
- Where product is destined for the domestic market, costs are likely to be passed on to consumers in the long run.

The Australian Retailers Association suggested regulatory costs are generally passed on:

Industry should not be burdened with regulatory duplication and inconsistency, as the resultant disproportionate costs will ultimately be passed onto the consumer ... (sub. 35, p. 3)

CHOICE claimed the Commission's assessment of the costs of food regulation did not adequately explore costs to consumers (sub. DR123, p. 6). However, as noted, it is not possible to determine the extent to which costs are passed to domestic consumers. Nonetheless, as these costs represent a trivial proportion of total sales, it is reasonable to assume they represent a commensurately small cost to individual consumers. Moreover, these costs are incurred to deliver improved food safety and, as such, provide benefits to consumers.

Given the relative size of regulation costs identified by the Commission and the survey, their incidence would likely make little difference in the short term to the

general competitiveness and trade performance of Victorian industries. But this is the aggregate story. At a disaggregated level, credible data on the cost of food regulation in Victoria are available neither for segments within an industry (for example, confectionary within food manufacturing) nor for the firms within those segments. Moreover, a lack of firm-specific information on cost structures and elasticity of demand for their product range means it would be problematic to assess the impact of regulation costs, even if disaggregated data were available. Nevertheless, inquiry participants' comments and previous studies provide insights into the impact of food regulation costs on specific industry segments. Submissions identified three areas in which competitiveness and trade performance of Victorian businesses could be materially affected: some restaurants, part of the seafood industry, and small businesses generally.

Restaurants

Restaurant & Catering Victoria argued that for some in the restaurant industry regulatory costs are large enough to affect their competitiveness and trade:

The need for a restaurant business to lodge a separate [food safety program] to participate in community festivals, events and alike is a major impediment to participation in such events. There is both a direct cost of the application and an indirect cost associated with the application that acts as a deterrent to participation. (sub. 36, p. 11)

It further noted low and declining profit margins, which emphasised the need to contain regulatory costs:

In 2005, restaurant businesses reported to the ABS an average net profit of 4 per cent, down 16 per cent on the previous 1998-1999 survey period. (sub. 36, p. 4)

Patrick Garry claimed costs have increased substantially in recent years: 'registration costs rose approximately 300 per cent with the introduction of mandated across the board food safety programs' (sub. 14, p. 5). If this were generally the case, such an increase could be expected to have an effect on competitiveness and trade performance. But a comparison of costs identified in the MAV survey in 1999-2000 with costs provided in submissions indicates this is not generally the case. Many submissions argued that registration fees are relatively minor. The City of Stonnington Community Health Unit claimed 'The greatest component of the cost to businesses is registration fees' (sub. 25, p. 2), but added:

The average level of registration fees is around \$500 per year, or less, and very few businesses would pay more than \$1000 per year. When considered as a percentage of the businesses' overall operating costs, registration fees would comprise only a small fraction in comparison to rent, wages, utilities, advertising

and marketing, and fees imposed by other departments of council, such as planning, building and local laws. (sub. 25, p. 2)

It concluded ‘the cost imposition on small businesses of food safety regulation is not great, when considered as a proportion of overall operating costs’ (sub. 25, p. 7). Similarly, Maroondah City Council (sub. 33, p. 1) and Wyndham City Council (sub. 38, p. 3) observed that the registration fee for an average restaurant/café is usually less than the cost of registering a car.

Seafood industry

Anecdotal evidence presented at the Commission’s business round table alleged that unnecessary and costly regulation of the seafood industry in Victoria has caused people to move their operations to Tasmania, New South Wales and South Australia to avoid regulation. The mobile nature of businesses’ capital (boats) facilitates this reaction. Also, the Victorian Rock Lobster Association stated:

To the best of our knowledge the other states producing southern rock lobster (South Australia and Tasmania) do not even require lobster fishers to be licensed for food safety, let alone pay fees to a regulator, or even worse—pay the highest fees on a per kilo basis for the safest seafood. (sub. 24, p. 2)

This, it claimed, has had adverse consequences for the Victorian industry and effectively constrains the industry’s competitiveness and markets:

The inconsistency in seafood safety licensing and fees payable for rock lobster in Victoria compared with the other states has caused a great deal of angst as previously iterated. While the cost to each operator may be less than \$1000 it is still a cost that operators in the other states do not have to pay even [though] they are operating to the same standard and in the same manner. This has led to uncertainty and a resulting reluctance to invest in both the rock lobster catching and processing sectors. (sub. 24, p. 3)

The Victorian industry has been placed at a distinct disadvantage with the other States. (sub. 24, p. 7)

Information provided to the Commission was insufficient, however, for it to judge the extent to which Victorian food regulations have affected the location of seafood operations.

Small businesses

Most food businesses in Victoria are small. Non-employing businesses and those with less than 20 employees represent about 81 per cent of manufacturing firms, 92 per cent of wholesaling, 92 per cent of retailing, and 86 per cent of cafés/bars/restaurants (table 4.2).

A number of inquiry participants observed that the cost of food regulation is greater for small businesses and, by implication, imposes a greater burden on

their competitiveness and trade performance. The City of Wodonga noted that smaller food operators have fewer resources to implement food safety programs (sub. 29, p. 2). The Victorian Farmers Federation similarly recognised that the food safety program works well for larger organisations but tends to be too arduous and time consuming for smaller businesses (sub. 40, p. 14). George Weston Foods Limited also claimed:

... the multiplicity of regulation and its complexity creates compliance difficulties for businesses of all sizes, but particularly in relation to small businesses that are not resourced to manage these issues. (sub. 52, p. 2)

Roger Pierotti argued that regulatory requirements impose a proportionately larger cost on smaller businesses, particularly where Hazard Analysis and Critical Control Points (HACCP) is required, because it is designed for larger businesses that tend to monitor, document and audit processes and test samples as necessary (sub. 30, p. 4). Evidence from the introduction of HACCP regulations in the United States supports this view. Studies there have shown first time implementation of HACCP requires large initial investments. These costs are lower on a per unit basis for larger food processors. And small firms' costs rise proportionally more than large firms' with the implementation of HACCP, which can put them at a competitive disadvantage. Further, large firms often have more inhouse resources for design and implementation, so have lower incremental costs in implementing HACCP. The need to have separate HACCP procedures for different products may also force small firms to drop some product lines (Unnevehr 2001, p. 14). Information from the Commission's survey of businesses also provided evidence that smaller firms incur a proportionately much higher burden (table 6.7).

Table 6.7 Annual cost of Victorian food regulation relative to turnover

<i>Business size by employees</i>	<i>Number of businesses in sample</i>	<i>Food regulation costs as percentage of turnover</i>
Large (more than 200 employees)	12	0.01
Medium (more than 20 employees but fewer than 199 employees)	4	0.32
Small businesses (fewer than 19 employees)	13	0.48

Source: KPMG 2007, p. 23.

Regulation can have a differential effect on small and large firms. This can arise for reasons such as asymmetry in compliance (where one firm suffers a greater cost burden per unit of output, even when regulations are evenly enforced across all firms) or asymmetry in enforcement (where regulation is more rigorously enforced against certain firms).

Since many new firms start as small firms, a regulatory burden favouring large firms can be considered a barrier to entry. The effects of environmental regulations, for example, have been shown to impede entry by small firms while not deterring entry by large manufacturing firms. This effect was shown to be persistent across 1977, 1982 and 1987 (OMB 2004, p. 54). Research suggests the cost of regulation generally is proportionately heavier for small firms. A literature review by Chittenden, Kauser and Poutziouris (2002, p. 68) provided evidence of compliance and administrative costs from a range of (non-food) regulation that are consistently greater for small firms and impose a burden that varies from 139 per cent to 867 per cent greater than that for large firms. The UK Better Regulation Task Force also noted that a 2004 study by the Federation of Small Business—*Better regulation is better for business*—found small firms’ regulatory costs are proportionately five times higher than those of large firms (BRTF 2005, p. 13).

To the extent that there are economies of scale in complying with a particular regulation, smaller firms suffer a higher unit cost than larger firms do. There is evidence, however, of significant differences in the level of enforcement for small and large firms, with the literature suggesting food regulations are more rigorously enforced for large firms (OECD 1997, p. 23). George Weston Foods observed this to be the case from their experience:

We already see a disparity in enforcement efforts with focus frequently being directed at larger food companies and many small food companies fail to comply with mandatory requirements under the code and other legislation. This can put large business at a significant commercial disadvantage ... (sub. 52, p. 3)

Similarly, Moreland City Council observed:

Larger food companies and manufacturers in particular have adopted [food safety programs] with a greater level of compliance than smaller food retailers. (sub. 51, p. 1)

It suggested reasons for this being so, such as larger companies having more resources to implement food safety programs, and more likely to supply other food companies (such as supermarkets) and thus be subject to external audits required by those companies (sub. 51, p. 1).

Evidence in the economic literature of the relative importance (and net effect) of compliance asymmetries and enforcement asymmetries is inconclusive. However, based on information in submissions and from the Commission’s survey of businesses, it would appear the costs of Victorian food regulation are

proportionately greater for small businesses. Accordingly, the Commission considers it likely (if such costs do adversely affect competitiveness and trade performance in particular market niches) that smaller firms would be affected more than larger firms.

6.5 Concluding comments

The direct ongoing cost of food regulation in Victoria is substantial for its main food industries—estimated to be about \$138 million a year—and comprises mostly administrative costs. While this estimate is only indicative, the overwhelming impression from submissions (supported by evidence from the Commission’s survey) is that generally this cost is relatively small as a proportion of industry turnover. In the Commission’s view, a cost of this scale is generally likely to have little short term effect on competitiveness and trade of most food businesses. Moreover, the cost is small relative to other regulatory costs for businesses, such as those arising from occupational health and safety, industrial relations and tax.

Most indirect costs noted by inquiry participants are derived from the operation of the ‘national’ system (and thus outside the ability of Victoria to unilaterally change). The Commission could not quantify the extent of indirect/market costs attributable to Victorian food regulations.

Knowing the total cost of food regulation is of only limited value, however, in developing or refining policy/regulation. The main significance of the cost of regulation is relative to the benefits derived from that regulation—given the acid test for any regulation is the net benefit—not simply the size of any cost. Also important is whether the cost can be reduced while still maintaining effectiveness (that is, maintaining the associated benefits). The remainder of the report focuses on this area: how to streamline or improve the regulatory arrangements so, while maintaining the effectiveness (benefits) of government intervention, the cost to business and society is lessened. Some improvements could be aimed at preventing costs from growing. Increasing product diversity and supply chain complexity suggests that costs could grow. Moreover, globalisation of food markets enhances competitive pressures on Victorian businesses and increases the significance of cost increases. Further, better risk related regulation can help ensure costs fall where most justified by the potential benefits.

The Commission notes that the Council of Australian Governments has decided to proceed with benchmarking of food safety regulation (among others) across jurisdictions (Productivity Commission 2007b, p. 3). This process will be helpful in tracking changes in regulatory costs over time and between jurisdictions, and in identifying the contribution of particular regulations to the cost of food safety regulation.

7 Improving the regulatory framework: national issues

7.1 Introduction

Inquiry participants suggested that aspects of the national food regulatory framework are imposing excessive burdens on Victorian food businesses and could be improved: key features of the national framework were described in chapter 3. The Victorian Competition and Efficiency Commission has explored the issues raised by participants, to assist the Victorian Government in its dealings with other Australian jurisdictions.

Stakeholders identified numerous issues relating to the national framework governing food regulation, including:

- the increasing use of food standards to achieve particular public health objectives and the importance of good regulatory practices (section 7.2)
- the food standards development process and its effect on food sector incentives to innovate (section 7.3)
- the use of primary production standards to address public health issues further up the food chain (section 7.4)
- duplication in the area of misleading and deceptive conduct (section 7.5)
- approaches to regulating minimum residue levels in food (section 7.6)
- the method used to regulate the weight of food products (section 7.7).

7.2 Beyond food safety

There is growing community concern about the health and economic impacts of chronic health problems such as obesity, type 2 diabetes and heart disease. Approximately 9 million Australian adults are overweight or obese and 3.3 million are in the high risk obese group, making Australia one of the world's fattest nations (DPC 2005, pp. 33–4). These health problems are of interest to the food sector because diet is considered to be one of several risk factors underlying chronic diseases. Others include lack of exercise, tobacco use, alcohol misuse, excess weight and high cholesterol.

A number of inquiry participants considered that national food standards should be used to address these public health issues.¹ Some raised concerns about the

¹ See, for example, Australian Medical Association (Victoria) (sub. 22, pp. 1–3; sub. DR131, p. 1), Hugh Wilbur–Ham (sub. 58, pp. 1–2), Golden Plains Shire (sub. DR70, p. 1), Jenny Mikakos MP (sub. DR90, p. 1), and the Obesity Policy Coalition (sub. DR113, pp. 1, 3–5).

use of food standards in this manner,² with several submissions highlighting flaws in the process of developing a national standard for fortification of bread with folic acid.³ Others took a different perspective, with the Australian Medical Association (Victoria), for example, arguing that the ‘current knowledge of the relationship between diet and disease must be used to guide further refinement of [national food standards], existing regulatory frameworks and ultimately the composition of the Australian diet’ (sub. 22, p. 3).⁴

Community concerns about public health issues are growing, and governments are responding by exploring policy options to address these issues. Through the Department of Human Services (DHS), for example, the Victorian Government has managed the Go For Your Life program in recognition of the importance of lifestyle factors, including diet, in maintaining the health and wellbeing of the population and the productivity of the workforce (chapter 10).

In 2005, in recognition of the importance of a national approach to a number of major policy issues, including food related public health, the Victorian Government released the *Third wave of national reform: a new national reform initiative for COAG*. Among other issues, this paper highlighted how failure to address national public health issues, including obesity, could reduce Australia’s productive capacity. Yet it is difficult to draw a clear dividing line between food safety and diet-related public health issues.

Figure 7.1 illustrates the fuzzy dividing line between a food safety issue and broader public health objectives. Consuming a small amount of a food high in saturated fats, for example, may pose little or no health risk to many people, but consuming lots of high-fat foods may pose an appreciable health risk of increased obesity, type 2 diabetes and heart disease, areas of increasing concern in Australia. The figure also highlights the need for policy makers to be clear about the underlying problems to be addressed and the desired policy outcome. A comprehensive assessment of alternative ways to achieve the desired outcomes will also be required. This process should cover regulatory and nonregulatory options such as mandatory national food standards, voluntary codes, education and information strategies, and financial incentives. The key issue, therefore, is not whether the food standards should be used to achieve broader community

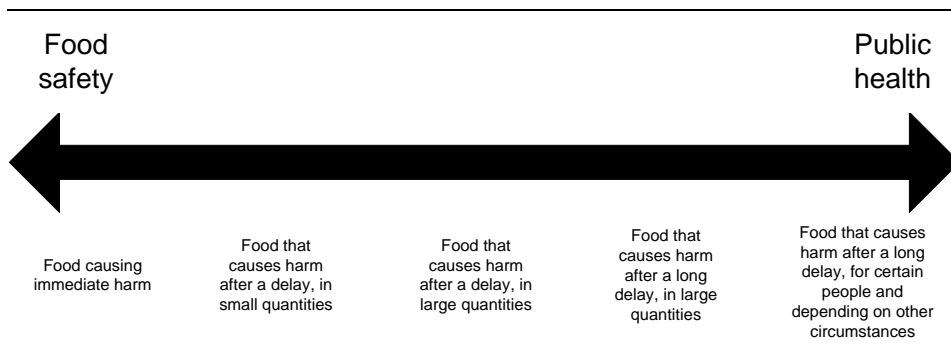
² See, for example, Flour Millers Council of Australia (sub. DR95, pp. 2–3) and Australian Food and Grocery Council (sub. DR106, p. 11).

³ See, for example, Flour Millers Council of Australia (sub. 39, p. 4; sub. DR95, pp. 1–6), DHS (sub. 48, p. 20), Focus on Food (sub. DR105, p. 3) and Australian Food and Grocery Council (sub. DR106, pp. 8–11).

⁴ Similar views were put to the Commission by VicHealth (sub. DR126) and the Obesity Policy Coalition (sub. DR113).

objectives, but whether governments have clearly defined goals and the best instrument, or mix of instruments, to achieve these goals.

Figure 7.1 **The fuzzy dividing line between food safety and public health**



Given the national character of many public health issues, there is a case for this process to be undertaken at the national level. The process should also be undertaken in a strategic and coordinated manner that includes all relevant policy areas such as education, health, industry and finance, and all governments.

Failure to follow a best practice process (by not considering all options for addressing national public health issues and relying on legislation as the default approach) can lead to a number of adverse outcomes. Community and industry confidence in food regulation can be undermined, thereby discouraging compliance, and high cost regulatory approaches could impose unnecessary costs on industry and consumers in the form of higher food prices. Government intervention can also unintentionally have a negative effect on cost-effective industry initiatives that will contribute to longer term public health outcomes.

7.2.1 Implementation problems

While best practice regulatory principles are widely understood in the community and have been agreed to by the Council of Australian Governments (COAG) (box 7.1), several recent examples at the national level have demonstrated where this process has not been followed:

- The Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) requested Food Standards Australia New Zealand (FSANZ) to develop a mandatory standard for fortification of bread with folate to address concerns about an unacceptably high rate of neural tube birth defects (NTDs) (box 7.2). ANZFRMC did so without adequately considering alternative policy options and their relative cost effectiveness.

A study looking at the cost-effectiveness of alternative policy approaches, which was commissioned after FSANZ began developing a mandatory standard, found that alternative approaches could be more cost effective. Despite this, ANZFRMC agreed to implement a new standard in July 2007 without further investigating alternative strategies.

Box 7.1 Best practice regulatory processes

The need for a best practice process for assessing regulatory proposals is highlighted in the COAG guidelines. The *Food Standards Australia New Zealand Act 1991* (Cwlth.) (FSANZ Act) also requires a rigorous approach when developing national standards.

In 2004, COAG endorsed an amended set of *Principles and guidelines for national standard setting and regulatory action* within which national standards and regulations should be developed:

- regulatory measures should be the minimum required to achieve an outcome
- regulations should entail the minimum necessary to achieve the objectives
- regulation should be designed to have minimal impact on competition
- regulation should have clearly identifiable outcomes
- regulatory measures should be designed and/or alternative approaches to regulation chosen with consideration of secondary effects.

The COAG guidelines also highlighted that if a regulatory action was to occur, an adequate regulatory impact assessment would be required:

- demonstrating the need for regulation
- detailing the objectives of measures proposed
- outlining the alternative approaches considered (including nonregulatory options) and explaining why an alternative approach was not adopted
- documenting which groups benefited from regulation and which groups paid the direct and indirect costs of implementation
- demonstrating that the benefits of regulation outweighed the costs
- demonstrating that the proposed regulation was consistent with relevant international standards (or justifying the extent of inconsistency)
- setting a date for review and/or sunseting of regulatory instruments.

There are also provisions in the FSANZ Act governing the approach to be taken in assessing national food standards. The Act (s29) states that FSANZ must have regard to 'whether other measures (available to the Authority or not) would be more cost effective than a food regulatory measure developed or varied as a result of the application'. The Act (s18(2)) also states that when developing or reviewing food regulatory measures and variations of food regulatory measures, FSANZ must have regard to any written policy guidelines formulated by ANZFRMC.

Sources: COAG 2002; COAG 2004.

Box 7.2 Mandatory fortification of bread with folic acid

In 2004, ANZFRMC asked FSANZ to examine ways of increasing the folate intake of women of child bearing age to reduce the incidence of NTDs, and asked it to consider the need for a national standard on adding folate to bread. While the policy guidelines given to FSANZ by ANZFRMC stipulated that all feasible alternatives should be considered (such as promoting voluntary fortification and providing information and medical advice to women), it subsequently requested FSANZ to focus on a regulatory approach. On the basis of this advice 'FSANZ reduced the number of regulatory options considered ... to maintenance of the status quo [voluntary fortification for some foods] and mandatory folic acid fortification' (FSANZ 2006c, p. ii). Even then, the standard ultimately adopted, which involves a tolerance range for folic acid, did not correspond with the options initially explored (and costed) as part of the initial public consultation (Flour Millers Council of Australia, sub. DR95, p. 6).

By constraining the range of options examined, ANZFRMC did not apply COAG's guidelines and potentially imposed unnecessary costs on the community and industry. A study examining the relative cost effectiveness of alternative policies for reducing NTDs was commissioned late in the process. The study examined the cost effectiveness of promoting the use of folic acid supplements, mandatory fortification of bread making flour with folic acid, extending voluntary fortification, and promoting consumption of folate rich foods, and found that:

... the largest effect, resulting in an estimated reduction of 23 to 27 NTDs, is seen to be achieved by the mandatory fortification of bread, or a national campaign to promote use of folic acid supplements in women who may become pregnant. (Segal et al. 2007, p. 54)

The analysis also highlighted that the cost effectiveness of mandatory fortification in Australia depended on the costs of implementation, which were uncertain. The report stated that 'applying the lower cost estimate, mandatory fortification appears less cost effective than other options' (Segal et al. 2007, p. 5).

The limited consideration given to the available range of policy approaches for addressing NTDs has undermined confidence in the policy development process. The Flour Millers Council, for example, stated that the process of developing the national standard has resulted in 'frustration, compromise, huge cost in time resource and ultimate loss in confidence and credibility of [the process] by industry' (sub. DR95, p. 4).

Earlier consideration of alternative strategies (based on robust cost-benefit analysis) could have ensured more effective decision making and greater confidence in the outcome, and minimised any potential costs to the community and industry.

Sources: FSANZ 2004c; FSANZ 2006c; Segal et al. 2007; Access Economics 2006.

- ANZFRMC requested FSANZ to examine a front of pack labelling system for food, despite the Australian Food and Grocery Council (AFGC) introducing a voluntary system based on recommended daily intake. While there is debate about the most effective form of such labelling (some prefer a traffic light system), ANZFRMC did not appear to consider asking FSANZ to monitor the effectiveness of the AFGC system and the consequences for business incentives in terms of signing up to this system. Such interventions can deter industry incentives to develop systems that effectively communicate the health attributes of food to consumers.
- ANZFRMC requested FSANZ to consider a mandatory country of origin labelling standard, even though a case for government intervention had not been demonstrated. On FSANZ's recommendation, ANZFRMC approved a standard introducing country of origin labelling requirements for unpackaged food such as fruit, vegetables, nuts and seafood, and increased labelling requirements for packaged foods. The Banks (2006) review later highlighted that the country of origin labelling standard was introduced despite cost-benefit analysis showing that the proposal would impose a net cost on the community.⁵ The Banks review also recommended that the standard be reviewed by an independent body: the Commonwealth Government accepted this recommendation (Commonwealth Government 2006, p. 28).
- ANZFRMC requested FSANZ to review the national standard relating to health claims. The current standard limits the ability of food businesses to make health claims about their products (FSANZ 2004a, pp. 15–6). ANZFRMC directed FSANZ to look at relaxing the ban on health claims but stated that a (mandatory) standard should be used for all high level claims, and that a standard should also be considered for all other claims. ANZFRMC also referred policy guidelines to FSANZ requesting that a standard be developed that would require pre-market assessment by FSANZ for all claims referring to biomarkers or serious diseases (ANZFRMC 2003). While the Commission supports a freeing up of industry capacity to make health claims subject to scientific substantiation, it considers FSANZ failed to adequately consider the full range of regulatory alternatives required under COAG guidelines and its own Act (box 7.1). FSANZ appeared to rule out the option of developing a voluntary standard or code of conduct covering some or all health claims, on the grounds that compliance with a mandatory standard would be greater.⁶ While this may be the case, a rigorous analysis of

⁵ The Office of Regulation Review noted the country of origin regulatory impact statement failed the COAG requirement to demonstrate that the benefits of introducing this standard outweighed the costs (PC 2006a, p. 63).

⁶ The current standard for nutrient content claims is covered by a voluntary industry code of practice. This code was then incorporated into the *Code of conduct for the provision of information on food products* developed by the food industry (ANZFA 1995).

alternatives would consider all the relevant effects, including any added flexibility offered by a voluntary code.

These examples illustrate that nationally agreed best practice approaches to developing national food standards are not being followed consistently by ANZFRMC and FSANZ. A major shortcoming is that the range of policy options considered is too narrow, suggesting that a more strategic forum such as COAG may be better placed to assess or oversight policy responses to national public health issues.

It may, therefore, be worthwhile for the Victorian Government to advocate for broader public health issues to be addressed by COAG rather than ANZFRMC, as this strategic approach is more likely to promote input from the relevant policy areas of government (that is, education, health, industry and finance). Such an approach has been followed recently, with COAG agreeing in 2006 to a package of measures worth \$1.1 billion over five years designed to achieve better health for all Australians (COAG 2006). This multifaceted package covers investment in health promotion, prevention and early intervention, and improved health services for disadvantaged groups such as people in rural communities, older people in hospitals and younger people with disabilities in nursing homes. More recently (in 2007), COAG agreed to a \$200 million package of measures aimed at tackling the growth in type 2 diabetes. Details of this package are to be developed (COAG 2007).

An alternative approach is for the Victorian Government to use its position on ANZFRMC to encourage adoption of best practice policy development processes, including an assessment of alternative policy options prior to directing FSANZ to consider a national standard. While Victoria's capacity to influence other jurisdictions is limited (it has only one vote), it could press for jurisdictions to commit to best practice processes by incorporating them in the Food Regulation Agreement.⁷ The main disadvantage of this option is that existing reference to best practice processes (box 7.1) have not consistently produced best practice approaches. If ANZFRMC published a regular report of its actions detailing how these actions related to the COAG guidelines, the process may work somewhat better.

On balance, the Commission favours an approach where national public health issues such as obesity, type 2 diabetes and heart disease would be addressed by

⁷ The Food Regulation Agreement was established by the Commonwealth Government and all states and territories and came into effect on 6 December 2002. It formed the basis of the national cooperative system of food regulation and highlighted national objectives, including providing safe food controls, reducing the regulatory burden on the food sector, harmonising both domestic and international food standards, and having consistent, cost-effective compliance and enforcement regimes.

COAG. One outcome of this process could be the development of a package of measures including a broad proposal to amend national food standards—with FSANZ tasked with developing an appropriate standard. Issues about nutrient deficiencies in the food supply (such as folate and iodine) would also be dealt with by COAG in a similar manner. ANZFRMC would, however, continue to deal with proposals to amend standards relating to food safety, primary production, and food labelling and other information, but through a process consistent with nationally agreed best practice principles.

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.**

7.2.2 A wider review of labelling

The Commission considers there is a case for a wider review of labelling issues based on flaws in the policy process for country of origin and front of pack labelling. The scope of the proposed independent public review of country of origin labelling requirements could be expanded to encompass the policy underpinnings of the entire standard.

A wide review of the policy underpinning could address the broad ranging concerns about labelling raised by inquiry participants, including concerns about:

- difficulties consumers have in understanding and using information on labels (Australian Medical Association (Victoria), sub. 22, p. 2; Australian Retailers Association, sub. 35, p. 3; George Weston Foods, sub. 52, pp. 5–6;

Fonterra Australia Pty Ltd, sub. DR102, p. 9; City of Stonnington, sub. DR118, p. 3)⁸

- the accuracy and truthfulness of labelling (G Mark, sub. DR64, p. 1; K Dingle, sub. DR91, p. 1; Focus on Food, sub. DR105, pp. 4–6)
- a lack of, or inconsistent, enforcement (AFGC, sub. 17, p. 8; CHOICE, sub. 49, p. 3; City of Stonnington, sub. 25, p. 6; Victorian Farmers Federation, sub. 40, p. 11)
- the costs to business (and consumers) of meeting labelling standards (the Australian Industry Group (sub. 32, p. 2) stressed the standards are imposing high costs, but CHOICE (sub. 49, p. 4) disputed industry claims).

A broad review of current labelling requirements would need to consider:

- the type of information demanded by consumers and the causes of any failure of the market to provide this information—given the importance of innovation to the food sector (chapter 4), it is important that government intervention does not crowd out industry attempts to develop new products and/or methods by which those goods, or information associated with those goods, is conveyed to consumers. As noted, ANZFRMC’s proposal to develop a front of pack labelling system has the potential to deter business participation in AFGC’s voluntary labelling scheme
- alternative instruments for addressing any failures in the market provision of information valued by consumers—there may, for example, be scope to move towards more cost-effective labelling requirements in areas unrelated to food safety (such as country of origin) that ensures consumers have access to some mandatory information without stipulating the manner in which other information should be made available. The food sector could then elect to provide the information through labelling, or by other mechanisms such as posting the information on web sites or providing it at the point of sale
- the impact of food standards on industry incentives to develop labelling valued by consumers—research by FSANZ (2003a) suggests that current labelling requirements have had little influence on consumer choices. The food sector also considered that compliance is excessively costly, particularly when labelling standards change
- the costs to industry and consumers of current labelling regulation, and the cost effectiveness of alternatives to mandatory standards—it may be possible, for example, to reduce the regulatory burden on business by

⁸ This concern with labelling is supported by empirical evidence, with a study by FSANZ reporting that consumers were often confused by labels and often failed to make informed decisions, despite prescriptive labelling requirements (FSANZ 2003a).

resorting to industry codes rather than mandatory standards. As noted, despite the existence of an industry code covering nutrient claims, ANZFRMC has pushed FSANZ to develop a mandatory standard without a comprehensive assessment of the benefits and costs of using a voluntary alternative.

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.

7.3 The standards amendment process

To allow some new food products or improved formulations to be marketed in Australia, it is often necessary to vary national food standards.⁹ Under the national framework, fortification of foods with nutritional supplements is prohibited unless the supplements have been specifically approved for use in particular products. Companies can seek to have national food standards varied by requesting FSANZ review the national food standards.

Several inquiry participants suggested that this process is slow, cumbersome and inflexible, and impedes effective innovation (chapter 3). For example, AFGC (sub. 17, p. 7), highlighted that a proposal to fortify fruit and vegetable juices took four years to be assessed and accepted. Cadbury Schweppes (sub. 20, p. 2) indicated that the process for formulated beverages¹⁰ took four years to finalise, during which time businesses could import similarly formulated beverages from New Zealand under the terms of the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth.).

Inquiry participants also argued that the operating procedures of ANZFRMC work against the interests of the main food producing states of New South Wales, Victoria and Queensland. It was implied that jurisdictions without a significant manufacturing base give industry considerations a lower priority than do the main food producing states, and are more sceptical about the benefits of new food products and the value of health claims. In May 2005, the

⁹ Variations to the Food Standards Code may be required for new food additives or processing aids, extension of use of existing additives to foods where permission has not been granted, changes to compositional standards for certain foods such as dairy products, infant formula and edible oil spreads, and for novel foods (such as food derived from a genetically modified organism).

¹⁰ Formulated beverages are non-alcoholic, water based, flavoured beverages containing claimable amounts of vitamins and minerals (FSANZ 2006a, p. 6).

NSW Minister for Primary Industries argued that ‘industry would suffer following a decision about health claims which was dominated by jurisdictions that had little presence in the food manufacturing sector’ (AFRG 2006, p. 117).

Recognising these and other concerns, ANZFRMC commissioned an internal review of the standards amendment process in July 2004. This review was undertaken by a working group of officials on the Food Regulation Standing Committee.

7.3.1 The review of the FSANZ assessment and approval process

The Food Regulation Standing Committee’s review of the standards development and amendment process reported to ANZFRMC in September 2005 and recommended:

- developing clearer requirements for submitting applications
- establishing new assessment processes tailored to the nature, complexity and risk of proposed changes to food standards, and providing indicative timeframes
- empowering ANZFRMC to issue policy principles and policy guidelines (with FSANZ required to adhere to policy principles but have regard to guidelines)
- limiting the basis for ANZFRMC to seek a review of FSANZ’s assessment of a proposal
- developing a transparent process for assessing proposed health claims, but with proposals for new claims being assessed on a confidential basis to preserve the first mover advantage of the applicant
- allowing company-specific amendments to food standards for novel foods, for a limited period.

Setting out clear application requirements would, for example, help reduce delays due to FSANZ requesting additional information to assess proposals. Similarly, requiring ANZFRMC to issue policy principles would help improve transparency and potentially result in more efficient outcomes.

Some of the proposals would, however, increase the complexity of the standards amendment process. In implementing the proposals to add new assessment paths, for example, FSANZ would need to judge whether proposals were of major or lesser significance, and thus whether they should be assessed under the full or streamlined assessment paths.

ANZFRMC accepted a number of these recommendations, and amendments to the FSANZ Act were prepared (Food Regulation Secretariat 2006, p. 1). On 1 July 2007, the Food Standards Australia New Zealand Amendment Bill 2007

was passed by the Commonwealth Parliament: the new amendment process will apply to all applications received by FSANZ from 1 October 2007.¹¹

7.3.2 Will the changes address participants' concerns?

It is difficult to assess the extent to which these changes will address inquiry participants' concerns:

- The proposal to limit ANZFRMC to requesting a single review of FSANZ's final assessment promises some shortening of the process, however, a single jurisdiction will still be able to request a review if it has concerns.¹²
- It is difficult to estimate how many applications would fall into the proposed streamlined assessment path. This would depend on FSANZ's judgements of whether applications are minor or major. Unless guidelines are developed, or until FSANZ has developed a sufficient track record, there would be some uncertainty about the process and its potential deficiencies.
- To the extent that the current process is deterring companies from bringing forward new health claims or food products, the proposed changes could lead to an increase in activity. This in turn could lead to extra demands on FSANZ, possibly increasing the average time applications are on FSANZ's forward work program.

The proposals to permit confidential discussion and assessment of proposals, and permit company-specific approval, also create a risk that companies would attempt to 'game' the system. A company becoming aware of a competitor developing a new product could, for example, attempt to delay introduction of the product by submitting its own application to FSANZ.

The review also assumed that the patent and trademark systems cannot provide sufficient protection for intellectual property embodied in new food products. Providing protections for intellectual property developed by food businesses via the Food Standards Code could be an indirect and untested way of addressing the perceived shortcomings in the legal framework.

There may also be scope to further examine options for streamlining the application process by:

¹¹ Three different streams for applications will now be available and this should reduce average assessment times. Although major changes to a food standard or the development of a new food standard will take up to 12 months, minor changes now have to be processed within three months. Most changes to food standards are expected to take nine months, down from an average of around 16 months previously (Mason 2007, p. 1).

¹² It is important to note that while a jurisdiction can request a review, the decision to initiate a review is made by ANZFRMC. The ANZFRMC can reject a request for a review if it considers the request does not accord with the agreed grounds for a review.

- modifying the voting arrangements of ANZFRMC—options include limiting reviews to cases where two or more jurisdictions request a review, or where a majority requests a review, or further limiting the circumstances where a review may be initiated
- requiring jurisdictions requesting reviews to state publicly detailed reasons for their position and to meet the full cost associated with undertaking the review—this would bring the assessment process in line with COAG’s *Principles and guidelines for national standard setting and regulatory action*
- requiring jurisdictions to consult with FSANZ early in the process, including through its ‘jurisdictional forum’ and ‘scientific network’ prior to a review being permitted—both mechanisms were established to help jurisdictions address any concerns prior to requesting a review. Based on discussions with FSANZ, the Commission understands these forums are often not used, despite them representing a simple mechanism (relative to a review) by which a jurisdiction could address any concerns it may have with a proposed amendment
- providing companies the option of being granted an automatic approval to proceed while FSANZ assesses the available evidence—during this period, companies would be subject to the disciplines of their insurers and the *Trade Practices Act 1974* (Cwlth.). They would also bear the risk of an adverse finding by FSANZ and ANZFRMC. Alternatively, automatic approval could be granted where scientific evidence from overseas supports a position that products are safe or health claims are valid.

A relevant consideration in evaluating these options is the increasing interest in using national food standards to achieve improvements in public health. As there will usually be a range of policy options for achieving specific public health goals, a sufficiently transparent and rigorous process is required to identify and carefully analyse options. This could be achieved through more clearly defined roles for ANZFRMC and FSANZ, and as a number of consultations suggested, a return to them operating as they were originally intended. The Coles Group noted ‘the focus of the Council [ANZFRMC] should be on providing policy guidance and ratification of standards, leaving technical decisions to Food Standards Australia & New Zealand (FSANZ). This will assist both FSANZ and the Ministerial Council to respond to an identified food issue in a more consistent, strategic and timely manner’ (sub. DR75, p. 2).

Whichever approach is adopted, the process needs to balance the competing influences of encouraging industry innovation with the community’s interest in ensuring rigorous assessment of proposals to alter food standards to achieve particular public health goals.

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.**

7.4 Primary production standards

During the Commission's consultations with state and national organisations, the significant coverage of primary food production standards was raised. Primary food production standards were developed post the Blair Report, due to a belief in the importance of effectively managing hazards of public health significance at the primary end of the food chain. The role of these standards is to make managing hazards in the later part of the food chain easier and more effective, resulting in safer food and improved public health outcomes.

Primary production standard development is a key work area for FSANZ, with seafood and dairy standards established, and work on poultry meat and egg standards underway. FSANZ works with other state and Commonwealth agencies, industry stakeholders and consumer groups in developing these standards. The establishment and implementation of these standards means that on-farm food safety standards are similar in each jurisdiction, although their implementation can vary according to each jurisdiction's approach to food regulation.

While primary production standards can bring a degree of consistency to food safety practices early in the food chain, the need for them should be decided on a case-by-case basis, and only if there is clear evidence that regulatory intervention is required. As the Department of Primary Industries noted:

It is important that regulation is only instituted as a 'last resort' and that due regard is taken of industry quality assurance schemes and other industry practices to manage risks that affect the safety of primary products. Mandatory systems that fail to recognise existing industry systems or have the flexibility to accommodate them, disadvantage those businesses that are already managing food safety. The management of risk also needs to be in the context of *where* in the production chain, from farm to consumer, the most effective intervention occurs. (sub. 56, pp. 6–7)

To encourage the development of 'good' regulation, there is a need to ensure any required regulatory effort is focused on the part of the supply chain where it would be most cost effective. The assumption that regulatory effort should be aimed at the earliest possible stage of the production process, such as a farm, may not achieve this.

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.

7.5 Misleading and deceptive conduct

Misleading and deceptive conduct provisions are included in state and national legislation, including in s52 of the *Trade Practices Act 1974* (Cwlth.), s13 of the *Food Act 1984* (Vic.) and ss9–12 of the *Fair Trading Act 1999* (Vic.). Concerns were raised about the scope for overlap and gaps in responding to misleading and deceptive conduct issues, and about the tolerances (or margin of error) used by the regulators of misleading and deceptive conduct.¹³

The misleading and deceptive provisions in the Food Act, the Fair Trading Act and the Trade Practices Act are largely complementary and allow for different

¹³ The tolerance level or margin of error represents the degree of flexibility granted to food manufacturers when making claims about the characteristics of food they may be producing; for example, 'no fat' and 'fat free' currently mean a level of fat no greater than 0.15g/100g total fat and a cholesterol level of no greater than 3mg/100g (Fonterra Australia, sub. DR102, p. 9).

remedies to be sought by different stakeholders in different forums for breaches of these provisions:

- Under the Food Act, a council's environmental health officers (EHOs) can seek remedies for misleading and deceptive conduct in a magistrate's court. Where a breach is established, the court can impose a penalty on the person carrying on a food business, but also on corporate officers (s51) and other business associates (s52). The court can also order corrective advertising (s53B).
- Under the Trade Practices Act, any person, including the Australian Competition and Consumer Commission (ACCC), can seek to have the Federal Court consider cases of misleading and deceptive behaviour. If a company is found to be involved in this behaviour, the remedies available to the Federal Court include damages, injunctions, corrective advertising orders and adverse publicity orders.
- Under the Fair Trading Act, the primary recourse for consumer protection in Victoria, consumers and competitors aggrieved by misleading and deceptive conduct can seek recourse through Consumer Affairs Victoria (CAV), which enforces the provisions of the Act. The Act allows a range of sanctions including enforceable undertakings, injunctions and adverse publicity orders.

The complementary aspect of the three Acts notwithstanding, there is still potential for overlap or gaps in regulatory coverage.¹⁴ While an operating agreement was developed between the former Victorian Office of Fair Trading and Business Affairs (now CAV) and ACCC to assist with coordinated implementation, this agreement is now outdated and limited in its coverage. By updating the existing operating agreement between ACCC, CAV and local councils, the division of responsibilities between DHS and these authorities could be clarified and more guidance provided to minimise any potential problems. The objective should be to exchange information about activities and to assign investigation and possible action to the most appropriate body, with national issues being referred 'up' to ACCC.

¹⁴ The Banks review also highlighted the scope for overlap and inconsistencies across state and national consumer protection legislation (Banks 2006, p. 51). The Commonwealth Government recently initiated an inquiry into Australia's consumer policy framework, including the scope to avoid regulatory duplication and inconsistency by increasing the use of general consumer regulation instead of industry-specific regulation (Costello 2006). An option highlighted was the removal of the misleading and deceptive conduct provisions from the Food Act, given the existing general provisions in the Fair Trading Act and Trade Practices Act. Section 13 of the Food Act is, however, quite different from both s9 of the Fair Trading Act and s52 of the Trade Practices Act; for example, although the Food Act could probably form the basis of a civil claim for damages for breach of statutory duty, it is unlikely that such a claim would ever be made because the Fair Trading Act and the Trade Practices Act are more suitable vehicles.

Updating the operating agreement would provide an opportunity to adopt current best practices and reflect machinery of government changes. The process of reviewing the operating agreement could also consider concerns about the limited tolerances on labelling. How information should be communicated between these entities, and the principles upon which this would be based, could also be addressed.

A recent case illustrates one approach that can be taken in terms of the tolerance of claims about food. In this instance, a company claimed its chicken products were 'GM [Genetically Modified] free' even though the chickens had been fed genetically modified feed. ACCC intervened because the 'not GM modified' labels on packages had the potential to mislead consumers into thinking the poultry in question was not being fed genetically modified feed. Following negotiations between ACCC and the industry, the 'not genetically modified' statements were removed from new packaging (ACCC 2004a). In this case, ACCC went on to say it was 'watching "GM-free" claims closely in the market and reminds food producers more generally that within the strong wording of our misleading conduct laws, free has to mean free' (ACCC 2004a).

This outcome occurred despite FSANZ's advice that 'the produce of animals fed GM crops does not have to be labelled as there is a complete breakdown of that crop in the digestive system and none of the altered DNA becomes part of the animal' (FSANZ 2004b).

While this case may have been intended as a demonstration case for industry, it highlights the need to balance the harm to consumers (from untruthful claims about food) with the costs to industry (of ensuring claims are truthful within an acceptable tolerance). It also highlights the importance of coordination between regulators in providing certainty for industry.

In the course of the inquiry, concerns were put to the Commission about the level of tolerance given to a wide range of claims about food, including 'fat free' and 'sugar free', and information on labels about the content of food. The Commission's draft report proposed that this issue be addressed by improving the coordination and exchange of (scientific) information between FSANZ and ACCC. While FSANZ and ACCC have a memorandum of understanding (MOU), the Commission is unaware of any specific guidelines issued by FSANZ to help ACCC address issues about food and acceptable tolerance levels. In the example cited above, improved coordination may have brought to light information that FSANZ had previously released. And if coordination protocols between regulators had been established, the available scientific evidence may have been used and the outcome (including avoided costs) may have been different.

A number of inquiry participants supported improved coordination between FSANZ and ACCC. AFGC noted, for example, that the MOU between FSANZ and ACCC could be improved if there was a requirement for ACCC to advise FSANZ in matters that may require their action (as is required when the reverse occurs). They also argued that ‘appropriate coordination of provisions would help reduce duplication and increase harmonisation’ in the application of the relevant laws (sub. DR106, p. 12).

7.5.1 Local government, CAV and misleading and deceptive conduct

As noted, local government also has a role in enforcing misleading and deceptive conduct by virtue of the provision contained in the Food Act. Inquiry participants raised a variety of concerns about the conduct of councils, especially relating to inconsistent enforcement (chapter 3).

The Commission’s draft report proposed that inconsistency in enforcing misleading and deceptive conduct by councils could be resolved if CAV had a clearer role. In particular, improved consistency could be achieved if CAV coordinated any action against misleading and deceptive conduct related to food. Restaurant and Catering Australia argued that such an approach could be beneficial and noted that ‘local government should not be required to check and enforce labelling where there are no public health implications’, and that where there was misleading or deceptive information on labelling, ‘these matters should be dealt with by other Statutes and/or Authorities (Consumer Affairs)’ (sub. DR89, p. 2). It was also noted by CAV that the advantages of greater coordination of misleading and deceptive prosecutions (under its lead) included the ‘application of a consistent approach across industries and locations; greater experience in enforcement; and no inherent requirement to prioritise food safety issues’ (sub. DR139, pp. 1-2).

An MOU currently exists between a number of regulators in Victoria including Dairy Food Safety Victoria, PrimeSafe, the Municipal Association of Victoria and the Australian Institute of Environmental Health. The MOU sets out some broad principles and provides for information sharing between regulators (chapter 8) and is scheduled for review in late 2007. This review represents an opportunity to incorporate CAV into the MOU and to clarify CAV’s potential role in dealing with the misleading and deceptive conduct provisions of the Food Act, including whether it should become the lead and/or coordinating agency responsible for addressing misleading and deceptive conduct.

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.**

7.6 Maximum residue levels

The application of agricultural chemicals to agricultural produce in Australia must meet the national food safety standards set by FSANZ. FSANZ sets maximum residue limits (MRL) to ensure produce is free from unacceptable levels of agricultural chemicals and heavy metal residues. If a chemical is not specifically listed in the Food Standards Code (standard 1.4.2), there must be no detectable residues of that chemical in any food. MRLs are also set by the Australian Pesticides and Veterinary Medicines Authority (APVMA), which independently evaluates the safety and performance of chemical products intended for sale. The Commonwealth Department of Agriculture, Fisheries and Forestry also conducts the National Residue Survey to monitor residues of agricultural and veterinary chemicals and environmental contaminants in selected products. Its aim is to assist key export and domestic market access.

The Victorian Department of Primary Industries administers the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* (Vic.) and associated Regulations. Through its Victorian Produce Monitoring Program, the department aims to ensure the application of agricultural chemicals to agricultural produce is appropriate and meets national food safety standards. The Victorian Farmers Federation also noted that DHS and local councils have authority in these matters (sub. 40, p .10).

Studies consistently show that Victorian produce meets the stringent national MRL. Monitoring programs from 2000-01 found that 99 per cent of samples met the acceptable standards (DPI 2007b), but the highly precautionary and duplicative nature of MRLs in Victoria and their inconsistent interpretation have been highlighted as imposing excessive costs on the food industry. The Department of Primary Industries noted, for example, that ‘farmers legally use chemicals on food with a MRL approved by APVMA, however the food product may be in breach of the Food Standards Code because no MRL has been listed’ (sub. 56, p. 4).

The Victorian Government has made a policy commitment to achieve harmonisation of MRLs between the Food Standards Code and the MRLs approved as part of chemical registration undertaken by APVMA. This initiative, which was originally raised at a 2002 ANZFRMC meeting, aims to address the potential legal exposure and trade risk (including export trade) to primary producers. Time delays between registration and listing in the Food Standards Code, which vary from 6–12 months, have been raised as an impediment to the harmonisation process (sub. 56, pp. 4–5). The Commission notes, however, that the Food Standards Australia New Zealand Amendment Bill 2007 includes amendments that will permit FSANZ and APVMA to undertake concurrent, rather than consecutive (APVMA then FSANZ), assessments. The amendments will ensure greater alignment between the two systems and help minimise delays between the approval of a chemical for use by APVMA and its inclusion in the Food Standards Code (DHA 2006b, p. 7).

The practice of imposing MRLs based on a precautionary zero tolerance approach by various government entities rather than a cost–benefit approach can adversely affect both consumers and industry. The marginal costs to businesses of achieving increasingly lower levels of measurable residues are likely to rise rapidly beyond a certain point. Some of the costs of achieving zero residues will be passed on to consumers, depending on market conditions. In a submission to the FSANZ review of its MRL standard, Mr Planken of the International Honey Exporters Organisation suggested a revised standard that would allow a chemical (not currently in the standard) to be present in food, provided the detectable residue of that chemical was below 0.5 parts per billion ‘unless it is toxicologically proven that the detected substance has a potential impact on public health and safety’ (FSANZ 2005b, p. 18).

Considering the National Residue Survey is paid for by farmers through a levy, such a standard would be expected to have a favourable effect on industry costs. International practice also complements Mr Planken’s suggestion. Where residue limits are proposed in the American Congress, for example, there is a statutory obligation to prepare, and seek comment on, a cost–benefit analysis that addresses the range of issues specified (NPHP 2000, p. 34).

The Commission considers the current regulatory arrangements for MRLs are complex and duplicated in some areas, and supports the Victorian Government's commitment to achieve harmonisation between the various MRL requirements affecting agricultural industries. The Commission also considers FSANZ's zero tolerance approach, which is embodied in the national standards, results in an economic loss for both consumers and industry. One way of improving this situation would be for FSANZ to adopt a risk based approach to MRLs.

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.

7.7 Weights and measures

Australia requires a wide range of packaged goods, including foods, to be labelled with a statement of quantity. The method of determining a deficiency in packaged goods is administered by a minimum quantity system (MQS), where a package marked with a statement of quantity must contain at least that quantity. A number of inquiry participants suggested that MQS is placing Australia in an uncompetitive position and supported adoption of an average quantity system (AQS) in line with some of Australia's trading partners. Cadbury Schweppes, for example, argued that if Australian manufacturers adopted AQS they would 'see a significant reduction in overfill product and subsequently significant cost savings'.¹⁵ They also noted that 'New Zealand manufacturers [who use AQS] are significantly advantaged as they can pack a lower fill weight/volume' and that because of the Trans-Tasman Mutual Recognition Treaty, those products can then be sold in Australia (sub. 20, p. 3).

MQS might sound ideal for consumers, but it does not recognise that variations in fill level occur with modern (usually automated) packing processes. Australian legislation recognises this by allowing deficiencies of no more than 5 per cent in any one package on the day the article is packed, provided the contents of that package, plus 11 others of the same kind and stated quantity, show no aggregate

¹⁵ The adoption of AQS involves three rules: the declared quantity on a package should accurately reflect the quantity being supplied, so the average net content of the packages in a lot (production run) may not be less than the declared quantity; no more than 2.5 per cent of the packages in a lot may have negative errors more than the prescribed tolerable negative error; and no package shall have a negative error by more than twice the prescribed tolerable negative error (Ministry of Consumer Affairs 2005).

deficiency.¹⁶ Thus, any package in a selection of 12 packages could be deficient by no more than 5 per cent provided the overweight packages compensate for the deficient ones (Ministry of Consumer Affairs 2001, p. 5).

Australia's use of MQS is at odds with a number of countries, including Canada, the European Union, India, Japan, New Zealand, Switzerland and the United States, which have adopted AQS (Office of Fair Trading 2006a, p. 5). This reduces Australian manufacturers' capacity to compete with international traders and increases the scope for missed export opportunities and/or sales by businesses that supply overseas markets, particularly the European Union.

Australia's use of MQS is also at odds with it being a signatory to the International Convention on Legal Metrology. As a signatory, Australia is obliged to adopt International Organisation of Legal Metrology recommendations, including the adoption of AQS for international trade in prepacked goods. Inconsistent laws affecting the trade of goods and services can impede efficient production by reducing market access and imposing greater costs on industry.

In 2007, as part of a move to harmonise domestic trade measurement regulations, the Commonwealth Government agreed to assume responsibility for establishing a national trade measurement system which would, amongst other things, cover the method used to determine a deficiency in the weight of packaged goods (COAG 2007). The new arrangements are to commence on 1 July 2010. CAV has advised the Commission that a draft of the Commonwealth regulations are in the process of being developed and that there is an expectation that AQS provisions for prepacked goods will be included.

The potential benefits from AQS adoption include:

- improved capacity to measure goods created in high volume production runs
- improved consumer confidence in the accuracy of packaged goods (due to the application of the three rules of AQS)
- the relative simplicity and low resource requirement to accommodate the proposed arrangements for the majority of industries with computerised systems
- lower consumer prices (or less upward pressure) as savings from 'overfill' are passed on to the consumer (Office of Fair Trading 2006a, pp. 9–12).

Introducing AQS would not be without cost. Some retooling and additional sampling would need to be undertaken, particularly in the establishment phase, and the extent and frequency of checks would depend on the quantities packed, the type of packing and the rate of output (Office of Fair Trading 2006a, p. 10).

¹⁶ In Victoria, this requirement is detailed in the Trade Measurement (Interim) Regulations 2006 (s85).

On balance, the Commission considers that moving to AQS would align Australia with internationally accepted standards and help improve its competitiveness. AQS is also a more efficient and equitable method of identifying short measure in prepacked articles for businesses and consumers.

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.

8 Improving the regulatory framework: state government issues

8.1 Introduction

Most Victorian businesses face strong incentives to ensure food is produced safely (chapters 2 and 4), and many respondents to the Victorian Competition and Efficiency Commission's survey of business costs reported doing more to ensure food safety than is required under Victorian regulations (chapter 6). As a result, the key to ensuring Victorian food regulation is effective and efficient is to target regulatory effort where risk is highest and market incentives are insufficient, due to a lack of knowledge or resistance to meeting minimum food safety standards.

Effective targeting of food regulation requires clear objectives, 'seamless' regulatory coverage, consistent application, and robust accountability and transparency mechanisms. To inform decisions about where to concentrate scarce regulatory resources, reliable and up-to-date information is needed on risks and the effectiveness of different types of intervention. And the regulatory system should exhibit the capacity and flexibility to shift resources to address identified food safety risks.

Given the limited information available, it is difficult to determine whether the allocation of regulatory effort in Victoria is based on an assessment of food safety risks and the likely effectiveness of regulation in addressing these risks. But feedback from inquiry participants suggests there is scope to improve the regulatory framework so it conforms more closely with the desirable characteristics outlined above.

Chapter 3 noted:

- the objectives of food regulation are open to different interpretations
- the *Food Act 1984* (Vic.) does not identify which agency is responsible for overseeing local government's performance in meeting its food safety responsibilities which, when combined with the ambiguous meaning of some legislated objectives, clouds accountability
- the framework for the strategic allocation of regulatory activity across the state needs to be strengthened
- councils are not required to report how well they are performing their food regulation responsibilities, weakening both the pressure for continuous improvement and the information available on where to target activity.

This chapter examines ways of improving the regulatory framework to address these issues, by:

- clarifying objectives (section 8.2)
- clarifying roles and responsibilities (section 8.3)
- developing the statewide strategic planning framework (section 8.4)
- improving coordination among regulators (section 8.5)
- enhancing performance reporting (section 8.6).

8.2 Clarifying the objectives of food regulation

Submissions identified actual and potential objectives of food regulation that relate to:

- reducing foodborne illness
- protecting public health and safety
- preventing misleading and deceptive conduct.

8.2.1 Reducing foodborne illness and protecting public health and safety

The Food Act

While the Commission views its role as examining food regulation and its implementation within the framework of objectives established by the Victorian Government, it also examined whether there are grounds for clarifying the objectives of the Food Act.¹ The three objectives in Victoria’s Food Act (box 8.1) mirror those in the Model Food Act that all Australian jurisdictions endorsed under the Food Regulation Agreement.

Box 8.1 Objectives of the *Food Act 1984 (Vic.)*

Section 3 of the Food Act states that “The objects of this Act include the following—

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

Source: Food Act 1984.

¹ In chapter 7, the Commission examined the scope and process for establishing objectives of food regulation at the national level (noting that Victoria’s stated objectives should match those established in the Food Regulation Agreement and the Model Food Act).

The inquiry process highlighted that there is considerable debate about the priority that should be given to:

- reducing foodborne illness (the most common interpretation of the first objective)
- protecting public health, which is an objective of Food Standards Australia New Zealand (FSANZ) in developing food standards or codes of practice, and also a possible interpretation of the first objective of the Food Act
- preventing misleading conduct (section 8.2.2).

The Commission understands that an original intent of the Food Act was to reduce the incidence of foodborne illness resulting from the sale of food. Submissions from regulators suggest the Act is being implemented primarily with this purpose in mind. The Department of Human Services (DHS) stated that ‘direct evidence of the effect of the FSP [food safety program] requirements should ultimately be visible in the data on the incidence of foodborne illness in Victoria’ (sub. 48, p. 7). A number of councils also argued that the Food Act should maintain a focus on food safety (City of Stonnington, sub. DR118, p. 1; Glen Eira City Council, sub. DR83, p. 8; Hume City Council, sub. DR97, p. 2).

Some inquiry participants, however, argued that the current objectives of the Food Act should give more attention to broader public health considerations. The National Heart Foundation of Australia (Victorian Division), the Obesity Policy Coalition and VicHealth considered that the protection of public health should be a key objective of the Food Act (sub. DR103, p. 1; sub. DR113, p. 1; sub. DR126, p. 3). The Obesity Policy Coalition defined the ‘protection of public health’ as protecting the public from long term harm caused by chronic diseases associated with food consumption (sub. DR113, p. 5).

High level objectives, such as those in the Food Act, will inevitably be open to different interpretations. That said, the registration and inspection regime under the Food Act is designed to reduce foodborne illness, which is thus bound to remain a high priority for regulators. It would be helpful for the Victorian Government to clarify the first objective of the Food Act (s3(a)) by incorporating within the Act a statement that a priority of food regulation is to reduce the incidence of foodborne illness resulting from the sale of food. This would permit some clarification without altering the objectives of the Food Act—which needs to be avoided because it would depart from objectives that all jurisdictions have endorsed. Adopting this approach would still allow the government to pursue broader public health objectives through national food standards or other state legislation such as the *Health Act 1958* (Vic.). Broader public health concerns would remain an objective of the Food Act to the extent

that national decisions about food standards relating to public health were given force in Victoria through s3(c).²

Additional clarity could be provided:

- by the minister instructing what priority to attach to specific objectives (which could be achieved through the strategic planning process described later in this chapter (section 8.4))
- by the government specifying principles to inform regulators about how they are expected to interpret the objectives and to apply the provisions of the Food Act (box 8.2).

Box 8.2 Guiding principles for food regulation

Food regulation should be:

- the minimum necessary to achieve the desired objective, as the *Victorian guide to regulation* proposes (Government of Victoria 2007, p. 3–7)
- risk based, to reduce the regulatory burden and improve resource allocation
- efficiently administered (minimising administrative and compliance costs), in line with the Victorian Government’s commitment to reducing the regulatory burden
- nationally consistent, so similar businesses are treated similarly
- evidence based
- mindful of international food regulations and market access implications.

A robust performance monitoring and reporting system (section 8.6) should inform the administration of food regulation in Victoria. And the information generated by this system should underpin the process of continuous regulatory improvement.

Many inquiry participants supported the inclusion of principles.³ But DHS, while it supported giving priority to reducing the incidence of foodborne illness, argued that it is not appropriate to include generic principles of good regulation in the Food Act (sub. DR149, p. 5). The Commission, however, considers that it is precisely because such principles of good regulation are generally applicable that they would foster effective and efficient food safety regulation, and thus would be an appropriate addition to the Food Act.⁴ The principles would, for

² As noted in chapter 7, the Victorian Government may seek at the national level a more coordinated and strategic approach to issues of nutrition and public health, which includes, but goes beyond, food standards per se.

³ These included Glen Eira City Council (sub. DR83, p. 8), Fonterra Australia Pty Ltd (sub. DR102, p. 3), the Australian Institute of Environmental Health (Victorian Division) (sub. DR104, p. 1), the Australian Food and Grocery Council (sub. DR106, p. 13), the City of Stonnington (sub. DR118, p. 4) and Brimbank City Council (sub. DR130, p. 1).

⁴ This approach is adopted in legislation such as the *Environmental Protection Act 1970* (Vic.).

example, indicate to regulators that they should have regard for the costs of regulation, and should base intervention on evidence that the regulation would be justified and effective. The Department of Primary Industries (DPI) argued that it is also important to recognise the role of food regulation in maintaining food products' access to markets, particularly export markets (sub. DR144, p. 1).

The major industry-specific food Acts

Objectives in the industry-specific food Acts are expressed in terms of regulatory instruments rather than food safety outcomes (box 8.3). As a result, there are no specified outcomes against which to assess regulators' performance.

BOX 8.3 Objectives expressed in terms of 'means'

Dairy Act 2000 (Vic.)

- Section 5(a) states that an objective of Dairy Food Safety Victoria is to 'ensure that standards which safeguard public health are maintained in the Victorian dairy industry'.

Meat Industry Act 1993 (Vic.)

- Section 1(a) states that the Act's purpose is 'to set standards for meat production for human consumption and pet food'.

Seafood Safety Act 2003 (Vic.)

- Section 1(a) states that the Act's purpose is to provide 'a regulatory system under which all sectors in the seafood supply chain are required to manage food safety risks in accordance with the relevant applicable standards'.

Sources: Dairy Act 2000; Meat Industry Act 1993; Seafood Safety Act 2003.

The Commission considers, given that the instruments in these Acts seek to maintain 'food safety', that their objectives should be aligned with the Food Act and that the proposed principles should also apply. These changes would provide stronger direction to regulators and enable more effective monitoring of the extent to which regulation is achieving its stated outcomes. A number of submissions supported the alignment of objectives (Australian Institute of Environmental Health (Victorian Division) (AIEH), sub. DR104, p. 1; Coles Group Limited, sub. DR75, p. 2; Golden Plains Shire, sub. DR70, p. 4).

DPI contended that regulators would have difficulty measuring performance if the primary objectives of Victorian food legislation were aligned because, for example, there is little evidence to suggest foodborne illness derives from poor food safety practices in the dairy sector. It argued that more precise measurement relates to the implementation of standards that aim to prevent illness (sub. DR144, pp. 1–2). However, limiting the focus to implementing standards could lead to excessive emphasis on rule based regulatory tools (such as requiring

food safety programs or food safety supervisors) compared with alternative (and possibly more cost-effective) approaches such as education strategies. Moreover, having consistent objectives relating to food safety would not prevent regulators from measuring performance in terms of activities necessary to achieve food safety outcomes.

While there are challenges in measuring and interpreting food safety outcomes (section 8.6), legislation should specify the ultimate objectives of food safety regulation. These objectives, together with guiding principles, would inform the design of performance reporting and monitoring regimes and, therefore, the targeting of regulatory effort at areas where it can be most effective and efficient.

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.

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.**

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.

8.2.2 Preventing misleading and deceptive conduct

The second objective of the Food Act (also a core provision of the Model Food Act) relates to misleading and deceptive conduct (box 8.1). Chapter 7 discussed inquiry participants' concerns about duplication and gaps in coverage in the misleading and deceptive conduct provisions of Victorian and Commonwealth legislation, and about the way in which the provisions are interpreted and applied. This section considers concerns about the priority accorded by Victorian regulators to monitoring and enforcing the provisions of the Food Act and the *Fair Trading Act 1999* (Vic.).

Some inquiry participants considered that this matter receives insufficient priority in Victoria (CHOICE, sub. 49, p. 3; Obesity Policy Coalition, sub. DR113, p. 5; VicHealth, sub. DR126, p. 5), and some businesses noted that consistent and active enforcement of misleading and deceptive conduct provisions helps to maintain a level playing field for food businesses (Fonterra Australia Pty Ltd, sub. DR102, p. 11; George Weston Limited, sub. 52, p. 4). Consumer Affairs Victoria (CAV) argued for more emphasis on the objective of ensuring efficient food markets, backed by additional funding to support 'proactive monitoring campaigns in food markets to send signals [that the Victorian Government is] serious about fraud, and deter those contemplating it' (sub. DR139, pp. 1, 3).

While misleading conduct does occur, businesses have strong incentives to provide truthful information. As noted in chapter 7, competitors have an incentive to reveal misleading behaviour by rivals. DHS pointed out that complaints about labelling 'generally arise from competitors of the manufacturer against whom the complaint is made, rather than from consumer associations or other sources' (sub. 48, p. 19). Reliable information remains a cornerstone of both market and regulatory processes. The Commission is not inclined, therefore, to recommend changing the priority accorded to reducing misleading conduct. Nonetheless, improvements in interagency coordination (proposed later in this chapter) should improve both communication among DHS, CAV and councils on misleading conduct issues, and the assignment of responsibility to follow up problems identified.

8.3 Clarifying roles and responsibilities

There is scope to clarify the responsibility for administering food safety regulation in Victoria. As noted, the Food Act does not address which government agency is responsible for overseeing local government's performance in relation to food safety. The Auditor-General observed:

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

In addition, inquiry participants' views, along with evidence gathered in a survey of local governments for this inquiry, suggest councils are adopting different principles and approaches to implementing food regulation (chapter 11).

Concerns about unclear responsibilities were raised initially by the Auditor-General in 2002, so it is surprising this issue has not been addressed. DHS told the Commission that it does not 'specifically measure its performance against all objects in the Food Act as it is not responsible for them, local government is' (DHS 2006c). And the Municipal Association of Victoria (MAV) noted there is no direct statutory connection between the Minister for Health and DHS and the Food Act requirements that are undertaken by local government (sub. DR128, p. 9).

The Minister for Health is responsible for the Food Act. It follows, while councils are responsible for activities and outcomes at the local level, that the minister has responsibility for achieving the Act's overall objectives. To enable the minister to discharge this responsibility, DHS should be clearly responsible for monitoring the extent to which local government fulfils its responsibilities under the Food Act. Clarifying this responsibility should be a high priority.

A number of inquiry participants (Coles Group Limited, sub. DR75, pp. 2–3; Woolworths Limited, sub. DR110, p. 1) strongly supported the Commission's approach to this issue. Some councils expressed qualified support and sought detail on how this approach would work in practice (City of Stonnington, sub. DR118, p. 4; City of Whittlesea, sub. DR114, p. 1). Section 8.6 discusses the implications for local government of performance reporting.

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.

8.4 Fostering a statewide approach to improving food safety

Clarifying accountabilities will improve regulatory effectiveness and efficiency but will not necessarily address concerns about councils' different approaches and priorities in implementing food regulation. DHS can encourage more targeted regulation focusing regulatory effort across the state on the issues that warrant the most attention, by developing a strategic planning framework for Victoria.

The Auditor-General in 2002 recommended that the Food Safety Unit (FSU), in cooperation with key stakeholders, develop a strategic plan (AGV 2002, p. 10). FSU subsequently prepared *Strategic directions 2004–2007*, which ‘provides a basis for clarifying roles, responsibilities, key strategies and relationships with other key food safety stakeholders’ (DHS 2004d, p. 1). In a follow-up report, however, the Auditor-General identified deficiencies with the plan. First, the unit developed the plan without specifically consulting industry and local government, although it did use intelligence gathered from these sources (AGV 2005b, p. 18). Second, the plan did not address the Auditor-General’s recommendation on establishing protocols for monitoring the performance of local government against its legislative obligations (AGV 2005b, p. 18). DHS advised that work on developing FSU’s second strategic plan will not commence until late 2007 (sub. DR149, p. 33).

Although FSU’s first strategic plan identified other regulatory agencies, it focuses primarily on the unit. Both Dairy Food Safety Victoria (DFSV) and PrimeSafe have developed corporate plans setting out strategies for coming years (DFSV 2004c; PrimeSafe 2005b). While these efforts are useful, the sectoral approach means Victoria lacks a comprehensive plan for its entire food regulatory system.

In its draft report, the Commission proposed that the Victorian Government develop a statewide strategic plan encompassing all food regulators, to coordinate their individual plans. Infocus Management Group (sub. 38, p. 6; sub. DR122, p. 4), Coles Group Limited (sub. DR75, p. 3) and Glen Eira City Council (sub. DR83, p. 11) supported this approach. The Commission envisages that the plan would include:

- an explanation of the role that regulation can play in addressing food safety risks, referring to the need to target regulation where it can be most effective
- short and medium term objectives and priorities for regulation, supported by statistical analysis where available
- strategies and actions to realise these goals
- a regular review of progress in achieving these objectives (identifying the information needed to assess progress) and benchmarking performance against other food regulators and jurisdictions.

A strategic plan can incorporate other elements—for example, food safety strategies in the United States (President’s Council on Food Safety 2001) and the United Kingdom (Food Standards Agency 2001) have included performance targets.

An overarching plan would facilitate a more integrated approach to food safety regulation. Regulators would work under better aligned objectives and be aware of each other's activities, which would reduce duplication of effort, improve coordination and help identify gaps in regulatory coverage. The plan would identify priorities and promote consistent application of food regulation across the state, reinforcing the measures recommended in chapter 11. This approach would reduce costs to the extent that duplication is avoided or lessened—for example, where a problem or task affects more than one regulator (such as the education of food handlers), a coordinated solution would be easier to reach.

Recommendation 8.5

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:

- **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).**

8.5 Improving coordination among regulators

While clear objectives and accountabilities, strategic planning and performance reporting would enhance the regulatory framework, effective delivery requires coordination among regulators. The Commission considered two broad ways in which to improve coordination:

- (1) merging some or all state food regulatory agencies, so a single agency would carry out most of the regulatory tasks
- (2) maintaining existing regulators, but enhancing the mechanisms for coordinating their activities.

8.5.1 A single food regulator for Victoria?

Some inquiry participants suggested that moving to a single regulator would address the issues discussed in chapter 3. The Australian Industry Group (sub. 32, p. 3), Woolworths Limited (sub. 50, p. 8) and Coles Group Limited (sub. DR75, pp. 3, 6) considered that a single food regulator, as in New South Wales, would clarify responsibilities and improve resource allocation, reporting and communications. Other submissions, however, had a contrary view. The Australian Dairy Products Federation was concerned that a single agency would set generic standards (sub. 26, p. 1). The Golden Plains Shire argued that regulation at the local level is most responsive to, and supportive of, small business (sub. DR70, p. 5).

The draft report examined the case for establishing a single food regulator in Victoria. The Commission also examined how New South Wales had progressively developed a consolidated NSW Food Authority (VCEC 2007a). Having assessed the arguments and available evidence, the Commission is not convinced that Victoria should consolidate the FSU, DFSV and PrimeSafe into a single food authority:

- Victoria's and New South Wales' regulatory frameworks are at different stages of development. John Ward commented that Victoria has had a long history of successful regulation of dairy and meat industries as well as food regulation administered by local councils, whereas 'it must be recognised that they [New South Wales] were coming off a low base relative to Victoria' (sub. 59, p. 1).
- The New South Wales approach is still evolving and has yet to be fully implemented and evaluated (VCEC 2007a). Moreover, there is little international evidence on the impact of consolidation. The US Government Accountability Office, after examining the experiences of seven countries in consolidating their food safety systems, reported that none of the countries had analysed the results of consolidation (US GAO 2005, p. 4).
- The Commission received little evidence of substantial problems with Victoria's industry based regulatory arrangements; on the contrary, submissions from industry indicated that regulatory arrangements are working well. Dairy Australia commented favourably on the co-regulatory approach administered by DFSV (sub. 23, p. 1). Fonterra Australia Pty Ltd stated that DFSV and PrimeSafe have considerable expertise in the industries which they regulate (sub. DR102, p. 12).
- Given the small size of the FSU, DFSV and PrimeSafe (chapter 6), the savings from merging these agencies may be small, and possibly outweighed by implementation and adjustment costs, at least in the early years.
- A single regulator would still need a mechanism to distribute resources throughout the state to monitor food businesses in Victoria. It is questionable as to how different this would be in its management of the challenges of priorities, consistency and coordination that arise from the current delegation of responsibilities to local government.
- Many of the arguments for creating a single regulator can be addressed in other ways. Reflecting this, the Commission has recommended a number of reforms to strengthen the food safety framework in Victoria (section 8.5.2) and ensure a cohesive strategic approach across all entities (section 8.4).

Given these points, the case is not strong enough to justify merging FSU with PrimeSafe and DFSV at this time, especially given there are other ways in which to address concerns about accountability, coordination, consistency and the costs to business of Victorian food regulations. The following sections examine these alternatives.

8.5.2 Improving coordination among existing regulators

As noted, a number of submissions reported coordination problems among food regulators in Victoria (chapter 3). The Commission identified similar issues in its report on regulation and regional Victoria (VCEC 2005a), as did the Auditor-General in his reports on food safety management in Victoria (AGV 2002, 2005b). Options to improve coordination include:

- improving the existing memorandum of understanding (MOU) among food regulators
- setting up service agreements between state and local governments
- strengthening advisory and governance elements of the food safety framework.

Coordination among public agencies, however, is not simply a function of organisational structure. Regulators' incentives to improve coordination are a key driver of information exchange and operation. The effectiveness of organisational arrangements would be given a firmer foundation with the earlier recommendations, which would clarify food regulation objectives and provide related guidance. Moreover, improved performance monitoring against objectives (section 8.6) should also improve coordination.

Memorandum of understanding

Food regulators in Victoria and other Australian jurisdictions use MOUs to delineate responsibilities and coordinate their activities. An effective MOU can help ensure 'seamless' regulatory coverage from 'paddock to plate' without duplication. The existing MOU between DFSV, PrimeSafe, MAV and AIEH came into operation in 2004 for a five year term (with a review after three years). Aimed at achieving a cooperative approach to protecting public health and safety in Victoria, it sets out broad principles and the roles of the respective parties as they relate to food safety, and provides for information sharing among regulators.

The MOU supplements Victorian food legislation, which does not specify the responsibilities of regulators in some areas. Even though recent industry-specific legislation has been drafted to complement the Food Act, further guidance is required in areas such as responsibility for dairy, meat and seafood in supermarkets. The MOU also clarifies responsibilities where there is potential

overlap and seeks to avoid duplication in regulatory activities such as registration/licensing and the application of standards.⁵

Where there are multiple regulators and multiple Acts, an MOU can set out operational protocols (in more detail than would be appropriate for legislation) that enable regulators to manage boundary issues and avoid gaps in coverage. The MOU can also provide a coordinated group to interface with industry.

Operation of the memorandum of understanding

Some inquiry participants consider the MOU has operated reasonably well. MAV commented that the demarcation between agencies is clear and that the memorandum clarifies relationships (sub. 41, p. 11). The City of Whittlesea indicated that the MOU has, in general, fulfilled its purpose within its municipality by clarifying which agency is responsible for a particular food business (sub. DR114, p. 2). DFSV suggested that the MOU has streamlined responsibilities in relation to recalls and consumer complaints. If, for example, a dairy licence holder is implicated in a complaint or recall, the local council will refer the process to DFSV rather than DHS (Dench McClean Carlson 2006, p. 9). DHS also argued that the arrangements had increased collaboration and cooperation (DHS 2007a).

The City of Yarra indicated that the MOU is generally adequate, but there could be more clarity about the first point of contact for food safety issues and a more consistent approach to inspections and compliance requirements (sub. DR132, p. 1). Similarly, AIEH suggested the MOU could clarify roles and responsibilities, and address inconsistent application of food standards by different authorities (sub. DR104, p. 2).

A potential weakness of the MOU is that it does not impose legal rights or obligations, relying instead on the cooperation and good faith of the signatories. That said, publication of the MOU strengthens the signatories' incentives to abide by its provisions and provide information to parties affected by it. Moreover, the Commission's other recommendations to improve accountability and reporting would mean that a revised MOU would more readily expose any shortfalls. The reporting arrangements under the food safety framework (discussed below) should strengthen regulators' incentives to make the MOU work effectively.

Information sharing among regulators

There appears to be scope to improve information sharing among regulators. In a report prepared for the Commission, Dench McClean Carlson stated:

⁵ When food legislation was changed a number of years ago, the Victorian Government at the time wished to avoid dual licensing of a business for food safety purposes (Theophanous 2003, p. 841).

It would seem logical that the database of registered licensed dairy establishments held by DFSV should be available to the local municipalities where they are located. This currently is not the case and given the referral process in place through the ... MOU, it would ensure nothing falls between the cracks. (Dench McClean Carlson 2006, p. 13)

DFSV reported that privacy law prevents it from giving its list of licensed dairy premises to councils. This difficulty could be addressed by a licensing condition that provided for the sharing of licensing information (Dench McClean Carlson 2006, p. 13).

Although the MOU facilitates information flows from local government and DHS to PrimeSafe and DFSV, it does not facilitate flows in the opposite direction. In the case of foodborne illness investigations, the MOU asks DHS to notify DFSV or PrimeSafe of any information affecting food safety in dairy, meat or seafood businesses. However, it does not ask DFSV or PrimeSafe to provide this type of information to DHS or councils, even though such information would be useful in recalling unsafe food products. Given only the Secretary of DHS has emergency powers extending to all food businesses regulated under Victorian food legislation, it seems reasonable that the MOU should ask DFSV and PrimeSafe to provide information that would assist the Secretary in exercising these powers.

The MOU could also allow for more information sharing about food safety risks and enforcement action. Where, for example, local government has obtained food samples from premises licensed by DFSV or PrimeSafe, the current MOU asks that unsatisfactory test results be forwarded to the relevant regulator for appropriate action. But it does not ask DFSV and PrimeSafe to provide such information to local government or to report whether, or what type of, enforcement action has been taken.

Legislative amendments may be needed to improve information sharing. While the Food Act enables the transfer of information to councils and public statutory bodies (ss54C and 54D), the Seafood Safety Act and Meat Industry Act contain more restrictive provisions, which limit the flow of information to other regulators.

Review of the memorandum of understanding

As noted, a review of the MOU is planned for late 2007. Submissions identified a number of issues relating to regulators' responsibilities (chapter 3), including:

- 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.

While the Commission has not examined all these issues,⁶ the review of the MOU should examine regulators' responsibilities in these areas. Given the issues identified around information sharing, the review should also develop improved information sharing protocols.

The coordinating committee of food regulators (discussed below) should undertake the review, with input from the Food Safety Council and the Food Victoria Council. The review should also determine how the committee will operate, including frequency of meetings, decision making processes, and procedures for resolving disagreements. These operating rules will be important for managing boundary issues and making decisions about the strategic plan. The review should commence following the government's response to this report, and be completed within 12 months. The review should also set out a timetable for the implementation of its recommendations.

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.

⁶ The issue of misleading conduct is discussed in section 8.2.2 and chapter 7.

A committee of food regulators

Several submissions suggested a central agency or committee could coordinate food regulation. John Ward noted:

The existing agencies have great strengths in terms of systems, personnel, geographical coverage and resourcing so the exercise may more be about the most effective deployment of those collective strengths with a mechanism to coordinate activities. (sub. 59, p. 2)

Although the MOU provides for the signatories to meet twice a year (or more frequently if required), this committee appears to have been inactive. MAV reported that it has not been involved in any committee or discussion about the MOU since it was signed (sub. DR128, p. 10). In the draft report, the Commission proposed a new form and wider mandate for the committee of regulators. Including CAV on the committee would facilitate the coordination of monitoring and enforcement activities relating to misleading and deceptive conduct.

Some submissions expressed concerns about the proposed structure of the coordinating committee. MAV pointed to the potential for a committee comprised mainly of state government agencies to develop unrealistic requirements of local government (sub. DR128, p. 11). The City of Maribyrnong and Hume City Council argued that local government should be represented on the committee (sub. DR82, p. 2; sub. DR97, p. 2). In response to these concerns, the Commission suggests the committee could include—in addition to MAV—a further two representatives from individual local governments (for example, a metropolitan council and a regional council).

Role of the committee

The committee would develop for ministerial approval a food safety strategic plan, which is an instrument for bringing about a statewide, integrated approach to food safety regulation (section 8.4). Other roles could include:

- overseeing the MOU and its ongoing operation
- regularly monitoring performance of the outcomes achieved through the food safety strategic plan and coordinating reports to the responsible ministers
- overseeing a common food safety performance reporting system
- identifying and addressing any significant problems that require a coordinated or statewide response, with regulators to seek ministerial decisions when required⁷

⁷ Some examples of issues that may require a statewide response include: monitoring misleading and deceptive conduct in the food sector; ensuring consistency of food regulation (across the state and with

- examining the scope to use coordinated education and information strategies to complement regulation (chapters 10 and 12 discuss such strategies for businesses, households and the community sector)
- consulting with the Food Safety Council and the Food Victoria Council on matters as appropriate
- serving as a forum to share knowledge, information and lessons.

The whole of government group, which has a different membership, would continue to advise on Victoria’s approach to national standards.⁸

Operation of the committee

The committee would not have statutory form nor diffuse the lines of accountability between the regulators and responsible ministers: the FSU through the Secretary of DHS to the Minister for Health, and DFSV and PrimeSafe through the Secretary of DPI to the Minister for Agriculture. It would be chaired by DHS and should adopt a cooperative approach to problem solving and decision making. The revised MOU should, nevertheless, include procedures for resolving disagreements among committee members. At a minimum, the committee could adopt protocols similar to those used by interdepartmental committees within the Victorian Government. The committee should also have the ability to establish working groups to examine specific matters.

Figure 8.1 illustrates how the committee would combine with the other elements of the proposed improved framework for food safety described in this chapter.

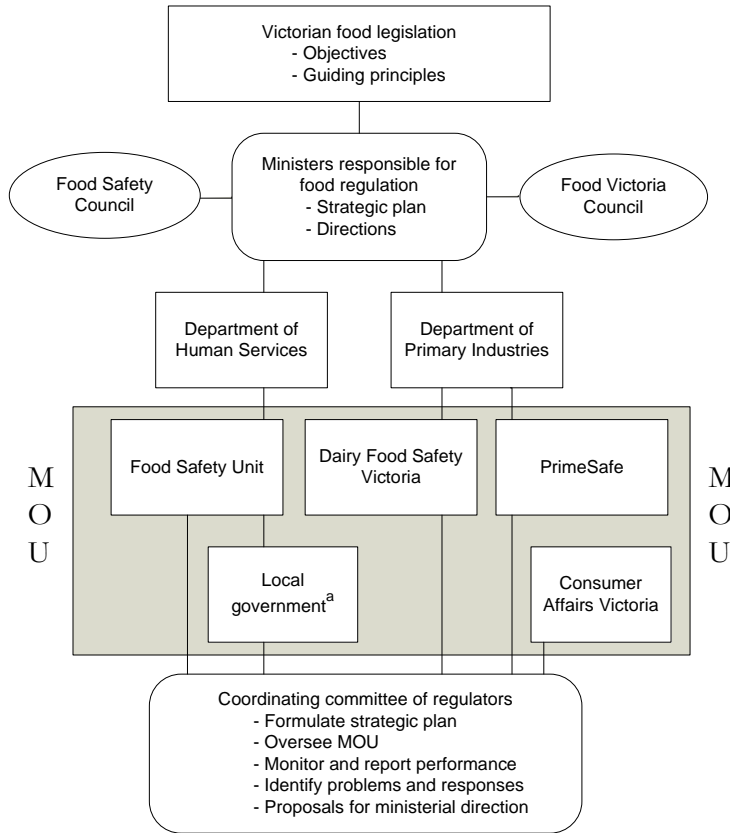
Consultation

Commenting on the proposed food safety framework, Infocus Management Group stated that ‘it is also important that inputs are received from non-regulators’ (sub. DR122, p. 4). The Commission acknowledges the need for an expert body that can provide advice across the entire food safety system. The Food Safety Council—established under the Food Act to provide advice on food safety, food standards and the operation of the Act—could advise the coordinating committee and the Victorian Government on progress with the proposed strategic plan.

national standards); managing the interface with other regulatory regimes (such as the accreditation of aged care and childcare establishments); and managing food safety emergencies.

⁸ This group includes DHS, DPI, the Department of Innovation, Industry and Regional Development, the Department of Premier and Cabinet, and CAV. It develops a coordinated Victorian approach to issues relating to food standards being developed under the Food Standards Code (DHS, sub. 48, p. 13).

Figure 8.1 **Accountability and the food safety framework**



^a Represented by an officer from MAV and two officers from local councils.

The coordinating committee should also consult with industry, consumer and community groups. DPI argued that if the framework would benefit from a formalised mechanism for conveying industry and community advice to food ministers, then such a body should be established for that purpose (sub. DR144, p. 2). The Food Safety Council and the Food Victoria Council (which includes senior representatives from the food manufacturing, retail and primary production sectors across the state), or a merged body, could meet this need.

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.

Securing implementation of food safety regulation

An enhanced MOU and the committee of regulators would encourage coordination among regulators. As noted, the committee would develop a strategic plan for allocating regulatory effort across Victoria. This plan would be useful, however, only if implemented and actively monitored. In most cases, the publication of the plan and its endorsement by the ministers would prompt implementation by the respective regulators. However, the Commission has considered two additional instruments that could be used:

- (1) service agreements between state and local governments
- (2) ministerial power to direct councils on food safety issues.

Service agreements

Service agreements could be used to articulate the roles and responsibilities of state and local governments and ensure implementation of regulatory obligations. In its response to the draft report, MAV supported the use of service agreements to achieve 'some level of central coordination' (sub. DR128, p. 5). A number of local councils also supported this approach, while the City of Stonnington argued that service agreements should be given serious consideration (sub. DR118, p. 9).

The City of Maribyrnong indicated that service agreements can deal with some food safety activities undertaken by councils (sub. DR82, p. 4).

How can service agreements contribute?

Service agreements could encourage implementation of the strategic plan by strengthening incentives for local governments to align their regulatory performance with state objectives. They could do so by:

- incorporating council risk management strategies⁹ into agreements
- incorporating rewards or penalties in agreements
- involving a process of negotiation, which can help to reconcile the differing positions of regulators
- providing local government with a framework to agree on benchmarks for their regulatory obligations, and with incentives to exceed such benchmarks
- providing processes for developing interpretative guidelines.

The City of Ballarat (sub. DR107, p. 1) and the City of Monash (sub. DR138, p. 3) noted that service agreements would also provide a framework for addressing other identified shortcomings such as data reporting and local government capacity constraints.

Legislated and non-legislated functions

Functions that might be included in service agreements fall into two categories: those that local governments have a legislated requirement to undertake and activities not provided for in the legislation. If the state wants local governments to undertake functions that are not legislated, then a service agreement could specify the required activities and associated funding. Some councils considered that service agreements could underpin food safety activities that are additional to their statutory requirements (City of Maribyrnong, sub. DR82, p. 4; City of Yarra, sub. DR132, p. 4). DHS already has a standing contract, which has been used to fund after-hours inspections by councils of pork roll vendors, and a campaign to explain the introduction of food safety program templates. This approach could be extended to encompass other food safety activities, both ad hoc and ongoing.

Specification of roles and responsibilities within agreements should have regard to balancing administrative and enforcement consistency across jurisdictions and ensuring the flexibility for local government to use discretion and local knowledge in discharging its responsibilities.

⁹ Risk management strategies and their key elements (such as inspection and enforcement approaches) are discussed in chapters 9, 10 and 11.

Negotiating and structuring agreements

The voluntary nature of agreements is a major strength because it requires that differences in objectives and priorities must be recognised and that a mutually acceptable approach be reached. An explicit process whereby councils identify how and why their position differs from the state's policy objective, and what is required to align the two, would form a basis on which to formulate incentives to include in service agreements and thus minimise the likelihood of councils electing not to enter a service agreement. If parties to the agreement invest in its negotiation process, then they become committed to its success and thus have an incentive to adhere to the agreed approach.

Funding arrangements

Funding arrangements are critical to the acceptance of agreements by local governments and to the agreements' ultimate success. In the case of legislated functions, funding already exists (through council rates and fees paid by regulated businesses), but service agreements could acknowledge the resource constraints faced by local government by incorporating performance rewards for councils that meet risk management benchmarks for activities such as inspections. For activities that are extra to legislated functions, additional funding would be required. Funding could be based on a formula that recognises differing costs of service delivery and incorporates performance rewards and penalties.

There are also likely to be implementation and transaction costs, such as contract negotiation and set-up costs for data management systems, which the agreements would need to recognise.

Implementation

While experience already gained with service agreements would assist parties to negotiate and implement food safety agreements, there would nevertheless be significant new issues to resolve. The emerging partnership approach in New South Wales (whereby councils can enter into individual service agreements) may offer useful insights. A trial involving a small number of councils in Victoria drawn from a cross-section of municipality types would identify major hurdles, enable the collection of baseline data against which effectiveness could be evaluated, and reduce implementation and transaction costs for a full rollout.

A trial would help resolve key issues relating to the nature of the agreements. These issues include how to achieve more uniformity while allowing for the differing circumstances of councils and developing funding formulas that can be consistently applied but that have inbuilt flexibility (to allow for differences such as the size and demographic dispersion within municipalities).

The state would need to resolve threshold issues such as whether the agreements should be voluntary or mandatory; whether to use the standing agreement or develop a separate food safety agreement; and whether agreements are to be negotiated through MAV or directly with councils, with MAV playing a facilitating role. There may be a case for having DHS negotiate agreements directly with councils for the trial phase of the program but using agreements through MAV for the rollout across all 79 councils once development issues are resolved. The state would also need to consider what, if any, legislative amendment is necessary for agreements to be introduced.

Matters that service agreements could address include:

- the preparation of risk management strategies to underpin councils' registration, inspection and sampling policies
- processes for industry based programs targeting risks identified within the state's strategic approach to managing food safety risk
- the basis on which a new database could be developed to replace the VicFin model, which inquiry participants indicated has significant deficiencies as currently implemented (section 8.6).

The trial would need to include a cross-section of councils, drawing from metropolitan, regional and rural areas, and include councils dealing with specific concerns such as culturally and linguistically diverse communities and local economic development. Five or six councils would be required to obtain such coverage. A two year trial should be long enough to generate the required information. Allowing a further year to plan the trial, negotiate agreements and evaluate the results, the whole process would thus require three years.

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.

Ministerial power of direction

The case for the power

While cooperation among regulators is to be encouraged, on its own it may not guarantee the effectiveness of the proposed arrangements. Under current arrangements, the Victorian Government cannot direct councils under the Food Act. This may dilute the minister's accountability for implementing food safety legislation. Woolworths Limited noted there is no overriding body that controls local government (sub. 50, p. 4). DHS stated:

... the Food Act, despite being a piece of State Government legislation that is applied by local government, currently provides no power to the minister or the department to direct councils in any meaningful way. Further, there are no sanctions that can be applied if a council fails to meet its obligations under the Act. (sub. 48, p. 15)

Council officers are also looking for direction from DHS. Environmental health officers reported that they want the department to take a leadership role in supporting councils to explore options for consistency (Windsor & Associates 2005, p. 40). An option is to empower the Minister for Health, where necessary, to direct local councils on food safety matters to improve consistency in the application of food regulation across Victoria. MAV indicated that such directions would reduce the autonomy of local councils to determine the level of resources they allocate to food safety activities based on local needs and priorities (sub. DR128, p. 12). There may, however, be circumstances in which the Victorian Government does not want local priorities to guide resource allocation, and a directions power could be used in such cases.

The legal situation

The Commission's legal advice indicates that State Parliament may pass laws enabling ministers to direct local government, notwithstanding that the *Constitution Act 1975* (Vic.) recognises that local government is a 'distinct and essential tier of government' and that councils are 'constituted by democratically elected councillors' (s74A(1) and (1A)). The *Road Management Act 2004* (Vic.), for example, empowers a minister to direct local government as to both the performance of particular functions and the manner in which those functions are carried out (s22(1)). Moreover, the *Intergovernmental Agreement Establishing Principles to Guide Intergovernmental Relations on Local Government Matters* contemplates that the state can give directions to local government on the performance of functions. Clause 10 of that agreement provides that:

Where the Commonwealth or a State or Territory intends to impose a legislative or regulatory requirement specifically on local government for the provision of a service or function, subject to exceptional circumstances, it shall consult with the relevant peak representative body and ensure the financial implications and

other impacts for local government are taken into account. (Commonwealth of Australia, States and Territories, and Australian Local Government Association 2006, p. 4)

In its draft report, the Commission recommended that the Minister for Health be given the power to direct local government on food safety matters as appropriate. This would involve inserting a new section in the Food Act that allows the minister to issue such directions (and that requires these directions to be published in the *Government Gazette*). DHS noted that such a power would be potentially useful and appropriate given its central responsibility for food safety (sub. DR149, p. 19). However, some councils (for example, Glen Eira City Council, sub. DR83, p. 11) were concerned that ministerial directions could go beyond the legislative provisions of the Food Act and shift costs from state to local government.

Due process

Given legitimate concerns of the type raised by Glen Eira City Council, the proposed new power to direct local councils under the Food Act should be constrained. The constraints should be designed to ensure that exercise of the power by the minister is transparent and that, subject to exceptional circumstances (such as emergencies), the minister consults with local government or the relevant peak body, such as MAV, and ensures that the cost and other implications of any direction are taken into account.

The first element of the Commission's proposal is that cooperative approaches should be the primary response to problems identified by the strategic planning process. The Commission envisages that the power for the minister to give directions would be exercised only when a particular issue or problem of significance has not been satisfactorily resolved by cooperative approaches.

Second, where a cooperative approach has not been successful, ministerial directions should be given in writing, together with a statement of the reasons for the directions to ensure transparency. Ministerial directions should be published in a readily accessible place, such as the *Government Gazette*. Councils may also wish to publish directions on their websites.

Third, ministerial directions should be constrained by the parameters of the Food Act. They should take account of the objects of the Act and the principles to be included (recommendation 8.2). They should also relate to the exercise of the powers and the performance of functions conferred on councils under the Act. They may deal, for instance, with matters such as clarification of the objects of the Act in cases where a council appears to be adopting an interpretation that is inconsistent with the Food Regulation Agreement. They may also require reporting in accordance with a template of councils' performance in administering and enforcing the Food Act, and give directions on specific

operational matters relating to administration and enforcement, such as frequency of inspections of certain classes of business and the balance between education and enforcement actions. They may also cover the setting of parameters for fees, audits or sampling.

In addition, subject to exceptional circumstances, there should be consultation with local government or the relevant peak body before a direction is given. The consultation may enable a cooperative approach to be agreed upon without the need for a direction. However, if that fails, the consultation would enable full consideration of the financial implications of the direction and the need for provision of appropriate funding by the state, if increases in registration or other council fees are not practicable. There may also be non-financial considerations, such as the need to recruit and train suitable personnel or other resource constraints affecting local government that may affect the timing of a direction.

Where these requirements have been met, the Act should provide that councils must comply with ministerial directions. DHS should have the power to make reasonable inquiries to ascertain whether there has been compliance.

Consultation before a direction is given would assist in the evaluation of its costs and benefits. At present, when an appreciable burden is to be imposed on a sector of the public by statutory rules, a regulatory impact statement must ordinarily be prepared to weigh the costs and benefits. A regulatory impact statement is not required for other forms of subordinate instruments, such as ministerial orders when they apply to a sector of the public, but the Commission sees benefits in the introduction of such a requirement either procedurally in the first instance, as described above, or at a later date by amendment of the *Subordinate Legislation Act 1994* (Vic.).

Enforcement

Requiring that ministerial directions are issued only after a thorough public process serves at least two purposes. First, it ensures directions are used only when they have been demonstrated to be the best instrument for the issue at hand and that efforts at a cooperative approach have failed. Second, the public demonstration of the case for using a direction will help to ensure directions are enforceable. The State Government may be willing to enforce a direction (for example, by threatening to withdraw funds or even to dismiss a council) only as a last resort for issues of particular importance. But the need for such enforcement action is less likely if there has been a transparent public process, in which councils have been involved, to demonstrate that the state's direction is justified.

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.

8.6 Improved reporting of food safety performance

A number of reports have criticised the reporting of food regulation in Victoria. In 2002, the Auditor-General reported that neither FSU nor councils were adequately informing the public of their performance against their obligations under the Food Act (AGV 2002, pp. 103–7). In its follow-up report, *Management of food safety: progress on our 2002 report* (AGV 2005b), the Auditor-General concluded that progress had been limited. It found that councils were not adequately reporting their food safety activities to DHS, although it noted that DHS has no authority under the Food Act to ensure local government meets its obligations. Only nine of the 19 councils visited reported food safety activities externally through their 2003–04 annual reports (AGV 2005b, p. 29). Based on a sample of local councils' 2005–06 annual reports, local government appears to continue to provide the public with little information on food safety issues (chapter 5).

Performance monitoring and reporting are particularly important for food safety regulators given they face the following challenges:

- large gaps in knowledge about the effectiveness of policy instruments
- food safety outcomes that are largely determined by business behaviours (for example, how businesses manage risks) and consumer behaviours (for example, food handling in the home) that are constantly evolving
- the matter of knowing where the focus of regulation should be and how to allocate resources (to areas of highest risks and areas of highest potential to reduce illness).

A performance reporting framework for food safety could support regulation by:

- informing the public and Parliament that food regulators are reducing foodborne illness in an effective and efficient manner
- assessing the effectiveness of different councils' approaches to food safety regulation and identifying best practice compliance approaches
- enabling councils to identify and target high risk businesses
- enabling bodies such as FSANZ, FSU and DPI to determine whether the new standards covering high risk activities (such as seafood, catering, food service to vulnerable groups, and some meat products) are having the intended effects on foodborne illness
- enabling better policy review and development
- helping identify any systematic food safety issues.

In its draft report, the Commission recommended that a performance reporting system be developed for food regulatory activities. It has also released on its website a discussion paper on performance reporting for food regulatory activities (VCEC 2007c). In response, many inquiry participants expressed support for better performance reporting, arguing that reporting forms part of good governance, improved accountability and benchmarking of performance, and enables better targeting of regulatory effort.¹⁰ DHS stated that 'the development of a statewide performance database would constitute a potentially powerful tool to assist in better directing food safety regulatory effort and monitoring overall performance trends' (sub. DR149, p. 12).

8.6.1 Developing a performance reporting framework

Inquiry participants also commented on practical aspects of designing a performance reporting framework, including:

- the purpose of performance reporting
- the scope of reporting
- the information to be reported
- further implementation issues.

The purpose of performance reporting

MAV stated that 'the key purpose of a performance reporting framework should be to provide information which enables better targeting of regulatory effort where food risks are greatest' (MAV 2007a, p. 1). A primary challenge for food

¹⁰ These participants included Moonee Valley City Council (sub. DR89, p. 1), Hume City Council (sub. DR97, p. 3), Kernow Environmental Services P/L (sub. DR98, p. 2), Loddon Shire Council (sub. DR109, p. 1), MAV (sub. DR128, p. 13) and Brimbank City Council (sub. DR130, p. 2).

regulators is to focus their effort where risk is highest and where market incentives to produce safe food are insufficient—for example:

- at activities that have been identified at the national level as high risk (such as food service to vulnerable groups, catering, fermented meats, some seafood and restaurants)
- at high risk businesses that are not required by customers along the supply chain to provide quality assurance or undergo third party audits
- at food businesses that lack sufficient knowledge about food safety or resist meeting minimum food safety standards.

The primary purpose of a reporting framework should thus be to enable regulators to assess the effectiveness of their targeted regulatory efforts. This suggests that an appropriate suite of indicators would measure inputs, outputs and outcomes for target groups of businesses.

Scope of reporting

DHS and councils are not required to report publicly any information relating to food regulatory activities. However, councils can share information with regulators such as DHS, and the Food Act does not prevent DHS or councils from publishing aggregate measures. Some councils do publish such figures (number of inspections and food samples collected) in their annual reports.

For privacy reasons, there may be limits to the timing and detail of what is published, especially as processes are already in place to notify urgent foodborne illness outbreaks. The public should be made aware, however, of developments in food safety and the performance of regulators in ensuring food safety. FSU, for example, published a case study of a foodborne illness investigation (FSU 2005b, p. 9). The NSW Food Authority also publishes case studies of foodborne illness outbreaks and how they are dealt with, without releasing information that may unfairly affect businesses that have cooperated and rectified any problems (NSW Food Authority 2006b).

Councils will be more willing to provide information if DHS provides feedback on the implications of that information once it is aggregated and analysed. This point is highlighted by Golden Plains Shire:

... most councils gave up reporting [to DHS] years ago because of a lack of interest from the department in the reports. If there was a meaningful request for information that was analysed and used in formulating policy, most councils would be happy to cooperate. (sub. DR70, p. 2)

Neither PrimeSafe nor DFSV publishes detailed information about its food safety performance. PrimeSafe flagged, however, that it will develop a set of

performance benchmarks (through its corporate plan for 2005–10) against which it will measure its effectiveness and contribution (chapter 5).

DPI argued that export markets and consumers could misinterpret data and lose confidence in the safety of food from a particular sector. It also argued that absolute transparency may inhibit reporting and consequential corrective action (sub. DR144, pp. 2–3). The Commission notes that such concerns could apply across the food industry. To reduce these concerns, data should be supported by explanatory notes to reduce the risk of misinterpretation. In addition to data provided by food producers directly, data can be derived from other sources, such as food sampling by regulators and customer complaints. Making performance information available will promote transparency and accountability, and reduce information asymmetry. It could also mitigate reactions by export markets if an adverse event occurred and minimise any adverse trade effects. Like DHS and local government, therefore, DFSV and PrimeSafe should report their food safety performance to the public and their minister to ensure accountability.

Information to be reported

Given that food regulation should target areas of high risk, disaggregated indicators relating to these high risk activities will be more useful. But collecting the relevant data could have higher marginal costs. Indicators that could be collected include:

- input measures—number of full time equivalent staff employed, staff training hours and the budget allocated to food regulatory activities
- output measures—inspections, samplings and enforcement/compliance data (as discussed in chapter 9, councils should also report the number of training orders imposed on businesses)
- outcome measures—foodborne illness cases, outbreaks, notifications, food recalls and results of surveys conducted.¹¹

The justification for regulation is to improve food safety outcomes. Consequently, performance reporting should focus as far as possible on outcomes rather than just outputs and inputs. Outcome measures can be difficult to collect, however. In this event, measures of outcomes may need to be supplemented by indicators of inputs and outputs, where there is evidence that such measures are linked to improved outcomes.

Although councils and state regulators do little public reporting, MAV (2007a, 2007b) indicated that councils collect some of the information needed for a reporting framework, such as business registration details and inspection

¹¹ VCEC (2007c) contains details on the types of indicator that could be reported and their uses.

and compliance histories. Where the information required is not presently collected, one approach is to start by reporting readily available information and build the framework over time. In developing such a framework, lessons could be learned from food safety agencies in other jurisdictions and overseas. While identifying best practice in food safety reporting would require more extensive analysis, the Commission notes that the NSW Food Authority and the United Kingdom Food Standards Agency take a more comprehensive approach to performance reporting than has been developed in Victoria.

Further implementation issues

Inquiry participants highlighted several possible implementation issues, including:

- institutional and legal arrangements
- reporting systems
- funding for reporting.

The Commission considers that the DHS/MAV Food Safety Coordination Project can address implementation issues relating to the development of a performance reporting framework.

Institutional and legal arrangements

An effective reporting framework requires that the roles, responsibilities and functions of regulators be clearly defined. This is to ensure regulators are clear about their obligations, what they have to report on (based on their functions and responsibilities) and to whom they have to report. As noted, councils are not required under the Food Act to report to DHS or the public, and DHS does not have the power to require mandatory reporting. To enable reporting and ensure consistency in reported information, it is thus necessary to have a mechanism that encourages councils to report. This could take the form of:

- an amendment in the Food Act or a power to the minister to give directions to councils requiring reporting
- the use of service agreements between DHS and councils
- a minister championing the need for performance reporting and giving DHS the responsibility and resources to encourage change
- the government encouraging DHS to report, by tying the department's budget/funding to a requirement to report against certain performance indicators.

In 2005, the Commission examined food safety regulation in its report *Regulation and regional Victoria: challenges and opportunities*, in which it recommended:

That councils should periodically report their performances against their obligations under the *Food Act 1984*, using performance indicators developed by the Food Safety Unit and local government, represented by the Municipal

Association of Victoria. The results should be published. Performance reporting should be made mandatory after two years if negotiations have not achieved an acceptable outcome. (VCEC 2005a, p. xlvi)

The Victorian Government supported the recommendation in principle, but noted that mandatory reporting would be contrary to policy on local government reporting.

The Commission notes that while the Victorian and local governments may prefer nonmandatory reporting, such an approach is unable to deliver consistent statewide reporting on food regulatory activities. This is highlighted by various reports on the lack of reporting by food regulators (section 8.6). While having a minister champion the need for performance reporting, encouraging DHS to take up responsibility for reporting and using service agreements are options worth considering, the Commission considers that the successful implementation of statewide performance reporting requires the minister to have the power to direct councils to report, should any councils be unwilling to participate in a cooperative process. In its draft report, the Commission recommended that the Minister for Health direct local councils to report their food safety performance to DHS. While there were mixed responses to this recommendation, a number of councils supported this approach so long as appropriate funding is made available.¹²

Reporting system

The Commission received some input on how a reporting system for regulation could work. Options include using the existing reporting system (VicFin), reporting templates and online systems. VicFin was initially developed with the capacity for councils to upload information on their regulatory activities (VCEC 2007c). The current version of VicFin, however, is not fit for purpose, for reasons that include the incompatible/multiple reporting systems used by councils and incomplete computer records. Numerous councils reported problems with VicFin,¹³ and information provided to the Commission by DHS indicated declining use by councils. Given the problems and delays in getting VicFin running since its implementation in 2002, developing a new system could be an alternative to achieve comprehensive performance reporting.

In the initial phase of performance reporting, a less resource intensive reporting system could take the form of a reporting template developed by DHS to facilitate consistency in the reporting format and allowing aggregation of

¹² These councils included Glen Eira City Council (sub. DR83, p. 11), Moonee Valley Council (sub. DR89, p. 1), Hume City Council (sub. DR97, p. 3) and Loddon Shire Council (sub. DR109, p. 1).

¹³ These councils included Brimbank City Council (sub. 5, p. 2; sub. DR130, p. 2), Surf Coast Shire Council (sub. DR79, p. 3), Glen Eira City Council (sub. DR83, p. 12), City of Whittlesea (sub. DR114, pp. 1, 4) and City of Stonnington (sub. DR118, p. 2).

statewide results. In time, it would perhaps be worthwhile for DHS to develop an online system.

Funding for reporting

Some councils indicated that implementing performance reporting would compete with other council priorities for scarce resources. MAV suggested that costs could be recovered:

... through increased fees to food businesses, subsidies from ratepayers via general council revenue, or payments from the State Government. (sub. DR128, p. 13)

Inquiry participants argued that since the benefits of reporting accrue to the community and state government, appropriate funding should come from the State Government via service agreements between DHS and local government.¹⁴ As Hume City Council noted:

... it would be appropriate for any specific reporting requirements [to] be negotiated by an intergovernmental agreement between the State Government and local governments with the costs associated with reporting borne by State Government. This could be achieved through service agreements with councils, with detailed data to be provided and negotiated with councils. (sub. DR97, p. 3)

Service agreements could also be used to work through issues with implementing appropriate reporting systems. If the system that DHS develops requires councils to upload their data instead of entering data on an online system, then DHS should consider the compatibility with councils' present information system, and it may have to provide additional funding to councils if it requires councils to change/upgrade their current information system.

Recommendation 8.10

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:

- **the Minister for Health should issue a direction under the new section in the *Food Act 1984* (Vic.) to require local councils to report their food safety performance to the Department of Human Services. Using this information, the department should prepare reports for local government and the public.**

¹⁴ These participants included City of Maribyrnong (sub. DR82, p. 3), City of Ballarat (sub. DR107, p. 1) and MAV (sub. DR128, p. 13).

- 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).

8.7 Improving consistency across food legislation

As well as examining the objectives of Victorian food legislation (section 8.2), the Commission examined other provisions within this legislation, finding a number of apparent inconsistencies. Although submissions presented little evidence on the costs these inconsistencies impose, consistency in legislation is a key element of good regulatory design, and a prerequisite for promoting consistent implementation of regulation across the food industry.

The regulatory frameworks established by the Food Act, Dairy Act, Meat Industry Act and Seafood Safety Act are substantially similar, but they nonetheless exhibit differences that do not appear to be based on any clear principles and that may impede consistent administration and enforcement across the various food industries in Victoria. Why, for example, might repeated failure to register a supermarket under the Food Act lead to a fine of up to \$11 000 whereas repeated failure to license a butcher shop under the Meat Industry Act might lead to a fine of up to \$55 000 and two years imprisonment?

Aside from the apparent legislative inconsistencies identified (appendix B), there may be other anomalies. The Commission recommends, therefore, that DHS and DPI establish a joint committee to examine Victorian food legislation, so as to identify and address inconsistencies.

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.

8.8 *Bread Industry Act 1959*

In addition to inconsistencies within major Victorian food legislation, the Commission identified issues with other food-specific legislation. Stemming from its review of the *Labour and Industry Act 1958* (Vic.),¹⁵ the Commission identified the *Bread Industry Act 1959* (Vic.) as potentially imposing undue costs on Victorian food businesses and community activities. The Commission released a working paper in June 2007 (VCEC 2007b) seeking comment from stakeholders on whether the Act should be retained. Of the seven submissions that followed (subs. DR136–137, DR140–143 and DR150), six offered no objections to repealing the Act.

The Bread Industry Act's two key provisions prohibit (1) restrictions on the supply of bread making ingredients and equipment to bread manufacturers, and (2) agreements within the industry that preclude or hinder compliance with the Act. Reflecting concerns about the state of competition in the bread industry in the 1950s—when the industry was undergoing significant structural change—the provisions sought to benefit consumers of bread (in terms of choice, price and quality) by preserving competition in the industry. The government in 1989 attempted to repeal the Act and other bread industry legislation, but the attempt stalled because the Legislative Council majority wished to preserve the other legislation (VCEC 2007b).

The Commission identified and examined three issues that are central to considering whether the Act should be retained.

- (1) the sufficiency of broader legislation (the *Trade Practices Act 1974* (Cwlth.)) to deal with competition issues in the bread industry
- (2) the extent of specific competition problems in the bread industry
- (3) the use and effectiveness of the Act to address competition problems.

8.8.1 Trade Practices Act

The case for retaining the Bread Industry Act would appear to rest primarily on demonstrating that the objectives of the Act cannot be achieved through alternative means, such as through the Trade Practices Act. Although the Trade Practices Act and the Bread Industry Act are not perfect substitutes, the former's ss45(2), 46 and 47(3) and (5) substantially overlap the latter's key provisions. For example, while s9 of the Bread Industry Act prohibits all agreements that restrict supply to the bread industry, ss45(2) and 47(3) and (5) of the Trade Practices Act prohibit agreements that restrict a firm's dealings (known as an exclusionary

¹⁵ The Commission submitted a review of the Labour and Industry Act to the Victorian Treasurer in June 2007. The review can be found at www.vcec.vic.gov.au.

provision) or might have the effect of substantially lessening competition. Coles Group Limited, a major producer of breads at in-store bakeries, stated ‘the Act duplicates many provisions which are now contained in the Trade Practices Act’ (sub. DR140, p. 1).

8.8.2 The bread inputs market today

Another possible reason for retaining the Bread Industry Act would be if particular characteristics of the bread industry warranted industry-specific legislation to maintain competition. Laucke Flour Mills stated that ‘the bread industry in Victoria has no specific characteristics which could justify specific legislation to safeguard competition’ (sub. DR137, p. 1). It appears that today’s bread inputs market is not exceptional. Moreover, recent assessments concluded that, with the possible exception of flour milling, the various segments of the market are competitive. For example, strong competitors, low barriers to entry and significant countervailing power held by customers exist in the market for ‘bread improver’ (an ingredient that improves the texture and volume of bread) (ACCC 2005b). And BRI stated that strong competition among bread manufacturers has kept bread prices low and increased product differentiation (BRI Australia 2003, pp. 11–2). Baker’s Delight, the largest Victorian bread franchise, stated that it has ‘no objection to the repeal of the law referred to in the Bread Industry Act’ (sub. DR141, p. 1).

8.8.3 Effectiveness of the Act

The case for repealing the Act would be strengthened if it is not used, or cannot be used, to address competition problems in the bread industry. The Commission found no evidence of the Act ever being enforced, inspectors being appointed to assess compliance with the Act, or any prosecutions being made under the Act. Section 10 of the Act stipulates that the Labour and Industry Act provides for powers of inspectors. According to the Department of Innovation, Industry and Regional Development (DIIRD 2007, pp. 4–5), no inspectors have been appointed or have operated pursuant to the Labour and Industry Act since at least 1992. Coles Group Limited was also ‘not aware of any recent enforcement action taken under the Act’ (sub. DR140, p. 1). Moreover, the Act makes references to legal institutions and sections of other legislation that are obsolete.

The Baking Industry Association of Victoria stated that it recently used the Act’s definition of ‘bread’ for the purposes of award classifications for bread traders and pastry cooks, allowing it to ‘argue the case for the small bread manufacturers’ (sub. DR150, p. 1). It argued that if the Act were repealed, then the definition of ‘bread’ would have to be transferred to another piece of legislation. Although the definition of ‘bread’ in the Bread Trade (Victoria) Award 1999 originates from

the Act, the award makes no reference to the Act. Consequently, repealing the Act would have no direct impact on the definition of 'bread' in the Award.

The Act was enacted prior to the creation of the Trade Practices Act and while the bread industry was undergoing significant structural change. In light of the existence of the Trade Practices Act, the competitive nature of the bread industry, and the ineffectiveness of the Bread Industry Act in practice, the Commission recommends that the Act be repealed.

Recommendation 8.12

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

8.9 Implementation and review of the proposed arrangements

The costs to government of implementing many of the Commission's recommendations in this chapter are likely to be incremental, as key parts of the framework are already in place. While the coordinating committee of regulators and the strategic planning process will involve additional ongoing costs, these costs are likely to be small in magnitude. Conducting the trial of service agreements is anticipated to involve small one-off costs. Although some performance data is currently collected, establishing and operating a common performance reporting system is likely to impose additional costs on food regulators.¹⁶

As discussed, the proposed arrangements are expected to improve the coordination and consistency of regulatory activities, and to remove gaps in regulatory coverage. A further benefit is that the effectiveness of the food safety system in Victoria would be improved as a result of the performance reporting system and enhanced consultation with experts, industry and the community. The information from performance monitoring and consultation should be used to develop statewide strategies and interventions, and educational programs.

The performance of the proposed food safety framework should be reviewed after five years of operation. If the review finds performance below expectations, it could re-examine other options (including service agreements and a single food regulator for Victoria). By that time, the results of the trial of food safety service agreements will be available. There will also be more experience in Australia and overseas with a single regulator approach.

¹⁶ According to DHS and MAV, food safety performance reporting as proposed by the Commission would involve additional costs for DHS and local government (sub. DR128, p. 13; sub. DR149, pp. 27–8).

9 Improving food regulation: regulatory instruments

9.1 Introduction

This chapter examines the key regulatory instruments used to manage food safety risks and the scope to streamline regulation through a more targeted approach to implementing Victorian food regulation.

In accordance with the terms of reference, the Victorian Competition and Efficiency Commission has developed a package of reforms to streamline regulation without undermining the objectives of Victorian food regulation. The intent of the proposed changes is to target regulatory effort where risks to food safety are highest. This is generally where food is served to vulnerable groups and where market incentives are insufficient to ensure inherent risks are appropriately addressed.

One challenge facing the Commission is inadequate information on the effect of food safety regulations (chapter 5). Without such information, the Commission has attached significant weight to the evidence of where food safety risks are greatest. It has also broadly defined the term ‘risk’, encompassing consequences of the inherent characteristics of particular foods and the strength of market and other incentives facing food businesses to ensure they produce safe food. Having examined current regulatory arrangements, the Commission considers that the *Food Act 1984* (Vic.) and its application should be more closely geared to addressing food safety risks.

A regulatory system that focuses on key problem areas would feature a risk based approach—one based on an assessment of the inherent risks associated with particular foods and the incentives to manage those risks effectively. The system would have the flexibility and incentives to shift resources to identified areas to prevent food safety risks. This could also involve managing the balance between regulatory intervention (such as penalties for noncompliance) and nonregulatory measures (such as provision of information and training).

A lack of information makes it difficult to determine where regulatory effort in Victoria is allocated and how the allocation relates to risk. Nonetheless, as noted in chapter 6, this regulatory effort has a substantial cost—mainly administrative in nature—to the community. There appears to be scope for reducing regulation for some food manufacturing and processing businesses, food service businesses and community groups, given the risks they pose. (Chapter 12 examines the effects of regulation on community groups). There is also scope in some areas to rely less on regulation (especially where it is not well implemented) and more on providing education and information to businesses and consumers (chapter 10).

9.2 Strengthening the risk based approach

Given the strength of market, legal and other incentives for firms to produce food that is safe (chapters 2 and 4), the Commission considers there is scope to take greater account of these incentives in implementing food safety regulation in Victoria. Accordingly, it has proposed a more risk based approach to food regulation whereby the risk profile of food businesses would guide the administration of regulation, taking account of incentives as well as the type of food. This approach would target areas with the largest potential to reduce the incidence of foodborne illness and would be more consistent with nationally agreed standards (chapter 3).

9.2.1 Current risk based classification of food businesses

A feature of food safety regulation in Victoria is the requirement that all declared food premises must have a food safety program (FSP) tailored to its food hazards and must appoint a suitably trained food safety supervisor (FSS). Food premises covered by the Food Act must register with the councils within whose jurisdiction they operate. Similar requirements apply to not-for-profit declared activities (chapter 12). Businesses licensed under the *Dairy Act 2000* (Vic.), *Meat Industry Act 1993* (Vic.) or *Seafood Safety Act 2003* (Vic.) must have an FSP or quality assurance program (DPI 2007a).

Although some regulatory requirements for food premises registered under the Food Act (such as third party audits) depend on the type of activity undertaken, they do not depend on broader factors such as commercial incentives to produce safe food, or a business's track record in producing safe food and complying with regulation. While the classification system differentiates high and lower risk businesses, it does so in a limited way. Victoria's current classification system differs from the approach being developed nationally (box 9.1) and applied in states such as New South Wales, which is to undertake a risk assessment for different sectors and mandate FSPs only for those sectors where there is evidence of a net benefit.

9.2.2 A new risk based classification of food businesses

To help focus regulatory effort more on businesses where food safety risks are greatest, the Commission's draft report proposed a new category (class 3) to identify food businesses that represent a low risk of food safety. This category would embrace businesses that have either a low inherent food risk or that, in practice, represent a low risk (such as those with quality assurance programs that cover the requirements of the Food Act). In addition, the Commission suggested that councils should have the flexibility to move businesses between risk categories based on their track record.

BOX 9.1 National Risk Validation Project

In 2002, the Commonwealth Department of Health and Ageing together with the NSW Department of Health funded the *National Risk Validation Project*. The project involved a review by Food Science Australia of the available data to identify food sectors that are consistently associated with foodborne illness outbreaks. The following five high risk food sectors were identified and ranked in order of priority:

- (1) food service for sensitive populations
- (2) producers, harvesters, processors and vendors of raw, ready-to-eat seafood
- (3) catering operations serving food to the general population
- (4) eating establishments
- (5) producers of manufactured and fermented meats.

As part of the project, Minter Ellison Consulting estimated the cost of foodborne illness attributable to these sectors to be around \$1 billion a year in Australia. The study also examined the benefits and costs of applying FSPs to these high risk sectors, finding that FSPs would yield net benefits for most sectors, but net costs for eating establishments (FSA & MEC 2002). This was also noted in the *Ministerial policy guidelines on food safety management in Australia: food safety programs* (FRSC 2003).

Based on the results of these studies, the Australia and New Zealand Food Regulation Ministerial Council agreed in December 2003 that FSPs should be made mandatory in all high risk categories except eating establishments (ANZFRMC 2003). This decision is being implemented through several new or proposed standards:

- primary production and processing standard for seafood (these commenced on 26 May 2006)
- primary production and processing standards for ready-to-eat meat and poultry meat (for the manufactured and fermented meat sector, these commenced on 24 November 2006)
- food safety programs for food service to vulnerable populations (to commence on 5 October 2008)
- food safety programs for catering operations (with a draft assessment expected to be submitted to the board of Food Standards Australia New Zealand in November 2007) (FSANZ 2007a).

Sources: ANZFRMC 2003; FRSC 2003; FSA & MEC 2002; FSANZ 2007a.

Submissions indicated widespread support for extending the risk classification to identify low risk businesses and to facilitate a more targeted regulatory effort. Support for the proposal came from Golden Plains Shire (sub. DR70, p. 3), the City of Melbourne (sub. DR81, p. 1), Moonee Valley City Council (sub. DR89, p. 1), the City of Whittlesea (sub. DR114, p. 4) and the City of Stonnington (sub. DR118, p. 5). Similarly, Brimbank City Council (sub. DR130, p. 2) and the Municipal Association of Victoria (MAV) (sub. DR128, p. 14) considered that introducing an additional category that matches risk to an appropriate regulatory effort is a welcome initiative.

A small number of those submissions commenting on the proposal did not support a new class of business or the movement of premises between categories based on good performance. The Surf Coast Shire Council argued the introduction of a new class 3 business ‘potentially opens the door to more inconsistency’ (sub. DR79, p. 4). Knox City Council (sub. DR84, p. 2) and Glen Eira City Council (sub. DR83, p. 13) argued that the categorisation of risk should be based on the potential to generate unsafe food. The Department of Human Services (DHS) acknowledged that the proposal to create a third class for low risk is worth consideration, but argued that any allocation to that class should be based solely on the risk inherent in a business’s food activities. Accordingly, it considered a food business should not be able to move from one risk class to another (sub. DR149, p. 7).

As well, some who supported the proposal for a new class did not support flexibility for councils to move premises between class 2 and class 3. The Horsham Rural City Council thought businesses classified as low risk may become complacent and stop trying to meet food safety requirements (sub. DR115, pp. 4–5). Similarly, the food special interest group of the Australian Institute of Environmental Health (AIEH) considered that movement from class 2 to class 3 would suggest that the nature of a business has less risk, which is not the case (sub. DR104, p. 3).

Moreover, submissions argued that a division of risk within the existing class 2 could improve targeting of regulatory effort. And doing so would avoid potential problems with establishing a new class. The Surf Coast Shire Council (sub. DR79, pp. 4–5) and Hume City Council (sub. DR97, p. 4) noted the present two classes of business can already accommodate reducing the burden for low risk businesses, and a separate category within class 2 would be preferable to a new class. The City of Yarra ‘agrees that the current class 2 should be split into more risk types based on the inherent risk of the food handling operations, with reduced compliance requirements for those falling into a lower risk’ (sub. DR132, p. 1). This was also the view of MAV:

... the MAV considers it would be preferable to have two categories within class 2, effectively a 2A and 2B ... This is because a move to class 3 may imply that the nature of the food businesses is less risky, when in fact it continues to be risky, but that the proprietor is taking care to manage the risks appropriately. (sub. DR128, p. 14)

The City of Stonnington noted the system already embodies a three tiered system, with the groups being ‘class 1’, ‘class 2’ and ‘class 2 exempt’ (the latter being premises that sell only very low risk packaged food and are exempt from FSP requirements). It considered there is scope to expand the third group to premises that are still relatively low risk, but that do not meet the current requirements for FSP exemption. Examples of such premises are milk bars,

convenience stores and service stations selling products such as packaged milk or hotdogs, or bars and nightclubs selling only drinks and prepackaged snacks (sub. DR118, p. 9).

Some councils already apply a division within class 2 to reflect medium and low risk activities and to prioritise regulatory effort. The City of Whittlesea noted it has such a system. Its class 2 low risk classifications comprises all the premises proposed (by the Commission) for the new class 3. The council supports the removal of the FSP requirement for all low risk premises, noting it is difficult to justify a small milk bar proprietor, for example, having to become a qualified FSS just to measure the temperature of a refrigerator containing milk products (sub. DR114, pp. 4–5).

Based on the evidence before it, the Commission considers the introduction of a low risk category is warranted as part of a package of reforms to target regulatory effort on areas of higher food safety risk. However, it does not have a firm view on whether this should occur via establishing a new class 3 or having separate categories within class 2 for medium and low risk. More important is the result of having greater risk differentiation based on a robust classification system.

As noted, Victoria's classification system differs from the approach being developed nationally and applied in states such as New South Wales. The Commission considers Victoria's classification should be mindful of these national developments and consistent with them where possible. In that regard, it considers that the basis for allocating businesses within class 1 should reflect criteria on which the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) agrees. Class 1 businesses would thus contain those categories that the ANZFRMC has determined should have FSPs (box 9.1). Further, any future changes at a national level should be reflected in Victoria's Food Act. For the two proposed class 2 categories, the Commission considers DHS would need to develop guidance material having regard to the food safety risk classification tool being developed by the Commonwealth Department of Health and Ageing (which accounts for both inherent risk and managed risk) and the Food Standards Australia New Zealand (FSANZ) classification model *The priority classification system for food businesses*. That model, for example, lists as low risk businesses (among others), bakeries producing breads and cakes, fruit stalls selling whole/uncut fruit, liquor manufacturers/shops, milk vendors and service stations selling milk and orange juice (ANZFA 2001c, pp. 13–4).

The Victorian Government should consider outlining criteria for determining low risk business activities in subordinate legislation so it would be reviewed periodically (at least every 10 years) and modified if circumstances warrant, subject to a regulatory impact statement. This approach would help achieve consistency across councils and subject any change in criteria to the scrutiny of a regulatory impact statement, complete with a transparent benefit–cost assessment.

The Commission expects that businesses in the class 2 medium risk category with a record of compliance with food regulation requirements and good food safety performance could, on the recommendation of councils, shift into the lower risk category. This would mean fewer council inspections and possibly lower registration and inspection fees for those businesses. Councils could also move a business from the lower risk category to the medium risk category in response to serious noncompliance with food safety standards. This flexibility would reinforce incentives for complying with regulatory requirements and focus council resources on improving food safety where it is most needed.

Given the implications of reclassification for affected businesses, it may be necessary to establish a mechanism for reviewing council decisions to move premises between class 2 categories. If a business has concerns about a reclassification decision, councils could initially review the decision: requiring councils to report review outcomes annually would impose a discipline on the internal review. If a business is still not satisfied with the council's internal review, the department or an independent body could undertake a further review, with business bearing the review costs if the council's decision is upheld.

Those inquiry participants at the coal face of implementing any changes—for example, Golden Plains Shire (sub. DR70, p. 3), Moonee Valley City Council (sub. DR89, p. 1), Hume City Council (sub. DR97, p. 4), the City of Stonnington (sub. DR118, p. 5), Brimbank City Council (sub. DR130, p. 2) and Kernow Environmental Services P/L (sub. DR98, p. 2)—stressed the need for guidance on the criteria for allocating businesses to the various classes or categories. Such guidance is regarded as important to ensure a consistent approach and as a measure of legal protection for councils. In this regard, MAV noted 'guidance will be required to assist councils develop the basis for making judgements about allowing class 2 businesses to have reduced regulatory requirements' (sub. DR128, p. 14). MAV also indicated that criteria for decisions would provide councils with a defence if a business deemed low risk (and thus subject to lesser regulatory controls) becomes the source of a food poisoning incident (sub. DR128, p. 14). For business too, such guidance is important, and the Coles Group sought clear examples of the types of food business that would fall under each class definition (sub. DR75, p. 3).

Some submissions suggested how to meet this need for guidance. The City of Melbourne suggested 'to ensure that public health and safety is not compromised, the definition of the broader based "low risk food businesses" should be supported by scientific data and be clearly articulated in a schedule format to facilitate a consistent approach across all municipalities' (sub. DR81, p. 1). Hume City Council suggested:

... the current risk classification system should be aligned to the FSANZ model, which matches risk to appropriate regulatory effort. Food businesses that are

categorised as 'low risk' under the FSANZ classification model, *The priority classification system for food businesses* would become in effect class 3, with the associated reduction in regulatory requirements as proposed. (sub. DR97, p. 4)

To facilitate council consistency in implementing a more flexible classification, and certainty for business, DHS would need to ensure councils use a consistent approach to assess compliance and make decisions about moving businesses into a different risk category.

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.**

9.3 Registration and licensing

Food premises in Victoria (including not-for-profit events involving the sale of food) must register with councils. Businesses engaged in the primary production, manufacture, transport and sale of meat, poultry, seafood and dairy products are also required to be licensed under relevant industry-specific food legislation. Registration or licensing as the basis of food regulation provides:

- regulators with knowledge about the ownership and location of food businesses, which assists with tracing sources of foodborne illness, investigating complaints and undertaking food recalls
- a mechanism for ensuring compliance with food regulations (the threat of nonrenewal)
- registration/licensing fees to meet the costs of regulatory activities
- a basis for distributing educational material.

Registration, however, also involves administration and compliance costs, and can become a barrier to entry if the requirements are more stringent for new entrants. Submissions identified the following issues relating to the registration and licensing of food premises in Victoria:

- the multiple registration of mobile and temporary food businesses
- the multiple registration of premises required for food businesses with multiple outlets
- the registration period specified under the Food Act.

Additionally, councils' differing approaches to processing registration applications, defining types of food business and determining fees exacerbates the regulatory burden of multiple registrations.

9.3.1 Registration of mobile and temporary food businesses

Victorian councils registered about 20 000 temporary premises in 2006. These premises probably included the operations of commercial caterers or mobile food vendors, as well as community activities such as farmers' markets, food fairs, cake stalls and sausage sizzles. Businesses such as caterers and mobile food vendors are also likely to operate in multiple council areas.

Under the Food Act, each premises or location where food is sold must be registered. While the Act has no provision for temporary food events, many councils grant temporary registration to these operators. Inquiry participants¹ raised two main concerns with these arrangements:

- (1) Mobile operators may be registered and inspected on multiple occasions throughout the state because they operate in different locations, increasing the cost of food regulation to business and councils.
- (2) Councils have different approaches to registering temporary food events: increasing the complexity and cost of food regulation to business.

Concerns about the regulatory burden of registration for mobile and temporary food businesses led some inquiry participants to suggest a single registration scheme for such operators. The City of Melbourne stated:

An alternative to existing arrangements may be to establish a central agency to register temporary food premises State-wide. Registrations would be recognised by all municipalities, and provide operators with access to any number of events.

¹ Examples included AIEH (sub. 10, pp. 7–8), City of Greater Dandenong (sub. 12, p. 6), City of Port Phillip (sub. 13, p. 5), City of Melbourne (sub. 16, pp. 3–4), Moonee Valley City Council (sub. 18, p. 1), Knox City Council (sub. 19, p. 4), Wellington Shire Council (sub. 28, p. 2), City of Wodonga (sub. 29, pp. 2–3), Restaurant & Catering Victoria (sub. 36, p. 11), Wyndham City Council (sub. 37, pp. 2–3) and the MAV (sub. 41, p. 14).

Municipal [environmental health officers] could then be more effectively utilised in monitoring food safety at events, rather than spending time administering the registration process. (sub. 16, p. 4)

Implementing a single registration system for mobile food vendors could be achieved by establishing a central database. A number of inquiry participants expressed support for a central database, or at least more effective linking of information.² The City of Melbourne (sub. 16, pp. 4–5) also suggested there may be scope to use a central database for vending machines. A vending machine, like a mobile operator, moves regularly (subject to location and profit).

A single registration system for mobile businesses

In its draft report, the Commission proposed establishing a single registration system, whereby a mobile business could register with one local government but notify other councils if it visits their areas. Each council's registration data would be listed on a common system. Using a common system, councils could confirm that the visiting mobile business is registered. Any council would be free to undertake an inspection within its boundaries and to act if it suspects a breach of food regulations. DHS or another organisation could administer the system, with registration in one municipality being sufficient for a business to be put on the central register's database.

Reaction to the proposal was overwhelmingly positive. Submissions from small businesses, for example, highlighted the cost of multiple registrations for their mobile operations, and the benefit to them of a central register (box 9.2).

Council responses to the draft report almost universally supported a single register for mobile businesses as a welcomed initiative, although a couple had reservations about its necessity and worth. The City of Whittlesea claimed:

... the current system does allow for this business to be registered with the council where the business is based or where the food vehicle is garaged. ... The creation of a centralised register would be creating another bureaucracy that would not really deal with the main issue. The current system could still work just to ensure mobile food premises are only registered once. (sub. DR114, pp. 5–6)

Similarly, Colac Otway Shire was 'unclear how a centrally operated registration system would work or how it would save time and effort for proprietors or council. VicFin has been in operation for some five years and still does not work'

² AIEH (sub. 10, p. 9), the City of Port Phillip (sub. 13, p. 4), the City of Melbourne (sub. 16, pp. 4–5), the Australian Retailers Association (sub. 35, p. 12), Restaurant & Catering Victoria (sub. 36, p. 13), Wyndham City Council (sub. 37, p. 2) and the MAV (sub. 41, p. 15).

(sub. DR94, p. 4). AIEH, however, thought a single database would assist local government in:

- reducing administrative burden in being able to reference a database to see that each mobile operator is registered,
- identifying unregistered commercial operators that obtain ‘one day’ Food Act 1984 registrations for numerous events,
- providing a means to report effectively to the regulatory authority. (sub. DR104, p. 4)

Box 9.2 Business views on a single register

I primarily sell my products at weekend markets, farmers markets, community festivals, wine and food shows across Victoria ... In 2006, I attended 96 such events. To end of May 2007, 32 events. I have obtained temporary food premises permits over this period from [21 different councils]. Each of these 21 authorities has set different requirements and charges for their permits. ... I support the proposal for a central registry for the following reasons:

- It will be easier to comply with the regulations
- It will reduce the administrative burden and staggering duplication of applying for and assuring permits are current ...
- The cost is out of relativity to the takings that can generally be made at the events I attend and all of these charges are over and above the Food Registration permit of \$330 I pay to the City of Yarra for my manufacturing premises. (Hells Breath, sub. DR87, pp. 1–2)

As a small maker and marketer of salad dressings who sells primarily through farmers markets, community markets and food events, I find the current administrative and financial requirements of separate registrations a burden I can do without. A central registry would counter the inconsistencies of each council, the additional costs of separate registrations each time I commit to a new event/market as well as provide me with more time to focus on my business. (Yumm Dressings, sub. DR121, p. 1)

... how much easier it would make our life. ... Currently we are registered with 15 different councils, nearly all have different requirements and costs from \$40 to \$140 ... [in addition] Our registration with PrimeSafe (the meat controlling body) costs us \$700 per year with our compulsory audits on top of it. I feel that the above would be sufficient to qualify us for a central registration and a one-off fee which we would be only too happy to pay. (The Smokehouse, sub. DR129, p. 1)

For many councils, support for the proposal was subject to various concerns being resolved. These included designating which council would be responsible for inspecting mobile businesses listed on the registry, recovering costs, entering inspection information into a suitable database, investigating complaints, monitoring the effectiveness of the registry in achieving food safety outcomes, and dealing with any constraints (such as privacy) to sharing information between councils. The fees associated with a single registration process and inspections might also need to be re-examined. On this issue, MAV noted:

If registration were to occur in a different municipality, councils covering the location of sale of the food would need to charge other fees, such as site fees, to cover their costs of inspection, sampling and other enforcement activities. (sub. 41, p. 14)

Of these concerns, the need to unbundle registration and other (particularly inspection) fees was prominent in council submissions. Comments from Golden Plains Shire (sub. DR70), the City of Maribyrnong (sub. DR82) and the Hume City Council (sub. DR97) exemplify this issue:

... it is important that individual councils have the ability to recoup the cost of inspections at festivals, etc. There would also need to be an amendment to the Food Act to facilitate this, as the Act requires councils to register food premises at the point of sale. (sub. DR70, p. 3)

There are implications on how councils will recover fees for their regulatory activities from the proposal to create a central registry of food businesses. Councils use the registration process to charge fees to fund the costs of this process and the costs of their statutory role (inspection and enforcement). (sub. DR82, p. 1).

... this proposal will have practical implications for payment of registration fees and the allocation of costs for regulatory effort between those councils where a business originates (and is registered) and those councils, which have to undertake the inspections (which may want to charge site specific inspection fees). (sub. DR97, p. 6)

The fact that other states in Australia manage to register food businesses and have their councils inspect premises suggests the issues in implementing this change are not insurmountable. However, the Food Act would need to be amended to facilitate the unbundling of councils' registration and inspection activities and charging for each to recover the respective costs. Similarly, as DHS noted, legislative amendments would be needed to clarify who has legislative responsibility for inspecting the business and/or monitoring its compliance with the Food Act (sub. DR149, p. 14).

The DHS/MAV Food Safety Coordination Project could address the concerns noted by the Commission and inquiry participants. It is examining (among other things) options for a more streamlined registration system (MAV, sub. 41, p. 14). In addition, the City of Stonnington suggested a single registration system operated by DHS (similar to vehicle registration) with revenue distribution to councils may be worth considering (sub. DR118, p. 6). MAV also indicated the Victorian Government's web based system available through Business Victoria—which provides a single entry point for businesses and sets out the various regulatory requirements for particular types of business—could be used for this purpose. Thirty councils are already linked to this system, which embraces food regulation requirements. MAV would support extension of this system as the

basis for a central register, with appropriate referrals to relevant regulators (sub. DR128, p. 17). The system's architecture and functionality are appropriate for capturing the registration information needed for a central database, and this could be achieved at a modest incremental cost.

The cost of establishing a registry will depend on the ability of state and local regulators to use existing systems and thus is uncertain. The Commission has estimated that developing a new single database for *all* food businesses could cost between \$150 000 and \$200 000. This is broadly equivalent to the estimated cost of integrating NSW Health databases and information systems as part of establishing the NSW Food Authority (Kerin 2002, p. 140) The Commission considers, however, that the cost of establishing and operating such a system would be more than offset by savings to mobile food businesses and councils. For example, using assumptions suggested by DHS that are much more conservative than those used by the Commission in the draft report (that each mobile business registers three times at an average cost of \$200), cost savings to business could amount to \$600 000 per year (DHS, sub. DR149, p. 14).

The Commission considers that a central database for mobile food businesses would help to streamline the registration process and reduce costs to both business and councils. Given the likely net benefits of a single registry for mobile food premises, it may be worthwhile extending the scope of such a system to all food businesses, whether mobile or fixed.

9.3.2 Registration system for all food businesses

Under the Food Act, each premises or location where food is sold must register with the council within whose jurisdiction it resides. In 2006, councils registered about 45 000 fixed premises. These arrangements result in:

- (1) the registration of premises rather than businesses: increasing the cost of food regulation to business with multiple premises and to councils
- (2) different approaches to registration across councils, adding to the complexity and cost of food regulation.

The Coles Group noted it incurs a lengthy and arduous process of registering each store (more than 185 in Victoria) in each municipality and that a central register would significantly reduce its compliance burden (sub. DR75, p. 4). Metcash provided a measure of the potential savings based on recent experience in New South Wales (where it saved about \$200 per site from the introduction of a central register for its 30 warehouses). It estimated that a single register could save its group of customers about \$30 000–100 000 across the 730 stores it services in Victoria (Metcash 2007).

Submissions commenting on the proposal for a single registration system were mostly supportive. The Coles Group argued ‘it is imperative that the proposed central register for mobile food businesses be extended to cover all multi-site businesses’ and strongly recommended that Victoria adopt the New South Wales centralised approach (sub. DR75, p. 4). The Australian Retailers Association noted ‘a central register ... will help reduce administration time’ (sub. DR100, p. 9). The InFocus Management Group (sub. DR122, p. 5) and Koshi Sushi (sub. DR127, p. 3) supported a central registry of all registered food businesses, although the former observed that its worth would depend on it remaining current and accessible. MAV thought that a single registration system for food premises, in principle, is worthy of consideration (sub. DR128, p. 16). The City of Melbourne, however, did not support the proposal, arguing that the relevant council should continue to register fixed premises (sub. DR81, p. 3).

Most of the issues relating to establishing a single registry for all businesses are common to those for a single registry for mobile businesses. Of particular concern, as MAV highlighted, are the fee implications for councils where a business originates (and is registered) and councils that have to inspect outlets (and may need to charge site-specific inspection fees) (sub. DR128, p. 16). However, as noted, there appears to be no insurmountable impediment to councils unbundling registration from inspection (or other) activities and charging separate fees for each.

Also as noted, the DHS/MAV Food Safety Coordination Project could address inquiry participants’ concerns about the introduction of a single registration system. Similarly, the web based system available through Business Victoria could be developed to support a central register of all food businesses (sub. DR128, p. 17). The cost of developing this functionality and operating the system is likely to be modest.

As noted, the Commission estimated the cost of developing a new single registry database for all food businesses to be between \$150 000 and \$200 000. It considers that a single registry for food businesses would confer substantial benefits to business and, to a lesser extent, councils, additional to those benefits from a single register for mobile food businesses. It also considers that the councils’ concerns regarding the establishment of such a registry—particularly concerns about councils’ ability to recover the costs of their regulatory effort—can be satisfactorily addressed. Accordingly, and subject to the cost of implementing a suitable information system to record registration data, the Commission considers Victoria should establish a single registry for all food businesses. It would be appropriate for DHS to oversee the establishment and maintenance of such a central database.

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.**

A single registry of businesses, however, raises the issue of Victoria's use of premises (rather than businesses) as the basis for registration. In Victoria, the Food Act distinguishes between a food premises and a food business, and requires all food premises to be registered with the council within whose jurisdiction they are located (s35(1)). The registration of food premises in Victoria is a regulatory anomaly at the national level. All other states and territories, except Western Australia, adopt the approach of standard 3.2.2 of the Food Standards Code and part 8 of the Model Food Act, and provide for the registration or notification of food businesses.³

Under the code, a food business must notify the appropriate enforcement agency of certain details, including the location of all its food premises. While the approach in Victoria complies with the requirements of the code (which merely sets a minimum standard), the registration of food premises instead of food businesses imposes a higher regulatory burden on proprietors of food businesses that operate within a number of council districts. A chain retailer, for example, must repeat the registration process for each individual food premises and incur additional costs resulting from the duplication—namely, fees, time and costs associated with managing relationships with a range of councils. Under the code's approach, a chain retailer need register only the food business as a whole with a single enforcement agency, and notify the agency of the number and location of food premises operating under that business.

The requirement under Victoria's Food Act that premises rather than businesses be registered complicates the application of the Food Standards Code in Victoria. Accordingly, to facilitate the direct application of standard 3.2.2 of the code and bring about greater national consistency, the Commission considers that Victoria should revise the Food Act to express its legislation in terms of businesses rather than premises.

³ A further regulatory anomaly in Victoria is that the Dairy Act, the Meat Industry Act and the Seafood Safety Act adopt inconsistent approaches to licensing obligations. While the Meat Industry Act conforms to the approach in the Food Act and provides for licensing of meat processing facilities, the Dairy Act and the Seafood Safety Act provide for licensing the food business.

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.

9.3.3 Registration period

Under s40C of the Food Act, the period of registration is one year from the date on which it is granted or renewed, although this may be extended for a class of food premises (s40B) (appendix B). Several inquiry participants argued that the period of registration should be more flexible, to reduce the burden on businesses and councils—for example, Knox City Council argued that the Food Act needs to be amended to allow for a flexible registration period to be determined by the registration authority (sub. 19, p. 4). Similarly, Coles Myer stated that it:

... does not believe that food businesses in Victoria should have to renew their registration on an annual basis, only where a significant change has been made to the food safety program. (sub. 7, p. 3)

The Commission has not recommended a change in the registration period because the changes it has proposed will reduce the regulatory requirements associated with registration for businesses and councils. Class 2 businesses, for example, would no longer be required to lodge an FSP on registration (section 9.4). The annual registration requirement gives councils an additional avenue for ensuring compliance and an option for recovering the costs of implementing food regulation.

9.4 Food safety programs

The Food Act requires all declared food premises in Victoria to develop and adhere to an FSP—a document that identifies (a) potential hazards in food handling operations and (b) the steps for ensuring hazards are managed. The following are key features of Victoria's arrangements:

- Class 1 premises (covering commercial and not-for-profit hospitals, aged care facilities and child care centres) must develop their own FSP, while class 2 premises (all other types of business apart from those specifically exempt) have the option of using standard templates (registered by DHS) covering fixed and temporary food premises (chapter 3 and appendix B).
- Victorian councils may inspect food premises with a standard FSP at any time to determine whether the food business carried out at the premises is operating in accordance with the FSP (s19HA of the Food Act).

- FSPs or quality assurance programs are also required by Dairy Food Safety Victoria (DFSV) and PrimeSafe in the Victorian dairy, meat and seafood sectors.
- Victoria is unique in requiring all declared food premises to develop FSPs: other states implementing FSPs have done so for specific industry sectors—for example, the New South Wales Government has mandated FSPs for meat handling and processing businesses; dairy producers, factories and vendors; and businesses handling seafood and shellfish (NSW Food Authority 2006c). In Victoria, the only activities exempt from the FSP requirement are retailers of low risk prepackaged food.
- When the FSP requirement was conceived, the impact of the proposed legislation on government and industry was not assessed (Smith 2001, p. 119).
- Victoria requires community groups raising funds by selling food to prepare FSPs, whereas the national voluntary standard for developing FSPs exempts such activities from this requirement. Other jurisdictions do not require community activities to prepare FSPs (chapter 12).
- DHS has registered FSP templates for fixed premises and temporary events such as community fund raising events. These templates also serve an educational function by explaining risk types and control methods, and providing other information to food businesses.

9.4.1 Assessment of food safety programs

It is difficult to draw a direct link between the use of specific regulatory instruments (such as FSPs) and changes in the incidence of foodborne illness in Victoria, given the lack of data (chapter 5). Inquiry participants' views were divided on whether FSPs have reduced the incidence of foodborne illness. Several councils commented positively on the effect of the arrangements (section 5.2.1), but the City of Melbourne (with around 2700 fixed premises registered as at 1 January 2007)⁴ argued that the introduction of FSPs has yet to demonstrate a significant improvement in food safety standards (sub. 16, p. 1). Similarly, the Victorian branch of AIEH, which represents environmental health officers (EHOs), stated that FSPs were not generally resulting in large food safety improvements, despite placing a heavy workload on EHOs and councils (sub. 10, p. 1). Glen Eira City Council (sub. DR83, p. 14) and MAV (sub. DR128, p. 15) also noted that no research has been conducted to analyse the effectiveness of Victoria's FSP requirement in reducing foodborne illness. The Commission found no compelling evidence that the general application of FSPs has delivered an improvement in food safety outcomes.

⁴ This figure is based on the City of Melbourne's response to a survey of local governments undertaken by DHS for the Commission (DHS 2007d).

There is a view that the FSP requirements make it ‘easier’ for councils to assess compliance with food safety standards. As the City of Whittlesea noted, ‘how could an EHO determine ... if this business is complying with food safety requirements without an FSP?’ (sub. DR114, p. 5). However, meeting the paperwork requirements of an FSP where it is not fully integrated with the operation of a business will not guarantee that food is being prepared safely or that the business has thoroughly identified and addressed risks.

The case for requiring FSPs for businesses depends on whether the benefits outweigh the costs. Previous studies have found that FSPs can deliver net benefits in some cases. The national study of FSPs undertaken by Food Science Australia and Minter Ellison Consulting (FSA & MEC 2002, p. 8) concluded that FSPs would provide benefits in a number of high risk food sectors but that they would generate net costs for the food service sector (which includes restaurants and cafés). Although The Allen Consulting Group estimated that introducing FSPs nationally would deliver a net benefit, it noted that the costs may outweigh the benefits for businesses that are small and serve low risk foodstuffs (ACG 2002, p. 97). The approach adopted nationally has been to develop a voluntary standard for FSPs (standard 3.2.1 of the Food Standards Code) and to consider mandating FSPs on a case-by-case basis for identified high risk sectors or activities (box 9.1).

The net benefits of FSPs also depend on how businesses respond to the requirements. In some areas, businesses may adopt a ‘tick the box’ approach to completing registered templates—for example, some businesses may maintain FSP records but not perform all the tasks documented. Some respondents to the Commission’s survey of food businesses reported that they use FSP templates rather than developing their own, so as to avoid difficulties in getting a customised plan approved (KPMG 2007, p. 25).

Against these concerns, some inquiry participants considered that FSPs have helped to raise business awareness about food safety issues. This is partly because they are designed to serve an educational purpose, particularly for small businesses or new entrants that lack sufficient knowledge about food hazards and their control. While surveys commissioned by DHS have shown increased awareness of food safety practices among food handlers since the introduction of current FSP requirements, the effects on food safety outcomes are less obvious (chapter 5).

Further, food handlers’ inadequate knowledge of food safety is more likely to be an issue in particular circumstances (such as for new and culturally and linguistically diverse (CALD) businesses). Training that targets these areas—rather than being a general requirement of all businesses—should be a more cost-effective approach. Moreover, there are probably more efficient nonregulatory means to raise food handlers’ knowledge that can better target problem areas (chapter 10).

While the benefits of a general requirement to have an FSP are unclear, the evidence suggests the requirement has imposed material costs on councils and some businesses:

- Some submissions highlighted the costs to councils—for example, the City of Melbourne stated it has invested considerable time and effort in assisting the transition to FSPs (sub. 16, p. 1); the City of Port Phillip also reported it has spent significant resources on educating proprietors about FSPs (sub. 13, pp. 2–3); and the City of Greater Dandenong argued that FSPs have been resource intensive for councils and business (sub. 12, p. 1).
- Several submissions highlighted the administrative costs to businesses—for example, Coles Myer noted that the FSP template must be reviewed and renewed every year at considerable cost (sub. 7, p. 3).
- MAV considered that while some businesses find the requirements onerous, those that have embraced the intent of FSPs do not (sub. 41, p. 8).
- Evidence about the costs of food regulation suggests the compliance costs of FSPs for some businesses are low, but this may be because these businesses have unilaterally implemented food safety standards that exceed regulatory standards (chapter 6).

It was also argued that the administrative burden of preparing FSPs has fallen most heavily on small businesses, particularly those in the food service sector such as restaurants and cafés. Although the Hazard Analysis and Critical Control Point (HACCP) system (which is the basis for FSPs) was primarily designed for large businesses (WHO 1999, p. 3)⁵, the mandatory requirement in Victoria means FSPs are applied to businesses of all sizes. Several submissions pointed to the costs imposed on smaller businesses:

- Restaurant & Catering Victoria contended that the resources required by restaurant businesses to comply with the record keeping requirements of FSPs are substantial (sub. 36, p. 7).
- The AIEH argued that smaller businesses have fewer resources to implement FSPs (sub. 10, p. 2).
- Case studies of small food businesses by the Department of Innovation, Industry and Regional Development (DIIRD) showed those businesses find record keeping requirements of food regulations difficult to manage, and experience regulatory costs relatively greater than those of medium to large businesses (sub. DR152, pp. 3–4).
- The requirement to prepare an FSP has also placed a significant burden on small community groups (chapter 12).

⁵ The World Health Organisation noted that because the Codex HACCP system and guidelines for its application were developed from the perspective of large food industries, they are not well adapted to small businesses.

Reflecting the concerns about the net benefits of FSPs, particularly for low risk sectors and for small businesses generally, the Commission considered two options for reducing the regulatory burden:

- (1) targeting the FSP requirement at high risk food businesses only
- (2) simplifying the current FSP templates.

9.4.2 Targeting food safety program requirements

The *National risk validation project* (box 9.1) identified producers, harvesters, processors and vendors of raw, ready-to-eat seafood; catering operations serving food to the general population; eating establishments; and producers of manufactured and fermented meats as high risk areas. Further work at the national level has generated a range of risk classifications using a business sector food safety risk classification tool (DHA 2006d). This tool, for example, categorised newsagents, sweet shops and vending machines (supplying shelf stable foods) as activities considered to present negligible risk of causing foodborne illness; greengrocers were categorised as handling low or medium risk foods (DHA 2006d, p. 50).

The assessment of FSPs in section 9.4.1 indicates that requiring all low and medium risk businesses to adopt an FSP is likely to impose administrative costs in excess of the food safety benefits. This suggests to the Commission that low or medium risk businesses should not be required to prepare an FSP. This exemption would embrace a large number of (often small) businesses that sell only low risk foods (including milk and other refrigerated packaged products) and most community events. This exemption already occurs to some extent, as Colac Otway Shire noted:

... the temporary and community FSP template is far too complicated and this council does not use it. At community-like events the council require all food stall operators to submit free of charge a form detailing what type of food they are selling and the food handling experience of operator. If it is determined that the operator has limited food handler experience or is selling a risky food then they will receive extra attention from our food safety officer in the form of literature or verbal instruction to ensure that safe food is sold. (sub. DR94, p. 1)

FSPs are largely redundant where existing class 2 category businesses (particularly food manufacturers) apply stringent quality assurance processes, because those businesses already meet food safety requirements under the Food Act. Many manufacturers have achieved accreditation under third party audited quality assurance programs such as SQF, ISO and WQS. Some businesses have sought accreditation to gain marketing advantages; others do so to meet customer requirements. These accreditation arrangements may cover food safety as well as quality, and thus are a substitute for FSPs and council oversight. In such cases,

streamlining the regulatory requirements would likely have little or no adverse effect on food safety.

An administratively simpler and more targeted approach is to introduce a certification requirement for low and medium risk food businesses; similar to the notification requirements in standard 3.2.2 of the Food Standards Code. This would require the owner to inform councils about their food related activities, identify the person(s) responsible for food safety, and certify that they have identified the food safety risks of their business and taken appropriate steps to manage those risks. With a certification requirement, councils could continue to identify food businesses in their area and follow up, where necessary, any complaints or product recalls. Councils would also still be able to undertake an inspection at any time to determine whether the requirements of the Food Act and national food safety standards are being met, as is currently the case. This approach would be more consistent with national arrangements, which require FSPs only for identified high risk activities.

Removing the FSP requirement for the food service sector (restaurants, cafés and takeaways) also appears warranted. Although this sector was recognised as a higher risk sector under the *National risk validation project*, cost-benefit studies indicate that requiring FSPs for food service premises imposes a net cost, mainly due to the record keeping requirements. Accordingly, the Commission considers that FSPs should be required only for those categories agreed to by the ANZFRMC. This would mean that only businesses in the Commission's proposed class 1 would be required to have an FSP, and businesses within class 2 would be required to satisfy a less onerous certification process. Bruce Boxer (sub. DR73) and Surf Coast Shire Council (sub. DR79), in their response to the draft report, expressed a similar view:

... FSPs for class 2 premises are not working well. Very few are keeping records or even have the FSP on site. ... The cost to council and small business is high for this administrative activity ... I believe FSPs should continue for class 1 premises but with the option of auditing either by external consultants or council EHOs. (sub. DR73, p. 1)

If the VCEC is serious about national consistency and reducing administrative burdens, food safety programs ... must be abolished. (sub. DR79, p. 5)

Although the Commission is proposing that FSPs generally not be required for all class 2 businesses, it acknowledges the value of FSPs as an educative tool. Submissions illustrated this role. Colac Otway Shire stated 'the FSP is designed to educate as well as provide a framework for the production of safe food' (sub. DR94, p. 2). Similarly, the City of Stonnington stated:

Much of the current content of Food Safety Program Templates is intended to provide educational material for both proprietors and staff ... (sub. DR118, p. 5)

Accordingly, the Commission envisages that FSP templates would continue to play this educative role, with councils and DHS making templates and existing literature available for food businesses to use voluntarily. There may also be scope for councils to still mandate FSPs as part of a targeted enforcement strategy: for example, councils might require FSP templates for businesses they consider at risk of not applying safe food handling processes to their operations (such as some new and CALD businesses). The Commission envisages this option would apply to only a small number of businesses. Moreover, removal of the FSP requirements for class 2 businesses would be accompanied by improved monitoring, training and information measures (chapter 10).

The Commission recognises that some form of record keeping might still be needed for EHOs to assess compliance against the Food Act requirements. However, it considers that Victoria's food regulation should not mandate record keeping requirements additional to those set out in the Food Standards Code.

9.4.3 Simplifying food safety programs

Inquiry participants suggested there may be scope to achieve savings to business by simplifying FSP templates and record keeping.

Simplifying food safety program templates

A number of inquiry participants suggested there is scope to reduce the costs of Victorian food regulation to business and community groups by simplifying FSP templates. Knox City Council recommended that FSP templates for food businesses be further simplified (sub. 19, p. 2) while Maroondah City Council saw potential for simplifying templates for temporary or community events (sub. 33, p. 2).

The length and complexity of the existing templates could be reduced by focusing them on the major food hazards (such as inadequate temperature control, with resources for more complex issues provided separately) and reducing record keeping requirements (Jenkins-McLean, Skilton & Clarence 2004, pp. 15–9; Medieros et al. 2001, pp. 108–13; Redmond & Griffith 2003, pp. 130–61). Simplifying the templates would also make them more accessible and understandable to food business proprietors. The *Food safety program template for retail and food service businesses* comprises more than 80 pages and contains considerable repetition—for example, messages about time and temperature danger zone are repeated numerous times (DHS 2004e).

Some councils opposed the option of further simplifying templates. Hume City Council did not support any further simplification because it might exacerbate existing problems with FSP compliance (sub. DR97, p. 5). MAV noted councils' concerns about the extent to which FSP templates are currently simplified, and

the extent to which food business proprietors pay lip service to template contents to satisfy regulatory requirements rather than the intent of food safety programs (sub. DR128, p. 15). Loddon Shire Council went further:

... ‘simplifying’ food safety programs is a futile notion. The current templates available are of a simplistic nature. Experience has shown that the standard of a food safety program doesn’t reflect the overall operation of the food business... Taking this into account and to achieve a reduction in administrative burden ... the removal of the [FSP] requirement should be considered. (sub. DR109, pp. 1–2)

DHS, too, questioned the worth of further simplification. It argued that this could mean less detailed or less specific guidance being provided to business. In that case, businesses using the template would need to invest more effort to achieve compliance (sub. DR149, p. 8). DHS also claimed it was not clear that improving the editorial content of templates (including reducing repetition) would yield significant cost savings to business (sub. DR149, p. 8).

Inquiry participants’ comments suggest simplification has already come a long way and gains from additional simplification would be marginal at most. Accordingly, and in view of the Commission’s proposal that FSPs be required for only class 1 businesses, the Commission does not support this option.

Simplifying record keeping requirements

While Australian food safety standard 3.2.1 states that food businesses must make and keep appropriate records for FSPs, Victoria has its own record keeping requirements. These arrangements require records to be kept in a particular manner:

The current FSP template process places emphasis on record keeping in the format detailed in the templates, and does not include the flexibility to keep fewer records if ongoing compliance is being maintained. (City of Yarra, sub. DR132, p. 4).

Chapter 6 indicates that administrative costs (mainly record keeping requirements) for Victoria’s main food industries account for around \$82 million a year. For class 1 and 2 businesses regulated under the Food Act, this cost is about \$68 million.⁶ Numerous submissions reported that record keeping associated with FSPs is imposing a burden on food businesses without improving food safety:

- Restaurant & Catering Victoria argued that there is no necessary connection between producing safe food and being able to demonstrate this to an EHO

⁶ That is, food manufacturing, wholesaling, retailing and eating establishments (excludes school canteens, hospitals, and aged care and child care establishments).

via written records (sub. 36, p. 11). Similarly, MAV argued that record keeping does not guarantee safe food (sub. 41, p. 8). The City of Greater Dandenong reported that most businesses monitor food temperatures even though many other records are not kept (sub. 12, pp. 4–5). And a survey commissioned by DHS showed that compliance with requirements such as monitoring temperatures generally exceeds compliance with the associated record keeping requirements (Culinary Solutions Australia 2004).

- Several inquiry participants, including Mitchell Shire Council (sub. 3, p. 1), Knox City Council (sub. 19, p. 1), the City of Wodonga (sub. 29, p. 2), Moreland City Council (sub. 51, p. 2) and DIIRD (sub. DR152, p. 3), indicated that the costs of meeting record keeping requirements fall most heavily on small food business. And in a report for DHS, Campbell Research & Consulting (2005b, p. iii) found all stakeholder groups considered that reporting requirements are arduous for small business and seem particularly ‘over the top’ for low risk businesses.
- There is evidence of a lack of compliance with record keeping requirements. The survey commissioned by DHS found that around half the businesses surveyed kept appropriate temperature records covering the cooking and cooling processes for hot food (Culinary Solutions Australia 2004, p. 11). Wyndham City Council stated that many food businesses in its area struggle to meet record keeping requirements and are often deemed noncompliant (sub. 37, p. 7).

A potential benefit of record keeping requirements is that they raise awareness of the importance of equipment and food storage and handling practices, and enable authorities and businesses to identify and address any failings in food safety practices. A number of councils (Colac Otway Shire, sub. DR94, p. 2; the City of Melbourne, sub. DR81, p. 2; Glen Eira City Council, sub. DR83, p. 14; the City of Stonnington, sub. DR118, p. 5) emphasised this need for some form of records to demonstrate compliance with food safety requirements.

Knox City Council argued that ‘streamlining ... record keeping requirements is contrary to a total risk management approach’ (sub. DR84, p. 2). Other inquiry participants (Hume City Council, sub. DR97, p. 5; Kernow Environmental Services P/L, sub. DR98, p. 2; and Brimbank City Council, sub. DR130, p. 2) accepted that some simplifying of record keeping is warranted, but only for low risk food businesses; they argued that all other businesses should still provide complete food records.

There are, however, other ways to raise awareness and ensure some traceability in the event of problems—for example, education and information can be provided to business proprietors to ensure they understand the importance of appropriate food safety practices. And as Maroondah City Council pointed out, information on food input suppliers can be obtained from invoicing systems (sub. 33, p. 1).

While one response to low compliance with record keeping requirements is to strengthen enforcement, such action could also be counterproductive. Given the inherent difficulty of monitoring the day-to-day activities of businesses, for example, stronger enforcement could produce higher levels of records falsification or disputes between EHOs and businesses.

Given that the record keeping requirements appear to provide limited benefits (some of which could be achieved through alternative nonregulatory means), the Commission considers they could be streamlined by removing most record keeping requirements for class 2 businesses and relying on the general requirements of the Food Standards Code. This approach would allow increased flexibility for business, such as greater reliance on exception reporting, electronic monitoring and alarm systems that alert staff to a fall in temperatures. On this point, Colac Otway Shire concurred, noting ‘automatic temperature monitoring devices and alarms would monitor refrigerators etc. with minimal effect on a proprietor’s resources’ (sub. DR94, p. 2). Technological improvements could be expected to facilitate this approach.

Relying on the general requirements of the Food Standards Code would not undermine food safety, but would produce savings for many businesses, particularly small business. Section 9.10 explores the effects of simplified record keeping requirements.

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.**

9.5 Food safety supervisors and food handlers

Under nationally agreed food standards, food businesses must ensure persons undertaking or supervising food handling operations have skills in and knowledge of food safety and food hygiene matters. Declared food premises in Victoria are also required to appoint an appropriately trained FSS. Appendix B

sets out the detailed FSS requirements and chapter 12 discusses the requirements facing community groups. A number of inquiry participants questioned the benefits of the FSS requirement, with some supporting the concept but critical of the way in which it has been applied.

9.5.1 Impact of the food safety supervisor requirement

Most food businesses have a strong incentive to ensure their employees possess the required skills and are appropriately supervised. This means most businesses will be best placed to determine the level and type of on-the-job or external training necessary to equip staff with the desired skills. Given the high rate of staff turnover in the food sector, however, employers may have difficulty capturing the full benefits from external training and, therefore, may underinvest in training. Further, some businesses may underestimate the benefits of training, due to a lack of awareness or for cultural, language or other reasons.

In such circumstances there may be a case for government intervention to support food safety training, if the benefits outweigh the costs. Intervention may include providing information about the benefits of training, the courses available and subsidies to businesses for training, and mandating some types of training for all businesses or just for target groups.

The Food Act mandates that all declared food premises must appoint an appropriately trained FSS. The type of training required depends on the industry sector and the activities undertaken on the premises. Registered premises are required to inform councils that the FSS has completed a sufficient number of units of competency to satisfy the legislative requirement (DHS, sub. DR149, p. 34). This approach contrasts with the nationally agreed approach of requiring food handlers to have skills and knowledge in food safety, without prescribing methods for obtaining skills and knowledge.

The administrative burden imposed as a result of the FSS requirement is difficult to estimate, but could be substantial. Infocus Management Group stated training costs are typically \$200–400 per FSS (sub. 38, p. 5), although Colac Otway Shire (sub. DR94, p. 2) and CFT International Pty Ltd (sub. DR101, p. 2) claimed \$200 or less is more likely. This cost is often ongoing rather than one-off, as a result of the high mobility and exit rates in the food and hospitality industry (sub. 38, p. 5). There are also productivity losses from staff attending FSS training courses. Although formal training courses vary from less than a day to more than two days, survey data suggest the average duration is about one day (Culinary Perspectives 2005, p. 35). Based on an employee cost to a business of \$55 per hour,⁷ this suggests productivity costs of around \$400 per FSS, and a

⁷ The method outlined in VCEC (2006a) suggests a rate of \$55 per hour to cost staff time.

total cost of \$600–800 per business premises: industry-wide, this is likely to represent a substantial cost. If, for example, one in 10 of the 45 000 registered fixed premises in Victoria provide FSS training for one staff member each year, the annual cost to business would be \$2.7–3.6 million⁸ (excluding any cost to councils of enforcing the requirement).

In addition to concerns about the costs of meeting the FSS requirement, inquiry participants raised issues about:

- the effectiveness of the requirement: inquiry participants noted that many businesses do not require their FSS to be present at all times. AIEH noted that it is too easy to nominate an FSS who is remote from the business (sub. 10, p. 3)
- the quality and focus of FSS training: Golden Plains Shire noted the quality of the training has long vexed councils because it varies so much and training bodies are not adequately scrutinised to ensure students' competencies (sub. DR70, p. 3)
- inconsistent approaches by councils in enforcing the requirements and advising businesses on training requirements (chapter 11): for example, the National Retail Association noted some councils require the retail take-away industry to acquire 'retail' food training competencies whereas other councils require 'hospitality' sector competencies (sub. DR120, pp. 2–3).

The main potential benefit of the FSS requirement is a reduction in the incidence of foodborne illness. While there is no direct evidence indicating that FSP and FSS requirements have reduced illness, there is some evidence to suggest food handling skills have increased. DHS commissioned surveys on food safety practices show improvements in the food safety knowledge of FSSs and junior food handlers since 2002 (chapter 5). However, recent evidence suggests the role of the FSS in facilitating improved food handling skills among junior staff is limited:

There is little evidence that all of the changes in food safety knowledge that have been found among junior food handlers can be directly attributed to knowledge transfer from FSSs. The hypothesis that strong knowledge transfer between FSSs and junior food handlers is driving the improvements found among the junior food handlers in food safety knowledge is not supported by this study. While there were found to be fewer significant differences in individual measures between FSS and junior food handlers in 2006, the qualitative research suggests that the 'knowledge gap' has been closed through external courses in food safety, particularly in the areas of temperature control and safe food storage. (IPSOS 2006a, p. 4)

⁸ This estimate does not account for the cost of staff training that some businesses would have incurred if FSS training were not a regulatory requirement. In this regard it may be considered an upper bound estimate.

The lack of evidence that increased skills have translated into reduced foodborne illness could reflect limitations of the available data. But the lack of evidence of improved outcomes is not surprising because the FSS requirement is not targeted at those businesses that underestimate (due to a lack of awareness or for cultural, language or other reasons) the benefits of training.

Given doubts about the cost-effectiveness of the FSS requirements, the Commission examined two options for reducing the impact on business:

- (1) removing the FSS requirement for all or some food businesses and relying on outcome focused national standards
- (2) replacing the FSS requirement with more targeted training opportunities.

Removing the requirement for food safety supervisors

Given the concerns about the effect on business of the FSS requirements, an option is to remove this requirement for all registered businesses. This option would be administratively simple and produce large savings to businesses.

The proposal to remove the FSS requirement received mixed responses. Some inquiry participants—such as the City of Whittlesea (sub. DR114, p. 5) and the Coles Group (sub. DR75, p. 5)—supported removing the FSS requirement for all businesses. Other inquiry participants supported the proposal, but for low risk establishments only. Hume City Council (sub. DR97, pp. 5–6) and Latrobe City Council (sub. DR124, p. 1), for example, welcomed the proposal as a sensible reform for ‘low risk’ businesses, but considered that existing class 1 and class 2 businesses should continue to have an FSS. More generally, MAV stated that ‘more targeted and effective support for food safety training for food businesses will be welcomed by councils as a sensible reform for [low risk] businesses’, but advice from councils to MAV is that it is necessary to retain the requirement for class 2 businesses (sub. DR128, p. 16).

Other participants did not support abolishing the FSS requirement, citing a variety of reasons. AIEH (sub. DR104, p. 3) and the City of Melbourne (sub. DR81, p. 3) held that the FSS role is necessary to enable a business to ensure food handling is done safely. AIEH argued that if the FSS requirement were to be removed, it should be replaced with a requirement that all food handlers be formally trained in basic food handling skills (sub. DR104, p. 4). However, the Commission’s view is that requiring formal training for all food handlers would have limitations similar to those of the FSS requirement yet be many times more expensive. In a similar vein, DHS argued that if the FSS requirement were abolished, businesses would need to rely on generic training courses for their staff. In practice, it suggested, this alternative could absorb any cost savings from removing the FSS requirement (sub. DR149, p. 9). The City of Ballarat (sub. DR107, p. 2) and the Loddon Shire Council (sub. DR109, p. 2)

argued against the proposal on the grounds it could diminish the regional presence of training bodies if it led to demand below the minimum scale necessary to support them.

Central to some participants' opposition to removing the FSS requirement is the belief that such a move would mean no food handling skills are required or that the skills of food handlers would decline, thereby increasing the risk of foodborne illness. However, these outcomes are unlikely. It is not clear that removing the FSS requirement would adversely affect food safety, given that many businesses do not require their FSS to be present at all times, thereby undermining their effectiveness. Moreover, without the FSS requirement, businesses would still be required to comply with national food standards relating to the skills and knowledge of food handlers.

A general requirement that all registered food premises appoint a trained FSS is not an efficient way of targeting training at businesses that lack the skills and knowledge of food safety for cultural, language or other reasons. There may be more cost-effective ways of improving knowledge and skills for these businesses. Accordingly, the Commission recommends that the universal requirement for an FSS be removed.

Targeted training options

Government intervention to support food safety training is likely to be most cost-effective when targeted at businesses displaying serious or persistent breaches of food safety standards or businesses that underestimate the benefits of training. One way to target training is to give councils the power to require a business premises proprietor and/or their staff to undertake training in food safety where serious or persistent unsafe food handling practices have been observed. The Coles Group (sub. DR75, p. 5) supported this option. Training could cover regulatory requirements as well as food safety and hygiene practices. By requiring training to be undertaken at businesses' expense, giving councils or DHS this power would strengthen incentives to comply with food regulation. To help prevent this power being used as a de facto FSS requirement, councils should report regularly on the number of training orders imposed on businesses.

The City of Ballarat, however, feared that replacing the FSS requirement with scope to compel businesses to undertake 'targeted training' would require a competency assessment by councils that is not required under current arrangements and, possibly, a Magistrates' Court order. If so, this could significantly increase costs for local government (sub. DR107, p. 2). To avoid the concern that court action might be needed to give effect to a council's decision to impose a training order, s19HB(1)(b) of the Food Act could be amended to provide the necessary authority to councils.

For businesses that have difficulty understanding and complying with food regulation requirements for cultural, language or other reasons, targeted training might be required as part of the certification process proposed by the Commission. Councils have carried primary responsibility for developing materials targeted at CALD food businesses, although DHS has developed some too. The City of Dandenong, for example, informed the Commission of the council's initiative in distributing its awareness raising materials to other Victorian councils:

The diversity of cultures trading food in Victoria has required City of Greater Dandenong Environmental Health Unit to develop many CALD food safety resources, including a 'no words' food safety picture kit, a 'virtual food premises', and many language translated food safety materials. However, CALD food operators continue to experience difficulty with compliance to food law. CALD food traders require greater regulatory resources to encourage uptake of regulation and generally consume enormous amounts of resources to ensure food safety compliance. (sub. 12, p. 6)

While some councils are already active in this area, there is scope for DHS to take a more active role in ensuring a coordinated approach to helping CALD businesses understand and comply with Victorian food regulation.

On balance, the Commission considers there is little evidence that Victoria's FSS requirements have improved food safety. Replacing them with targeted training approaches would yield savings to most businesses and strengthen incentives to comply with food regulations. As part of its package of reforms to better focus regulatory effort on risks, the Commission recommends that the Victorian Government remove the requirement for FSSs and introduce more targeted and effective support for food safety training for food businesses.

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.**

9.6 Inspections and audits

Victorian food businesses may have their operations inspected and/or audited by a number of regulatory authorities as well as by private sector auditors. Multiple government and private inspection and audit regimes have led to concerns about unnecessary duplication and costs to the food industry. The main issues relate to:

- the obligation on councils to inspect all food businesses as part of annual registration (except those for which the Minister has declared registration may be for a longer period), which discourages risk based enforcement
- unnecessary duplication between council inspections and third party audits
- duplication between regulatory and private sector audits
- the proliferation of private sector audits.

9.6.1 Council inspections

The Food Act distinguishes between two types of inspection of food premises that council EHOs may conduct. It also provides for approved third party auditors to audit certain types of food premises.

First, there are inspections and audits of compliance with standard and nonstandard FSPs respectively:

- In the case of food premises with a standard FSP, council EHOs may inspect the premises at any time to determine whether the food business conducted at the premises is operating in accordance with the FSP (s19HA).
- In the case of food premises with a nonstandard FSP, the proprietor of the business must ensure an approved food safety auditor (s19IA) conducts an FSP audit. The purpose of the audit is to determine compliance with the FSP and whether the program is still adequate (s19J). The Secretary of DHS determines the frequency of the audits, which varies depending on the type of food premises (s19K). The Secretary has declared a minimum audit frequency should be 12 months (Government of Victorian 2001b, p. 1).

Second, councils must carry out inspections before they allow, renew or transfer the registration of food premises, irrespective of whether the food premises has a standard or nonstandard FSP, or has no FSP at all. Under s39 of the Food Act, before a council registers (or renews or transfers the registration of) food premises, it must inspect the premises and be satisfied of compliance with all the relevant requirements of the Food Act. And if the premises is a declared premises and is not exempt, then the council must be satisfied that there is a compliant FSP.

Inspections under s39 cover matters different from those covered by inspections under s19HA and audits under s19IA and s19J. Council inspections under s39

are undertaken to determine whether premises have complied with Food Act requirements and, in the case of declared premises, have a complying FSP. Council inspections under s19HA and audits under s19IA and s19J are to determine whether the food premises have complied with their FSP.

Requiring councils to undertake annual inspections of food premises under s39 before renewal of registration, when there is no reason to suspect noncompliance with the Food Act, and regardless of whether other inspections have taken place, imposes unnecessary costs on councils and businesses. Consideration should be given to making annual inspections risk-based rather than routine. This option had widespread support from inquiry participants (box 9.3).

Box 9.3 Inquiry participants' views on making annual inspections discretionary

[Coles] support an amendment to s39 of the *Food Act 1984* (Vic.) to remove the requirement for councils to inspect premises before annual renewal of registration and make inspections discretionary under s39. (Coles Group, sub. DR75, p. 4)

... it is common sense to direct resources for compliance to those businesses that pose a greater risk to the community. (Surf Coast Shire Council, sub. DR79, p. 6)

The proposal to remove the requirement for councils to inspect premises before the annual renewal of registration will allow greater flexibility for councils and will work well in conjunction with reduced inspections for good performers. (Moonee Valley City Council, sub. DR89, p. 2)

We believe that councils should still retain the need to inspect premises but should be able to adjust their inspection requirements based on a risk based assessment. (Kernow Environmental Services P/L, sub. DR98, p. 3).

The [AIEH] supports the recommendation to remove the requirement for [councils] to inspect all premises before annual renewal of registration. Business where an annual inspection may not be required would include food businesses with accredited quality assurance programs, for example, HACCP certification and premises selling low risk food only such as those currently exempt from food safety programs. (AIEH, sub. DR104, p. 4)

MAV expressed concern about removing the requirement for annual council inspections, arguing that it would weaken the food safety system (sub. 41, p. 13). So too did the Colac Otway Shire, which argued that businesses 'need to be inspected ... to keep touch with what is being sold ... Many low risk premises change their products, proprietors and function and without the barest of scrutiny how is council going to discharge its responsibilities?' (sub. DR94, p. 2).

However, these concerns, together with those about the costs to business and councils of mandatory annual inspections under s39, could be addressed if these inspections were made discretionary. Each council's risk management strategy would guide its inspection frequency—for example, a council could decide to conduct a s39 inspection if:

- EHOs had made an unsatisfactory inspection report under s19HA (compliance with the FSP)
- council had received an unsatisfactory audit certificate following a third party audit
- council had some reason to doubt food premises were complying with their obligations under the Act (for instance, complaints from consumers)
- council had decided, as part of a risk management strategy, to target regulatory scrutiny at particular types of premises or operator (such as delicatessens or aged care centres).

These concerns also highlight the need for rules and guidance—a point emphasised by Glen Eira City Council (sub. DR83, p. 15) and AIEH:

It would be expected that if such changes were to be implemented, clear guidelines for inspection programs would need to be produced by DHS in consultation with [local government authorities] and the AIEH. (sub. DR104, p. 4)

On the basis of the discussion above, the Commission considers that the Victorian Government should amend s39 of the Food Act to remove the requirement that councils must inspect premises before annual renewal of registration, and instead allow councils to make inspections discretionary under s39. Further, it would be appropriate for DHS to oversee the development of inspection guidelines to facilitate consistency among councils.

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.

In exercising their discretion on the need for annual inspections, councils could take into account evidence from third party audits. However, while the Act is meant to prevent overlap between inspections and audits, some submissions noted there was duplication between council inspections and third party audits. Woolworths Limited stated:

Even now and despite Woolworths having opted for third party auditing it is often noted that council EHOs continue to request changes to documentation (food safety plans), operations and/or building structure. Such comments may indicate non-compliance against the Food Safety Program, Food Act or Food Standards Code and are also included in third party audit reports, which are submitted to councils for review. This is unnecessary duplication of effort between council EHOs and third party auditors. (sub. 50, p. 2)

Similarly, the City of Yarra argued that if a business has an effective quality assurance and auditing program, then that should substitute for council inspection:

... a food safety audit system should be seen as a more thorough food safety assessment than the periodic inspection/compliance check by an EHO as long as it covers all issues dealt with by the EHO in relation to food safety. (sub. DR132, p. 2)

Submissions also cautioned about the credibility of evidence used to justify councils not inspecting businesses. In this regard, Surf Coast Shire Council stated:

There has clearly not been enough work done to examine the quality of audit reports being produced nor the overall benefits and value of the audit system currently in place. Until such time that this occurs the jury should be out on whether there is potential for council inspections to cease in lieu of an audit. (sub. DR79, p. 6)

Similarly, Glen Eira City Council (sub. DR83, p. 16) and the Rural City of Wangaratta (sub. DR112, p. 1) noted, given their experience with third party auditing, that they had a low level of confidence in it as a credible alternative to an inspection by a council EHO.

On the issue of auditor credibility, DHS noted that Victoria is the only jurisdiction not conducting random audits or checks on auditors. Instead, it relies on the auditor certification body—Registrar Accreditation Board Quality Society of Australasia (RABQSA)—to ensure auditors are competent, supported by evidence from the annual inspection of businesses by EHOs (sub. DR149, p. 18). DHS observed that other jurisdictions have expressed concerns that RABQSA certification by itself is inadequate assurance of the competence of auditors (sub. DR149, p. 18). Thus, if the annual inspection requirement were removed, DHS argued that Victoria would be compelled to implement arrangements to ensure the auditors are audited—a situation that would incur added costs by either state or local government (sub. DR149, p. 18). The Commission notes, however, that the ‘auditing of auditors’ would be needed for only a short while, until implementation of the national food safety audit policy—a policy agreed to by the ANZFRMC, to promote uniformity and consistency in auditing within Australia. Intended to address concerns about auditor credibility, this policy is to be implemented over the next five years.

9.6.2 Regulatory and private sector audits

In addition to the inspections and audits under the Food Act (described above), several other major inspection and auditing regimes apply to Victorian businesses:

- Food businesses licensed by DFSV and PrimeSafe may be required to have second or third party audits (appendix B).
- The Commonwealth Government’s quarantine agency, the Australian Quarantine and Inspection Service (AQIS), provides export certification services to facilities exporting meat, fish, dairy, grain, horticultural products, live animals and organics.
- A number of food businesses are accredited under their own or customers’ quality assurance processes that require third party audits. Examples of quality assurance programs are HACCP, SQF 2000, ISO, BRDC and WQA.

Several arrangements are in place in Victoria to prevent duplication of audits:

- DHS will recognise third party audits under a quality assurance program, provided the program covers the requirements of the Food Act and the auditor has certification from the RABQSA.
- PrimeSafe may require licensed businesses to operate an FSP and be third party audited. It approves a panel of companies, one of which licensed businesses must engage to conduct the audit. PrimeSafe can recognise an audit under a quality assurance process, provided the audit is conducted by an auditor approved by PrimeSafe.
- The Department of Primary Industries reported that PrimeSafe and DFSV are working with AQIS to address potential duplication of audits (sub. 56, p. 7):
 - Where a meat or seafood business requires an AQIS inspection, PrimeSafe now recognises such inspections as meeting the requirements of the Meat Industry Act (DHS 2007a).
 - AQIS now formally recognises DFSV audits for the purposes of their export orders and this audit duplication has been removed (Dench McClean Carlson 2006, p. 7).
- For an AQIS audit to be recognised under the Food Act, the AQIS auditor must obtain approval under the Food Act. However, AQIS has not required its auditors to seek such approval, so AQIS audits therefore have not been recognised as meeting the requirements of the Act. In these circumstances a separate audit would be required (DHS 2007f).

The Commission did not receive any direct evidence suggesting that the arrangements for recognising AQIS, DFSV and PrimeSafe audits are not working. However, the Department of Primary Industries considered that industry quality assurance systems could be used more widely to meet Food Act requirements. If a recognised (accredited) third party audited quality assurance system meant that a food business is ‘deemed to comply’ with its regulatory obligations, then the limited resources of regulators could focus on businesses without accredited systems. A mechanism for transferring non-compliance information from the quality assurance system to the relevant regulatory agency for further

intervention would need to be developed (sub. DR144, p. 3). To better focus regulatory effort, DHS could identify quality assurance processes that meet Victorian food regulations, and provide this information to councils. Councils would then not need to inspect accredited premises unless they receive a complaint or undertake a random inspection.

9.6.3 Private sector audits

Some inquiry participants commented on the number of private quality assurance processes—for example, DHS stated:

Numerous companies require their suppliers to run specific QA [quality assurance] systems and have them third party audited. Often there is no mutual recognition of these commercial systems. As a result the suppliers are subject to multiple audits and the associated expense. This is a worldwide problem. (DHS 2007f)

The Commission has not examined the reasons for the proliferation of private quality assurance processes. It notes, however, that this issue has been recognised as an item on the work program of the Food Standards Implementation Subcommittee (ISC 2005a, p. 13). Industry associations such as the Australian Food and Grocery Council—which has initiated an auditor competency forum, with a key goal being to rationalise audit requirements (sub. 17, p. 8)—can also play a useful role in streamlining audits under quality assurance processes.

9.7 Frequency of audits

By adopting a risk based approach, the frequency of audit would vary according to the food safety risks posed by different types of food business. The initial audit frequency for a food business would be determined by the risk classification and the business's compliance record. The Australia New Zealand Food Authority, the predecessor to FSANZ, developed national guidance for the frequency of audits (table 9.1).⁹

⁹ The states and territories never formally adopted this audit frequency guideline. Under the national audit policy adopted by the ANZFRMC in 2006, ISC has been given the task of developing audit frequency guidelines for the jurisdictions—a task to be completed in 2008-09 (DHS, sub. DR149, p. 34). The more recent national audit policy does not provide specific guidance on audit frequencies but indicated that regulators will align the frequency of regulatory audits with the business risk profile and the business's compliance history (ISC 2006).

Table 9.1 National guidance on audit frequency^a

<i>Classification</i>	<i>Starting point (months)</i>	<i>Maximum (months)</i>	<i>Minimum (months)</i>
Low risk	18	12	24
Medium risk	12	6	18
High risk ^b	6	3	12

^a The table shows the 'starting point' number of months between audits for different risk classes. The frequency can be adjusted between the minimum and maximum depending on the food safety performance of the business. ^b This group would generally correspond to class 1 businesses.

Sources: ANZFA 2001a, 2001c.

Victoria's audit regime is broadly consistent with these guidelines but there appears to be scope to reduce audit frequencies for some sectors (for example, dairy) and to lower the minimum frequency of audit stipulated by DHS:

- PrimeSafe requires audits for retail butchers and retail chicken meat businesses twice a year; smallgoods manufacturers, which are considered to have higher food safety risks, are audited four times a year (DPI 2007a).
- Dairy exporters are required to be audited three times a year, although reducing the frequency to two times a year has been discussed. Domestic dairy manufacturers whose products are not for export have had their audit frequency reduced by DFSV from three to two times a year (Dench McClean Carlson 2006, p. 7).
- The frequency of PrimeSafe and DFSV auditing is based on performance: if compliance is assessed to be low, then the frequency and intensity of audits is increased (Dench McClean Carlson 2006; DPI 2007a). Because audits of meat, poultry, seafood and dairy manufacturers and processors are conducted on a user pays basis, these businesses have an incentive to maintain or improve their food safety performance and thus keep the number of audits and related costs to a minimum.
- The Secretary of DHS establishes the frequency at which audits should be held: class 1 and 2 food businesses must have at least one audit every 12 months. While this approach allows for more frequent audits, it does not allow for lower audit frequencies.
- Neither the Food Act nor any regulations provide sufficient guidance to third party auditors about determining the frequency of audits based on food safety risk and performance. While the *Food safety auditor's handbook* specifies the minimum frequency, it makes no reference to risk and/or performance based audit frequencies (DHS 2005b, p. 11).

There may be scope to reduce audit frequencies for the dairy sector and for premises registered under the Food Act by bringing them into line with national

guidelines. Some councils supported use of an audit frequency model—for example, Hume City Council viewed it as a nationally consistent and sensible risk based approach (sub. DR97, p. 7). Submissions representing business interests also supported an approach that reflects the inherent risk and compliance record of a business. The Australian Retailers Association, for example, stated that adopting clearer guidance on audit frequency would streamline the auditing system by standardising the frequencies of audits across industries. Doing so would help remove duplication and keep costs down for businesses (sub. DR100, p. 10). Similarly, Aged & Community Care considered there is scope to reduce council audit frequency if the auditing system of accredited residential aged care facilities meets the requirements for food safety under the other system. It pointed to ‘other examples in our sector where national programs have negotiated with a state for such mutual recognition’ (sub. DR145, p. 3). However, as discussed in section 9.6.1, concerns about the credibility of alternatives would first have to be satisfied.

The Commission does not have the expertise to endorse the audit frequency model developed by the Australia New Zealand Food Authority, but supports the concept of aligning audit frequency to the risk profile and compliance history of a business. There is no information on how present audit frequency is decided in Victoria: as noted, the Food Act has a minimum of one audit every 12 months, while DFSV and PrimeSafe have their own regimes. DFSV and PrimeSafe indicated they vary audit frequency with compliance history but no guidance is available on how such decisions are made. Nor does DHS provide guidance to councils on varying audit frequency (above and below the specified minimum).

There is also scope to adopt more of a risk based approach to audits under the Food Act by reducing the frequency of audits for businesses that are low risk (based on an assessment of inherent risk and compliance history). Allowing this flexibility could reinforce incentives to comply with food safety requirements. For it to occur, and to ensure frequencies do not rise except in cases of poor performance, DHS would need to provide guidance to businesses and auditors about how to lower audit frequencies according to the food safety performance of individual businesses.

DHS noted that the Food Act does not allow different audit frequencies for good or poor performers to be specified (sub. DR149, p. 18). While it supported the proposal to allow for a more flexible system of audit frequencies, legislative change would be required to achieve that flexibility (sub. DR149, p. 19). Accordingly, the Commission considers that the Food Act should be amended to allow a minimum period between audits of greater than 12 months (perhaps 18 months) and to permit risk factors to be considered when the frequency of food safety program audits is determined.

Estimating the savings from implementing an audit regime more tailored to the risk profile and compliance history of a business is difficult, because they would depend on a business's level of compliance and on the number of businesses that fall into each risk category. However, a greater focus on higher risk or noncomplying businesses could be expected to improve the effectiveness of regulatory effort in delivering improved food safety outcomes.

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.

9.8 Food sampling

Section 32 of the Food Act requires councils to submit at least three samples of food for analysis during each year for each thousand persons of population of the municipal district. The Infectious Diseases Regulations 2001 also require food analysts to notify DHS if any food samples are found to contain notifiable pathogens (DHS 2006c).

Councils have developed and implemented food sampling programs. The East Gippsland Shire Council, for example, conducts food sampling of premises on a random and targeted industry-specific basis (East Gippsland Shire Council 2007). John Ward noted that most councils work to a food sampling plan based on the risk prioritisation of food businesses in the municipality (sub. 21, p. 2). However, despite around 15 000 food samples being analysed in Victoria each year (DHS 2006c), the results are not used to assess the statewide effectiveness of food regulation. While the Food Act requires the results of food sampling to be reported to councils, it does not require councils to report them to DHS.

DHS and local government established the Victorian Food Sampling Committee in 2002 to identify sampling activities of strategic importance and seek cooperation in conducting surveys across the state. The committee has representatives from councils, MAV, food and microbial testing laboratories,

OzFoodNet and DHS (FSU 2004a). The first statewide sampling survey focused on freshly squeezed juices from retail businesses (DHS 2005c).

The collation of food sampling results from councils across the state would provide a valuable database for assessing the effectiveness of food regulation. The Commission considers that DHS should establish and maintain such a database and report regularly on trends in food safety across Victoria and in specific parts of the state. The participation of local councils and MAV would be required. The committee could advise DHS on the development of the database and comment on the analysis and reports prepared by DHS. The analysis could assess trends in food sampling results over time and across geographic areas.

The Commission perceives several benefits from this approach. First, the analysis of statewide data would shed light on the effects of food regulation in Victoria. It would also help to identify problem or risk areas, and provide a basis for reallocating resources and developing strategies to address these problems. The analysis and reports prepared by DHS would also inform councils' surveillance programs.

Inquiry participants' responses to this suggestion were generally positive. Kernow Environmental Services P/L considered it a welcome initiative (sub. DR98, p. 3). Fonterra Australia Pty Ltd considered it could provide information to help industry improve its performance:

In relation to food sampling management ... sampling results could be further utilised by industry if broad industry-specific reports were provided to manufacturers to increase awareness of food safety issues that may be emerging in their industry. (sub. DR102, p. 13)

AIEH supported the proposal to establish a database of food sampling results. It noted that councils already participate in regional and other food sampling groups that include food-specific surveys through to investigational programs. Such programs allow effective data collection that advises on food safety risks (sub. DR104, p. 4). Similarly, the City of Whittlesea agreed that the creation of a statewide food sampling database would be beneficial and could be easily established and maintained if data were directly supplied by the analysts. It suggested the database should also include data from PrimeSafe and DFSV. Further, DHS could take advantage of better using DHS regional sampling groups and organise targeted sampling based on the analysis of the database (sub. DR114, p. 7).

The City of Stonnington indicated that establishing a database to collate sampling results should be relatively easy, given 79 councils use only two public analysts (sub. DR118, p. 8). However, it also noted that the proposal would have funding implications for local government:

The cost of introducing such measures would encompass increased food analysis costs, increased data analysis (software/staffing), increased staffing to manage greater inflow of documentation, increased costs associated with reporting, development of educational material, training of staff, development of effective performance measures. (sub. DR118, p. 8)

Similarly, DHS noted that it would require additional resources to establish and maintain a database of food sampling results, analyse those results and prepare annual reports (sub. DR149, pp. 27–9).

Golden Plains Shire was sceptical that such a measure would succeed ‘on reporting results of council inspections and sampling. ... most councils gave up reporting years ago because of a lack of interest from the department in the reports’ (sub. DR70, p. 2). Additionally, some councils were cautious about how useful such sampling might be. The City of Stonnington observed:

... while this may be a valid approach for measuring compliance in the manufacturing and processing sector, where both the product line and the sampling regime are highly standardised ... it has not been demonstrated that food sampling is a useful indicator of compliance in other sectors of the food industry. For example, because there are so many variable factors affecting food safety in a restaurant on any given day ... it is unlikely that a random sample would provide an accurate picture of the overall risk. (sub. DR118, p. 7)

Glen Eira City Council expressed concern that the results of any sampling program might be misused as a league table of performance. If this were so:

This will lead to an undermining of the food sampling program and may encourage local governments to sample from ‘good performing’ food businesses to have a positive sampling result, rather than utilising sampling as a tool to uncover noncompliance with the Food Act. (sub. DR83, p. 16)

The Commission perceives considerable merit in establishing a sampling database, and considers reservations about its worth can be readily addressed.

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.**

9.9 Summary of the Commission’s approach

Table 9.2 summarises the Commission’s proposed approach to food regulation in Victoria. While the focus is on the approximately 45 000 business and not-for-profit food premises regulated under the Food Act, the principles underpinning the proposed structure equally apply to businesses regulated by PrimeSafe and DFSV. To a large extent, DFSV and PrimeSafe already employ this approach, as do a number of councils.

The key features of the Commission’s proposed approach include:

- retaining the current two class risk classification system, but with class 1 containing those categories that the ANZFRMC has determined should have FSPs¹⁰ (box 9.1) and recognising that class 2 would include businesses with low inherent risk or that represent, in practice, a low food safety risk¹¹
- DHS facilitating this classification approach, by making generally available further analysis of food sampling, complaints and council reporting information. Councils would have the capacity to decide which businesses were low risks, subject to guidelines (chapter 11)
- establishing a single registration system for all food businesses, which would also enable temporary and mobile food businesses (such as caterers and food vans) to register once rather than in multiple council areas
- retaining the requirement for FSPs for class 1 premises only. Class 2 premises would not be required to prepare FSPs, but would identify the persons responsible for food safety and certify to councils that they have taken appropriate steps to identify and manage food safety risks
- removing the FSS requirements and, instead, relying on the requirements set out in the national Food Standards Code. This would be supported by a more targeted regime of providing equivalent information and training for businesses that lack knowledge and skills in food safety, and training for food businesses that fail to comply with food safety standards
- businesses continuing to register their premises annually but with simpler paperwork requirements—for example, businesses would provide detailed information only for a change in business details, in their FSP (if one is required) or in the food activities they undertake
- removing the requirement for annual council inspections for class 2 premises if they are low risk or third party audited (and that auditing covers food safety), instead relying on a structured system of random or lower frequency inspections developed from the results of councils’ food sampling programs and other data

¹⁰ It will be necessary for the Secretary of DHS to make declarations under s19C of the Food Act from time to time to bring the categories agreed upon by the ANZFRMC within class 1.

¹¹ Chapter 12 discusses the application of the Commission’s proposed approach to community groups.

- simplifying mandatory record keeping requirements to allow businesses more flexibility in meeting the national food standards—for example, requiring reporting of equipment breakdowns and problems encountered (that is, exception reporting).

Table 9.2 Proposed approach to food safety regulation

<i>Instruments</i>	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	
Food safety risk	High	Medium (with scope to move between categories)	Low
Examples	Hospitals, aged care centres, child care centres	Restaurants and cafés, large food fairs	Green grocers, most community activities
Registration	Yes, with simplified paperwork requiring business details or indicating any changes in ownership and activities	Same as class 1	Same as class 1
Food safety program	Yes, customised food safety program to be developed and implemented	Replace with certification requiring business to: (1) identify the person responsible for food safety and (2) certify that food safety principles in the Food Standards Code are understood and applied (consistent with the complexity and risk of the business)	Same as class 2 medium risk
Food safety supervisor	No requirements additional to those set out in the Food Standards Code	Same as class 1	Same as class 1
Record keeping requirements	Yes, as required under the customised food safety program	No requirements additional to those set out in the Food Standards Code	Same as class 2 medium risk
Council inspections	Risk based, as set out in published council risk management strategies (e.g. some minimum frequency plus random and/or in response to a complaint)	Risk based, as set out in published council risk management strategies (e.g. annual inspection unless accredited under a quality assurance process)	Risk based, as set out in published council risk management strategies (e.g. random, in response to complaints)
Third party audit	Compulsory (with the audit frequency based on performance)	Not required by legislation	Not required by legislation
Food sampling	High frequency, as set out in published council risk management strategies (e.g. for each random inspection)	Moderate frequency, as set out in published council risk management strategies (e.g. for a defined percentage of each inspection)	Lower frequency, as set out in published council risk management strategies (e.g. for a defined percentage of each inspection)

9.10 Effects of the Commission’s proposed changes

This chapter has outlined changes designed to streamline Victorian food regulation without undermining the objective of the regulations. This section considers the expected effects of the main proposals on the burden of regulation for businesses, councils and the Victorian Government, and on food safety outcomes.

While these changes are intended to lessen the regulatory burden, they also give discretionary powers to councils—powers to move businesses between risk categories, require FSPs, impose training orders and alter inspection frequency. A counterpoint to potential savings from the Commission’s proposals is that councils could use discretionary powers more than is intended. However, the Commission considers this unlikely for a number of reasons:

- Councils generally have a goal of encouraging a vibrant local business and community environment: an excessive use of discretionary powers would be at odds with this goal.
- Councils already have considerable discretion in their exercise of regulatory powers, and submissions did not identify abuse of these powers as an issue.
- Experience shows many councils typically do not recover the full cost of their regulatory effort, which is behaviour inconsistent with an inclination to use any discretionary powers to excess.
- Performance reporting that covers outcomes as well as inputs will provide some transparency in councils’ use of their discretionary powers and any excessive use.
- Appeal mechanisms—for example, against decisions to allocate businesses to one risk category or another, or against training orders—will constrain the abuse of council powers.
- The provision by DHS of guidelines for the use of councils’ discretionary powers could be expected to limit any excessive use and transparent reporting of councils’ risk management strategies (chapter 11).

The Commission considers that the proposed changes to food regulation could reduce regulatory costs to business and councils by about \$34 million per year, while strengthening overall compliance with food safety standards. The proposed changes seek to target regulatory effort where risks to food safety are highest—that is, where food is served to vulnerable groups in the community and where incentives are insufficient to ensure risks are appropriately addressed, given a lack of knowledge or resistance to meeting food safety standards.

Where possible, the Commission has endeavoured to estimate the expected effect on regulatory costs to business and governments. (Appendix C provides more detail.) It has also provided a qualitative indication of the expected effect on food safety outcomes. Table 9.3 summarises the estimated savings of these proposals.

Table 9.3 Estimated savings

<i>Proposed changes</i>	<i>Estimated effect in first year</i>
	<i>\$m</i>
Reduced regulatory requirements for low risk businesses	0.0
Removing the FSP requirement for class 2 businesses	30.5
Single register for all (including mobile) premises	2.0
More targeted training requirements (mid range estimate)	1.7
Removing annual inspection requirements for registration	0.0
Total estimated savings	34.2

Source: VCEC estimates.

Reduced regulatory requirements for low risk businesses

The development of a nationally consistent risk based regulatory approach via an expanded risk classification system—one that better targets FSP requirements (at class 1 businesses), provides greater recognition of quality assurance processes, and lessens regulatory requirements on businesses with a good track record—could reduce the costs of meeting Victorian food regulation and deliver improved food safety outcomes.

The Commission considers savings would accrue primarily to businesses in the low risk category. In its draft report, it envisaged that this group would constitute about 30 per cent of registered premises, a level also estimated by Hume City Council (sub. DR97, p. 4). However, MAV indicated that councils have suggested 30 per cent is too high, and a much lower level is warranted (sub. DR128, p. 6). Using a more conservative 20 per cent, about 9000 premises could be expected to reside within the low risk category and thus qualify for a regime of fewer s19HA, s19IA and s19J inspections. Allowing for (a) random inspections in line with councils' risk management strategies and (b) current exemptions from the FSP requirement, the Commission expects at least 6000 inspections could be avoided each year. It has assumed an average cost to business for each inspection of \$110, representing about two hours of a person's time in preparing for and accompanying an EHO during an inspection. On this basis, the proposal has the potential to deliver savings to low risk business of around \$660 000.

However, whether the proposal delivers any savings to businesses or councils *in aggregate* would depend on how councils react. If the resources saved from reduced inspection of low risk activities were redirected to inspecting higher risk

activities, then the aggregate cost to both business and councils would be unchanged. Only the incidence of those costs would change. This response would be consistent with the Commission's goal to redirect regulatory effort to higher risk activities. Accordingly, the Commission has ascribed no savings to this proposal.

Single register for all businesses, including mobile businesses

Establishing a single registration system might cost the Victorian Government about \$200 000 in set-up costs. Attributable annual operating and maintenance costs for a system such as that suggested by MAV could be expected to be less.

The savings to mobile food businesses (such as caterers and food vans) from registering once are difficult to estimate. However, the annual savings would appear to easily exceed the cost of developing and operating a central registry—for example, conservatively assuming that the database saves 1000 (or 5 per cent) of the estimated 20 000 mobile or temporary businesses from registering on three separate occasions (with each registration costing businesses \$200 in fees and time to prepare documentation), the gross savings to business could be about \$600 000 per year. Offsetting this saving would be cost recovery for some level of council inspection (for example, at farmers markets or fêtes), which is currently included in registration fees. Submissions suggest, in general, that this inspection would be minimal. The Commission thus considers that annual savings to businesses could be reduced to around \$500 000.

A central registration database, particularly if it were an extension of the electronic system suggested by MAV, would also deliver time and cost savings to councils. However, because the savings would accrue mainly from the electronic registration process rather than from the central database, the Commission has not included them as savings associated with this proposal.

A single registry for all businesses would also deliver savings to businesses with multiple premises. Savings would derive mainly from the time that businesses would save in dealing with one council only in registering their business and listing their premises. Information from Metcash (based on its experience with a single registry system in New South Wales) suggests these savings could amount to around \$200 for each additional premises.

Although data for Victoria are not available on the number of multiple premises this proposal might affect, information for New South Wales suggests multiple premises constitute up to 25 per cent of all food premises (NSW Food Authority 2007b). Using this as a guide, if 20 per cent of Victoria's 45 000 or so registered food premises were multiple premises, the Commission estimates that a single register could save businesses up to \$1.8 million annually.

Accordingly, the Commission estimates that a single registry for all food businesses could deliver annual savings to businesses in excess of \$2.3 million. After accounting for likely operating and maintenance costs, the Commission expects a single registry could deliver net savings of about \$2 million annually.

Removing food safety program requirement for class 2 businesses

Removing the FSP requirement for class 2 businesses, combined with the discretion for councils to mandate FSPs as part of a targeted enforcement strategy, would not undermine food safety, but would produce savings for a large number of businesses, particularly small businesses.

These savings will apply to businesses regulated under the Food Act only. Most class 2 businesses will no longer require an FSP and will save a large proportion of the administrative costs associated with that requirement. The Commission estimates that about 34 000 premises in the four main food industry groups will be affected in this regard. Most businesses will also no longer need to incur the occasional cost of reviewing or renewing their FSP to retain its currency. This will deliver savings by avoiding the implementation costs of doing so. However, each year there will be businesses which councils deem as requiring a FSP (because of their risk profile or because they exhibit serial or serious non-compliance—1000 and 1100 respectively). These businesses are expected to incur both ongoing and implementation costs.

The Commission estimates that these changes have the potential to save food businesses in the four main food industries about \$30.5 million annually (appendix C). This is the major saving resulting from the proposed changes to food regulation in Victoria being recommended by the Commission.

Negligible effects on food safety outcomes are expected because national food safety standards relating to food handling/storage and record keeping will still apply. Information from councils suggested that this proposal would not materially affect council costs, as they would still need to inspect premises to ensure compliance with applicable Victorian and national food regulations. In this regard, the proposed change would see councils maintain a level of regulatory effort similar to that before the change, albeit with a greater focus on higher risk businesses.

More targeted training requirements

Replacing the FSS requirement with training targeted at businesses that most need such training and that fail to comply with food safety standards is expected to improve food safety outcomes. Businesses with good performance would have greater flexibility in determining how they meet the national standard specifying that employees possess skills and knowledge in food safety. As noted, the annual cost to business of this requirement is an estimated \$2.7–3.6 million.

Removing the FSS requirement would save a substantial amount of this cost. But the extent of savings would depend on (a) the proportion of new entrants that councils deem to require targeted training, and (b) the proportion of businesses that fail to comply with food regulations and for which councils choose targeted training to deliver improved performance.

On the first of these variables, the Commission has applied a growth rate of about 5 per cent a year (about 2250 on current numbers): it would expect a majority of these businesses would be aware of the food safety risks and the food safety standards required of them. Accordingly, the Commission expects targeted training would apply to no more than 1000 of these businesses each year. On the second variable, evidence suggests between 4–10 per cent of all registered businesses (1800–4500) are serial or serious noncompliers.¹² Only a fraction of these (mid-point 3150) cases would attract targeted training to rectify the identified noncompliance, and some (albeit a minor proportion) would be captured within the new entrants group. The Commission expects an additional 1100 of these noncomplying businesses, at most, would need to undertake targeted training each year. It thus expects its recommendation would mean that about 2400 businesses (4500 minus 2100 [1000+1100]) would not incur the \$600–800 that would otherwise apply. This would amount to \$1.4–1.9 million in savings each year. But this estimate does not account for the cost of staff training that some businesses would incur if FSS training were not a regulatory requirement. In this regard it may be considered an upper bound estimate.

The estimate has not been adjusted for the cost to councils of enforcing this proposal. Councils currently have to enforce the requirement on all businesses, whereas under the Commission's proposal they would have to apply it to only those businesses they deem need it; this would be a smaller number of food businesses than currently, so no additional costs to council are expected. More likely, the change would free up council resources now dedicated to enforcing this provision in the Food Act. The Commission has not attempted to estimate these savings because it considers councils would reallocate those resources to other regulatory activities. There would be some costs to councils and the Victorian Government in establishing consistent arrangements for implementing this recommendation, although the incremental cost is expected to be minimal.

Removing annual inspection requirements for registration

Removing the requirement that councils undertake an annual inspection of all registered food premises could result in substantial savings for business and, to a lesser extent, for councils. The Commission expects these savings would apply primarily to businesses within the low risk category. As noted, it envisages about

¹² Derived from information provided by various councils.

30 per cent of premises would reside in this group, but information from MAV suggests a much lower level is warranted (sub. DR128, p. 6). A more conservative 20 per cent suggests about 9000 premises would fall in the low risk category and potentially qualify to not have to be inspected annually. Allowing for inspections in line with councils' risk management strategies (say, 20 per cent of these premises) about 7200 inspections could be avoided each year.

In the draft report, the Commission assumed each s39 inspection costs business \$300. However, Colac Otway Shire noted that \$300 would overstate costs for all except large manufacturing premises (sub. DR94, p. 2). Accordingly, the Commission has assumed a cost to business of about \$110, representing about two hours of a person's time in preparing for and accompanying an EHO during an inspection. On this basis, the proposal has the potential to deliver savings to low risk business of around \$790 000.

However, any savings to businesses or councils *in aggregate* would depend on how councils react. As the City of Stonnington stated:

It also does not follow that removal of mandatory inspection would represent a cost saving to council, as any time would more likely be allocated to higher risk premises, or other non-food related activities. (sub. DR118, p. 7)

Given the likelihood that regulatory effort would be redirected to higher risk activities, the Commission has ascribed no savings to this proposal. However, better targeted inspection and audit arrangements should lead to a net overall improvement in food safety outcomes by redirecting effort away from businesses with strong incentives to comply towards those that do not comply because they resist meeting, or lack knowledge of, food safety standards.

Supporting strategies

This chapter has proposed the need for an improved food sampling program to support more targeted implementation of the regulatory framework and to encourage improved compliance. Information obtained from a more robust food sampling program would support efforts to raise business awareness about food safety risks and enable councils to better identify and prioritise regulatory effort.

While many of the measures proposed by the Commission aim to provide rewards for good performance, these need to be backed by stronger penalties for the small number of businesses that refuse to do the right thing. Greater emphasis on informing the public and businesses about major food safety risks and strategies for addressing these risks can support the instruments of food regulation. Chapters 10 and 11 discuss these matters.

Financial impacts for government

Victorian and local governments would need to adequately fund these supporting strategies. The Commission has not analysed whether additional state government funding is required because the costs to government would depend on, amongst other things, how the various measures are implemented. However, while the implementation costs of these proposals have not been estimated, they are expected to be relatively small and could be incurred incrementally.

There would also be ongoing costs to government resulting from the proposed changes. These costs would stem, for example, from councils assessing and categorising food businesses under the new classification system (and reviewing any complaints about these decisions), the statewide collation and analysis of food sampling results, improved monitoring and reporting systems, and the provision of advice and assistance to councils. The Commission has not estimated these ongoing costs, but envisages they would be more than offset by the savings from more targeted and streamlined regulatory arrangements.

Although the Commission sought information from regulatory agencies on the likely cost of implementing its proposals, the agencies were unable to provide estimates. However, they indicated that the extensive changes to Victoria's food regulations in 2001 were accompanied by a budget appropriation of about \$2 million for the implementation of those changes (including the provision of education to councils and businesses). In today's currency, that would equate to about \$3 million.¹³ The Commission envisages a similar amount might provide for the introduction of the changes proposed in chapters 8, 9, 10, 11 and 12.

¹³ Based on the cost index presented by MAV being a more appropriate inflator than the Consumer Price Index.

10 Strengthening market incentives

Chapter 9 examined some regulatory instruments used in Victoria to reinforce market incentives to provide safe food. Process based instruments such as food safety programs (FSPs), record keeping and training (including food safety supervisors) are intended to ensure businesses identify and adequately manage risks. This chapter considers the role of other instruments—information and education strategies (section 10.1) and sanctions (section 10.2)—in reinforcing market incentives to provide safe food.

10.1 Information and education strategies

Information and education strategies can play an important role in reinforcing market incentives to ensure food safety. Such strategies can complement food regulation (for example, by raising business, community group and consumer awareness about regulatory requirements) or substitute for regulation (for example, by alerting people to food safety risks and ways to manage them).

To reduce the risks of foodborne illness, four basic behaviours need to be understood and applied by food handlers:

- (1) ensuring temperature control (keeping hot food hot and cold food cold)
- (2) properly cleaning hands and utensils
- (3) thoroughly cooking food (particularly poultry, meat patties and seafood)
- (4) avoiding cross-contamination when handling cooked and uncooked food.

Awareness and knowledge about these behaviours can be communicated by:

- print media such as newspapers and magazines
- brochures, booklets, posters
- websites
- seminars, workshops and exhibitions
- television and radio advertising
- consumer help lines
- schooling or training—primary, secondary, tertiary, technical and further education, workplace
- labelling
- accreditation bodies or quality marks on products.

While these behaviours need to be tailored to the setting and type of food involved, the basic information needed to handle food correctly is not complex

or beyond the capacity of most people to understand. Nevertheless, around 25 per cent of foodborne illness is reported to occur in the home (chapter 5).

The Commission considered whether placing a greater focus on awareness raising initiatives could improve food safety outcomes in two key areas:

- (1) supporting the effective implementation of better targeted regulation (as recommended in chapter 9) by ensuring businesses, especially those in class 2, have adequate information about food safety risks and how to manage them (chapter 12 covers the importance of developing information and education strategies for community activities.)
- (2) addressing concerns about food safety in the home.

The Victorian Competition and Efficiency Commission received suggestions about how food safety information and education could be streamlined and strengthened. Golden Plains Shire emphasised that ‘Adopting a “whole of community” approach to food safety is preferable as it will not only improve food safety in the home, but by making consumers more aware they will expect food businesses to improve their performance’ (sub. DR70, p. 3). John Ward noted the opportunity for ‘simple, readily accessible on line training should also be considered for all casual food handlers’ (sub. DR96, p. 2).

Supporting better targeted regulation

For business, government provision of two broad types of information is warranted:

- (1) information on the regulatory arrangements and how to comply
- (2) information on potential food safety hazards that the government possesses and of which businesses are unaware.

A key function of the regulatory tools applied in Victoria is to communicate information about regulatory requirements and food safety issues to businesses. Chapter 9 noted the view of the Department of Human Services (DHS) that FSP templates, food safety supervisor requirements and council inspections are used to convey to food businesses information about regulatory requirements and the management of food safety hazards. Also, DHS has developed programs targeted at problem areas, such as pork rolls (DHS nd).

The Auditor-General has been critical of the lack of coordination in Victoria of information and education activities, noting that this deficiency has limited the effectiveness of the independent efforts of DHS and councils (AGV 2002, 2005b). The Commission recognises that steps have been taken by DHS (such as initiating the joint Food Safety Coordination Project with the Municipal Association of Victoria) to address some of the issues raised by the Auditor-

General. Also, the recently implemented integration of Foodsmart¹ in the BusinessVictoria website provides new food businesses with a ‘one-stop-shop’ where they can find answers to all licensing and registration questions and obtain information about starting and running a business.

The Commission’s proposed changes to the regulatory framework will require informing businesses about the new regulatory requirements and maintaining the flow of information on food safety hazards. The Commission has also recommended a food safety strategy with an improved performance reporting framework (chapter 8) which requires councils to develop food safety risk management strategies (incorporating inspection and enforcement strategies) (chapter 11). These initiatives are intended, in part, to provide additional information about food safety risks and basic food safety behaviours. Chapter 12 examines initiatives targeted at community groups.

There is scope to enhance the effectiveness of councils’ educative role in the food safety regulatory system by developing more coordinated and effective approaches to the provision of information to food businesses and community activities. Some councils, such as the City of Greater Dandenong, have developed innovative information resources targeted at particular food businesses. The Commission proposes that DHS should take a lead role in this area by promoting greater sharing of knowledge and resources and by streamlining, strengthening and coordinating information resources developed by itself and councils. In doing so, DHS could also seek input from other members of the committee of regulators (chapter 8).

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.

Food safety in the home

Information and education campaigns designed to impart basic food safety behaviours to food handlers in the home are a significant component of food safety policy in countries such as the United Kingdom, Ireland and the United States (Patnoad 2001; *safefood* 2007; PFSE 2006). While improved behaviour in the home can prevent illness due to poor food handling and preparation, it can also lessen the potential impact of hazards introduced at

¹ Foodsmart is a service which provides food safety information to businesses and enables them to develop their FSP online.

earlier stages of the food supply chain. For this reason, the World Health Organisation describes food handling in the home as the last line of defence against foodborne illness (WHO 2000, p. 48). Efforts to improve food safety in the home can also improve the effectiveness of regulation because people transfer their improved food safety knowledge from home to their jobs in the food industry—the food industry employs a significant proportion of the workforce (around 14 per cent).

In Australia, a variety of programs to promote food safety in the home are in place at the national, state and local levels. At the national level, Food Standards Australia New Zealand (FSANZ) has developed educational materials for consumers, and the Food Safety Information Council seeks to educate consumers in safe food handling practices. Initiatives have also been developed at the national level in cooperation with the states—for example, DHS distributed the Commonwealth funded *Looking after our kids* video and booklet (which was developed under the National School Canteen Food Safety Project) to all Victorian schools.

In Victoria, DHS and councils have developed a variety of food safety materials targeted at consumers. The Victorian Government undertook an initiative to raise consumer awareness of food safety risks in the home through television advertisements run in January 2003. DHS has also produced materials to meet concerns expressed in the Auditor-General's 2002 report, such as addressing the requirements of businesses with special needs (AGV 2002, pp. 91–2). Councils make resources available for businesses, fund raisers and consumers on safe food practices. Some rely solely on resources provided by DHS and FSANZ, while others (such as the City of Greater Dandenong) develop resources customised for the needs of their municipality (box 12.5).

According to DHS, recent surveys indicate a good overall level of community understanding of basic food handling behaviours, and suggest the need for intervention is limited (NWC Research 2007, pp. 11–2). But the value of survey based studies of food safety knowledge has been questioned. Redmond and Griffith (2003, p. 130), for example, reviewed international studies of food handling in the home. They reported that surveys (questionnaires and interviews) were the most frequent means of data collection, with focus groups and observational studies also used. Their review found that knowledge, attitudes, intentions and self-reported practices did not correspond to observed behaviours, suggesting observational studies provide a more realistic indication of the food hygiene actions used in domestic food preparation.

Despite limitations, surveys of safe food handling in the home (such as that undertaken for DHS by NWC Research) have identified specific groups possessing a lower level of knowledge (NWC Research 2007, pp. 11, 17). This finding suggests targeted information and education strategies may be more

cost-effective than broad strategies. Options for developing a more strategic approach to providing information and education to food handlers in the home are examined below.

Designing information and education strategies

Opinion is divided on whether awareness raising campaigns are effective in bringing about desired changes in behaviour. An evaluation of an awareness raising campaign designed by Ireland's Food Safety Promotion Board (called *safe*food) argued that the campaign had been successful in changing consumer behaviour (Amarach Consulting 2004). It was argued that the campaign had been successful because it was focused and relevant to individuals, and because it utilised a variety of mediums including television and radio advertising, as well as in-school education and promotional literature. The evaluation found that in the seven years since its establishment, *safe*food changed consumer attitudes and behaviour towards food safety in one in five people.

As noted, DHS has expressed doubts about the likely effectiveness of awareness raising initiatives, given the apparent existing high level of consumer knowledge of food safety issues (DHS 2007g). Some inquiry participants noted similar concerns. Roger Pierotti argued:

There seems to be a flawed belief that consumers need more information and education regarding food safety matters, yet the current evidence shows a high level of confidence in the safety of the food consumers buy and eat and a high level of consumer knowledge of basic safe food handling practices ... Social marketing approaches clearly identify that raising awareness through information provision and education alone does not necessarily bring about behaviour change. (sub. DR99, p. 2)

There are considerable challenges to overcome if successful programs are to be developed. In particular, the Victorian Government's experience with initiatives to address obesity and associated chronic diseases demonstrates the critical importance of having a well developed, evidence based strategic plan.

The *Go for your life* secretariat in DHS coordinates a strategic plan to address unhealthy eating, physical inactivity and obesity. Local agencies—councils, primary care partnerships and community health services—plan and implement programs within this overarching strategy. The Auditor-General recently assessed whether the Victorian Government's health promotion strategy has been effective in addressing the risk factors of unhealthy eating and physical inactivity (AGV 2007). The Auditor-General's report found 'the combined efforts of government have not significantly slowed the increase in obesity underpinning the rise in preventable chronic diseases' (AGV 2007, p. 2) and identified gaps and weaknesses in the current approach that may contribute to this apparent lack of success. The report stressed the importance of the planning framework to the

success of programs, and identified requirements for developing and implementing best practice planning, including:

- developing an objective understanding built on a strong evidence base of the risks and outcomes of the behaviours that individuals employ
- understanding existing evidence on what programs work best to achieve desired behaviour changes
- identifying gaps in knowledge of the scale, trends and impacts of risk factors and of the effectiveness of programs, and implementing a plan to address those gaps
- having a framework for the consistent and continuing evaluation of the effectiveness of programs
- continually updating programs in light of further research and the results of program evaluations.

In line with this assessment by the Auditor-General, the Commission considers there is an inadequate evidence base on which to develop strategies to influence food safety awareness and behaviours by food handlers in businesses and in the home. The case for awareness raising campaigns directed at changing behaviour in the home is also unclear without a cost-benefit analysis of particular proposals. That said, there is a case for developing a better understanding of the extent of foodborne illness in the home, its causes and the extent to which it is linked to food handling behaviours in the home.

Given that any problems relating to food handling in the home are likely to be common to other jurisdictions, Victoria may need to press for national support for further research on the nature of foodborne illness in the home. Research could focus on the extent of any gap between knowledge of food safety and behaviours, especially for different groups in society. It could also focus on developing a better understanding of the amount of foodborne illness occurring in the home, so as to assess the potential benefits of information and education strategies.

In Victoria, there is scope to improve understanding of food safety issues. The proposed improvements to performance reporting and food sampling will contribute (chapter 9). As noted, DHS has also published the results of food safety awareness surveys of food handlers. But there is scope to make more use of existing information. In particular, DHS operates a food safety hotline which received around 5000 calls in 2006-07 (DHS 2007i p. 2); there is, however, no analysis of the nature of these calls. Resourcing of DHS' Food Safety Unit to undertake information and education initiatives has been progressively reduced over recent years, and the unit's capacity to undertake significant initiatives is limited.

As noted in chapter 7, there is significant interest in diet related issues and their link to chronic health problems. The Victorian Government's *Go for your life* strategy is already targeting these problems but an opportunity may arise to reinforce these wider health messages in any programs designed to raise food safety awareness.

As well as improving the understanding of food safety issues, there is also scope to develop a more coordinated approach to the provision of information and education to businesses and consumers. No clear strategy appears to underpin the development of such information resources; DHS and councils are separately developing material covering similar issues. As noted by the Auditor-General, there is scope to better coordinate these efforts.

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.**

10.2 Using sanctions to strengthen market incentives

Effective regulatory systems are supported by a spectrum of sanctions that might apply to businesses when they fail to comply with regulatory requirements. In the food safety context, sanctions reinforce the strong market incentives to provide safe food (chapters 2 and 4). At present, councils can employ sanctions such as ordering businesses to undertake certain activities, seizing spoiled food, ordering third party audits, ordering corrective advertising, reinspecting businesses, imposing conditions on registration, suspending or revoking registration, and prosecuting noncompliant businesses.² These sanctions complement the provision by councils of information and advice to businesses as a means of assisting compliance with food regulation (figure 10.1).

² The sanctions available to councils are supplemented by significant emergency powers exercisable by the Secretary of DHS under the *Food Act 1984* (Vic.), including the powers to direct that food be recalled.

Figure 10.1 Enforcement options for councils



^a Already available under the Food Act.

Evidence suggests Victorian councils deal with noncompliance issues mostly by providing information and advice. Statistics on enforcement activities are not centrally collected, but a survey of 47 Victorian councils by DHS found that in the two years prior to 2007 councils deregistered 23 premises and initiated 96 prosecutions of businesses for breaching food regulations (DHS 2007d). This represents a tiny proportion of the 45 000 registered food premises in Victoria.

The focus of councils on providing information and advice is appropriate given the strength of market incentives to ensure food safety. Nevertheless, several inquiry participants considered there is scope to address gaps and lack of graduation in the current range of sanctions available to councils. Reflecting the input from inquiry participants, the Commission examined three additional mechanisms to support compliance with food regulation:

- (1) on-the-spot fines
- (2) a rating system for food service establishments
- (3) public naming of businesses that do not comply with food regulations.

10.2.1 On-the-spot fines

A number of inquiry participants, including local councils, supported the introduction of on-the-spot fines (also called penalty infringement notices, (PINS)) under the *Food Act 1984* (Vic.). Kernow Environmental Services noted:

Greater powers need to be granted to [environmental health officers] and councils to specifically and quickly deal with minor nonconformances such as inadequate record keeping. The introduction of penalty infringement notices (PINS) should be actively considered. (sub. 6, p. 2)

Moonee Valley City Council also noted ‘the introduction of PINS will give council more flexibility for enforcement’ (sub. DR89, p. 2), while Melbourne City Council stated:

The City of Melbourne supports the concept of on-the-spot fines for contraventions against the Food Act. Council agrees that there are some instances where the severity of the noncompliance may not warrant court action in the first instance and the issuing of a penalty infringement notice may be a more appropriate deterrent. (sub. DR81, pp. 2–3)

Some inquiry participants argued that on-the-spot fines are needed to allow councils to deal with breaches that are not sufficiently severe to warrant prosecution but that still pose an appreciable risk to health and safety. DHS, for example, stated that it supports their introduction ‘as a means of providing a proportionate sanction in cases of relatively minor breaches of the regulatory requirements’ (sub. DR149, p. 22). Councils argued that some offences are not severe enough to justify incurring the costs of prosecutions, given the likely size of court imposed penalties. Councils also argued that delays between the detection of a serious breach and a court hearing can make prosecutions unsuitable for addressing breaches that can and should be quickly resolved. The City of Port Phillip commented:

... prosecution is a long and often costly process, but in this case—with the offence that commonly carries a typical penalty of approximately \$1000—it is considered even less appropriate. (sub. 13, p. 3)

Golden Plains Shire also noted:

Environmental Health Officers have long sought the ability to issue on-the-spot fines, as the cost of running minor cases in the Magistrate’s Court has meant that prosecutions don’t occur until something very serious happens and the small things are never corrected. (sub. DR70, p. 3)

The Australian Retailers Association, on the other hand, commented:

Penalties themselves are a strong encouragement but, for larger businesses that have the resources to pay substantial fines, penalties are sometimes less effective than incentives. (sub. DR100, p. 8)

Best practice regulation suggests regulatory bodies should have a range of enforcement options that are sufficiently graduated to encourage compliance with regulations. The *Victorian guide to regulation* notes that key features of a good compliance regime include strategies based on the principle of deterrence and a wide range of penalties, including persuasion, warnings, financial penalties, licence suspension and prosecution (Government of Victoria 2005a). Victorian regulators in other areas, such as occupational health and safety, have the capacity to issue on-the-spot fines as part of an escalating range of responses. The Model Food Act agreed on by the states and territories (including Victoria) provides for a system of on-the-spot fines. Reflecting this, jurisdictions such as New South Wales have given councils the power to issue on-the-spot fines.

Providing a range of enforcement options to regulators is also consistent with international best practice, such as the Hampton review (Hampton 2005) and the Macrory review (Macrory 2006) in the United Kingdom. Both reviews examined best practice in regulation and its enforcement, finding that a graduated scale of penalties and enforcement options could help to resolve problems more efficiently.

Making on-the-spot fines available to councils should not, however, be viewed as a substitute for councils first endeavouring to encourage compliance by providing information and advice and then re-inspecting. Nor are on-the-spot fines a substitute for prosecution and other heavier handed responses where there are persistent and major breaches of food regulations.

Provided councils are given adequate guidance from DHS about the use of on-the-spot fines and other sanctions, adding this tool should enhance food safety outcomes without imposing a large burden on food businesses. Such guidance could outline that on-the-spot fines should not replace practices such as the provision of information and advice, and that they should be used only after other options have failed (such as when a business has repeatedly ignored specific advice from a council).

The Commission understands that some councils charge businesses ‘revisit’ fees when a second inspection is required to rectify breaches of the Food Act that do not pose a direct threat to public safety. It considers that this is an appropriate approach and may be preferable to on-the-spot fines in these situations.

Any guidance would also need to cover the process for a business seeking a review of a council decision to impose a fine. The *Infringements Act 2006* (Vic.), the overarching legislation to regulate on-the-spot fines in more than 50 Victorian Acts, provides for a review process that could be used. Under the Infringements Act, enforcement agencies are required to have training standards and codes of conduct for their issuing staff. The Infringement Act also allows any person served with an infringement notice to apply to the relevant

enforcement agency for a review of the decision. In addition, any person with an infringement notice may elect to have the matter heard and determined in court. Providing for a review process will increase community confidence in the system, as well as consistency in application.

Some inquiry participants also supported the development of guidelines covering councils' use of an expanded array of sanctions. The City of Maribyrnong commented:

We believe that should [on-the-spot fines] be introduced they would need to be accompanied by state guidelines that are clear and allow for consistency of enforcement ... (sub. DR82, p. 4)

The Commission expects approximately 2100 on-the-spot fines to be issued annually. This is based on the assumptions that:

- fines would generally be considered only in cases of persistent non-compliance
- such cases would broadly correspond to the number of significant food safety breaches reported by councils (between 4 and 10 per cent of premises, representing between 1800 and 4500, or a mid-point of 3150)
- a third of the potential 3150 breaches would either attract other enforcement options or change their behaviour in response to the threat of a fine.

The Commission has also assumed an average infringement cost of \$750. This is based on the New South Wales system, where infringement penalties range between \$600 for an individual and \$1320 for a corporation. The Commission has taken an average penalty lower than the mid-point because of the prevalence of small businesses in Victoria. On the basis of these assumptions, the Commission estimates that its proposal to introduce on-the-spot fines would impose an annual cost to business of about \$1.5 million.

In chapter 11, the Commission examines the need for greater consistency in how councils administer and enforce the Food Act, and section 11.5 further considers the need for risk management strategies and guidelines.

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.

10.2.2 A star rating system for food services

Several inquiry participants suggested that providing consumers with information on whether food premises comply with regulatory requirements could reinforce market incentives to produce food safely. Some suggested that a ‘rating system’ for the food service sector (restaurants and cafés) based on inspection results could be beneficial. A council operated restaurant rating scheme has some appeal because councils currently inspect food premises to assess compliance with food safety standards, and they collect information that could inform a rating scheme. Also, market incentives to provide safe food may be weakened when food businesses have better information than consumers have about the safety of their products (chapter 2). A rating system could improve consumers’ awareness about food safety and provide a way for them to differentiate between compliant and noncompliant businesses.

The rating system could involve displaying the results of food safety inspections (star ratings) or providing certificates or awards to good performers. Hobsons Bay City Council noted:

Asymmetric information could be reduced if the Victorian Government offered food operators the option of affixing something to the front shopface of their business, which indicates the standard and whether the premises is compliant with requirements. Consumers would then be informed of a businesses food safety standard at the time of assessment. (sub. DR108, p. 2)

Councils or other groups may establish voluntary rating systems to identify businesses that have received a clean bill of health. The City of Stonnington noted:

While acknowledging that such schemes provide a practical incentive for improving food safety, it is felt that rating award systems are best placed within the discretion of local councils. (sub. DR118, p. 11)

Some councils are already implementing schemes that reward good behaviour:

- Brimbank City Council operates a five star award based program. About 500 restaurants and other food premises throughout Brimbank are inspected by environmental health officers (EHOs) to determine whether they are worthy of a star certificate. A business complying with the minimum set standards could be eligible for a three star certificate, while one that clearly exceeds the minimum standards could be eligible for a four or five star certificate. Brimbank City Council awarded 38 five star awards in 2006 (Brimbank City Council 2007).
- Glen Eira City Council also runs a five star safe food program. Businesses that consistently maintain safe food practices receive a five star certificate; free promotion in the *Glen Eira safe food guide*; a reduction in council

registration fees; entry into the Shop of the Year awards; and the opportunity to participate in a nutrition program run by the council (sub. DR83, p. 4).

- FoodSafe is a rewards based scheme run by the Australian Institute of Environmental Health, which operates in parts of Tasmania, South Australia, Western Australia and Queensland. A FoodSafe sticker and certificate are awarded to premises where all staff have at least basic food handler training and where safe food practices are maintained to the satisfaction of the inspecting EHO (AIEH 2007).

Some concern was expressed about the effectiveness of such schemes. Roger Pierotti stated:

... [local council rating systems] tend to be small scale and locally specific, have no regulatory legitimacy and generally lack the marketing muscle to attract broad consumer attention. A coordinated statewide approach with adequate marketing resources, appropriate legislative and regulatory instruments and an integrated operational framework with consistent and collaborative implementation and enforcement processes would be required to make such a scheme happen. (sub. 30, pp. 1–2)

To increase compliance with food safety laws, a number of cities in the United States and the United Kingdom publicise inspection scores on websites and require restaurants to display scores, grades or full reports in their windows. A study of the restaurant grade card scheme operating in Los Angeles found it had:

- positively affected hygiene standards and health
- raised consumer awareness about safe food practices
- rewarded food safety ‘high achievers’ through increased revenue (Jin & Leslie 2005).³

Several councils raised concerns about the implementation of these schemes because:

- individual inspectors and councils may be inconsistent
- a considerable delay can occur between a rating being awarded and subsequent inspections being done, potentially undermining the relevance of the rating
- consumers may have difficulty in interpreting ratings, depending on how schemes are devised
- a review mechanism may be needed to deal with business concerns about the publication of any adverse inspection findings.

³ Jin & Leslie (2005) noted that if a restaurant received an ‘A’ grade (that is, the highest grade), their revenue increased by about 6 per cent relative to their revenue when there were no grade cards.

Councils may publish identifying details of good performing businesses, with their consent. Given councils are best placed to judge whether such a disclosure scheme should be used as a regulatory tool alongside other measures, the Commission has not recommended that a statewide award or rating scheme be introduced.⁴ To promote greater consistency, however, the Municipal Association of Victoria (in consultation with industry groups) could develop guidelines for councils to follow when implementing voluntary award schemes.

10.2.3 Disclosure of offending businesses

Publicising businesses (‘name and shame’) that do not comply with food safety requirements could address some of the information asymmetries present in the market (chapter 2). Where consumers lack the information and skills to assess the safety of food, providing information may enable them to make more informed choices about where to buy or consume food, and could supplement any rating system of good performers (or operate independently of it).

This issue has recently received considerable attention in New South Wales and Queensland. The NSW Food Authority recently established a ‘name and shame’ register, providing on its website the details of businesses successfully prosecuted for breaches of food safety laws. A review is also underway into whether to release the details of on-the-spot fines issued for food safety breaches (NSW Food Authority 2007a). Queensland Health (2007) also announced it would create a blacklist of successful prosecutions. These moves have prompted calls for Victorian food authorities to follow suit.

Court information on prosecutions under the Food Act is publicly available, but EHOs are prohibited from publicly releasing information. Although councils are not expressly prevented from disclosing information obtained under the Food Act, no formal system of disclosure is in place. In addition, although court orders are ‘publicly disclosed’, they are not readily accessible.

The national approach is to facilitate the availability of information on prosecutions. Section 111 of the Model Food Act allows for publication of the names of offenders convicted of an offence under the Act or regulations relating to the handling or sale of food. Publication must occur within 21 days of the final court order and must be made in the *Government Gazette* or a newspaper.

The Food Act does not contain the same express provisions as in the Model Food Act. Moreover, the various primary industry Acts in Victoria adopt different disclosure models, so food businesses operating in the state face

⁴ There is no provision in the Food Act to authorise councils to establish such schemes. Nonetheless, s3F of the *Local Government Act 1989* (Vic.) provides that a council has the power to do all things necessary or convenient in connection with the performance of its functions under any Act.

differing disclosure provisions based on the industry in which they operate. The *Dairy Act 2000* (Vic.), provides only that an officer of Dairy Food Safety Victoria must not make ‘improper use’ of any information for a personal benefit, whereas the *Meat Industry Act 1993* (Vic.) prohibits disclosure of information (even in court) without the consent of the Minister for Agriculture.

One disadvantage of publishing the names of businesses convicted under the Food Act is the delay between when the offence occurs and the judgement being recorded. Initiating the prosecution may provide sufficient incentive for businesses to comply with food safety standards; by the time a judgement has been found and recorded, the information may not reflect the current situation with the business. On the other hand, if a business is faced with the prospect of being named after successful prosecution, it may be more likely to comply with earlier interventions by councils as suggested by Moreland City Council (box 10.1).

Box 10.1 Case study: an argument for disclosure

Moreland City Council was first alerted to breaches of food safety laws of a local restaurant in January 2002 when an annual inspection was conducted. Subsequent re-inspections found the proprietor was still not complying with food safety laws. Numerous customer complaints were also received about the restaurant throughout 2002. In August 2002, DHS issued a closure order and, consequently, the proprietor was charged on summons in November 2002. Despite being issued a closure order, the restaurant continued to trade DHS did not have power under the Food Act to place a closure notice on the front of the premises to inform consumers about the closure. In September 2004 the proprietor was convicted and fined for various breaches of the Food Act and for operating without registration. The case was also publicised in the local newspaper. Since November 2002, the case has been subject to appeals and adjournments, and it is still before the courts. The restaurant has been denied registration by Moreland City Council, however strong evidence suggests the restaurant continues to trade. Moreland Council considers the restaurant poses a risk to public safety.

The Commission believes this case illustrates that while adverse publication might deter some food businesses from using unsafe food practices, it is not a guarantee. It highlights the importance of having a range of responses to adequately deal with all food businesses as the circumstances of individual cases will differ.

Source: Moreland City Council, sub. DR147.

Several inquiry participants did not support greater disclosure by naming business that did not comply with the Food Act. The City of Maribyrnong argued that it:

... does not believe that this concept would act as an incentive for businesses to comply with their food safety obligations.

The dangers of such a system include:

- possible inconsistencies between individual officers and between councils
- possible delays from the publicising of inspections results, the business operator taking the necessary remedial action and council conducting follow-up inspections
- the economic consequences for businesses operators on being named and also from any delays in the follow-up inspections as cited above
- the liabilities issues for councils for any delays in the follow-up inspections and the economic impact on businesses as cited above
- misinterpretation of inspection results by consumers. (sub. DR81, pp. 5–6)

However, a register of successful prosecutions under the Food Act and the industry Acts is subject to the same judicial process and, therefore, avoids any inconsistencies among individual EHOs and councils. Similarly, closure notices issued by DHS are subject to a consistent departmental process.

Any option for disclosing details of poor performers would need to remain up to date with the food safety practices of businesses. The register would need to incorporate an appeal mechanism whereby businesses can request a re-inspection to establish whether they have rectified the issues that caused them to be prosecuted, and to allow businesses deemed compliant to have their name removed from the register. This would reinforce incentives to comply with food safety requirements and minimise the exposure to bad publicity once a business has been found to comply.

The Commission considers the *Food Act 1984* (Vic.), *Meat Industry Act 1993* (Vic.), *Dairy Act 2000* (Vic.) and *Seafood Safety Act 2003* (Vic.) should be amended and a register of successful prosecutions under the Acts should be established. The register should also record details of businesses that have been issued with a closure notice while that notice is in place. DHS should ensure that the register is easily accessible by consolidating and publishing it on its website.

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.

11 Local government

11.1 Introduction

Councils have a key role in administering Victorian food regulation. As discussed in chapter 3, all food premises (except primary food production business) must register with councils. Councils are also responsible for inspecting Victoria's 45 000 registered food premises, and they have a lead role in responding to complaints and undertaking investigations. Their prominent role in administering and enforcing regulation reflects several factors:

- first, a view that locally elected bodies should be responsible for tailoring the implementation of food regulation to reflect local knowledge and judgements. Where allocation of responsibility to a council works well, it should produce outcomes that respond to local views but possibly at the expense of some broader statewide consistency.
- second, reasons of efficiency, because councils already perform regulatory activities, including public health and restrictions on smoking in food establishments. Councils can thus use local knowledge and expertise to achieve an efficient outcome.

How councils administer the *Food Act 1984* (Vic.) will have a significant impact on the efficiency and effectiveness of Victorian food regulation. A number of inquiry participants considered there is scope to reduce the regulatory burden on food businesses and improve food safety outcomes by addressing how councils administer and enforce Victorian food regulation.

11.2 Issues of concern

As discussed in chapter 3, many inquiry participants expressed concerns about the consistency of council implementation of food regulation. The Victorian Competition and Efficiency Commission defines consistency as the use of the same underlying principles and standards by which certain outcomes (such as safe food) are being sought—for example, inspection frequency should be related to risk, and registration and inspection fees should be based on costs. Consistent application of these principles by councils would result in varying inspection frequency and council fees, reflecting the extent to which costs and risks differ across municipalities.

Inquiry participants identified three areas of potential inconsistency:

- (1) different councils' approach to registration and enforcement to ensure compliance

- (2) different environmental health officers' (EHOs) interpretation of the requirements of the Food Act (and the Food Standards Code)
- (3) different councils' determination of fees and charges, particularly for food businesses that operate within and across municipalities.

The Victorian Auditor-General noted inconsistent council implementation of food regulation (AGV 2002, 2005a), and pointed out that 'only a few councils were fulfilling all their legislative responsibilities' (AGV 2005a, p. 9). A survey of Victorian local governments (box 11.1) also found evidence of different approaches to implementing Victorian food regulation at the council level, particularly for registration fees and enforcement. While some councils used more frequent inspections, deregistration and prosecutions to ensure compliance, others relied more on education, information sessions, translators and awards (section 11.5.1) (DHS 2007d).

Box 11.1 Survey of Victorian local governments

In September 2006, the Commission in conjunction with the Department of Human Services (DHS) and the Municipal Association of Victoria (MAV) requested information from councils about fixed food premises registration; permits issued to temporary food premises; the number of inspections of both fixed and temporary food premises in Victoria; and fees, council compliance strategies and strategies for dealing with culturally and linguistically diverse businesses.

About 60 per cent of councils (47 of 79) responded. Respondents covered the range of councils, from small rural to large metropolitan, and the Commission considers the survey coverage to be reasonable. The interpretation of the survey results expressed in this inquiry report represents the views of the Commission, not those of either DHS or MAV.

Several inquiry participants were also concerned about councils' approaches to the registration and enforcement of community events. Some councils required all community events to be registered, while others permitted the use of temporary food permits (a tool not recognised under the Food Act). Differences in council registration requirements for domestic and multi-use kitchens were also a concern to inquiry participants, particularly to those from the community sector (chapter 12).

Some concerns about inconsistency, especially in relation to the interpretation of regulatory requirements, reflect the broad way in which some requirements are specified. One example under the Food Standards Code (section 15 of standard 3.2.2) is that a food handler must, when engaging in any food handling operation: (a) take all practicable measures to ensure his or her body, anything from his or her body, and anything he or she is wearing does not contaminate food or surfaces likely to come into contact with food, and (b) take all practicable measures to prevent unnecessary contact with ready-to-eat food. The broad way

in which this standard is expressed provides scope for regulatory interpretations to differ, depending on the decision makers' accumulated experience and knowledge. Some inconsistency may also occur where council EHOs do not understand the relevant food safety regulation and policy. The City of Yarra, for example, argued that food safety is one of many issues handled by councils and that this can lead to some 'not having resources and time to understand and apply regulatory requirements in a uniform manner' (sub. 43, p. 4).

The lack of uniformity across different councils' interpretation of the obligations on food businesses can create costs if it:

- leads to poorer health outcomes in areas where enforcement is less robust
- distorts competition by encouraging resources to shift to areas where compliance standards and costs are lower
- adds to compliance costs because businesses that operate in more than one jurisdiction devote resources to understanding and complying with varying regulatory regimes (VCEC 2005a, p. 251).

Quantifying the magnitude of the burden imposed by inconsistent implementation of food regulation is difficult. Inconsistent council implementation of food regulation has, however, been recognised as imposing undue burdens on the economy for some time. As the Blair report (1998) noted:

We are also aware of unwarranted costs to business due to inconsistencies and duplication within the regulatory and enforcement framework. (Blair 1998, p. 3)

Small businesses, in particular, complain they learn one set of 'rules' only to find the next inspector on duty interprets the same rules differently. (Blair 1998, p. 61)

While consistency of food safety outcomes may be viewed as more important than consistent regulatory implementation, the results of the local government survey, together with input from inquiry participants, suggest food safety outcomes are also likely to differ across municipalities. Differences in council approaches to implementing food regulation are likely to create different incentives for business and thus different food safety outcomes. One example is that some councils try to target particular problems (such as premises selling pork rolls), while others do not seem to have a targeted enforcement strategy and instead focus on ensuring all businesses are meeting their regulatory obligations.

The Commission's examination of the survey results and the inquiry submissions has been unable to clearly identify whether risk has influenced the different approaches. Inquiry participants suggested, however, that the different approaches adopted by councils have caused confusion and added costs to doing business in Victoria.

11.3 What is causing these concerns?

The Commission considers inconsistent implementation of food regulation by councils reflects a combination of:

- differences in the skills and financial capacity of councils to implement food regulations
- aspects of the regulatory framework established by the Victorian Government, particularly those aspects that inhibit councils from adopting risk based approaches to implementing food regulation.

A number of the proposed changes to food regulation outlined in chapters 8, 9 and 10 could help to address the implementation challenges facing councils. For example, removing the requirement for all class 2 business premises to have annual inspections and prepare detailed food safety program would free resources (EHOs) to focus their efforts on areas of higher risk. Several inquiry participants, however, considered there is further scope to address implementation issues through the initiatives discussed below.

11.4 The capacity of local governments

To implement regulation effectively, councils need access to sufficient skills and financial resources. While streamlining regulation will indirectly address some of the skill and financial constraints faced by councils, councils can also address their capacity issues by:

- re-examining council rates and fees, and the application of cost recovery principles for food regulation activities such as registration and inspection (section 11.4.1)
- developing resource sharing (pooling) arrangements with other councils (section 11.4.2)
- further using material developed by the state government, such as common inspection templates and generic food safety fact sheets/information (section 11.4.3)
- addressing EHO workforce issues, including the potential supporting role of paraprofessionals to free EHOs to concentrate on more complex cases and strategic food safety issues (section 11.4.3)
- better reporting activities and outcomes to the state government to help identify and implement efficient resource allocation, including for food safety inspections and EHO training and development (chapter 8).

11.4.1 Financial constraints and cost recovery

Councils have the capacity to address financial constraints affecting implementation of food regulation by increasing their general rates, increasing food business registration fees and/or reallocating money from other activities. This capacity is granted by the State Government through a number of Acts, including the *Local Government Act 1989* (Vic.) (s155) and the Food Act (s41A).

While councils' rate levels and overall expenditure priorities are beyond the scope of this inquiry, it is important to note that the capacity of councils to meet their regulatory responsibilities is a longstanding issue. The revenue raising capacity of local government is the focus of a Productivity Commission research study, due to report in April 2008 (PC 2007a).

One approach by which councils could ensure they have the capacity to fund their food regulation activities is by setting fees, including those for registration and inspections (chapter 9), that reflect their full cost. A recent analysis by the Municipal Association of Victoria (MAV) found councils recover only part of their total food regulation costs through registration fees and other charges (MAV 2002). The majority of councils surveyed during this inquiry reported that they are partly recovering the costs of their food regulation activities. The survey found that three quarters of councils surveyed applied cost recovery principles to varying degrees, with councils on average seeking to recover 60 per cent¹ of their total costs.² However, nearly 25 per cent of councils did not use cost recovery principles (DHS 2007d).

There appear to be two reasons councils choose to partly recover their food regulation costs. One is that most councils have waived (or greatly reduced) fees for community activities. The City of Stonnington reported:

Most councils waive fees, or have much reduced fees for community groups, and not-for-profit organisations, both for premises registration and for temporary events. (sub. 25, p. 5)

According to the survey of local government (box 11.1), smaller councils appeared to be the most likely to charge a modest (often fixed) fee for registering not-for-profit community based events involving food.

The partial approach to cost recovery also appears to reflect a concern within councils about the adverse impact of registration fees on business activity. For example, MAV stated in its submission to the Commission's 2005 inquiry into

¹ An average cost recovery level of 60 per cent is consistent with the level of cost recovery advocated by MAV (MAV 2002, p. 6).

² The Commission also understands from discussions with MAV that the cost recovery figures cited in the survey of Victorian local government must be used with caution because councils have vastly different approaches to measuring and attributing costs.

regulation in regional Victoria that councils have a direct financial incentive to attract and retain business and that ‘any reduction in the number of businesses will reduce the ability of councils to collect own source revenue, and require alternative sources to be identified and rated’ (VCEC 2005a, p. 100).

The Commission has not examined whether underrecovery of the total costs of administering food regulation by councils is an effective way to encourage activity in municipalities, but given the small amounts charged by councils (relative to the costs of operating most businesses), such strategies are unlikely to be effective in isolation. The Commission supports better targeting and application of cost recovery by councils, so those activities that require more extensive regulatory oversight meet the costs of regulation. Such an approach to cost recovery would also help build on the strong market incentives for businesses to ensure food safety.

The partial cost recovery approach to food regulation adopted by councils contrasts with other areas of food regulation within Victoria. PrimeSafe and Dairy Food Safety Victoria, for example, have a total cost recovery policy (DPI 2007a). A total cost recovery approach is consistent with the *Victorian guide to regulation*, which states ‘general government policy is that fees should be set on a full cost recovery basis’ (Government of Victoria 2005a, pp. 3–10). The Productivity Commission also noted that ‘the price of regulated products should incorporate all the costs of bringing them to market, including the costs of regulation’ (PC 2001, p. 2). Poor cost recovery arrangements can undermine equity and efficiency objectives (VCEC 2005b, p. 435). A related issue is the appropriate level of regulation and, consequently, costs. The proposed regulatory framework reforms (chapter 9) would help address the costs associated with regulating food activity.

To provide a sound basis for, and greater consistency in, council registration fees and other activities relating to food regulation, it may be worthwhile developing policy guidelines outlining broad principles for food regulation cost recovery. The purpose of the guidelines would be to assist councils in setting fees and charges covering activities such as registration and inspection. Any guidelines could draw on existing principles, such as those developed by the Victorian or Commonwealth government.³ Once these cost recovery guidelines are developed and implemented, it may also be worthwhile for MAV to survey councils to help establish a benchmark for council inspection fees.

³ Alternatively, the cost recovery guidelines could be based on the mandated cost recovery principles that MAV is developing for setting registration fees, and that the Victorian Government has indicated it will support (in-principle) by liaising with MAV. This in-principle support was provided in the Victorian Government’s response to recommendation 8.5 of the Commission’s *Regulation and regional Victoria: challenges and opportunities* report (VCEC 2005a).

11.4.2 Resource sharing and efficiency measures

To address some of the skill and financial capacity challenges that are contributing to inconsistent implementation of food regulation, councils may have scope to share resources with other councils and adopt more cost-effective models of service delivery (such as contracting out). One approach is for councils to share a portion of EHO time with other councils (Windsor & Associates 2005, p. 20). The City of Ballarat noted that ‘sharing of environmental health services is an option to improve capacity and consistency in local government implementation of food regulation’ (sub. DR107, pp. 2–3). Other examples of council resource pooling initiatives include:

- the SWIFT Library project, whereby 60 per cent of Victoria’s councils and nine libraries have joined together to purchase a new computer system and manage services for the libraries located in their area (MAV 2007)
- 12 councils in the Hunter region of New South Wales forming Hunter Councils Limited, to drive efficiencies and cost savings via joint purchasing programs (including those for traffic signage and advertising), regional planning processes, a common human resources team and a joint staff training team (PwC 2006b)
- the Local Government Association of Queensland providing shared corporate services for councils, including information technology (which includes hosted web applications, community portals and online information), joint software procurement, insurance, workers compensation, and industrial relations and human resource expertise (PwC 2006b).

There appear to be no legal impediments to councils pooling their food safety regulatory resources, or to the Department of Human Services (DHS) facilitating such efforts. There may, however, be ways for councils to make better use of their limited resources, such as making greater use of environmental health paraprofessionals to complement EHO activities (section 11.4.3).

11.4.3 Skill (education, experience and knowledge) capacity

An effective system of food regulation relies on councils’ capacity to attract suitable staff. In 2005, MAV estimated local government in Victoria employed about 190 EHOs (Windsor & Associates 2005, p. 17) to regulate (among other responsibilities) an estimated 45 000 registered food premises.⁴ To meet the

⁴ This figure excludes the 20 000 or so temporary events each year that involve the sale of food (chapter 12).

current requirement that councils inspect every food premises annually, EHOs would need to undertake at least one inspection every working day on average.⁵

Given the magnitude of the task facing EHOs, their capacity to implement food regulation effectively and consistently depends on a number of factors:

- The nature of the regulatory environment and the tasks that EHOs must perform. As well as undertaking inspections, EHOs have an important role in educating businesses and community groups about the regulatory requirements. One study reported that the average time required to conduct a food business inspection is around two hours (Windsor & Associates 2005, pp. 47–8).
- The number of registered premises, the types of food premises (for example, the number of temporary premises and those operated by culturally and linguistically diverse groups) and the geographic spread of the premises.
- The range and complexity of other tasks for which EHOs are responsible, such as management of staff, emergency management, public health planning and needle syringe management.
- Whether the role is performed by a solo operator or a member of a team, which has implications for administrative load (Windsor & Associates 2005, pp. 39–43).
- The priority given to administering food regulation relative to other council functions. As Roger Pierotti argued, ‘food safety matters compete against other issues [in councils and in other state regulators]’ (sub. 30, p. 2).

Changes detailed in other parts of this report (such as growth in the number of business and community activities selling food), changes in food regulations (especially at the national level) and changes in the range of regulatory functions performed by EHOs mean the task of administering food regulation is constantly evolving. In this environment, councils’ ability to implement food regulation in a consistent and effective manner depends on their ability to attract and retain suitable staff.

Recruiting and keeping environmental health officers

Previous reports have documented the challenges facing councils in finding suitably skilled people to fill EHO positions. The Victorian Auditor-General stated:

We are concerned that the effectiveness of the food safety regulatory system may be compromised by the shortage of skilled staff.... It is critical that DHS and other agencies involved in training, recruitment and employment of EHOs

⁵ An inspection every working day is determined by dividing the number of food premises (45 000) by the number of EHOs (190), then dividing the resultant figure by the number of working days in a year (229). This includes 11 public holidays and 20 days of annual leave.

act quickly to respond to the work force shortage as it represents a significant risk to the food safety regulatory framework. (AGV 2005a, p. 17)

A report for DHS also found that the EHO workforce is in a period of transition, moving towards a younger profile: for nearly a quarter of EHOs (22 per cent), it was their first job, and over 58 per cent of the workforce was under 40 years of age (Windsor & Associates 2005, pp. 18–31). Yet, according to a respondent to a department survey:

There is no mentoring program for more experienced EHOs to pass on their knowledge to younger EHOs. ... It wasn't until I came out to the country that someone took me under their wing and showed me the ropes. (Windsor & Associates 2005, p. 57)

Roger Pierotti also noted:

The small separate nature of the regulatory authorities may also be contributing to a potential shortage in the food safety regulatory workforce. There seems to be particular workforce capacity limitations in country areas of Victoria. There does not seem to be coordinated processes for workforce development, recruitment, retention and career planning. It could be argued that this disparate nature creates competition between the regulatory authorities for suitably qualified staff and does not encourage sharing of resources and the development a cohesive workforce. (sub. 30, p. 3)

As noted, recruitment challenges may be particularly acute for rural councils, although options available to them include taking on relatively recent graduates who are then required to 'learn on the job', increasing their use of environmental health paraprofessionals, contracting tasks to consultants and sharing resources with other councils. Golden Plains Shire claimed, however, that increased use of less qualified officers could lead to even greater difficulties in recruiting suitably qualified staff. It argued that 'moves by DHS to de-skill the environmental health workforce by introducing lesser trained food inspectors could lead to even greater shortages of EHOs' (sub. DR70, p. 3).

A (2006) study into the role and training of environmental health paraprofessionals, however, suggested that while training and employment of environmental health paraprofessionals would not address the whole range of environmental health issues, it would help improve the role of EHOs in councils. In particular, it would allow EHOs to focus on more strategic environmental health concerns by freeing them from more routine activities (Wall 2006, p. 21).

The lack of sufficiently skilled environmental health staff in regional Victoria reflects a broader problem afflicting many parts of regional Australia, one that has been evident for some time as the population (and the workforce) concentrates more in coastal areas and in the larger, regional 'sponge' cities (VCEC 2005a, pp. 131–3). The Productivity Commission, for example,

recognised there are particular problems attracting and retaining health professionals in outer metropolitan, rural and remote areas. These pressures are also expected to intensify (PC 2005d, p. iii).

DHS recently reviewed issues facing the EHO workforce and recommended strategies be developed to:

- attract people to the role and ensure new entrants can meet its requirements, including implementing food safety regulations
- raise and promote the profile of EHOs
- improve consistency in the implementation of regulation across councils
- address changing job roles, manage EHO expectations of the role, and take advantage of the increased skills and knowledge of new entrants
- address professional development and training needs of EHOs (Windsor & Associates 2005, pp. i–vi).

DHS has commenced the *Food Act Authorised Officer Development Project Part 1—Pathways* to progress these recommendations. This project aims, among other objectives, to identify minimum EHO training requirements to effectively administer the Food Act in Victoria. DHS has also developed a new diploma course as a basis for broadening the range of people able to be authorised under the Food Act to perform aspects of the EHO role. It is investigating the feasibility of establishing a postgraduate course for the same purposes (DHS, sub. DR149, p. 21).

The Commission supports initiatives to address EHO recruitment and capacity, including the increased use of environmental health paraprofessionals. It considers that DHS' initiative and the regulatory reforms proposed in chapters 9 and 10 are complementary, with both helping to address the financial and skill challenges contributing to the inconsistent implementation of food regulation by Victorian councils.

The skills and training of environmental health officers

The Victorian Auditor-General found in 2002 that councils considered EHOs have the knowledge to perform their role effectively (AGV 2002, p. 64). Several inquiry participants, however, indicated that an improved EHO skill base is required—for example, Coles Myer indicated:

... there should be increased efforts to recruit and train competent environmental health officers (EHOs) to enable them to better undertake their roles as food safety regulators. (sub. 7, p. 4)

Several inquiry participants suggested a more coordinated approach to EHO training would increase consistency in council implementation of food regulation. The *Food Act Authorised Officer Development Project Part 1—Pathways* may

help to address this concern. There also appears to be a demand by EHOs for the department to take a stronger leadership role. Such a role would include the provision of relevant information and training to increase an EHO's capacity to achieve consistency and understand the costs of inconsistent practice in terms of both business and staff morale.

The tools available to assist environmental health officers

While some efforts have been made to improve consistency by the issuing of guidelines, for example the *Administering the Food Act: a guide for local government 2002* (DHS 2002c), they are dated and often applied inconsistently. Councils and EHOs (as part of focus groups) have indicated a desire for DHS to provide more of this type of leadership (Windsor & Associates 2005, p. 40). In the draft report, the Commission stated that the provision of updated guidelines and a standard compliance check template for councils (following consultation with key stakeholders) would be a useful step to improve consistency in implementing food regulation. The City of Whittlesea argued, for example, that DHS should develop standard guidelines on key elements of the Food Act to improve the consistency of councils' interpretation (sub. 31, p. 4). Similarly, the Australian Institute of Environmental Health (AIEH) 'welcomed the recommendation for DHS to develop appropriate guidelines for LGAs [local government authorities] in administering the Act' (sub. DR104, p. 6).

Compliance with directions and guidance could be encouraged by ensuring any such material is developed in close consultation with councils and industry. Improvements in performance reporting (chapter 8) would also improve compliance levels. Monitoring the level of compliance with directions and guidance in the short term would provide a mechanism to assess the need for a more directive approach to council implementation of food regulations.

A number of inquiry participants supported the use of standard compliance check templates for EHOs. AIEH argued that the provision of templates could both improve consistency in how inspections are undertaken and clarify the emphasis placed on specific issues during an inspection (sub. 10, p. 13).⁶ A number of templates exist; for example, AIEH developed one in 2001, although it considered that further work would be necessary to develop and implement such a tool in Victoria (sub. DR104, p. 5).

A number of inquiry participants, however, expressed concern with the use of standardised inspection templates. For example, Horsham Rural Council considered 'council should be given freedom to inspect the premises however

⁶ Hobsons Bay City Council also considered that a 'standardised assessment process should be linked to a scoring system to enable business performance to be rated' (chapter 10) and that the use of a standard assessment tool could be facilitated with the adoption of new technology, such as hand-held devices with standardised software (sub. DR108, p. 2).

they like, providing that all areas are covered during that inspection’ (sub. DR115, p. 5). Similarly, the City of Maribyrnong argued that mandating the use of a compliance checklist would undermine council autonomy ‘to determine the level of resources they allocate to food safety, based on their evaluation of local needs and priorities’ (sub. DR82, p. 1).

On balance, the Commission considers there is merit in a standard template being developed to promote consistency when a comprehensive inspection is undertaken. However, it does not support mandating the use of a standard inspection template for every inspection. Such a requirement could end up becoming, by default, a substitute to the current requirement to prepare a food safety program, and it could undermine the strong educative role that EHOs play in the food regulation system (chapter 10). While a statewide compliance inspection checklist would facilitate consistency, mandating its use would lessen the flexibility and use of judgement an EHO must exercise to perform their role effectively.

Other options for building environmental health officer capacity

Other options that could be used to address EHO capacity include:

- drawing on the experience of other jurisdictions seeking to address similar issues
- continuing the development of VicFin as a tool for sharing knowledge
- developing a mentoring program for EHOs.

To address concerns about inconsistencies in implementing food regulation in New South Wales, the NSW Food Authority is expected to commence EHO education and training around mid-2007. Training is expected to be delivered by state authority personnel (or contracted experts) and online learning opportunities (NSW Food Regulation Partnership 2005, p. 38). Victoria has an opportunity to observe and draw lessons from this initiative.

In Victoria, the VicFin information sharing system was designed to make the implementation of regulation more consistent. While it has not lived up to expectations, VicFin was developed:

- to act as a forum for geographically separated EHOs to share and discuss information and implement consistent food regulation
- to help inform the department about where assistance may be required and to be a tool of communication between the department and local government (John Ward, sub. 59, p. 3).

The slow uptake and use of VicFin and its lack of development have limited its effectiveness as an information dissemination and communication tool. However, the development of an effective online discussion forum—where EHOs could post questions and issues for discussion—would be useful and

would meet part of the original intent of VicFin. An effective online forum (and training tool) would also allow the department to post scenarios based on actual events, invite EHOs to describe actions they would take, and then provide feedback on the proposed actions.

Another mechanism to increase consistency would be a mentoring system whereby experienced EHOs could share their experience and knowledge with junior officers, particularly those just starting their careers. The Commission recognises that DHS and AIEH have implemented some EHO mentoring initiatives and regional forums in Victoria. These initiatives, which appear to be informal and uncoordinated, could provide significant public health benefits if formalised and more broadly applied. In the draft report, the Commission noted that one option for formalising this process would be to develop a statewide mentoring program, with the Victorian Government providing EHO salary supplementation. A number of councils supported this type of initiative, with one stating that ‘financial support is necessary [for councils] to promote the extension of [mentoring and cadetship] programs’ (Surf Coast Shire Council, sub. DR79, p. 7). The Commission notes, however, that the development of a more formal mentoring scheme and its funding are separate issues. The Commission supports the development of such a scheme and notes that key stakeholders would need to negotiate an appropriate funding source.

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.**

11.5 Enforcement

Council powers to enforce Victorian food regulation are set in legislation. Councils can exercise limited discretion in requiring action by a food business and using the (limited) tools to encourage compliance. As discussed in chapter 3, several inquiry participants expressed concern that councils have adopted inconsistent approaches to enforcing food regulations. Some differences in enforcement should be expected, given that councils are responsible for administering food regulations with regard to local conditions. That said, the differences in enforcement should be based on consistent enforcement principles (section 11.5.2) to ensure consistency and help inform businesses and consumers about the rationale for any differences. Without clear and consistent principles, different approaches to enforcement by councils may cause confusion about compliance requirements within the business community and weaken business and consumer confidence in the regulatory framework. Areas in which this issue may be particularly important include inspection frequency (and inspection fees) and complaints handling, including in relation to food labelling. Chapter 10 examined the remedies available to council for breaches of food regulations.

11.5.1 Local government's approach to enforcement

The survey of Victorian councils (box 11.1) found that different strategies are used to encourage compliance with Victorian food regulations, including:

- education, newsletters, information sessions and training material for businesses and community groups
- EHOs working one-on-one with businesses
- increased frequency of food business inspections
- food safety business awards
- business 'scoring systems' that help EHOs identify high risk food businesses
- 'user pays' registration fees, with 'poor performing' food businesses required to pay a higher registration fee
- deregistration and/or prosecution.

Most councils rely on the provision of information and advice to encourage compliance with food regulations. The approaches used to disseminate this information vary considerably, and include business one-on-one sessions, newsletters and training. Hume City Council, for example, produces a quarterly newsletter (*Hume Food News*), which is delivered to all food businesses to assist in ensuring safe food. It also has a multilingual telephone information service for people from culturally and linguistically diverse backgrounds (Hume City Council 2006). Many other councils, including Greater Geelong City Council, Mount Alexander Shire Council and Maroondah City Council, use material developed by

DHS to provide information about good food safety practices. Banyule City Council also uses a 'food safety week' to promote the benefits of food safety (Banyule City Council 2006).

Many councils appear reluctant to use prosecutions to encourage compliance with food regulations. About 36 per cent of councils surveyed had prosecuted noncompliant food businesses, and large councils (with large numbers of registered businesses), appeared more likely to prosecute noncompliant businesses. Smaller councils appeared more likely to rely on compliance strategies, such as undertaking more frequent inspections and providing advice and information to noncompliant businesses. (The threat of more frequent inspections can be an effective mechanism for encouraging business compliance with food regulations.) A number of councils use 'reward' systems as part of their food safety compliance strategy (chapter 10). Such mechanisms help consumers make informed decisions as to the safety of the food they have purchased.

The survey also suggested that councils have adopted different approaches to the annual food business inspection legislative requirement. For example, while some councils indicated they were meeting this requirement by undertaking inspections on all premises registered in their municipality, other councils indicated a rate of inspection (of fixed premises) as low as 60 per cent. This finding is broadly consistent with the Auditor-General's findings on food safety implementation (AGV 2002, 2005a).

There is little information available on how councils formulated their risk management strategies, including inspection and enforcement strategies. In discussions with the Commission, John Ward⁷ indicated that many councils do not use food sampling tests to develop surveillance and enforcement programs. This suggests there may be benefits in developing guidance for councils to develop risk management strategies that are consistent with a risk based approach to administering food regulation.

11.5.2 Risk management strategies

The issue of improving consistency in the implementation and enforcement of food regulators has been recognised at the national level, and the Food Standards Implementation Sub-Committee (ISC) has developed a strategy for addressing the issue. A key component of the strategy is the development of guidelines on food regulations and standards implementation and enforcement activities (ISC 2005a, p. 3). While Victoria has contributed to its development, the strategy does not include any specific initiatives that can be implemented in

⁷ John Ward provides food testing services to a large number of Victorian councils.

Victoria in the short term. A recently released summary of progress in implementing the Blair report recommendations, part of the Bethwaite review, stated:

It is generally felt this recommendation [recommendation 3—nationally consistent risk based enforcement and compliance strategies and priorities] has either not been implemented, or is in the process of being addressed via the strategies of the ISC. (DHA 2007a, p. 2)

In the draft report, the Commission proposed that councils be required to develop and publish risk management covering food safety issues. The purpose of such a strategy would be to identify specific problem areas and high risk activities, and to explain how the risks will be managed. This approach would permit councils to develop a robust risk management strategy tailored to their local areas but also based on sound risk management principles. Publication of the strategies, combined with better reporting on their implementation (chapter 8), would also help assure businesses and the broader community that any differences in inspection frequency (within and across councils) are based on consistent and transparent principles.

While each council should have a tailored risk management strategy, there may be a case for DHS to assist councils with their strategy development. This assistance could focus on providing consistent principles and information for councils to identify their priorities and appropriate strategies. DHS assistance could involve, for example, developing a template and providing basic inputs (such as sampling-based information on major food safety risks). Councils could then build on this base, using information from their local experience.

The strategy should highlight that inspection frequency is determined by a range of factors, including:

- the inherent risk associated with different types of business
- the compliance history of businesses
- the level and number of (food safety) complaints received by a council concerning a particular business or type of business
- the results of, or the need to undertake, food sampling
- change in the ownership of a business
- random checks.

It should also highlight the various mechanisms that the council can use to encourage compliance (chapter 10), broadly identifying when these tools should be exercised. DHS referred to this type of guidance as the 'hierarchy of sanctions' and argued that it should be considered for food regulation (as it recently has been adopted for some safety related legislation) (sub. DR149, p. 22). The enforcement mechanisms available would include:

- information and advice
- penalty infringement notices
- remedies through the court system (including prosecutions, seizure of goods and corrective advertising)
- business closure (through a request to the Secretary of DHS).

This strategy, once developed, would help stakeholders understand the rationale behind any inspection regime in place. It would also help to ensure that councils continue to rely on providing information and advice in the event that the array of sanctions is expanded (chapter 10). Furthermore, public access to the guidelines and information on the effectiveness of council strategies (from performance reporting) would also improve incentives for businesses to meet food safety standards and raise community confidence and awareness about the importance of food safety.

The Commission received broad support for the proposal to require councils to develop food safety risk management strategies. MAV noted that this type of approach would ‘support local government in its role in administering the provisions of the Food Act’ (sub. DR128, p. 19). Golden Plains Shire also supported this approach, but noted that ‘greater guidance is also required in establishing the human resources needed to undertake the full range of environmental health work required by council and the State Government’ (sub. DR70, p. 5).

Inquiry participants indicated that councils are required to produce similar types of strategy in other areas of regulation. The *Domestic (Feral and Nuisance) Animals Act 1994* (Vic.), for example, requires councils to prepare a domestic animal management plan that outlines the programs and services in place to mitigate risks and encourage responsible pet ownership. Councils are required to report against their risk management plans in their annual reports. Similarly, the *Environment Protection Act 1970* (Vic.) requires metropolitan councils to prepare a municipal solid waste infrastructure schedule (part of a metropolitan waste and resource recovery strategic plan), in which councils must detail existing and required infrastructure for municipal solid waste.

This approach is also common in other areas of regulation in Australia—for example, the Australian Competition and Consumer Commission provides information on how it enforces its legislative responsibilities (*Trade Practices Act 1974* (Cwlth.)). This approach has also been adopted in other countries such as the United Kingdom, where the *Reducing administrative burdens: effective inspection and enforcement* review (the Hampton review) identified principles of inspection and enforcement for regulators to use, to encourage more efficient approaches to regulatory inspection and enforcement without compromising

regulatory standards or outcomes. Relevant principles in the Hampton review included the following:

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
- No inspection should take place without a reason.
- The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions (Hampton 2005, p. 7).

The United Kingdom Government accepted the Hampton review recommendations, which were based on the above principles. The Commission understands these recommendations are being implemented, and that the United Kingdom Government will be establishing the Local Better Regulation Office—the body that will help local authorities to implement those principles in 2007 (Cabinet Office 2007; HM Treasury 2005, p. 53).

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.**

12 Community groups and food regulation

12.1 Introduction

The inquiry terms of reference require the Victorian Competition and Efficiency Commission to report on the impact of food regulation on the not-for-profit sector and on community activities such as fêtes and sporting events. This reference reflects concerns about the potential for food regulation to have an adverse effect on community activities and volunteering.

While there is no widely accepted definition of the not-for-profit sector and community activities, the Commission refers to the broader community sector in this report, which includes activities undertaken by not-for-profit community and charitable groups that involve the sale of food for fund raising or other purposes. Examples include community group meetings, school canteens, community food festivals, local sporting club events, cake stalls and sausage sizzles held to raise funds.

The Commission has adopted the approach that regulation should target areas where food risks are greatest and where the capacity to manage these risks is lacking. Using this approach, the key factor shaping the extent of regulation is risk (broadly defined in chapter 9), not the status of the group providing the food. That said, community groups may have some characteristics that will influence the appropriate form of intervention by state and local governments. Some community groups may lack the knowledge and skills to adequately deal with food safety issues, despite the incentives facing them and their general good will (chapter 2). The impact of this knowledge gap will be negligible for low risk activities such as cooking sausages, preserves and cakes. The effects will be much greater for large community events involving cooking, handling and storing of a diverse range of foods.

This chapter applies a broad approach to examining the effects of Victorian food regulation on the community sector and appropriate risk management strategies, briefly outlining:

- some of the key characteristics of the community sector
- the role of community activities in society and the role of food in fostering such activities
- how Victorian food regulation has been applied to community activities
- the impact of Victorian food regulation on community activities
- how the Commission's proposed regulatory framework would apply to community activities, and outstanding issues.

12.2 Overview of the community sector

The broadly defined community sector comprises a large number of organisations whose diverse composition and purpose make a simple definition difficult. A common characteristic of these organisations is that they are mission driven and operate on a not-for-profit basis. They include:

- welfare groups such as St Vincent de Paul, Anglicare and the Red Cross
- community groups such as social, cultural and sporting clubs established to pursue a shared interest or objective
- volunteer organisations such as the Country Women’s Association (CWA), the Country Fire Authority (CFA), the State Emergency Service (SES)¹ and neighbourhood houses established to meet particular community needs
- religious groups
- educational and child service institutions
- health and care organisations such as hospitals and aged care facilities
- research organisations
- philanthropic foundations and trusts
- peak bodies representing and servicing community groups, industries and professional groups.

The national economic contribution of the community sector was 3.3 per cent of gross domestic product in 1999-2000 (ABS 2002a).² If imputed wages of volunteers were taken into account, this contribution rises to 4.7 per cent of gross domestic product—in aggregate, roughly equivalent to the agriculture, fisheries and forestry sector. No corresponding data is available for Victoria, but it is reasonable to assume that the community sector contributes a similar percentage to the state economy. Beyond this, however, the community sector adds much more to (unmeasured) community welfare and social capital (section 12.2.1).

The Victorian community sector is extremely diverse in terms of the role of food in the sector, the size of individual groups, and the food safety skills of the workforce. But it is not known how many community groups operate in Victoria or how many of them undertake activities involving the sale of food, because councils are not required to report publicly on the numbers of premises registered by businesses and community groups.

¹ CFA and SES are included in the Victorian Government accounts and, therefore, are not strictly part of the not-for-profit sector. Because these organisations depend on volunteers for their operations, however, they have been considered in this chapter.

² This figure represents the economic contribution made by the not-for-profit sector, whose coverage corresponds with the sectors listed above (ABS 2002).

A survey of councils (undertaken by the Department of Human Services (DHS) on behalf of the Commission) found that about 45 000 fixed premises (of which the Commission estimates 3400 to be class 1) and 20 000 temporary food premises were registered by councils across Victoria in 2006 (DHS 2007d). Based on a more detailed breakdown of registrations for seven councils, the Commission estimates that around 65 per cent of temporary registrations are issued to community events, indicating that about 13 000 groups or events were registered as temporary premises in 2006.³

Community groups also operate class 1 and class 2 fixed food premises. There are probably around 2300 class 1 business premises in the health, aged and child care sectors operated by not-for-profit organisations.⁴ While the number of class 2 fixed premises such as sporting and other club facilities, school canteens and neighbourhood houses cannot be reliably estimated, if 5 per cent of the estimated 41 600 class 2 premises were operated by community groups, there would be a further 2100 premises. Aggregation of these figures results in around 17 400 fixed and temporary premises and events operated by community groups in Victoria.⁵

The community sector relies heavily on volunteers, whose contributions are necessary for the success of community organisations. Volunteers perform roles as diverse as the sector itself including volunteer fire fighting, managing sporting clubs, caring for elderly people, helping at school canteens, staffing neighbourhood houses and delivering meals. A study by Soupourmas and Ironmonger (2002) estimated that Victorians volunteered 196.9 million hours in 2000, valued at about \$4.3 billion.

The strength of incentives, and the capacity of the sector to ensure food safety, is likely to vary. Community organisations that operate nationally face strong market incentives to ensure food safety—an incident in Victoria could affect their reputation across the country. Such groups also tend to have the resources to train staff in food safety skills or pay for catering, but food safety awareness and skills within the many small local groups will probably vary more, depending on the experience and background of a few volunteers. The Commission heard from CWA, for example, that a significant number of its members have many

³ Registration data for 26 councils indicated that close to three-quarters of temporary registrations were by not-for-profit (community) groups in 2004, while comparable data for seven councils in 2006 indicated that not-for-profit registrations were 65 per cent.

⁴ This is based on the number of hospitals (ABS 2005), the number of aged care homes (DHA 2007b) and the number of long day care and preschools (DHS 2006b) operating in Victoria. The numbers are adjusted for estimates of entities operated in the for-profit sector and estimates of child care centres and preschools that do not operate a kitchen.

⁵ This estimate excludes community groups that donate food and hence do not need to register with councils, and those that sell food but choose not to register with councils.

years experience preparing food for events (CWA 2006). The Commission also heard that some groups have difficulty finding volunteers with the required food safety skills (sub. 61, p. 1).

12.2.1 Community groups' contribution to social welfare

The Commission heard during its consultations that the community sector provides a number of broad benefits to the community that should be recognised in the design and implementation of Victorian food regulation. The community sector:

- helps strengthen communities by providing an opportunity for people to connect with others, enhancing a sense of belonging and reducing isolation within society. 'Community groups create social capital by providing opportunities for people to come together, volunteer and participate in local activities' (OSISDC 2006, p. xx). Neighbourhood houses and senior citizens clubs, for example, help to reduce the isolation of the elderly and members of culturally and linguistically diverse (CALD) communities
- provides low cost or free access to goods and services to the needy and those at risk such as the elderly, the disabled, the chronically sick, the homeless and the long term unemployed. One provider of emergency relief estimates that 'between 20 000 and 60 000 people a day do not have access to food and require that food to come from some sort of welfare agency' (One Umbrella 2006)
- provides services to the community that would otherwise not be provided, or would be delivered by governments. Community groups make a major contribution in areas such as aged care, country fire services, cultural activities and the arts, and in community facilities such as hospitals and kindergartens (ACG 2005, p. 11).

12.2.2 The role of food in supporting community activities

Food is important to community groups for a number of reasons. It can be an important way of raising funds, it can bring people together, and it can put welfare groups in touch with people who require their support services. Food also supports the activities of emergency response organisations such as CFA and SES.

The Commission heard from a diverse range of community groups that a key part of their activities involves preparing and selling food to the public to raise funds. The Commission also heard that groups such as hospitals and aged care homes provide food to clients as part of their activities, while others such as seniors groups provide food to group members who may pay a small fee to be a member of the group. And community groups such as the welfare agencies

provide emergency food relief to their clients at no charge. According to the Good Shepherd Youth and Family Service:

... encouraging people who are marginalised to come to a community event almost always relies on the sharing of food. People who are disadvantaged feel valued when they are provided with a ‘free lunch’ ... many community-based events include a lunch or supper, which may also double as a fund raising opportunity in some cases—itself a very important function (sub. 46, p. 2).

The types of food related activity undertaken by community groups are relevant because current Victorian food regulation applies only to activities involving the sale of food. The term ‘sale’, however, is broadly defined in s4 of the *Food Act 1984* (Vic.) (section 12.3.2).

While the provision of food can be integral to many community group activities, Victorian food regulation does not apply to all community activities. Section 12.3 examines how food regulation applies to the community sector.

12.3 Food safety and food regulation in the community sector

While the community sector is subject to similar regulatory arrangements that apply to the commercial sector, a number of special arrangements apply to fund raising events. The regulation of food safety should focus on activities that involve high food risks and before examining how food regulation applies to community groups, it is worth looking at the available evidence on food safety for the sector.

12.3.1 Food safety risk at community events and facilities

The food safety risks of community events will depend on:

- the types of food being served
- the skills and experience of those running the event
- the characteristics and number of people who attend the event or facility.

The available evidence on outbreaks of foodborne illness, together with input from participants, indicates that food risks from community activities are greatest for vulnerable people in hospitals or aged care centres and for complex multiday community events where a wide variety of food is provided over a number of days:

- evidence from the *National risk validation project* (FSA & MEC 2002, p. 2) identified food service to vulnerable groups such as young children, the elderly and people with weak immune systems as a high risk activity.

Victoria's Food Act requires a food safety program audited by a third party be prepared for such activities.

- DHS reported four⁶ significant incidents of foodborne illness attributable to food at community events in the last nine years (sub. 48, p. 17). All of these incidents occurred at relatively complex events, sometimes run over several days, where a wide variety of food was served by multiple providers. Three of the four events involved groups and individuals from CALD backgrounds. It seems likely that many smaller incidents have not been detected and reported.
- a number of inquiry participants argued that many of the small scale events run by community groups involve low risk foods and/or are conducted by groups and individuals with adequate knowledge and capacity to provide food safely. Examples of events identified by participants as low risk included sporting clubs catering for home games (Sports Assemblies Victoria 2006), CWA morning teas (CWA 2006) and sausage sizzles at local shopping centres or school fêtes (sub. 6, p. 2).

Victorian councils appear to have widely divergent views about food safety risks associated with small scale community events. The Municipal Association of Victoria reported on a workshop held in November 2006 at which council officers considered the issue of sausage sizzles and whether they should be exempt from registration requirements:

Officers were divided about this issue, with some suggesting that this would be appropriate, others citing examples of sausages being left semi-heated for longer than would constitute a safe time. (sub. 41, p. 16)

Brimbank City Council said the 'risk of providing a sausage from a hotplate or BBQ onto a slice of bread with tomato sauce is minimal' (sub. 5, p. 2). In contrast, the City of Stonnington considered that:

Temporary food events run by community groups can often pose a higher risk than those run by commercial enterprises. The reasons for this are:

- food handlers may have little or no food safety knowledge or training
- food handlers may have little or no experience in handling large quantities of food
- community groups are less likely to have the resources to provide adequate temporary facilities and equipment, such as hand washing facilities and registered food storage. (sub. 25, p. 6)

Given that the regulatory challenge is to focus resources on areas where food risks (broadly defined) are greatest and the costs of regulation are not greater than the benefits, the emphasis should be on food service at large and complex

⁶ A fifth incident was attributed to contaminated water.

community food events and to vulnerable groups. Currently, however, relatively simple, small community events may be subject to the same regulatory requirements as complex events.

Defining vulnerable persons

As noted, high food safety risk can arise because of the vulnerability of the consumers. The definition of vulnerable persons in Victorian regulations is broad, including all persons five years and younger and 65 years and older as well as those with weak immune systems (Government of Victoria 2001a, p. 3013). These age brackets are wider than the brackets identified by Food Standards Australia New Zealand (FSANZ) which nominates four and 70 as the appropriate cut off ages (FSANZ 2005c, p. 13).

Even within more restricted age brackets there is a spectrum of vulnerability, as noted by Aged and Community Care Victoria (sub. DR145, p. 1). In fact, all persons in the vulnerable age brackets are included, irrespective of the nature of the activities that are the subject of the food regulations; for example, preschools where children are all at the upper end of the age bracket and attend for two to three hour periods are treated the same as long day care centres, where children include infants and toddlers who receive meals as part of the care service. The definition also includes senior citizen and bowls clubs, which DHS has advised the Commission was an unintended consequence of the regulations.

As noted in chapter 9, risk classification under the Victorian Food Act differs from the national approach as set out in the Food Standards Code. Standard 3.3.1 of the code identifies vulnerable persons for the purposes of food safety regulation by listing (in a schedule to the standard) specific types of food service to vulnerable people. Establishments providing residential and care services to the aged are included in the schedule, but community activities where the participants happen to be seniors (such as bowls and senior citizens clubs) are not.

While the national standard provides a more targeted definition of vulnerable groups, it does contain an instance of inconsistent treatment. Where a preschool is conducted by a school, the school is not considered to be catering to a vulnerable population, but where the preschool is stand alone, it is considered to be catering to a vulnerable population.

12.3.2 Are all community activities subject to regulation?

To obtain registration for its premises, a food business must have a food safety program (FSP), nominate a trained food safety supervisor (FSS), be inspected by the local council as the registration authority, and pay a registration fee (chapter 3). Under the Food Act, a food business includes community activities

involving the sale of food, with ‘sale’ broadly defined to include any provision where consideration or commercial benefit might be deemed to have occurred. A number of activities in the community sector are not subject to regulation under the Food Act because the food is not ‘for sale’ (s4), including:

- the charitable provision of food, provided no payment is made by the consumer, including:
 - the donation of food by businesses
 - the donation of food by welfare or other organisations providing no charge, including for delivery, occurs
- any other supply of food to which the ‘for sale’ definition does not apply.

While these activities are not subject to food regulation, they are subject to other laws such as tort law and federal and state laws prohibiting deceptive and misleading conduct (chapters 7 and 8). These other laws provide recourse for a consumer who suffers harm.⁷

There are also situations where it is unclear to community groups whether food provided at an event should be considered ‘for sale’. Examples include situations where club members are provided with food at no charge at a club function or a coin donation is made on entry to a neighbourhood house event at which food is served. The Commission has heard that the status of these events may be unclear, even to councils. In relation to the activities of senior citizen clubs in council owned premises, Moreland City council noted:

Council’s legal advice, in regards to Council’s administrative function under the Act, is that we would need to assess on a case by case basis the activities of each group to determine whether the sale of food is occurring. (sub. DR77, p. 2)

In its submission, Sports Assemblies Victoria:

... encourages greater definition around the concept of ‘food premises’ and ‘food for sale’ as there seems to be a lack of clarity as it relates to sporting clubs; for example, if a club membership fee is paid does this deem food at club functions ‘for sale’ ... (sub. DR76, p. 1)

Food safety programs and supervisors

All high risk (class 1) activities conducted by community groups are subject to the same regulation as class 1 for-profit businesses. The regulations applying to lower risk (class 2) events, however, are slightly different for some community

⁷ Donor provisions in s31F of the *Wrongs Act 1958* (Vic.) limit the liability of donors provided the food is given in good faith, is safe to consume at the time of donation, any necessary handling requirements are conveyed to the recipient, and there is intention that the consumer will not pay. Section 37 of the *Wrongs Act* effectively transfers any liability arising from an act or omission by a volunteer to the community organisation.

events compared with those applying to for-profit businesses. The following discussion explains how Victorian food regulations apply to events undertaken by community groups.

Community activities involving the sale of food can use an FSP template provided by DHS. The department stipulates that groups holding fund raising events can use the *Food safety program template for food events*, provided:

- groups hold no more than one event per month and less than 12 events per year
- events operate for no more than one day at a time
- the event does not store food on the site of the event between days of operation (DHS 2003, p. i).

These conditions are not explicit in any of the regulations but are set out in the template preamble. If the activities of community groups do not meet these conditions, they must use the template that is available to businesses in the *Food safety program template for retail and food service businesses* (DHS 2004e).

Generally, food businesses are required to designate an FSS who has undertaken approved food safety training; community fund raising events do not need to appoint an FSS. Under s19V of the Food Act, the Secretary of DHS has granted an exemption from the FSS requirements to:

... any class 2 premises that are used for events that raise funds solely for community or charity causes and not for personal gain from the requirement in s19GA of that Act to have a food safety supervisor. (Government of Victoria 2002, p. 1047)

Although this exemption appears to apply to any fund raising event, DHS advised the Commission that the exemption applies only to community events satisfying the definition of an ‘event’ as described in the *Food safety program template for food events*, and outlined above. When the exemption applies, for example, to an annual school fête, community activities must, instead, nominate an event coordinator. Unlike an FSS, an event coordinator is not required to have any formal qualifications in food handling hygiene but is required to ‘ensure that all food handlers at the event, whether they are volunteers or paid workers, understand the relevant food safety and safe food handling practices for the tasks they will be carrying out’ (DHS 2003, p. 1).

While these arrangements have been designed to reduce the regulatory burden on groups holding a few events each year, the Commission considers they are unnecessarily complex and contribute to confusion about the regulatory requirements community events need to meet. Moreover, the ‘event’ criteria are arbitrary and not risk based. Table 12.1 provides examples of the regulatory requirements that may apply to different types of community events.

Confusion has also arisen about the interpretation of the laws relating to the treatment of senior citizens clubs. As outlined in section 12.3.1, these groups fall into the definition of vulnerable persons under the Victorian regulations, and so premises used to prepare food at these venues must meet class 1 registration requirements (third party audited, nonstandard FSP). These groups frequently meet in community facilities, which are sometimes council owned, where kitchens are used by many different community groups. Moreland City Council noted in its first submission that ‘compliance requirements are considered to be excessive for groups of this nature’ and the regulations give rise to accountability issues for councils (sub. 51, p. 5). The City of Whittlesea also raised the problem in its second submission:

Of particular interest to council is the classification of senior citizen groups. Council would like these groups to be considered the same as any other social club ... The current registration is difficult and theoretically they should be treated as Class 1 which is inappropriate. (sub. DR114, p. 9)

Councils have responded in different ways to these significant practical difficulties. As Moreland City Council further noted:

[An] approach by some councils, which is not uncommon, is to ignore the Food Act requirements as they pose too many practical difficulties to administer. This approach, although convenient, is hardly a sound risk management approach. (sub. 51, p. 6)

Confusion and inconsistency in the treatment of senior citizens clubs is the result of councils having different approaches to and interpretations of the laws. Moreland City Council reiterated its concerns in its second submission, suggesting options to exempt seniors groups entirely (or in part) from registration requirements under the Food Act to avoid the economic and social costs of current arrangements. It proposed two alternative risk mitigation approaches involving varying responsibilities for council and the seniors groups (sub. DR77, pp. 4–6). This issue is addressed in recommendation 9.1 relating to risk classification (chapter 9).

The complexity of the regulatory requirements for community activities contributes to confusion within the community sector. A number of community sector participants at the roundtables held with community groups and through the online survey (section 12.4.1) discussed the burden imposed by the need for training, even though many did not need to appoint an appropriately trained FSS. This indicates that groups are unaware of the exemption from the FSS requirements for community groups, or that councils are influencing community groups to undertake formal training.

Table 12.1 Victorian food regulations for community events

<i>Event</i>	<i>Register</i>	<i>FSP^a</i>	<i>FSS^b</i>
A tennis club holding a fund raising sausage sizzle each month	Yes	R&FS	Yes
A tennis club holding a sausage sizzle every month except July	Yes	Event	No
A local football club selling food to spectators at home games 12 or more times a year	Yes	R&FS	Yes
A local football club serving food at 12 or more matches to players, officials and club members who have paid an annual membership fee	If council considers that the food is 'for sale', same as above; otherwise no registration requirements		
The local bike club using the football club's facilities to hold a one-off curry and rice fund raising night	Yes	Event	No
A not-for-profit school canteen operating less than 12 times a year	Yes	Event	No
A for-profit school canteen operating less than 12 times a year	Yes	R&FS	Yes
A community group serving a meal of soup and sandwiches at no charge 12 or more times a year as part of a program to connect with disadvantaged groups	No	None	No
The same community group serving the same meal for the same reasons 12 or more times a year, but accepting a gold coin donation to support the group's activities	If council considers that the food is not 'for sale', the same as above; otherwise :		
	Yes	R&FS	Yes
A group of elderly migrants meeting, where culturally based food is available 'for sale'	Yes	Audited	Yes
A barbecue held weekly at a shopping centre to raise funds for community purposes	Yes	R&FS	Yes
A one-day cultural food fair for recently arrived migrants to showcase their diverse cuisines, where meals are paid for	Yes	Event	No
A two-day cultural food fair where patrons pay an entry fee	If council considers that the food is not 'for sale':		
	Yes	R&FS	Yes
	Otherwise		
	No	None	No

^a Food safety program required (Event = template for food events; R&FS = template for retail and food service businesses; Audited = third party audited, non standard FSP). ^b Food safety supervisor required.

Source: Based on the Commission's understanding of regulations applying to community activities.

Practice in other jurisdictions

The Victorian regulatory arrangements for community events are stricter than those in other states and territories. Table 12.2 shows that Victoria is the only jurisdiction to require community events to register, prepare FSPs and require formal training for some events.

Labelling requirements

Regulatory obligations governing the labelling of all food sold to consumers in Victoria are established in s16(3) of the Food Act. The Act requires compliance with the relevant standards in the Food Standards Code, which exempts food sold at fund raising events from the labelling requirements applying to businesses. This exemption is subject to the community event being able to provide information on request, or display that information:

- to enable consumers to make an informed choice, including about healthy eating and avoidance of allergens to which they have a sensitivity
- to provide information about the period during which it is safe to eat a food
- to enable food traceability in the event of an adverse incident.

The DHS event template acknowledges that labelling is not mandatory for fund raising events, and provides recommendations about how to ensure consumers are appropriately informed (DHS 2003, pp. 16–7). The template states, for example, that if labels are not used, a sign or brochure advising customers of foods that can cause allergic reactions be made available. Traceability is handled via the food providers list which the event coordinator must keep.

Local councils also have different requirements for the administration of food regulations for community groups and provide different advice about food labelling and information. This may have contributed to some confusion about the labelling requirements at community events for some groups. The President of the Parent's Association of St Bede's Primary School (North Balwyn), for example, argued:

Cake stalls—once an easy fundraising option, are now governed by fairly strict regulations on food preparation and labelling of goods. ... strict labelling requirement presents extra work for the fund raising committee and the labelling of ingredients also deters some parents from baking altogether. (sub. 15, p. 1)

Other organisations such as the CWA, however, recognised the advantages of labelling and felt that there were some benefits associated with present arrangements (CWA 2006).

Table 12.2 Interstate regulations for fund raising events

<i>State</i>	<i>Registration/ notification</i>	<i>FSP^a</i>	<i>Food handlers and supervisors</i>
ACT	Notify if food is sold less than six times a year for no more than three consecutive days and is not hazardous ^b ; otherwise register	No	There is no requirement, but appropriate training is encouraged
NSW	Notify only if selling potentially hazardous food ^b	No	No formal qualification required. Knowledge and skills required if dealing with hazardous food ^b
NT	Special arrangements apply; in general, registration is not required	No	No formal qualification required. Knowledge and skills commensurate with tasks performed required for hazardous food. Exempt if food is not hazardous ^b
Qld	Organisation must be licensed and premises registered with local government	No	Nominated person for overseeing food safety. No formal training, but knowledge and skills commensurate with tasks performed required if food is hazardous. Exempt if food is not hazardous ^b
SA	Organisation must notify once, regardless of number of food activities undertaken	No	No formal qualification required, but knowledge and skills commensurate with tasks performed required for hazardous food ^b
Tas.	Organisation must notify if food is shelf-stable and non-refrigerated, otherwise must register	No	As per Australia New Zealand Food Authority fact sheet and decision path for organisers
Vic.	Registration required	Yes	A trained food safety supervisor must be nominated unless the group holds less than 12 events a year; otherwise an event coordinator must be nominated who has responsibility for ensuring food safety understanding by food handlers

^a Food safety program. ^b The definition of 'hazardous food' differs between states but generally relates to higher risk foods such as meat, seafood and dairy when not eaten immediately after cooking, or for which safe temperature storage is required.

Sources: ACT Health; NSWFA 2006a; DHCSNT 2007a; DHCSNT 2007b; DHCSNT 2007c; Queensland Health 2003; EHBDS South Australia; DHHS Tasmania; ANZFA 2002b; DHS 2003.

Record keeping

All food businesses must keep records about food storage and handling (appendix B). Record keeping requirements for community groups depend on the number of events held; for infrequent events (less than 12 per year), the record keeping requirements are relatively light—the event coordinator must prepare a food providers list and maintain checklists about the setup and conduct of the event. Groups holding more frequent events are also required to keep records about the operation and maintenance of processes and equipment such as temperature control and repairs to fridges and ovens.

Registration of premises and kitchens

The Food Act requires a person conducting a food business to operate from registered premises (s35). Accordingly, a group must register kitchens used to prepare food intended for sale to the public with the council in the municipal district in which it is located. Participants identified a number of areas where uncertainties or inconsistencies in interpretation affect community activities.

One such area is the registration of temporary food events. The Food Act does not make specific provision for temporary food events such as food stalls, fêtes, festivals and sausage sizzles, and councils have adopted different approaches to the registration of temporary premises. A survey conducted by the Southern Region Food Surveillance Group, for instance, found that:

A total of 1789 applications for temporary food premises were received by nine councils during 2003. Of these, one council indicated that they issue 12 month permits, two issue single permits, one issues both and two do not issue either. Four councils register premises which are already registered by another municipality. (SRFSG 2004, p. 1)

There is also some confusion about policy relating to the use of unregistered home kitchens to prepare food for cake stalls and other fund raising events. DHS and the Victorian Branch of the Australian Institute of Environmental Health (AIEH) advised the Commission that food prepared in home kitchens and donated to an event is not subject to the registration provisions of the Food Act, but a survey conducted by the department in 2004 found that of 58 councils, almost half did not allow high risk food intended to be sold at a community or major event to be prepared at home (DHS 2004f). It appears, therefore, that the department's policy is not understood by some councils and community groups.

Some participants also raised concerns about differences in the application of registration requirements by councils for multi-user premises. Some community groups use kitchens in community centres run by councils or not-for-profit clubs, and each group using the kitchen must prepare an FSP if food is 'for sale'. As noted, if those premises are used to prepare food for a vulnerable group such

as senior citizens, and the food is deemed to be for sale, each group would need to register as a class 1 premises. This means the group would need to develop a nonstandard FSP and have it audited by a third party.

12.3.3 Jurisdictional overlap

Concerns have been expressed to the Commission about regulatory overlap, including in relation to audits and to class 1 premises providing food to vulnerable persons. Multiple accountabilities were raised by both the aged and child care sectors during roundtable discussions. Aged and Community Care Victoria (sub. DR145, p. 1), Child Care Centres Association of Victoria (sub. DR88, p. 2) and Kindergarten Parents Victoria (sub. DR146, p. 4) all raised this issue in their submissions.

Related issues are whether regulators in one jurisdiction correctly recognise compliance and enforcement of regulations in other jurisdictions, and what happens if regulators from one jurisdiction identify concerns with compliance in another jurisdiction. Box 12.1 outlines regulations applying in the aged care sector. DHS has advised that that ‘food safety audits are a more demanding process with respect to the food safety processes than the food safety component (if any) of accreditation audits’ (DHS 2007h).

The Commission understands that protocols are not in place (through which information can be exchanged between state/local authorities and accreditation agencies responsible for commonwealth funding to aged care homes and childcare centres) if concerns arise about food safety in an establishment. There is also no mutual recognition of audits.

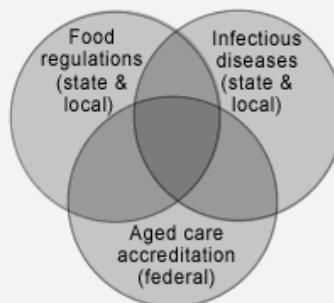
Recommendation 12.1

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:

- **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.**

Box 12.1 Regulation of the aged care sector

Food safety is part of a wider issue of infection prevention and control for establishments in the aged care sector. Commonwealth, state and local governments all have a role in the oversight of aged care homes and their provision of food to residents as illustrated in the diagram. State and local regulators have roles under both the Food Act and Health (Infectious Diseases) Regulations 2001 (Vic.). In addition, aged care facilities receive funding from the Commonwealth Government under the *Aged Care Act 1997* (Cwlth.). To be approved for funding a provider must have accreditation from the Aged Care Standards and Accreditation Agency Ltd (ACSAA).^a



Under Victoria's Food Act, an aged care establishment has responsibility for the safety of the food it serves to residents. It is required to meet food safety regulations applicable to class 1 premises, that is, to have a third party audited, nonstandard FSP. To obtain commonwealth funding, it must also satisfy ACSAA that it is making continuous improvement against 44 accreditation standards, some of which affect infection control. These accreditation standards do not explicitly mention food safety but require compliance with all relevant state and territory legislation and regulations, including the Food Act.

Local government is responsible for inspecting food facilities for compliance with class 1 obligations under the Food Act. Assessors appointed by ACSAA have the dual role of overseeing an establishment's 'continuous improvement' and undertaking audits on which ACSAA bases its accreditation.

Comments received from the sector indicate there is a level of duplication of kitchen audits. The views expressed were that the food audits against the FSP and current food safety standards were exhaustive and that, except for the menu, audits for ACSAA were a duplication by assessors with only general food safety knowledge (Aged and Community Care Victoria 2007).

^a ACSAA is appointed by the Commonwealth Department of Health and Ageing (DHA) under the *Aged Care Act 1997* (Cwlth.).

Source: Based on the Commission's understanding of accreditation and regulation in the aged care sector.

12.3.4 Food safety information support for community groups

Given the complexity of the regulatory requirements, good (less complex and more user friendly) information should be available to help community groups understand their obligations, identify and manage food safety risks, and help reduce the burden imposed by food regulations on community groups undertaking events involving the sale of food (discussed in section 12.5.2). Information is currently available from a number of sources:

- Local councils are likely to be the first point of contact for community groups, but based on a review of council websites, it appears the level of support provided by Victorian councils varies. Some rely solely on the *Food safety program template for food events*, for example, while others such as the City of Greater Dandenong are active in providing education programs and other support to community groups.
- The Food Safety Unit (FSU) of DHS also has a role in providing information on food safety. The FSU does not provide any links on its website specifically for community groups.
- Some resources have been developed at the national level. Examples include *Looking after our kids* (DHA 2002), developed to help school canteens meet the national Food Standards Code introduced in 2002, but which is no longer publicly available in Victoria. FSANZ has also developed a series of fact sheets addressing most food safety issues relevant to community groups. Links to these and other national resources have not been maintained on FSU website because, the Commission understands, they were viewed as transitional resources, and food safety programs now provide all the necessary food safety information.

12.3.5 Implementation and enforcement by councils

A number of differences in the way councils apply food regulations to community activities involving the sale of food have been highlighted. The main differences are registration requirements for temporary premises and kitchens, how councils interpret ‘for sale’ under the Food Act, and the amount of information on food safety regulation provided to groups. These differences have caused confusion and uncertainty for community groups. As noted by AIEH:

Often community groups are confused with various council requirements when applying for an application to sell food because each council has their own procedure. (sub. 10, p. 8)

Enforcement also varies significantly across councils. Considerable disparity in the attitudes of local authorities was noted by participants at the first roundtable of community groups. Martin J Cowling, for example, noted that the City of Melbourne regularly inspects One Umbrella in Melbourne, but in another municipality, the environmental health officer explained that inspection was not necessary because One Umbrella is a community organisation (One Umbrella 2006). Some councils (such as Brimbank City Council) acknowledge priority is not given to enforcement in the community sector (sub. 5, p. 2). It is not clear whether differences in the way councils implement and enforce existing food regulations reflects different assessments of the risks for such events, or simply differences in capacity to meet obligations.

12.4 Effects of food regulation on community activities

Inquiry participants submitted that the administration of Victorian food regulation has had a number of effects on the activities of the community sector:

- the costs of providing community activities has increased, reducing the residual funds raised to support such activities
- changes have occurred as to how fund raising events involving food are conducted
- volunteer resources have been diverted to handle administrative matters
- some activities involving food no longer occur.

Much of the information provided to the Commission on this issue was anecdotal; assuming these examples apply to all community activities is problematic because the Commission heard that some groups ignore the regulatory requirements. A number of characteristics of the community sector, however, suggest that food regulation and its administration may be particularly burdensome for this sector. Two groups stood out as being particularly affected:

- (1) small grassroots organisations such as local sporting clubs and neighbourhood houses, whose key characteristics are their small size, their reliance on a rapidly changing volunteer workforce, and the importance of food to group cohesion and fund raising
- (2) organisations such as charitable groups servicing the needy in the community and providing emergency relief to the disadvantaged, and delivered meals organisations. For a number of these organisations, the regulatory requirements are particularly onerous because they must meet the stricter regulatory requirements that apply to vulnerable persons.

12.4.1 Cost of meeting Victorian food regulations

The cost to the community sector of meeting Victorian food regulations is difficult to estimate because of the many factors affecting it, and the lack of information about the sector and its activities. Factors that influence the total cost to the sector of food regulations include:

- the number of community groups engaged in the 'sale' of food
- the characteristics of community groups and the nature of their activities. As noted, the community sector is highly diverse, comprising large and small groups that undertake a wide range of food related activities. Community groups experiencing high turnover of skilled staff may need to continually invest in understanding and complying with regulatory requirements. While larger groups may encounter initial set-up costs as procedures and systems are established, the ongoing costs will be relatively lower than for a small group

- the regulatory obligations that groups which provide catering to vulnerable community sectors are required to meet, such as preparing their own FSPs and undertaking a third party audit. Costs to this group will be greater than for small local groups such as a church holding a fêete or a sporting club serving food to members
- whether food regulation has indirect effects such as modifying the types of food related activities undertaken by community groups, or deterring people from volunteering
- levels of compliance with food regulation. Costs to community groups who do not comply with food regulation will obviously be low or zero, although some may have devoted time to understanding the requirements
- the cost of food safety incidents to affected individuals.

The Commission is unaware of previous attempts to quantify the costs of food regulation to the community sector. To estimate the costs to this sector of meeting Victorian food regulations, the Commission (together with Our Community) undertook an online survey of community groups about the impact of food regulations (box 12.2).

The survey asked respondents to estimate the costs of meeting existing food regulation requirements, with costs defined to include financial outlays on staff, equipment and training, and where applicable, the dollar value of unpaid time. On the basis of the 56 responses received from Victorian community groups, the Commission estimated that it would cost community groups between \$330 and \$764 per year to comply with Victorian food regulations. The lower figure reflects the costs of ‘just’ understanding the regulatory requirements and completing and submitting the relevant paperwork to councils.⁸ The upper figure reflects the annual costs to a group of understanding and complying with regulatory requirements, plus the costs of training to become an FSS.⁹ No allowance has been made for any changes to premises (such as installation of equipment) or activities because of the need to comply with food regulation. This upper figure also assumes that the group uses the standard template and thus does not pay for third party audits.¹⁰

⁸ The lower cost assumes that a community group member spends six hours a year on administrative activities relating to food regulation and that councils do not charge registration fees. Based on the methodology recommended by the VCEC (2006a) a rate of \$55 per hour has been used to cost staff time in this report. Applying this figure yields an annual cost of \$330. The actual time needed to meet regulatory requirements will vary depending on the scale of events, the types of food sold and the resulting complexity of the FSP. The lower figure also assumes that no formal training for volunteers is required.

⁹ According to Infocus Management Group (sub. 38, p. 5), training costs are \$200–400, not including the cost of being absent. It is assumed that due to staff turnover, each community group trains one FSS per year.

¹⁰ Infocus Management Group (sub. 38, p. 5) stated that an annual third party audit would cost around \$400, excluding any staff time preparing for and following up the audit.

Box 12.2 Online survey of community groups

Between December 2006 and January 2007, the Commission undertook an online survey of the effects of food regulation on community groups via the Our Community website, an online resource for community and not-for-profit groups. People accessing the website were invited to complete a brief survey (22 questions). The questions sought information about the respondent's community group, estimates of the administrative and compliance costs of meeting the regulations (including the value of time spent understanding and meeting the requirements), information about the level of compliance with regulatory requirements, and suggestions for improvement. Non-Victorian groups were also invited to participate to provide a basis for comparison.

Analysis of Victorian responses

Eighty-three people completed the survey, with 56 from Victoria. More than half the respondents represented groups with less than five staff (paid and unpaid), but varied in size of membership, funding base and focus areas. While the small number of responses makes it difficult to interpret the results, the survey highlighted:

- that the number of hours devoted to meeting food regulations does not increase in proportion to the income generated by groups, indicating that the regulatory burden is relatively higher for small groups
- that the reported annual costs of meeting food regulations vary from less than \$100 for some groups to several thousand dollars, with most groups spending between \$101 to \$750 per year (table below).

Costs to community groups of meeting food regulations

\$ Cost ^a	<100	101–300	301–750	751–1500	1501–3000	>3000
Number of organisations	6	16	18	5	5	6

^a Cost denotes financial outlays related to Victorian food regulations for staff, equipment and training, and where applicable, the dollar value of unpaid time as assessed by the respondent.

Just over 70 per cent of respondents indicated that their group complied with regulations all of the time (23 per cent) or most of the time (47.3 per cent). A further 20 per cent complied some of the time, while less than 3 per cent said they never complied, and 7 per cent said they were unaware of the food regulations.

Opinions on current regulation

Most respondents considered Victorian food regulation to be excessive. Fifty per cent of Victorian groups felt regulation was 'excessively burdensome', but only one non-Victorian respondent felt this way.

(Continued next page)

Box 12.2 Online survey of community groups (cont.)

Respondents were asked to indicate whether food regulation had led them to alter their activities. Over a quarter of Victorian respondents indicated that because of the costs of regulation, they had cancelled or reduced the number of food related events they organised. Common problems identified were an inability to ensure trained volunteers, approved environments or appropriate equipment. None of the groups had faced legal claims relating to a food incident.

Suggestions for improvement

The most frequent suggestions were to improve information and resources, and to provide free training (69 per cent) or to abolish the regulations for community groups (59 per cent). Cost reduction appeared to be a comparatively minor concern, with only 14–18 per cent of respondents suggesting cost reducing improvements. These responses suggest there is a great need to make information and training accessible to community groups as a primary way of addressing food safety. These issues are addressed in section 12.5.2 and more generally in section 10.2.

Source: Our Community 2007.

As noted, councils do not publicly report on how many premises (including community activities) they register. In an effort to examine the total administrative costs of Victorian food regulations, the Commission has assumed that there are around 17 400 community events or premises registered in Victoria (section 12.2).

Based on these estimates for community groups and the average costs of complying with food regulations (\$330–764), it further estimates that complying with Victorian food regulations costs Victorian community groups \$5.7–13.3 million per year. The Commission sought feedback on these estimates but received no additional input.

It is likely that the burden of food regulation falls disproportionately on small community groups. Participants at a community group roundtable in December 2006 argued that the preparation of FSPs involved excessive paperwork, even with the simplified events template. This work was viewed as disproportionate to the size of the event for many of the activities of smaller organisations (such as local sporting clubs) or at the unit level of organisations such as the Red Cross. This concern was also shared by some councils, with Brimbank City Council arguing:

The burden on these groups in completing the required FSPs, training volunteers, paying registration fees and on council to process applications and inspect the activities (mostly on weekends) exceeds by far the risk of the activity causing a food safety issue. (sub. 5, p. 2)

It was also suggested that many smaller organisations are focusing on meeting the requirement to complete the template without necessarily absorbing the underlying food safety message. This was the view of the City of Stonnington in relation to food businesses more generally:

Rather than utilising the template document as a standard operating procedure manual, as was intended, many proprietors see the FSP purely as a record keeping task. (sub. 25, p. 3)

The costs imposed by Victorian food regulation need to be viewed in the context of the total regulatory burden faced by organisations in the community sector. There are also compliance responsibilities under a range of national, state and local laws. Significant among these are occupational health and safety and workers' compensation. John Minchinton from Meals Victoria, for example, noted at the first community group roundtable:

Our small business probably has four or five different auditors come through the place every year for various different things, and each of those auditors wants to see a paper trail. In my office now I have a wall ... full of folders of paper trail to show those auditors we're actually keeping records. (Meals Victoria 2006)

12.4.2 Broader effects of food regulation

The Commission's estimates of the total administrative costs associated with food regulations do not take account of the broader effects of regulation on community groups. Inquiry participants considered that Victorian food regulation has had a number of broader effects on community groups, particularly on volunteering and on the overall vitality of the community sector:

- Some groups reported that they conduct some events differently, including paying outside caterers and keeping events private rather than engaging more widely with the community. In other cases, groups have stopped undertaking some activities altogether—for example, the Walwa Golf Club (box 12.3) and the Wangaratta Cycling Club no longer run a Saturday morning barbecue fund raiser (sub. 61, p. 1).
- The Commission also heard that the more onerous regulations applying to class 1 food premises are inhibiting the ability of kindergartens to undertake early lessons in the handling of food (sub. DR146, p. 3 and box 12.4) and of Home and Community Care funded Planned Activity Groups to undertake food making activities which would 'affirm older peoples' capabilities, talents and culture' (sub. DR145, p. 2).
- Negative and positive impacts on volunteers were reported—for instance, Phil Clarke (sub. 34, p. 2) indicated that some volunteers are frustrated by the need to meet regulatory requirements which they perceive to be overly

bureaucratic and which add little to food safety. But Kathy Landvogt from Good Shepherd Youth and Family Service noted that the training requirements of food regulation can provide a pathway to education and employment opportunities for young volunteers (Good Shepherd Youth and Family Service 2006).

- The Commission also heard that some groups and individuals ignore the regulations. While the level of noncompliance is unknown, the Commission heard anecdotally that it is widespread among smaller groups. The Our Community online survey for the Commission indicated that 30 per cent of respondents did not comply with the regulations, or complied only some of the time. Such noncompliance (which is encouraged when organisations that want to comply encounter regulations that are just ‘too hard’ coupled with the perception that ‘no one’s watching’, as noted by Shelley Mulqueen (sub. DR76, p. 1)) undermines the intent of the regulations and brings them into disrepute.

Box 12.3 **Walwa Golf Club**

Walwa Golf Club in north-eastern Victoria has a playing membership of 20 and a further 80 social members. The club relocated 15 years ago and established new premises, including a new course and club facilities, following a fire at the previous premises. The new club house included a kitchen with stainless steel surfaces and new refrigeration and cooking appliances.

A member of the local community cooked on Saturday evenings, serving up to 40 meals to members and their guests. They enjoyed a variety of occasions, such as fish nights, depending on what had been sourced from Melbourne markets or local suppliers.

The club rooms are air conditioned and safely positioned, and are an ideal function facility for local celebrations. The club took advantage of these attributes to raise funds to help meet the \$300 000 cost of its new facilities.

When amendments to the food regulations came into effect, the club discovered that it would need to spend money on the kitchen to comply, including installing a separate hand washing sink. Together with the cost and inconvenience of training and other compliance requirements, the club decided to cease its Saturday meals and the hiring of the club rooms as a function venue.

After play on Saturday evening, members and visitors can now purchase only prepackaged foods such as chips and biscuits. Members can, however, self cater in the club facilities by bringing along precooked foods or cooking their own food using club facilities. According to Walwa Golf Club, members are at greater food safety risk from cooked food being brought to the venue and shared by members or from less healthy food being consumed. A fund raising source is also no longer available to the club because of concerns about food regulations.

Source: Straughton 2007.

BOX 12.4 Food regulations in preschools

Kindergarten Parents Victoria provided the Commission with two examples that illustrate the potential impact of food regulations on some community activities.

Kingsville South Kindergarten

Following inspection by Hobsons Bay City Council^a this kindergarten has been instructed to not supply milk to the children unless it registers the kitchen (as class 1), makes the appropriate modifications to the kitchen, and complies with food safety regulations, for example, obtaining a food handling certificate.

A cooking program at the centre, which is seen as a valuable and enjoyable experience for children and which provides many benefits to the children such as mathematics and measuring, social skills (sharing, taking turns), communication and literacy, as well as food awareness and good hygiene, was also at risk of not being able to continue. An agreement between the council and the kindergarten has, however, allowed this program to continue on the proviso that the required ingredients are provided by the children, not the centre, which means the kindergarten has less control over the quality and safety of the ingredients used in the program than if the centre had purchased and stored the ingredients.

Hobsons Bay Kindergarten

This kindergarten has offered fruit and milk to children in the program. Fresh fruit is supplied on a weekly basis by the local greengrocer and is of high quality. Because many of the children attending the centre come from lower socioeconomic backgrounds, the kindergarten has continued this practice to meet the needs of these families and as a service to the community.

The kindergarten's decision to supply fruit rather than rely on children to bring it in was made because it ensured a higher quality and greater range of fruit. Families pay a fee of \$5.00 per term for this service. The kindergarten has now been instructed by Hobsons Bay City Council to cease this practice because it is breaking food safety regulations (the kitchen doesn't meet requirements and no-one has a food safety handling certificate). The committee and staff are very concerned that removing this service to families whose children attend the centre is detrimental to a disadvantaged community.

^a Hobsons Bay City Council explained its position to the Commission, noting that council is meeting its obligations under the regulations and endorsing the need for those regulations (sub. DR151, pp. 1-2).

Source: Kindergarten Parents Victoria (sub. DR146, p. 4).

Notwithstanding the concerns expressed to the Commission, there has been a substantial increase in the number of events registered by community groups. Surveys of councils undertaken by DHS in mid-2004 and at the beginning of 2007 suggest registrations of temporary premises over that time have almost doubled, from around 13 000 to approximately 20 000 (DHS 2007g). The surveys show that community activities comprised around 65 per cent of the

total number of temporary premises in early 2007 (13 000 premises), compared with around 75 per cent in mid-2004 (9750 premises). This indicates that the number of registered temporary community activities increased by one third over the 30 months, although this may be an overestimation of the actual growth in temporary registrations by community groups.

Caution should be applied to the interpretation of these figures. Apart from possible limitations of the data, the growth in temporary registrations may be due to more active enforcement by councils and/or greater awareness and compliance on the part of community groups. And the nature of the activities undertaken and the capacity of groups to raise funds may be affected in ways the data does not reveal. Some of this strong growth is likely to reflect greater awareness of, and compliance with, registration requirements and, thus, does not undermine the argument that regulation has discouraged food related community activities as the anecdotal evidence indicates.

The Commission's draft recommendations to reduce the burden imposed on community groups were welcomed by many participants from the community sector. Good Shepherd Youth and Family Service observed:

... it is worth saying that it is refreshing and important that the Commissioners are able to place the risk management issues in food safety within a wider context of social capital and community cohesion in general. The Commission offers important leadership in balancing our increasingly risk-averse society's focus on very occasional disasters, against the invisible mountain of daily good that is done with food in the community. (sub. DR78, p. 1)

Formulation of the final recommendations reflects input received from a broad range of participants, including community groups. The effects for this sector will still be a significant reduction in the burden of regulation, discussed in the next section.

12.5 Effects of proposed reforms

The administrative costs of regulation for the sector are difficult to estimate but are considered to be \$5.7–13.3 million (section 12.4.1). These estimates exclude any allowance for possible indirect effects such as groups stopping or altering their food related activities and discouraging volunteering.

Evidence suggests that the highest risks in community activities relate to food service to vulnerable persons in hospitals, aged care facilities and child care centres. Irrespective of whether they are run by commercial or community groups, these businesses are subject to stricter regulatory requirements than most community activities. Large and complex community food events are also relatively high risk, and are subject to the same regulatory requirements as smaller and simpler community food events such as sporting club events, sausage sizzles,

cake stalls, and school fêtes. It seems, therefore, that there is scope to reduce the regulatory burden on low risk community activities and encourage a greater focus of limited council and community resources on higher risk activities such as large and complex food events.

12.5.1 Simplifying regulation for community activities

Several sources of confusion and inconsistent council approaches are apparent, including the use of event FSP templates, exemptions from FSS requirements and council approaches to enforcing regulatory requirements. Chapter 9 outlined a number of reforms to food regulation to reduce the burden imposed by Victorian food regulations without undermining the objectives of the regulations. The Commission considers most of the confusion and inconsistencies would be resolved by adopting these measures. Outstanding issues for the community sector are addressed in this section.

Consistent with the general principle that regulation should focus on areas of high risk to health and safety, the Commission has not put forward specific changes to food regulations that would apply only to community activities. Instead, food activities in the community sector would receive the same regulatory treatment as commercial operations. A further regulatory instrument—information and education—is added for community activities (table 12.3).

Proposals outlined in the draft report were for a classification of food premises based on risk that acknowledged past performance as well as inherent safety risk of the food. The Commission heard concerns from DHS (sub. DR149, p. 7) and a number of councils including, for example, the City of Stonnington (sub. DR118, pp. 9–10) that risk classification should be based solely on inherent food risk. The final recommendations (chapter 9) retain the present classification into two classes, but a distinction between medium and low risk within class 2 is made, based on past performance as well as inherent food risk.

As is the case for businesses, FSP and FSS requirements would be removed for class 2 premises under the proposed framework, and mandatory annual council inspections of all registered food premises would be replaced by a system of lower frequency inspections targeted at specific high risk areas. A distinction between low and medium risk activities would enable the large number of low risk activities undertaken by community groups (such as school fêtes, sausage sizzles and catering by community sporting clubs) to face minimal regulatory requirements. Medium risk activities such as food festivals drawing large crowds would face a lighter regulatory burden than under current arrangements, but would be subject to closer scrutiny by councils than low risk activities, in line with a risk based approach to regulation. High risk food businesses operated by community groups and catering to vulnerable populations would continue as class 1.

Table 12.3 Assigning regulatory instruments according to food safety risks for community activities

<i>Instruments</i>	<i>Class 1 food premises</i>	<i>Class 2 food premises</i>	
Food safety risk	High	Medium	Low
Examples	Hospitals, aged care facilities, child care centres, kindergartens, meals on wheels	Large food fairs, school canteens, senior citizens clubs	Cake stalls, sausage sizzles, school fêtes, sporting clubs
Registration	Yes, but with simplified paperwork requiring business details or indicating any changes in ownership and activities	Yes, but with simplified paperwork requiring details about food to be provided and the organisation of the event	Yes, but with simplified paperwork requiring details about food to be provided and the organisation of the event
Food safety program	Yes, customised food safety program to be developed and implemented	Replaced by certification requiring community groups to: (1) identify the person responsible for food safety and (2) certify that they understand and apply basic food safety principles	Replaced by certification requiring community groups to: (1) identify the person responsible for food safety and (2) certify that they understand and apply basic food safety principles
Food safety supervisor	No requirements additional to those set out in the food safety program	No requirements additional to those set out in the Food Standards Code	No requirements additional to those set out in the Food Standards Code
Record keeping requirements	Yes, as required under the customised food safety program	No requirements additional to those set out in the Food Standards Code (record of suppliers)	No requirements additional to those set out in the Food Standards Code (record of suppliers)
Council inspection	As set out in published council risk management strategies	As set out in published council risk management strategies	As set out in published council risk management strategies
Third party audit	Compulsory (with the audit frequency based on performance)	Not required by legislation	Not required by legislation requirement
Food sampling	High frequency, as set out in published council risk management strategies	Moderate frequency, as set out in published council risk management strategies	Lower frequency, as set out in published council risk management strategies
Information and education	Resources targeted at specific activities such as kindergartens	Resources targeted at specific risks such as complex community events or those run by culturally diverse groups	Basic information on the key rules of food safety applicable to a broad range of community activities

The proposed changes to food regulation outlined in chapter 9 would reduce the administrative burden of food regulation for the community sector through:

- simpler registration requirements
- removing FSP requirements for class 2 food premises
- removing FSS requirements for class 2 food premises
- reduced record keeping requirements for class 2 food premises.

An education and information strategy for the community sector would be developed to help community groups conduct safe food events.

Such changes will reduce the administrative burden of food regulation on councils and community activities because they allow councils to focus regulatory effort in areas where food risks are greatest, thereby improving overall food safety outcomes. In some respects, the changes proposed by the Commission also reflect what is happening in practice. As noted in section 12.3.5, a number of councils do not inspect community events because they consider such events to be low risk and because many are held on weekends when the costs of sending out environmental health officers would be relatively high. Many small community groups are also choosing to ignore the regulatory requirements (section 12.4.2), and councils appear to adopt different approaches to actively encouraging compliance.

Under the Commission's proposals, the regulatory requirements for high risk community activities (class 1 premises) will remain in line with those for comparable commercial businesses and will be higher than for other community activities.

The Commission's proposals for simplifying food regulation would have the greatest effect on low risk community activities such as sporting club events, sausage sizzles, cake stalls and school fêtes. Organisers of these events would only need to certify that they understand basic food safety requirements and complete simplified registration paperwork. There would be no FSP or other regulatory requirements, but information and training resources would be available to meet community groups' needs. However, councils could impose training orders or require an FSP if inadequate food safety practices were evident.

Benefits of the proposed changes include reduced administration costs for community groups and a reduction in the adverse effects on activities that have been attributed to the current regulations. Under the proposals, information and education will be the preferred instrument to mitigate food safety risk in the sector. The Commission considers that appropriate information and education resources, in line with suggestions received from community groups, can be at least as effective as alternative instruments in managing food safety risk. The

costs of the proposal will be the additional resources associated with developing information and training resources to enhance food safety.

The cost savings from the proposed changes reflect the estimates developed in section 12.4.1. The Commission anticipates that implementing the proposed changes will see community groups conducting temporary food events, or operating class 2 fixed premises, spending half the time they currently spend meeting the present regulations. Time will instead be spent obtaining relevant information and notifying councils of the type of event to be held, and will result in savings of between \$2.9 and \$6.7 million for these groups in the first year. These estimates are considered to be conservative because actual savings may be greater than those assumed, with some groups making much greater savings. And the savings for groups involved in large food festivals will vary significantly depending on the present practices of local governments. An additional advantage will be greater certainty regarding the intended application of the regulations.

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 in chapter 9 and summarised in table 12.3.

At the roundtable consultation held with community groups after the release of the draft report, groups such as Our Community, Sports Assemblies Victoria, One Umbrella and Good Shepherd Youth and Family Service endorsed the draft recommendation to simplify and lighten the regulatory burden on fund raising and other community events. Good Shepherd Youth and Family Service noted in its second submission:

The proposed changes, if enacted, will mean that a significant amount of the administrative burden on these organizations will be removed. They will make it much easier for neighbourhood houses and community groups to respond to community needs such as overcoming social isolation, settlement of emerging communities, and peer support in life transitions and crises. (sub. DR78, p. 1)

As noted, while some councils support the need for greater clarity and consistency in the application of food regulations to community events, they also had concerns about how the classification proposals outlined in the draft report would apply in practice (City of Whittlesea, sub. DR114, p. 9; Hume City Council, sub. DR97, p. 7). Others, including City of Stonnington (sub. DR118, p. 9) and City of Yarra (sub. DR132, p. 4), reiterated assessments that caution is needed when reducing regulation for community groups because

of risk factors for some events. Brimbank City Council (sub. DR130, p. 3), however, was unreserved in its support for the recommendation.

Implementation of the proposed changes also raises issues about the expertise and capacity of local government environmental health resources to undertake the associated risk assignment responsibilities which are dealt with in chapter 11.

12.5.2 Supporting education and information for community activities

Under the Commission's proposed changes to Victorian food regulations, responsibility for ensuring food safety remains where it currently resides—with the organisations providing food.¹¹ State and local governments also have a responsibility to ensure that businesses and community groups have access to training opportunities and information about food safety hazards and ways to minimise them.

The Commission's proposals would place more of a responsibility on councils to identify potentially higher risk community activities, such as large scale community food events. While these events would be subject to the same requirements as simple low risk food events, councils would need to work with the organisers of higher risk activities to ensure food safety risks were addressed. Some councils already operate in this manner—for example, City of Greater Dandenong has developed a set of awareness raising and educational procedures for dealing with complex food events (box 12.5). The Commission understands that Dandenong has taken this approach because it has given food safety a higher priority than some other councils and because it has a particularly large representation of culturally and linguistically diverse groups holding community food events.

Although information on food safety is provided at the national, state and local levels, the Commission considers there is ample scope to improve the range of information available, the consistency and quality of that information, and the means by which it is delivered.¹² There are a number of options for improving support to community groups, including developing a coordinated resource centre for these groups to access information on how to conduct a safe food event. Information available from the centre would include resources to enable risk management at community events that involve the sale of food, including:

- fact sheets detailing the essentials of safe food handling, including personal hygiene and the danger temperature zone

¹¹ As noted in chapter 3, ss11–12 of the Food Act stipulate that the operators of food premises have a responsibility to ensure that food for sale is safe and suitable for human consumption.

¹² Chapter 10 discusses information and education strategies for businesses and consumers.

- event kits for the safe conduct of events such as cake stalls, sausage sizzles and plated meals, which provide a checklist of good food handling practice appropriate to a particular event
- fact sheets identifying hazardous foods, that is, those for which the danger temperature zone applies
- fact sheets detailing safe transport and storage procedures for events where this is necessary
- fact sheets detailing how to provide ingredient information for those with allergen sensitivities and manufacture/use by labelling
- posters for display at an event to remind food handlers of safe practices
- translations for groups from culturally and linguistically diverse backgrounds
- links to sources of further assistance in managing food safety risk at community events.

BOX 12.5 Best practice food regulation for community groups

The City of Greater Dandenong has established risk based policies and procedures that enable community groups to hold quite complex food events safely. Each year around 18 food festivals draw attendances of more than 200 000 and most of the events involve organisations from culturally and linguistically diverse backgrounds.

Council requires groups who want to hold a stall at an event to attend an information night to explain food safety regulatory requirements such as registration, FSPs and FSS requirements. The council has developed a compact disc that provides food safety and compliance information relevant to all food businesses, including those from the community sector, in a friendly and accessible format. The council also considers the track record of community groups when advising on the regulatory requirements that need to be met.

Sources: City of Greater Dandenong (sub. 60) and discussions with council officers.

Inquiry participants and responses to the Commission's joint survey of community groups suggest that the community sector needs additional information and support. A common view from the community sector is that simple information is likely to be more effective in conveying messages than large volumes of complex material. Developing improved resources for community activities can also be a low cost and effective way to raise awareness of food safety issues and strategies for addressing risks. The knowledge base necessary to develop these resources already exists, and the costs of developing further resources will depend on their nature and on the media used. Documents can be made available on websites, and more expensive formats such as video versions of the fact sheet topics are possible, but given the intended audience and the limited time volunteers have, the most effective format for delivering key messages is also likely to entail the lowest cost.

Whatever the form or types of information provided, there is a strong case for involving community groups in their development to ensure the messages are accessible to the sector. Importantly, once these resources are developed, they should be available through a well publicised central location to ensure community groups are aware of their existence. Involvement of peak bodies within the sector would be a low cost way of disseminating that information.

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 mechanisms to be developed for community events, with an emphasis on them being accessible and user friendly**
- **outlining arrangements for funding these activities.**

This recommendation was widely supported by participants. MAV, for example, endorsed the recommendation, noting:

These recommendations will provide councils with greater tools and examples to provide to community organisations undertaking activities involving the sale of food. (sub. DR128, p. 21)

AIEH stated:

The FSIG [Food Safety Interest Group] supports the recommendation for developing an education and information strategy for the community sector. This has long been overdue with many community groups being encouraged to host events that result in mass gatherings, without the skills and knowledge to assist in providing safe food. (sub. DR104, p. 5)

Participants offered considered suggestions about how the recommendation should be given effect. Good Shepherd Youth and Family Service said it was important to:

... promote positive aspects of training not just use it as a 'stick': although it is not helpful to make it compulsory to have a trained person in attendance at all activities, training is generally seen as useful, especially for responsible staff

members to ensure quality services, and for volunteers as an opportunity for skill development. (sub. DR78, pp. 2–3)

Golden Plains Shire emphasised that local governments should be involved in the dissemination of any information produced (sub. DR70, p. 5). Good Shepherd Youth and Family Service also considered it important that training be provided free of charge to small community groups and targeted at:

... key individuals (such as neighbourhood house volunteers) in the harder-to-reach community groups, as they will take those skills into other community spheres such as cultural groups, i.e. positive flow-on effects. (sub. DR78, p. 2)

12.5.3 Outstanding issues

Community groups raised a number of specific concerns about the way food regulations are implemented. These include the interpretation of ‘for sale’, the status of domestic kitchens used to produce items intended for sale, and the impact of the regulations on the activities of seniors groups and kindergartens. The proposals to reduce regulatory requirements on food businesses, including community groups, will resolve many of these concerns—for example, the need for a better definition of ‘for sale’, or the status of domestic kitchens, become less significant once the burden of regulation has been lightened.

Specific concerns about the operation of senior citizens clubs, including those on local government property, have been addressed by the recommendation to adopt the national risk categories, including for vulnerable persons, outlined in chapter 9 (section 9.2.2) and noted in section 12.3.1. Councils will be able to match regulatory effort and support with risk assessed activities on a case-by-case basis. Similar activities conducted by Home and Community Care funded Planned Activity Groups would continue as class 1 premises requiring third party audited FSPs.

Applying the national definition of service to vulnerable populations (standard 3.3.1) would not, however, provide relief for preschools from the obligations applying to class 1 premises under the Food Act, unless the only food provided was pasteurised milk and soy.¹³ The resulting requirement that preschools prepare a third party audited FSP represents a heavy burden for preschools and there is some evidence that it has resulted in the limitation of low risk food related activities that benefit the children. As noted, kindergartens are mostly small community based activities that are likely to be more sensitive to regulatory burdens than larger scale activities such as child and aged care centres. The Commission is aware of at least one case where a program to provide fresh

¹³ Standard 3.3.1 states that the standard ‘does not apply to food businesses that only serve milk as or in a beverage’.

fruit to children was discontinued due to advice that the kindergarten would need to develop a third party audited FSP (box 12.4).

The cost–benefit analysis of *The National risk validation project* (FSA & MEC 2002) that underpins standard 3.3.1 does not distinguish between the different circumstances of particular groups; for example, the FSANZ assessment process noted the attendance profile at different child care facilities but did not explicitly consider the associated costs and benefits of FSPs for different types of formal child care such as preschools (FSANZ 2005c, p. 18) although family day child care was excluded because of a low benefit to cost ratio (FSANZ 2005c, p. 17).

The Victorian Government may therefore want to consider measures to address the unintended consequences of applying more stringent regulatory requirements to kindergartens. Options include providing assistance to help kindergartens comply with food regulations.

Given the desirability of ensuring national consistency, the Victorian Government could consider (in the short term) assisting kindergartens to meet their regulatory requirements. At the same time, the Government should seek to raise this issue at the national level to ensure the case for including kindergartens under the national standard applying to vulnerable populations is supported by adequate evidence on the benefits and costs.

Recommendation 12.4

That the Victorian Government address impediments to the kindergarten activities that have resulted from class 1 food regulations:

- **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.**

Appendix A: Consultation

A.1 Introduction

In keeping with its charter to conduct extensive consultations during public inquiries, the Victorian Competition and Efficiency Commission advertised the inquiry into food regulation in Victoria in the major metropolitan and regional newspapers in September 2006. Following the Treasurer's announcement of the terms of reference on 14 September 2006, the Commission published an issues paper in October 2006, which outlined:

- the scope of the inquiry
- how to make a submission
- the Commission's consultation processes
- the inquiry timetable.

The issues paper invited inquiry participants to make submissions. The Commission received 63 submissions before the release of the draft report. A further 89 submissions were received after the publication of the draft report, bringing the total number of submissions to 152 (section A.2).

The Commission held three round table meetings in December 2006 and two round table meetings in May 2007 after the release of the draft report with a range of participants from business, community and government organisations (section A.3). The Commission also held discussions with a wide range of organisations, which included targeted consultations in the regional cities of Colac, Warrnambool and Traralgon (section A.4).

The Commission has appointed consultants and contractors to assist with aspects of the inquiry:

- Inquit Pty Ltd prepared a discussion paper on the impact of international regulation on the Victorian food industry.
- Dench McClean Carlson prepared a paper on the impact of food regulation on the dairy industry.
- KPMG surveyed food businesses to identify and measure the cost of food regulation in selected industries and identify where and how the regulatory burden could be lessened.

To encourage public debate on the draft report, the Commission made these documents available on its website (www.vcec.vic.gov.au). While the views presented are those of the consultant or contractor, the Commission's position on the issues covered in these reports is reflected in this final report.

A.2 Submissions

The invitation to make submissions was open to members of the public, community groups, employees, businesses, industry associations, Victorian Government departments and agencies, and local government. The Commission received 152 submissions (table A.1). The submissions are public documents that can be viewed on the Commission's website.

Table A.1 Submissions received

<i>Participant</i>	<i>Submission no.</i>
Chapman, N.R.	1
McGorlick, Sue	2
Mitchell Shire Council	3
Grant, Graham	4
Brimbank City Council	5
Kernow Environmental Services Pty Ltd	6
Coles Group Limited (formerly Coles Myer Ltd)	7
Lorenzi, Dianne	8
OZ Bin Cleaning	9
Australian Institute of Environmental Health—Victorian Branch	10
Joe White Maltings Pty Ltd	11
City of Greater Dandenong	12
City of Port Phillip	13
Garry, Patrick	14
Parents Association of St Bede's Primary School	15
City of Melbourne	16
Australian Food and Grocery Council	17
Moonee Valley City Council	18
Knox City Council	19
Cadbury Schweppes	20
Ward, John	21
Australian Medical Association—Victoria	22
Dairy Australia	23
Victorian Rock Lobster Association	24

Table A.1 **Submissions received** (continued)

<i>Participant</i>	<i>Submission no.</i>
City of Stonnington	25
Australian Dairy Products Federation	26
Regional Development Victoria	27
Wellington Shire Council	28
City of Wodonga	29
Pierotti, Roger	30
City of Whittlesea	31
Australian Industry Group—Victoria	32
Maroondah City Council	33
Clark, Philip S.	34
Australian Retailers' Association	35
Restaurant & Catering Victoria	36
Wyndham City Council	37
Infocus Management Group Pty Ltd	38
Flour Millers Council of Australia	39
Victorian Farmers Federation	40
Municipal Association of Victoria	41
City of Yarra	43
Jackson's on Middle Park	44
Jackson's on Middle Park (supplementary to sub. 44)	45
Good Shepherd Youth and Family Service	46
Australian Beverages Council	47
Department of Human Services	48
CHOICE	49
Woolworths Limited	50
Moreland City Council	51
George Weston Foods Limited	52
Consumer Affairs Victoria	53
Obesity Prevention Policy Coalition	54

Table A.1 **Submissions received** (continued)

<i>Participant</i>	<i>Submission no.</i>
MasterFoods Australia New Zealand	55
Department of Primary Industries	56
VicHealth	57
Wilbur-Ham, Hugh	58
Ward, John (supplementary to sub. 21)	59
City of Greater Dandenong (supplementary to sub. 12)	60
Wangaratta Cycling Club Inc.	61
Apostle Whey Cheese	62
Confectionary Manufacturers of Australasia Limited	63
Mark, G.	DR64
Koberle, T.	DR65
Argyropoulos, Salmone	DR66
Kennedy, Joan	DR67
Macarow, V.	DR68
Nolan, Robyn	DR69
Golden Plains Shire	DR70
Central Goldfields Shire Council	DR71
New, Phyllidia	DR72
Boxer, Bruce	DR73
Gilkes, Glynis	DR74
Coles Group	DR75
Sports Assemblies	DR76
Moreland City Council	DR77
Good Shepherd Youth & Family Service	DR78
Surf Coast Shire Council	DR79
Cadbury Schweppes	DR80
City of Melbourne	DR81
City of Maribyrnong	DR82
Glen Eira City Council	DR83

Table A.1 **Submissions received** (continued)

<i>Participant</i>	<i>Submission no.</i>
Knox City Council	DR84
Restaurant & Catering Victoria	DR85
Lembanova, Jana	DR86
Hells Breath	DR87
Child Care Centres Association of Victorian Inc.	DR88
Moonee Valley City Council	DR89
Mikakos, Jenny (MP)	DR90
Dingle, Kiera	DR91
Marshall, Beryl	DR92
Australian Quarantine and Inspection Service	DR93
Colac Otway Shire	DR94
Flour Millers Council of Australia	DR95
Ward, John	DR96
Hume City Council	DR97
Kernow Environmental Services Pty Ltd	DR98
Pierotti, Roger	DR99
Australian Retailers' Association	DR100
CFT International Pty Ltd	DR101
Fonterra Australia Pty Ltd	DR102
National Heart Foundation	DR103
Australian Institute of Environmental Health–Victoria Branch	DR104
Focus on Food	DR105
Australian Food and Grocery Council	DR106
City of Ballarat	DR107
Hobsons Bay City Council	DR108
Loddon Shire Council	DR109
Woolworths Limited	DR110
Victorian Rock Lobster Association	DR111
Rural City of Wangaratta	DR112

Table A.1 **Submissions received** (continued)

<i>Participant</i>	<i>Submission no.</i>
Obesity Policy Coalition	DR113
City of Whittlesea	DR114
Horsham Rural City Council	DR115
Lingham Foods Pty Ltd	DR116
National Australian Institute of Food Safety	DR117
City of Stonnington	DR118
Accommodation Getaways Victoria	DR119
National Retail Association	DR120
Yumm Dressings	DR121
Infocus Management Group	DR122
CHOICE	DR123
Latrobe City Council	DR124
Croplife	DR125
VicHealth	DR126
Koshi Sushi	DR127
Municipal Association of Victoria	DR128
The Smoke House	DR129
Brimbank City Council	DR130
Australian Medical Association (Victoria) Limited	DR131
City of Yarra	DR132
Jenkins, Simon	DR133
Australian Beverages Council	DR134
Dairy Australia	DR135
Peerless Foods	DR136
Laucke Flour Mills	DR137
City of Monash	DR138
Consumer Affairs Victoria	DR139
Coles Group	DR140
Bakers Delight	DR141

Table A.1 Submissions received (continued)

<i>Participant</i>	<i>Submission no.</i>
Flour Millers Council of Australia	DR142
George Weston Foods Limited	DR143
Department of Primary Industries	DR144
Aged and Community Care Victoria	DR145
Kindergarten Parents Victoria	DR146
Moreland City Council	DR147
Craig Bruckner	DR148
Department of Human Services	DR149
Baking Industry Association of Victoria	DR150
Hobsons Bay City Council	DR151
Department of Innovation, Industry and Regional Development	DR152

A.3 Round tables

The Commission held three round tables in December 2006 and two round tables meetings in May 2007 after the release of the draft report with a range of business, government and community organisations to discuss the effectiveness of the regulatory environment and the development of best practice options. Table A.2 lists participants in the business round table held on 6 December 2006.

Table A.2 Business round table participation

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Joanne Butterworth-Gray	Chief Executive Officer	Victorian Wine Industry Association
Helen Dornom	Manager Technical Issues Group	Dairy Australia
David Edwards	Deputy Chief Executive Officer	Australian Retailers' Association
Graham Evans	Chair	VCEC
Fiona Fleming	Consumer & Regulatory Affairs Manager	George Weston Foods Limited
Tony Gentile	Chief Executive Officer	Australian Beverages Council (and Victorian Beverages division)
Wendy Jones	Chief Executive Officer	Restaurant and Catering Victoria

Table A.2 Business round table participation (continued)

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Robert Kerr	Commissioner	VCEC
Keith Lloyd	Policy Advisor (Economics)	Victorian Farmers Federation
Ross McGowan	Executive Director	Seafood Industry Victoria
Paddy O’Sullivan	General Manager Public Affairs	Australian Hotels Association Victoria
Tanya Pittard	Manager—Chicken Meat Group	Victorian Farmers Federation
Dr David Roberts	Deputy Chief Executive	Australian Food and Grocery Council
Chris Turner	Director	Inghams Enterprises
	President	Australian Chicken Meat Federation
Alice Williams	Commissioner	VCEC
Robert Williams	Group Compliance and Regulatory Affairs Manager	George Weston Foods Limited

Table A.3 lists participants in the community round table held on 8 December 2006.

Table A.3 Community round table participation

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Martin Cowling	Chief Executive Officer	One Umbrella
Diane Embry	Chief Executive Officer	Volunteering Victoria
Graham Evans	Chair	VCEC
Robert Kerr	Commissioner	VCEC
Kathy Landvogt	Social Policy Researcher	Good Shepherd Youth and Family Service
Noela MacLeod	State President	Country Women’s Association of Victoria Inc.
Nelson Mathews	President	Meals Victoria
Alan Matic	Marketing Manager	Our Community
John Minchinton	Treasurer	Meals Victoria
Shelley Mulqueen	Chair	Sports Assemblies Victoria
Susan Pascoe (observer)	Commissioner	State Services Authority
Alice Williams	Commissioner	VCEC

Table A.4 lists participants in the government round table held on 12 December 2006.

Table A.4 Government round table participation

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Anne Astin	Chief Executive Officer	Dairy Food Safety Victoria
Carol Bate	Assistant Director, Food Safety and Regulatory Activities	Department of Human Services
Brian Casey	Chief Executive	PrimeSafe
Margaret Darton	Manager, Food Policy	Department of Primary Industries
Graham Evans	Chair	VCEC
Geoff Fraser	President, Victorian Branch	Australian Institute of Environmental Health
Catherine Gay	Special Advisor, Food Regulation Policy Section	Department of Health and Ageing
Paula Giles	Director, Policy Projects and Commercial	Municipal Association of Victoria
Jane Harris	Senior Policy Advisor	Consumer Affairs Victoria
Robert Kerr	Commissioner	VCEC
Hon. Rob Knowles	Chairman	Food Standards Australia New Zealand
Clare McArdle	Director, Sector Development	Department for Victorian Communities
Peter Rea	Manager, Food and Related Industries	Department of Innovation, Industry and Regional Development

Table A.5 lists participants in the local government round table held on 16 May 2007.

Table A.5 Local government round table participation

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Luke English	Manager – Civic Safety and Amenity	City of Moreland
Louise Gertner	Environmental Health Co-ordinator – Community Health Unit	City of Stonnington
Rosemary Hancock	Policy Adviser	Municipal Association of Victoria
Herb Horrel	Service Review and Development Officer	Brimbank City Council
Pauline Ireland	Assistant Director – Food Safety and Regulation	Department of Human Services

Table A.5 Local government round table participation (continued)

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Ralph Mertins	Team Leader – Health Services	City of Whittlesea
Terry Old	Managing Director	Kernow Environmental Services Pty Ltd
Sam Salamone	Acting Co-ordinator	Knox City Council
Emma Taylor	Acting Co-ordinator	Wyndham City Council

Table A.6 lists participants in the community round table held on 22 May 2007.

Table A.6 Community round table participation

<i>Name</i>	<i>Position</i>	<i>Representing</i>
Danni Campbell-Manley	Residential Services Manager	Aged and Community Care Victoria
Frank Cusmano	Chief Executive Officer	Child Care Centres Association of Victoria
Glenda Glover	Preschool Management Adviser	Kindergarten Parents Victoria
Marcus Godinho	Chief Executive Officer	One Umbrella
Kathy Landvoght	Social Policy Researcher	Good Shepherd Youth and Family Service
Nelson Mathews	President	Meals Victoria
Denis Moriarty	Co-Founder and Chief Operating Officer	Our Community
Shelley Mulqueen	Chair	Sports Assemblies
Jason Twomey	Project Officer	Volunteering Victoria
Paul Zanatta	Manager – Community Care and Small Rural Health	Aged and Community Care Victoria

A.4 Stakeholder consultations

The terms of reference required the Commission to consult with key interest groups and affected parties (including the business and community sectors) and to draw on the knowledge and expertise of relevant Victorian Government departments and agencies. Stakeholders consultations (table A.7) include organisations that attended one of the round tables listed in section A.3 (RT), and regional meetings in Colac (CL), Warrnambool (WR) and Traralgon (TR).

Table A.7 Stakeholder consultations

<i>Category</i>	<i>Organisation/ individual</i>
International	New Zealand—Ministry for Economic Development
	New Zealand—New Zealand Food Safety Authority
Commonwealth Government	Australian Competition and Consumer Commission
	Food Standards Australia New Zealand (RT)
	Australian Quarantine and Inspection Services
	Department of Agriculture, Fisheries and Forestry
	Department of Health and Ageing (RT)
	Mark Bethwaite, Independent Food Regulation Review
	Productivity Commission—Office of Regulation Review
Other government	New South Wales Food Authority
Victorian Government	Brimbank City Council (RT)
	Consumer Affairs Victoria (RT)
	City of Moreland (RT)
	City of Stonnington (RT)
	City of Whittlesea (RT)
	Dairy Food Safety Victoria (RT)
	Department of Human Services (RT)
	Department of Innovation, Industry and Regional Development (RT)
	Department of Primary Industries (RT)
	Department for Victorian Communities (RT)
	Food Safety Council
	Knox City Council (RT)
Melbourne City Council	

Table A.7 **Stakeholder consultations** (continued)

<i>Category</i>	<i>Organisation/individual</i>
Victorian Government	Municipal Association of Victoria (RT)
	PrimeSafe (RT)
	Parliament of Victoria Outer Suburban/Interface Services Development Committee
	Regional Development Victoria
	Wyndham City Council (RT)
Business	State Services Authority
	ACIL Tasman
	Australian Beverages Council (RT)
	Australian Chicken Meat Federation (RT)
	Australian Food and Grocery Council (RT)
	Australian Hotels Association Victoria (RT)
	Australian Retailers' Association (RT)
	Apostle Whey Cheese (WR)
	Burra Foods Pty Ltd (TR)
	Cadbury Schweppes
	Ceres Natural Foods Pty Ltd (Pureharvest) (TR)
	Coles Supermarkets (then Coles Myer Ltd)
	Costa Group of Companies
	CRF (Colac Otway) Pty Ltd (CL)
	Dairy Australia (RT)
	Fyna Foods Australia Pty Ltd
	George Weston Foods Limited (RT)
	Great South Coast Food and Wine Group (WR)
	Inghams Enterprises Australia Pty Ltd (RT)
	Masterfoods Australia New Zealand
Metcash Trading Limited	
National Foods Limited	
Kernow Environmental Services Pty Ltd (RT)	

Table A.7 **Stakeholder consultations** (continued)

<i>Category</i>	<i>Organisation/individual</i>
Business	R. Radford and Son Pty Ltd (TR)
	Restaurant and Catering Victoria (RT)
	Ron Hull and Associates
	Seafood Industry Victoria (RT)
	SKM Consulting
	SPC Ardmona Operations Ltd
	Timboon Fine Ice Creams (WR)
	Unibic Australia Pty Ltd
	Vegco Pty Ltd (TR)
	Victorian Wine Industry Association (RT)
	Victorian Employers' Chamber of Commerce and Industry
	Victorian Farmers Federation (RT)
	Ward, John
	Warrnambool Cheese and Butter Factory Company Holdings Ltd (WR)
	Woolworths Limited
Community	Adult Multicultural Education Services
	Aged and Community Care Victoria (RT)
	Association of Network Houses and Learning Centres
	Australian Institute of Environmental Health (RT)
	Australian Red Cross
	Baking Industry Association of Victoria
	Child Care Centres Association of Victoria (RT)
	CHOICE
	Country Fire Authority
	Country Women's Association of Victoria Inc. (RT)
	Crammond, Bradley
	Glass Street Kindergarten
	Good Shepherd Youth and Family Service (RT)
	Hampton Primary School

Table A.7 **Stakeholder consultations** (continued)

<i>Category</i>	<i>Organisation/ individual</i>
Community	Lawrence, Mark (Assoc. Prof.)
	Loff, Bebe (Assoc. Prof.)
	Meals Victoria (RT)
	Municipal Association of Victoria (RT)
	National Heart Foundation Australia
	Obesity Prevention Policy Coalition
	One Umbrella (RT)
	Our Community (RT)
	Kindergarten Parents Victoria (RT)
	St Vincent de Paul
	Second Bite
	South Kingsville Preschool
	Sports Assemblies Victoria (RT)
	VicHealth (Victorian Health Promotion Foundation)
	VicRelief + Foodbank
	Volunteering Victoria (RT)
	Walwa Golf Club Inc.
Worsley, Tony (Prof.)	

Appendix B: Food—the regulatory and institutional framework

B.1 Introduction

This paper outlines the framework for food regulation in Australia, with a focus on regulation in Victoria. It adopts the definition of food regulation used in the Blair report, *Report of the food regulation review*,¹ which takes food regulation to be:

Actions by government which affect the safety or quality of, or the information available in relation to food; encompassing all types of government regulation-making, industry self-regulation, compliance and enforcement activities; and covering relevant activities of all businesses in the food supply chain, including primary producers, food processors, retailers and food preparation businesses. (Blair 1998, p. 26)

The regulation of food to protect public health and provide appropriate information is complex and fragmented. It comprises international standards and agreements, and a number of agencies and legislation spread across all tiers of government (Healy, Brooke-Taylor & Liehne 2003). The three levels of government in Australia and various specialised regulatory bodies are involved in food regulation. Because the Australian Constitution does not confer an express power on the Commonwealth to regulate food, the (limited) role of the Commonwealth arises through its reliance on other powers (including its powers over corporations, trade and commerce, imports, exports and taxation) and by agreement with the states and territories to promote national consistency. Consequently, the food Acts of each state and territory, which oblige participants within the food sector to comply with the Food Standards Code, constitute the principal instruments of food safety. Other enactments also form part of the food regulation framework, with the most important in Victoria being the Acts relating to the meat, fish and dairy industries.²

¹ The Blair report surveyed the food industry in Australia; considered the benefits and costs of food regulation; listed major issues, including lack of uniform legislation (a problem reduced by the national adoption of the Food Standards Code), the inconsistent application of regulations by enforcement officers, the overlap and duplication of agency responsibility, and the lack of coordination across government agencies; and proposed reforms. The report can be found at www.foodstandards.gov.au.

² A useful web site for accessing food Acts passed by the Commonwealth, state and territory governments can be found at www.ausfoodnews.com.au/flapa/ActsRegulations.php. This site also provides other information about food regulation throughout Australia.

B.2 The food regulation framework

B.2.1 National food regulation

Victoria's food regulation framework operates within the context of a national system of food regulation. In response to the Blair report, each state and territory entered into an intergovernmental agreement with the Commonwealth to promote a national system of food regulation. The Food Regulation Agreement was necessary to give the Commonwealth a role in the regulation of domestic food supply because it has no specific constitutional power in this area (Banks 2006, p. 57). The agreement established the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) and Food Standards Australia New Zealand (FSANZ), which have responsibility for developing food policy and uniform food standards.

The agreement states that the objectives of the cooperative national system of food regulation are:

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

Australia and New Zealand Food Regulation Ministerial Council

ANZFRMC comprises health minister representatives and ministers from related portfolios from each state and territory and from the Australian and New Zealand governments, and aims to provide a 'whole of government' and 'whole of food chain' approach in pursuit of a cooperative national system (DHA 2006a).

The functions of ANZFRMC as laid down in the agreement include developing and implementing consistent food policy, standards and enforcement procedures throughout Australia and New Zealand. In performing these functions, ANZFRMC has the capacity to adopt, amend or reject national standards and to

request that they be reviewed. It is also responsible for promoting harmonisation with international food standards principally derived from Codex alimentarius (cl.3(a)(iii)).³

The Food Regulation Standing Committee (FRSC) was established under the agreement to coordinate policy advice to ANZFRMC and ensure a nationally consistent approach to the implementation and enforcement of food standards. The Food Standards Implementation Subcommittee (ISC) of FRSC was formed to assist in the consistent implementation, compliance and enforcement of policy, regulations and standards. ISC released *A strategy for consistent implementation of food regulation in Australia* in 2005 with the endorsement of the ANZFRMC (ISC 2005a). The objective of this strategy is to provide a framework for collaborative work among Australian food safety regulators, and New Zealand regulators where appropriate.

Food Standards Australia New Zealand

FSANZ, a statutory authority resourced principally by Commonwealth appropriation, also plays a fundamental role in promoting a national system of food regulation. It was established and operates under the *Food Standards Australia New Zealand Act 1991* (Cwlth.) (the FSANZ Act) and is responsible for researching, developing and submitting proposals for food standards to the ANZFRMC. The standards constitute the Food Standards Code, which is the foundation of Australia's national system of food regulation, and which state and territory food regulators implement and enforce.

The object of the FSANZ Act is to ensure a high standard of public health protection throughout Australia and New Zealand. It aims to achieve:

- a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand
- an effective, transparent and accountable regulatory framework within which the food industry can work efficiently
- the provision of adequate information relating to food to enable consumers to make informed choices
- the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection (s2A).

³ The ANZFRMC is not required by the agreement or the *Food Standards Australia New Zealand Act 1991* (Cwlth.) to adopt Codex alimentarius standards in the development of Australian standards. Section 7(1)(d) of the FSANZ Act provides that the functions of the ANZFRMC include promoting 'consistency between standards in Australia and New Zealand with those used internationally, based on the best available scientific evidence'. The concluding words indicate that the Codex standards may be varied where there is good evidence for doing so.

FSANZ has entered into a memorandum of understanding (MOU) with the Australian Competition and Consumer Commission (ACCC) to set out their respective roles and responsibilities in enforcing the Food Standards Code and the provisions of the *Trade Practices Act 1974* (Cwlth.) as they relate to the sale of food (cl.1.1). The MOU provides that FSANZ may advise ACCC of an apparent breach of the Act's fair trading provisions that is causing widespread and significant consumer detriment across Australia, for ACCC to consider and determine appropriate action. During the past five years, ACCC has identified approximately 450 instances of misleading and deceptive representations relating to food (DHS 2007c).

ACCC has also entered into an MOU with the Victorian Office of Fair Trading and Business Affairs, now Consumer Affairs Victoria (CAV), which is responsible for administering the misleading and deceptive conduct provisions of the *Fair Trading Act 1999* (Vic.).

Food Standards Code

The Food Regulation Agreement provides for the Food Standards Code to promote national consistency in Australia's food laws.⁴ Following a comprehensive review of the code in the late 1990s, more generic food requirements were introduced in place of prescriptive food standards, offset by increased labelling requirements for all food products.

The Food Standards Code mandates compliance with limits on the use of ingredients, processing aids, colouring, additives and residues, and sets compositional requirements. The code also sets standards for product labelling (packaged and unpackaged), marketing and advertising (ANZFA 2002a, p. 17). The standards apply to the whole spectrum of the food supply chain, and to whole food groups as well as specific food products.

The code is divided into four chapters:

- chapter 1—standards applying to all foods (that is, labelling, substances added)
- chapter 2—standards affecting particular classes of food (that is, cereals, meat, oils, dairy)
- chapter 3—food hygiene specific to Australia
- chapter 4—standards dealing with primary food production in Australia.

Chapters 3 and 4 and standard 1.2.11—country of origin labelling—apply only to Australia.

⁴ The Food Standards Code can be viewed at www.foodstandards.gov.au/thecode/

Interested persons may apply for the code to include new standards (FSANZ Act, s12(1)), or FSANZ may prepare a proposal on its own initiative (s12AA). The main steps in processing an application for a proposed standard or variation involve initial assessment, draft assessment, public consultation, ministerial approval and gazettal. In seeking to ensure food standards do not impose an unreasonable cost burden on food businesses, the FSANZ Act requires FSANZ to have regard to the cost consequences of a proposed standard or variation at the initial assessment and draft assessment stages of the application process (ss13(2) and 15(3)). The Commonwealth Parliament passed amendments to the FSANZ Act in June 2007 to introduce new and stricter timeframes for dealing with applications to amend the Food Standards Code.

The code has been incorporated into state and territory law through the food Acts, which make it an offence not to comply with the code. All amendments to the code become effective on the commencement date published in the *Commonwealth Gazette*, and they operate without amendment to the food Acts. Individual states and territories are responsible for enforcing the code for food produced and sold within their jurisdictions. The Commonwealth, through the Australian Quarantine and Inspection Service (AQIS), is responsible (via powers conferred by the *Imported Food Control Act 1992* (Cwlth.)) for enforcing the code for food imported into Australia. Food for export from Australia is regulated under the *Export Control Act 1982* (Cwlth.).

There is limited scope for state and territory variation in the application of the code (COAG 2002, cl.26). Public or stakeholder comment during the standards development process, along with the requirement that a majority of representatives in ANZFRMC assent to the new or amended standard, provides the opportunity for individual state concerns to be heard. Clause 27 of the agreement, however, provides that individual provisions may be made for a state or territory (or part thereof) where ANZFRMC is satisfied they are needed given exceptional conditions in that state or territory, and where the provision would not present a risk to public health or safety, or contravene Australia's international treaty obligations. Further, clause 28 allows for a state or territory to develop a temporary (12 months) new standard or variation where an immediate issue is affecting public health and safety, and when there is no time to apply to ANZFRMC for the amendment. DHS is unaware of any matters that have been pursued through clause 28 (DHS 2006c).

B.2.2 Commonwealth regulation

In addition to the noted Commonwealth legislation applying to food already referred to, the Trade Practices Act (administered by ACCC) and taxation legislation (administered by the Australian Taxation Office) are also significant. The Trade Practices Act promotes competition and fair trade in the marketplace

to benefit consumers, business and the community. Its reach extends to business competition such as price fixing and other anticompetitive agreements, and affects market structure and agreements within the food sector. Its reach also extends to consumer protection, such as prohibiting misleading and deceptive conduct, and requiring that goods meet specified standards (such as being of merchantable quality and reasonably fit for purpose). A fruit juice manufacturer, for example, could be subject to ACCC action for misleading conduct under the Act if it falsely claims that its product is ‘squeezed daily’. And a restaurant could be liable to a claim for damages for supplying unsafe food that was not of merchantable quality or fit for consumption. A range of enforcement actions can be undertaken under the Act, including product recall orders.

The Australian Taxation Office also administers the taxation laws that affect food, particularly the Goods and Services Tax (GST). While fresh foods including fruit, vegetables and meat are deemed to be GST free, most other foods will incur GST.

Other Commonwealth agencies with responsibility for regulation that affects food to some extent include:

- the Department of Agriculture, Fisheries and Forestry
- the Department of Health and Ageing
- AQIS.

B.2.3 State regulation

Victoria has two principal streams of food safety regulation. The first stream applies to the handling of food intended for sale and the sale of food, both of which are governed by the Food Act. The second stream applies to the primary production, manufacture, transport and sale of meat, poultry, seafood and dairy products, and is found in specialised industry focused Acts—namely, the *Meat Industry Act 1993* (Vic.), the *Seafood Safety Act 2003* (Vic.) and the *Dairy Act 2000* (Vic.). Many other Acts have a limited impact on food regulation but also produce social and business costs and benefits.

The various food laws are designed to be complementary, not overlapping, although Food Act provisions relating to safety in the sale of food have general application. Key food regulatory bodies—PrimeSafe, Dairy Food Safety Victoria (DFSV), DHS, the Municipal Association of Victoria (MAV) and the Australian Institute of Environmental Health (Victorian Division) (AIEH)⁵—entered into an MOU in 2004 to cooperate in the administration of the laws to protect public

⁵ The AIEH is the representative body of environmental health officers.

health in Victoria by ensuring a high level of food safety (DHS 2004g, p. 2). The MOU is due to be reviewed by October 2007 (DHS 2007a).

The Model Food Act 2000, as supported by the Food Regulation Agreement (2002), has contributed to greater national consistency in the food Acts of individual states and territories. The agreement provided the instrument under which states and territories were uniformly required to adopt selected provisions of the Model Food Act, requiring all Australian jurisdictions to incorporate the provisions of Annex A of the Bill (which sets out the core provisions including key definitions and offences relating to food) in their respective food Acts. Under the agreement, all jurisdictions were also encouraged, albeit not compelled, to incorporate in their food Acts the provisions of Annex B relating to enforcement and administration. Victoria has adopted the Annex B provisions to a limited extent, unlike other jurisdictions (such as New South Wales) that have adopted them more completely.

The Food Act

The Food Act constitutes the principal instrument of regulation of food intended for sale. The Act, like the food Acts in other Australian jurisdictions, incorporates the Food Standards Code as part of Victorian law (s16) and adopts the framework of the Model Food Act, particularly Annex A and some provisions from Annex B. The responsible minister is the Minister for Health.

The Act regulates the handling of food intended for sale and the sale of food. Its objects include:

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

‘Food’ is defined broadly as ‘any substance or thing used for human consumption’, whether it is raw, live, prepared or partly prepared (s4A). The definition specifically includes the sale of live animals intended for the table and excludes therapeutic goods.

The Act does not define the meaning of ‘safe’, and court decisions on its meaning have not been found. Section 4D of the Act states, however, that ‘food is unsafe if it would be likely to cause physical harm to a person who might later consume it’, assuming it is properly processed before being consumed and is consumed according to its reasonable intended use. It appears, however, that the Act seeks to prevent harm not only in the short term (for example, by ensuring food is safe from relatively immediate foodborne illness), but also in the long term (for example, by preventing adverse health effects resulting from contaminants such as high mercury levels in food, which are regulated by the Food Standards Code). Section 4D clarifies the meaning of ‘unsuitable’ food as

food that is ‘damaged, deteriorated or perished to an extent that affects its reasonable intended use’ or contains ‘a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food’ (s4D(1)).

Although the Act regulates conduct in relation to food that is for sale and not, for example, food that is prepared and consumed in the home or provided charitably, it adopts a broad definition of ‘sale’. Sale includes not only transactions where consideration is provided; it includes transactions such as giving away food for the purpose of advertisement, or promoting trade or business through activities such as free wine tasting in a liquor store (s4).

Some requirements of the Act apply generally to persons involved in the handling of food for sale—for example, the requirement that a person must not handle food intended for sale in a manner he or she knows will render the food unsafe (s8(1)). The farmer who sells cattle intended ultimately for the table and the butcher who sells steak are both subject to such requirements. Other requirements of the Act, such as the requirement that declared food premises must have food safety programs (FSPs) (s19C), do not apply to businesses involved in ‘primary food production’—that is, businesses involved in ‘growing, raising, cultivating, picking, harvesting, collecting or catching food’ (s4). This limited application of the Act stems from the existence of supplementary industry focused Acts that regulate primary industries, particularly the Dairy Act, the Meat Industry Act and the Seafood Safety Act (discussed below).

Exceptions to the application of the Food Act may also arise under s5, which provides that the minister may make orders declaring any premises not to be food premises for the purposes of the Act (s5(3)), or exempting specified food premises from some or all provisions of the Act (s5(3A)). The power of exemption permits flexibility in the application of the Act.

The Act encourages self-regulation and prevention strategies, focusing on outcome based provisions and reflecting a national movement away from prescriptive standards of food safety and compliance, towards a more flexible model (AGV 2002, p. 3). The implication of this outcome based model is that the law becomes less clear about what is required for compliance with the provisions of the Act. Section 11(1), for example, provides that ‘a person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsafe’. Section 4D assists with the meaning of ‘unsafe’ food by providing that food is unsafe if it would be likely to cause physical harm to a person who might later consume it, assuming it was properly processed and it was used as intended. While this provision sets out a desired *outcome* in relation to the safe handling of food, it does not provide clear guidance about what safe handling involves (for example, washing hands or cleaning surfaces). Guidance on how to handle food safety is provided through FSPs, which are required for declared food premises but not for premises where the risks are considered

minimal. Another example of the shift towards self-regulation is that the Act allows many businesses to either write an FSP that sets out strategies for dealing with recognised food risks specifically for their business, or use a template that the government has already approved.

The Act uses several regulatory processes: it creates offences for prohibited conduct; it requires the registration of food premises, the preparation of FSPs, the training for nominated food safety supervisors (FSSs) and the regular inspection or audit of FSPs; and it establishes surveillance and enforcement procedures. The Act also creates an advisory mechanism through the establishment of the Food Safety Council (part 10). The council, which comprises public health, food hygiene, consumer and industry representatives, provides advice and information to the Minister for Health and the Secretary on matters related to food regulation, in response to their requests (s60A).

Offences

Offences under the Act include knowingly handling food intended for sale in an unsafe manner (s8), knowingly selling unsafe food (s9) and engaging in misleading or deceptive conduct in relation to the advertising, packaging or labelling of food intended for sale or the sale of food (s13). The Act also requires compliance with the Food Standards Code (s16) and provides for defences in proceedings for offences, including that the person took all reasonable precautions and exercised all due diligence to prevent the offence (s17E). This defence may apply to a supermarket that sells a prepackaged product (such as sliced bread) that it acquires from a reputable supplier and that turns out on testing not to comply fully with the code.

It is not an offence under the Act for a business to fail to comply with the requirements of its FSP. However, if the failure amounts to a breach of the Food Standards Code (for example, standard 3.3.1 requires a food business that processes food to service vulnerable persons to prepare and comply with an FSP), there will also be a breach of the Act (s16(3)). Such failure may also lead to suspension or revocation of registration, or refusal to renew or permit the transfer of registration (s19HB(2)), but councils are reluctant to impose such penalties except in instances of serious contravention.

Registration of food business premises

Premises from which a food business is conducted—excluding a primary food production business—must be registered with the council in the appropriate municipal district, or with the Secretary in limited cases (part VI). This is dissimilar to other jurisdictions such as New South Wales, for example, where the *Food Act 2003* (NSW) more simply requires notification with its Food Authority of the information required in the food safety standards before a food business is commenced (s100).

Failure to register a food premises with the appropriate council is an offence punishable by a fine under the Food Act (s35). The term ‘premises’ includes buildings and vehicles, but not any premises used solely for a primary food production business (such as a farm or a dairy), and not transport vehicles engaged in the transport of food (such as tankers moving potable water) (s4). There are exceptions to the registration requirement where, for example, the business is operated by the Crown (s35(2)(a)), or where an exemption for premises or a class of premises has been granted by resolution of the relevant council or the Secretary (s38(3)). Under this latter provision, councils have the power to determine whether not-for-profit temporary food outlets need to be registered. Further exemptions apply to facilities and vehicles licensed under the Meat Industry Act, and premises licensed under the Dairy Act or the Seafood Safety Act (ss38(5)–(8)). The minister may also exempt premises from the registration requirement under s5(3A).

Businesses seeking registration or renewal of registration of food premises must be inspected by the council and found to be generally compliant with all requirements of the Food Act (s39(1)). In addition, businesses seeking registration or renewal of registration of a declared food premises must have an FSP (s38A) and a FSS (s38B). Where a business fails to comply with all requirements (for example, where there are minor defects), the Act gives the registration authority the discretion to allow registration to proceed, subject to an undertaking that the defect will be remedied by a specified time (s39A).

Registration continues for one year from the date it was granted or renewed, unless the premises is within a class for which the minister has declared that the registration is to be for a longer period (s40B) or is revoked or suspended before normal expiry (s40C). There is no provision for short term registration or for recognition of registration of mobile food premises that have been registered in another council. The follow-up report to the Auditor-General’s report on the *Management of food safety in Victoria* (2002) acknowledged this issue in the context of ‘temporary food business’ (that is, travelling food businesses) and documented the Act’s shortfall in failing to provide for temporary registration (AGV 2005a, p. 13).⁶

While registration fees are determined by each council and consequently vary across councils, they must not exceed any amount fixed by the Governor-in-Council by Order published in the *Government Gazette* (s41A). To date, no amount has been fixed under this provision. Councils are not required to prepare a cost–

⁶ The Auditor-General’s follow-up report to the *Management of food safety in Victoria* can be viewed at www.audit.vic.gov.au/reports_par/pafollowup_report.pdf.

benefit analysis or undertake public consultation when determining the registration fees to be charged.

A council may suspend or revoke the registration of a food premises on several grounds, including that a person is convicted of a second or subsequent offence against the Act in respect of the premises (s40D). The Secretary may direct a council to suspend or revoke the registration of a food premises if, in the Secretary's opinion, the grounds for suspension or revocation exist (s40E). A person who is aggrieved by a decision to refuse registration or to suspend or revoke registration may appeal to the Magistrates' Court (s42) rather than the Victorian Civil and Administrative Tribunal (VCAT), which more commonly hears such appeals. Until the appeal is heard, a revocation of registration is stayed and the business may continue.

Food safety programs

Standard 3.2.1 of the Food Standards Code provides that food businesses determined by each state and territory food authority must adopt FSPs. At present, standard 3.2.1 is a model standard and thus is not automatically adopted under the law of individual states and territories. Endorsement of standard 3.2.1 as a mandatory food standard was deferred on the basis of widespread industry concern (particularly among the food service and not-for-profit sectors) about the costs and efficacy of FSPs (FRSC 2003, p. 8). For standard 3.2.1 to become operational, the appropriate enforcement agency within a state or territory must make a determination of the 'food businesses' to which the standard is to apply. Under the Food Act, the Secretary does not have the power to make determinations in relation to 'food businesses', only 'food premises' (s19C). As a result, standard 3.2.1 will not apply within Victoria until the scope of the Secretary's power is amended under the Food Act, or the application of the code is amended. Because standard 3.2.1 is not mandatory, FSPs have been adopted independently in each state and territory, leading to significant inconsistencies across Australia.

However, a basic level of national consistency in FSPs has been achieved in the code independently of standard 3.2.1. Following the release of independent research into FSPs, ANZFRMC (2003) adopted policy guidelines (developed by the FRSC) to improve food safety management in Australia—namely, *Ministerial council policy guidelines on food safety management in Australia: food safety programs*. The guidelines provided that FSPs should be implemented only in those sectors identified as high risk *and* where the benefit-to-cost ratio justifies their implementation. On this basis, and acting on the results of the research, ANZFRMC recommended that mandatory FSPs be implemented within four areas:

- (1) food service, in which potentially hazardous food is served to vulnerable populations (that is, hospitals/nursing homes)

- (2) the production, harvest, processing and distribution of raw oysters and other bivalves
- (3) catering operations serving food to the general population
- (4) producers of manufactured and fermented meats.

To date, FSANZ has implemented ANZFRMC policy guidelines and thereby approved mandatory FSPs for all identified high risk sectors, except the catering sector.

Under the Food Act, the Secretary has power to declare that food premises of particular classes must develop an FSP (s19C).⁷ An FSP must document potential hazards in food handling operations and provide for monitoring of both hazard controls and the records needed to demonstrate compliance with the program (s19D). FSPs do not apply to any premises used solely for primary food production or to any premises declared exempt by the minister under the Act (s5(3)(a)). Different requirements apply to primary food production businesses.

The Secretary has declared that most food premises must develop an FSP and ensure all staff have adequate skills and knowledge to carry out their tasks safely. There is an exemption for retail food premises at which only prepackaged low risk food is handled or sold (Government of Victoria 2001a, p. 3013). Under the Secretary's declaration, most food premises are allocated to class 1 or class 2 according to the degree of risk associated with the food type or the persons for whom the food is being prepared. Class 1 comprises all food premises operated by a food business where the food being handled or sold is high risk and ready to eat, and is to be consumed predominantly by vulnerable populations such as children aged 5 years and under and adults aged 65 years and over. Class 2 comprises all food premises operated by food businesses other than class 1 food premises and exempt food premises (Government of Victoria 2001a, pp. 3012-3).

Food premises may develop an independent FSP in light of identified risk factors or use a standard FSP template that DHS has registered. Businesses that adopt a registered template must answer questions about their business, choose the records they will keep to provide evidence of their compliance, and provide a copy of the completed template to the council. The department has developed a simplified FSP template for community groups to use in some circumstances.

⁷ Part IIIB of the Act alternates between using the term 'food business' and 'food premises'. As a result, there is a lack of clarity in the application of some provisions. Part IIIB applies only to 'declared food premises' despite several references to a 'food business'.

Unless an exemption has been granted, declared premises—that is, premises within class 1 or class 2—must have a FSS who has met an appropriate food safety competency standard, has the ability and authority to supervise other people handling food, and can ensure the handling is done safely (s19G). Several certified training courses are available for supervisors to satisfy the competency standard; there are also courses for food handlers. Failure to comply with this requirement is a reason for refusal of registration or its renewal or transfer, or for the revocation or suspension of registration of the food premises (s19GA).

The Secretary may exempt the proprietor of declared premises (or the proprietors of a class of declared premises) from the requirement to have an FSP, to have an FSP audited or to have a FSS (s19V). The exemption must be in writing (s19V(2)) and is not required to be published in the *Government Gazette*.⁸

Inspection and audit of food safety programs

Class 2 food businesses that use a registered standard FSP template may choose for an environmental health officer from the council (s19HA) to inspect the program, to ensure compliance (otherwise they must be third party audited). Class 1 food businesses, as well as class 2 food businesses with their own FSP, must have their FSP audited by a certified food safety auditor (s19IA). The audits must be carried out at intervals declared by the Secretary for different declared premises (s19K).

The food safety auditor must give the proprietor of the premises a certificate of compliance if the auditor finds compliance with the FSP (s19L). If, however, the auditor considers the program has not been complied with or is inadequate, then the auditor must advise the proprietor of the premises about the remedial action required and provide an audit certificate when the noncompliance has been remedied (s19M). In each case, the proprietor of the business must provide a copy of the audit certificate to the council: failure to do so may lead to nonrenewal, suspension or revocation of registration (s19N).

The Act does not provide for other penalties (such as penalty infringement notices) for noncompliance with an FSP. Noncompliance may, however, amount to a breach of the Food Standards Code, in contravention of s16(3) of the Act.

Surveillance and enforcement

The Act confers wide powers on ‘authorised officers’ (defined in s4) to investigate and inspect food premises so as to ensure compliance with the Act (part IV). People whom councils have appointed as environmental health officers under the *Health Act 1958* (Vic.), as well as authorised officers under the Dairy

⁸ For declared food premises used for events that raise funds solely for community or charity causes, an exemption from the requirement to have a food safety supervisor was published in the *Government Gazette* (Government of Victoria 2002, p. 1047).

Act and the Meat Industry Act, are authorised officers for the purpose of the Food Act (s4).

The surveillance and investigation powers of authorised officers extend to examining and opening packaging (s21(1)(a)(iii)), seizing articles where there is a reasonable belief they have been used in connection with the contravention of the Act (s21(1)(a)(v)), and requesting the name and address of a person reasonably believed to have committed an offence under the Act (s21(1)(c)). Information that authorised officers obtain in the performance of their functions (such as when compiling inspection reports) must not ordinarily be disclosed or published (s54(1)) except with the consent of the person from whom the information was obtained, in connection with the administration of the Act, or for proceedings under the Act. This provision permits the disclosure in limited circumstances of information obtained by authorised officers, such as to provide evidence that would assist a person wishing to claim damages for loss as a result of conduct that contravenes the Act (including the supply of unsafe food). It prohibits, however, the supply of information to a person who wishes to take action for damages under other consumer legislation (such as the Fair Trading Act or the Trade Practices Act) for loss resulting from the supply of unsafe food. The provision, coupled with the absence of an express power to disclose on other bodies (for example, council or DHS), prevents the disclosure of information to the public about poorly performing premises. Sections 54A, 54B, 54C and 54D provide limited exceptions to the restrictions imposed by s54.

The Food Act (s59) incorporates most of the enforcement provisions contained in part XX of the Health Act, including provisions relating to expenses recoverable in certain circumstances (s412) and simplification of proof in certain cases (s437). Proceedings for contravention of the Food Act may be brought in the Magistrates' Court (s45), which may impose penalties of up to \$500 000 in the case of corporations and up to \$100 000 and two years imprisonment in the case of individuals.⁹ Where a corporation has contravened the Food Act, managers of the corporation are also guilty of an offence and liable for the penalty for the offence (s51).

Where a council brings proceedings for an offence under the Act, all penalties recovered in relation to the offence must be paid into the municipal fund of the council that brought the proceedings (s57), subject to the council accounting to any informant for half of the penalty (Health Act, s450). The court may also order forfeiture of articles involved in a contravention (s48), make orders requiring payment of costs and expenses (ss49 and 53A) and make orders requiring

⁹ By way of comparison, the Meat Industry Act provides that a butcher must not sell meat that is unfit for human consumption: the penalty for a first offence is 100 penalty units, or just over \$10 000 (s34).

corrective advertising (s53B). Nonetheless, the small amount of the penalties imposed and costs awarded, coupled with delays in the hearing of cases, may have a bearing on whether councils take this form of enforcement action. The Food Act does not provide that a court can make orders to compensate any persons who may have suffered losses as a result of unlawful conduct.

Despite the Act's self-regulatory orientation, there is no requirement for food businesses to submit food suspected of contamination for testing or to report suspected contamination to the council or DHS (Lederman 2006). Where the Secretary reasonably believes that a threat to public health exists, the Secretary has emergency powers to make an order to reduce the danger and mitigate the adverse consequences (s44). The nature of the order can range from requiring warnings to be published (s44A(1)(a)) to directing that a particular food be recalled (s44(1)(d)) or even impounded, isolated and destroyed (s44(1)(e)). Council officers are not permitted to exercise emergency powers. Further, the Act does not incorporate the infringement notice provisions set out in Annex B of the Model Food Act (ss116–24), so there is no provision for 'on the spot' fines that council officers could impose, possibly after providing appropriate education and warnings.

DHS provides some advice to councils to help them perform their obligations under the Act—for example, *Administering the Food Act: a guide for local government 2002* (DHS 2002c). But it does not publish comprehensive data on council enforcement activities such as the number of registered premises in each municipality and the number of inspections or particulars of enforcement action. Moreover, the Food Act does not grant DHS the power to direct councils to provide this information. It also does not ordinarily publish statistical information on food contamination incidents. The Commission was unable to find current information that would provide an overview of councils' enforcement actions.

Primary industry focused Acts

Of the specialised primary industry focused Acts that complement the Food Act, the most important are the Dairy Act, the Meat Industry Act and the Seafood Safety Act. These Acts provide for the second stream of food regulation, and their scope is confined to the 'primary production industries' (that the Food Act only partly covers), which require particular regulatory attention. Each Act principally exists to establish a key regulatory agency, empower a code of conduct and establish licensing powers.

Different regulatory arrangements apply in New South Wales, where the Food Regulation 2004 (NSW), empowered by part 8 of that state's Food Act, establishes a separate regulatory regime for high risk plant products businesses in addition to dairy, meat and seafood businesses. The specialised regulatory

treatment afforded to plant products businesses follows from the *National risk validation project*, which identified fresh cut fruit and vegetables, unpasteurised fruit and vegetable juices, sprouts and vegetables in oil as high risk foods (FSA & MEC 2002, p. 53).¹⁰

Regulation of the dairy industry

The dairy industry is a major rural industry in Australia and particularly in Victoria, where the bulk of Australian milk production occurs. The key laws regulating the dairy industry in Victoria are the Food Act and the Dairy Act. The responsible minister for the Dairy Act is the Minister for Agriculture.

Dairy products come within the definition of food in the Food Act; consequently, a person who handles dairy products for sale or sells dairy products must comply with relevant provisions contained in the Act. A dairy business, however, must comply with the Act only to the extent that the Act obliges the safe handling and sale of food and establishes emergency and enforcement powers; it is not bound by the provisions relating to FSPs and council registration.

The Dairy Act was enacted as part of the reforms to the dairy industry across Australia, which were intended to result in managed deregulation (Legislative Assembly 2000, pp. 1862, 1871). The Act was drafted to be consistent with the Food Act and, as far as possible, the principles of the Model Food Act for matters such as the use of FSPs, preventative methods of food safety management and audit arrangements (Legislative Assembly 2000, p. 1325).

The Dairy Act aims:

- to remove price and supply controls on milk
- to establish DFSV
- to provide a licensing system for the dairy industry
- to enable codes of practice and FSPs to be implemented in relation to dairy food (s1).

Under the Act, ‘dairy food’ includes milk, dried and condensed milk, cream, butter, dairy spreads, cheese, yoghurt, ice-cream, colostrum and any other product derived or extracted from those products (s3).¹¹

¹⁰ The identification of certain plant products as high risk was determined on the basis of international data. The ANZFRMC undertook to monitor local data as it became available (FRSC 2003, p. 6).

¹¹ Appendix 2 of the MOU between DFSV, PrimeSafe, DHS, MAV and AIEH further outlines the meaning of ‘dairy food’ by providing examples under each product class (DHS 2004g, p. 9).

The Act established DFSV as an independent statutory body to ensure the Victorian dairy industry maintains standards that safeguard public health (s5). DFSV's functions under the Act include establishing, maintaining, improving and monitoring the food safety standards of dairy food, the standards of construction and hygiene of plant and equipment in a dairy, and the standards of maintenance, cleanliness and hygiene of dairy transport vehicles. It is also responsible for monitoring and reviewing these standards (s6(b)).

DFSV is committed to achieving a national framework for dairy food safety based on international best practice principles. Its key objectives are to achieve consistency in standards and to reduce compliance costs for industry (DFSV 2006a). DFSV is subject to written direction by the minister; a direction may be published in the *Government Gazette* and must be published in the DFSV annual report (s8). The Commission is not aware of any direction that has been given.

To promote a nationally consistent food regulatory framework, DFSV signed an MOU with Tasmanian and South Australian dairy authorities during 2005-06 (DFSV 2006b, p. 3). DFSV also entered into an MOU in 2004 with PrimeSafe, DHS, MAV and AIEH, to 'achieve a cooperative approach to protect public health in Victoria by ensuring a high level of food safety' (PrimeSafe et al. 2004, p. 2). The MOU allocates responsibilities to the parties, to clarify responsibilities under the various laws regulating food in Victoria.

The regulatory mechanisms available to DFSV are licensing dairy businesses, developing and implementing codes of practice and FSPs, and the enforcement of conduct obligations under the Act.

Licensing

A person must not conduct business as a dairy farmer, dairy manufacturer, dairy food carrier or dairy distributor (such as a milk bar) unless they are licensed to do so (s22(1)) or an exemption applies. A person must also not own or use a dairy transport vehicle to transport dairy food in bulk unless there is a dairy industry licence for the vehicle (s22(2)). There are, however, exemptions from the licensing requirement for proprietors of food businesses that operate from food premises registered under the Food Act, and for licensees under the Meat Industry Act and the Seafood Safety Act, where those proprietors/licensees are subject to requirements for quality assurance programs or FSPs that adequately cover dairy food (s22A). In the case of a mixed business, where dairy and nondairy products are manufactured, packed or distributed, DFSV negotiates with the responsible council to determine the appropriate licensing authority (PrimeSafe et al. 2004, p. 6).

DFSV may fix the fees payable for the issue, renewal and transfer of licences. (While it must do so in consultation with the dairy industry, preparation of a regulatory impact statement is not necessary.) The criteria for determining licence

fees may include the value of services provided to a licensee, the value of industrywide benefits, and the scale of operations of each licensee (s24). There is no express constraint on the upper limit of the licensing fees as there is for registration fees under the Food Act. The licence fees fund the operations of DFSV.

DFSV may impose conditions on licences (s25(1)(a)). The term of a licence is to be not more than two years (s25(1)(d)); in practice, licences must be renewed and a licensing fee paid annually. DFSV may refuse to issue, renew or transfer a licence, and may suspend or revoke a licence on various grounds, including failure to meet the requirements of the Dairy Act, the Health Act or the Food Act, as applicable (s26). A person whose interests are affected by a licensing decision may appeal to VCAT for a review of the decision (s27).

Code of practice

With the approval of the minister, DFSV may develop a code of practice that confers authority and imposes duties on specified persons or classes of persons (s31). A code of practice must be developed in accordance with a procedure that requires DFSV to consult widely and consider submissions from the dairy industry (s32). The code must be published in the *Government Gazette* (s34).

Under these provisions and with the minister's approval, DFSV has developed the *Code of practice for dairy food safety*, which sets the minimum standards for the production, manufacture, storage and transport of milk and dairy foods to safeguard public health. All dairy premises must adhere to these standards, in conjunction with the *Food standards code: volume 2*, including chapter 3, 'Food safety standards' (DFSV 2002, p. 5). The code of practice also adopts as mandatory requirements the *Australian manual for control of Listeria in the dairy industry* and the *Australian manual for control of Salmonella in the dairy industry* (DFSV 2002, p. 6). It is an offence for a person to sell, deliver or provide for human consumption dairy food that has not been treated, packed and sealed as required under a code of practice (s36).

Food safety programs

The Dairy Act provides that DFSV may develop FSPs (s37) with which the minister may require classes of dairy industry licensee to comply (s38). Under the code of practice, all participants in the dairy industry must have an FSP approved by DFSV that meets the requirements of the code (DFSV 2002, p. 5).

The code of practice sets out the individual requirements of FSPs for each category of licensee. For a dairy farm, the FSP must meet requirements relating to contaminants, dairy milking premises, storage and equipment, hygienic milking, water supply and quality, cleaning and sanitising, traceability and personnel competency. Further, all raw milk produced must comply with

specified standards, and records must be maintained to demonstrate compliance with the FSP. Other categories of licensee have corresponding requirements.

DFSV must monitor compliance with each approved FSP (s40) and may require licensees to have the applicable program audited on a one-off basis or from time to time (s41). It may withdraw or suspend approval for an FSP by giving written notice to the licensee if it considers there has been a serious failure to comply with the program (s42); it is not an offence to fail to comply.

Surveillance and enforcement

DFSV may authorise officers to carry out surveillance and enforcement activities (s43) and may require licence holders to provide any records relating to dairy food it wishes to inspect (s44(2)). In administering the Dairy Act, authorised officers have powers to inspect and make copies of documents (s44(2)); enter premises reasonably suspected to require a dairy licence; require the production of documents and answers to questions; and administer and monitor compliance with the Dairy Act, Regulations, code of practice and licence conditions (s45). They have surveillance powers under the Food Act to administer the provisions that apply to dairy businesses.

Authorised officers also have power to make various orders—for example, that dairy premises be cleaned or disinfected, and that specified dairy food be seized, detained, or if satisfied that any dairy food is unfit for human consumption, they may add colouring material to render it unsuitable for human consumption but not to make it unfit for use as food for animals (s46). Authorised officers may also prosecute contraventions of the Act (s57)—for example, where a person fails to destroy milk products when ordered to do so. Penalties may be ordered by the court. It is not an offence under the Act to sell milk products that are unsafe for human consumption, although such conduct would contravene the Food Act and may be investigated by DFSV authorised officers, who are also authorised officers under the Food Act (s4).

Regulation of the meat industry

In addition to the Food Act, the key requirements affecting the meat industry are the Meat Industry Act, the Meat Industry Regulations 2005 and the Food Standards Code, particularly standard 2.2.1 for meat and meat products. The responsible minister is the Minister for Agriculture.

Meat (and the animals from which meat is derived) falls within the definition of food in the Food Act; consequently, a person who handles meat for sale or sells meat must comply with the provisions in this Act. A meat business, however, is not bound by the provisions relating to FSPs and council registration.

The purposes of the Meat Industry Act include:

- setting standards for meat production for human consumption and pet food
- setting up a licensing and inspection system and a mechanism for adopting and implementing quality assurance programs to ensure those standards are maintained
- enabling the regulation of meat transport vehicles
- establishing the Victorian Meat Authority (VMA, now called PrimeSafe) to operate the licensing and inspection system and arrange for the adoption and monitoring of quality assurance programs
- empowering PrimeSafe to perform the functions conferred on it by the Seafood Safety Act (s1).

The Meat Industry Act applies to food from numerous consumable animals, including poultry (excluding emus and ostriches), game (including rabbits, hares, kangaroos, pigs and goats) and cattle, sheep, goats, horses, donkeys and deer (as long as they are not living in a wild state) (s3). The Act does not apply to meat products in a dwelling house, meat in a dried or sealed form in a retail shop, or meat slaughtered on a farm for consumption on the farm (s5).

The Act establishes PrimeSafe as an independent statutory body (s43) to operate the licensing and inspection system established under the Act and to arrange for the adoption and monitoring of quality assurance programs (s1(d)). The functions of PrimeSafe include controlling and reviewing the standards of meat, poultry meat and game meat produced for consumption or sale within Victoria, and meat processing and transport facilities (s44). It does not have an express function to promote food safety. PrimeSafe is also the principal regulator under the Seafood Safety Act. PrimeSafe may be directed by the Minister for Agriculture in the performance of its functions, and it must publish any direction in the *Government Gazette* and in its next report on operations (s46). The principal regulatory mechanisms available to PrimeSafe are licensing premises and vehicles, providing inspection services, quality assurance programs and codes of practice, and enforcing conduct obligations.

Licensing

PrimeSafe is responsible for licensing operators of meat processing facilities that satisfy the criteria specified in the Act, particularly that the applicant is a fit and proper person (s16). Meat processing facilities include all abattoirs, poultry and game processing facilities, further meat processing facilities (that is, where meat is processed, packed or stored), retail butcher shops, pet meat and food processing facilities, and vehicles used for transporting meat for sale for human consumption (s3). A place is not a meat processing facility if it sells more manufactured meat, or products that contain some or no meat, than unmixed meat. Consequently, operators of supermarkets who sell many other products as

well as meat are not required to be licensed and are not subject to certain other obligations under the Act. Also, places where meat is sold to be consumed at those places are not meat processing facilities (s3); for example, operators of restaurants who serve meat dishes are not licensed by PrimeSafe, but restaurants must be registered under the Food Act.

To streamline the regulatory system relating to food, PrimeSafe has authority to supervise the retail and wholesale operations of a business under a single licence. Where this occurs, PrimeSafe applies provisions of the Food Act when monitoring the retail operations of a business; it also applies the provisions of the Meat Industry Act (PrimeSafe et al. 2004, p. 10). This arrangement will commonly apply for mixed businesses—for example, where a butcher shop sells grocery items in addition to meat and meat products.

Local government is responsible for the registration and supervision of food premises, including meat and seafood preparation areas in supermarkets under the provisions of the Food Act. A supermarket is permitted to sell pet food as well as meat, although a butcher shop is prohibited from selling meat as pet food where the meat is unfit for human consumption (Meat Industry Act, s37A). Where the principal activity of a food business is uncertain, PrimeSafe and local government negotiate the most appropriate authority to register it or license the proprietor (PrimeSafe et al. 2004, p. 10).

The Meat Industry Act provides that a licence is in force for the period (not exceeding three years) specified in the licence (s19); in practice, licences for operators of meat processing facilities and meat transport vehicles are renewed annually, subject to compliance with licensing requirements (PrimeSafe 2007b). PrimeSafe sets licensing fees without being required to prepare a regulatory impact statement (s44(h)). The most common category of licensee is ‘operator of a retail butcher shop’ (PrimeSafe 2007b). The Meat Industry Regulations 2005 (Vic.) provide for the licensing of meat transport vehicles. PrimeSafe’s licensing decisions may be reviewed by VCAT (s24).

Inspection services

PrimeSafe must provide inspection services for each licensed meat processing facility and may charge the licensee a fee for providing the service (s6). PrimeSafe may approve persons who can provide approved inspection services (s7) and who can recover fees for their services from licensees (s9).

Quality assurance programs

PrimeSafe may declare that certain premises, such as a class of butcher shops, must have a quality assurance program (s10A) to ensure standards required by the Meat Industry Act, Regulations and any applicable code of practice are maintained (s11). PrimeSafe keeps under review each approved quality assurance program (s12) and may require that it be audited on a one-off basis or from time to time (s12A).

Codes of practice

PrimeSafe may develop codes of practice that incorporate other standards and codes (s13A) and with which licensees must comply (s13E). Failure to comply with a code of practice is not an offence, but it is a reason for nonrenewal, suspension or cancellation of a licence. PrimeSafe has developed several codes of practice, including the *Victorian standard for hygienic production of meat at retail premises* (PrimeSafe 2007d).

Surveillance and enforcement

PrimeSafe may appoint inspectors to undertake specified functions (s70). The inspectors may undertake surveillance and investigations by conducting inquiries, searching premises and questioning persons to determine compliance with the provisions of the Act, Regulations, licences and quality assurance programs (s72).

The Act prohibits various forms of conduct; for example, it bans the sale of certain meat for consumption (s34), the slaughter of animals at unlicensed premises (s38) and the use of unlicensed vehicles for the transport of meat (s42A). In addition to the general standards under the Food Standards Code, participants within the meat industry are required to comply with industry-specific provisions in the code. Legal proceedings for contraventions of the Act may be instituted or conducted by the chair of PrimeSafe or by a person authorised by the chair either generally or in any particular case (s76). PrimeSafe does not publish particulars of the proceedings in its annual report or on its website.

Additional Acts relevant to the regulation of the meat industry include:

- the *Broiler Chicken Industry Act 1978* (Vic.), which applies to chickens grown under intensive housing conditions specifically for consumption as poultry meat after processing
- the *Livestock Disease Act 1994* (Vic.), which provides mechanisms to prevent, monitor and control livestock diseases. It obliges the owner of livestock, or the owner of land on which livestock resides, to report a suspicion that a livestock disease is present.
- the *Prevention of Cruelty to Animals Act 1986* (Vic.), which aims to prevent cruelty to animals, encourage the considerate treatment of animals and improve the level of community awareness about the prevention of cruelty to animals
- the *Stock (Seller Liability and Declarations) Act 1993* (Vic.), which operates to ensure certain species of stock are free from particular diseases and not in a particular condition when sold (s1). This Act applies to stock (a species used for food or producers of food products or fibre) and livestock products (milk, wool or honey).

Regulation of the seafood industry

The key legislative and regulatory instruments relating to the seafood industry are the Food Act, the Seafood Safety Act and the Food Standards Code (particularly standard 2.2.3, Fish and fish products, and standard 4.2.1, Primary production and processing standard for seafood). PrimeSafe is developing a Victorian standard for seafood processing. When the Victorian standard is approved, all seafood businesses will also be required to have an audited quality assurance program to ensure compliance with the standard (PrimeSafe 2004a). In the interim, seafood businesses must comply with the relevant provisions of the Food Standards Code. The responsible minister is the Minister for Agriculture.

Seafood is within the definition of food in the Food Act; consequently, a person who handles seafood for sale or sells seafood must comply with the provisions in the Act. But a seafood business must comply with the Act only to the extent that the Act creates obligations for the safe handling and sale of food, so the business is not bound to prepare an FSP and be registered with council.

The Seafood Safety Act was enacted to complement the Food Act and to introduce a new system for managing food safety in the seafood industry. It incorporates the whole seafood supply chain from fishing and fish farming through to retail sales of fish (s1(1)(a)). ‘Seafood’ includes any marine, estuary or freshwater fish, and any aquatic vertebrate animal (except crocodile) or aquatic invertebrate animal, including the products derived from these animals (s3). The Act applies to all ‘seafood businesses’, which means any business (retail or wholesale) involved in the handling of seafood intended for sale for human consumption. ‘Handling’ includes harvesting, aquaculture, processing, cooking (other than cooking for immediate sale), and packaging, storage and transport of seafood (s4).

PrimeSafe is the independent regulator with responsibility for seafood regulation (s6(1)). This responsibility is in addition to its responsibility for meat and poultry regulation under the Meat Industry Act. The regulatory mechanisms under the Seafood Safety Act include licensing seafood businesses, developing and applying codes of practice and FSPs, and undertaking surveillance and enforcement of conduct provisions.

Licensing

A person who conducts a seafood business must hold a seafood safety licence issued by PrimeSafe, unless an exemption applies (s9). The penalty for a first offence is 100 penalty units (more than \$10 000), with 500 penalty units or 24 months imprisonment, or both, for subsequent offences. A food business is exempt from the requirement to hold a seafood safety licence if the handling of seafood is not its main activity—for example, if it is a supermarket or a mixed food business (s4). A person who is the proprietor of a food business with

premises registered under the Food Act, or the holder of a current and valid licence under the Meat Industry Act or the Dairy Act, is not required to also hold a licence under the Seafood Safety Act (s10).

The two principal categories of seafood business licensees are seafood processing facilities and seafood harvesting facilities. Seafood processing facilities include retailers, wholesalers, processors and further processors, while seafood harvesting facilities include aquaculture and wildcatch businesses.

PrimeSafe proposes to develop an MOU with local government to ensure consistent standards apply to supermarkets and mixed food businesses handling and processing seafood. These businesses will be subject to the Food Act and supervised by local government, and will be required to comply with the Victorian standard for seafood processing when it is developed (PrimeSafe 2007c).

PrimeSafe sets licence fees following consultation with the seafood industry on the criteria for and structure of the fees (s12). The licence fees meet the costs of PrimeSafe in implementing the seafood safety system under the Act. They vary considerably in some categories according to the tonnage of seafood harvested or processed.

The term of a licence may be not more than three years (s13); in practice, licences are renewed annually. A licensee has the right to be heard before PrimeSafe makes the decision to suspend or cancel a licence (s18), but the Act does not provide a similar right in the case of a decision to vary or refuse to issue a licence. The Act does not provide an express right of appeal for the suspension or cancellation of a licence.

Codes of practice

PrimeSafe is authorised to develop codes of practice for seafood businesses after following a procedure that involves public consultation and notification in the *Government Gazette* of the code's development (s20). Licensees must comply with any applicable code of practice (s23). PrimeSafe has not yet developed a code for seafood businesses.

Food safety programs

The minister has declared, in accordance with s24(1), that all persons who conduct seafood processing facilities are required to put in place an FSP. Holders of seafood processing licences must, therefore, prepare and submit an FSP to PrimeSafe (s24(3)) for its approval (s25). The contents of an FSP are detailed in the Act (s26); PrimeSafe has also published guidance material to ensure FSPs include an organisational chart, a Hazard Analysis and Critical Control Point (HACCP) plan and programs for cleaning, maintenance, pest control, training, calibration, traceability and recall. Compliance with an applicable program is a

condition of a seafood safety licence (s27). PrimeSafe may require compliance to be audited on a one-off basis or from time to time (s29).

Surveillance and enforcement

Inspectors authorised by PrimeSafe under the Meat Industry Act (s70) may undertake surveillance and enforcement in respect of seafood businesses. They have a general power to take any action necessary to ascertain compliance with the provisions of the Act or Regulations, a code of practice, a seafood safety licence or an FSP (s30). But their powers under the Seafood Safety Act do not extend to monitoring compliance with provisions of the Food Act. They may seize seafood that is unfit for human consumption (s32) and may enter and search premises with the consent of the occupier (s33); in the absence of consent, and where there is reasonable evidence of a contravention of the Act, inspectors may obtain a search warrant to enter and search premises (s34).

The principal offence under the Seafood Safety Act is conducting an unlicensed seafood business (s9). Other offences relate to hindering or obstructing authorised officers (s45), failing to provide information required by authorised officers (s46) or giving false or misleading information (s47), and refusing admission to an authorised officer (s48). Legal proceedings may be instituted under the Act either by the chair of PrimeSafe or by a person authorised by the chair, either generally or in any particular case (s56). PrimeSafe does not publish particulars of proceedings it has instituted under the Act or the penalties imposed.

B.2.4 Improving consistency in Victorian food legislation

Consistency in legislation is an important element of good regulatory design and a prerequisite for promoting consistent implementation of regulation across the food industry in Victoria. Although the preceding outline has indicated substantial structural similarities in Victorian food legislation, chapter 8 identified apparent inconsistencies in the legislation that relate to:

- registration/licensing
- disclosure of information
- immunity and protection from liability
- investigation procedures
- penalties.

Table B.1 Registration/licensing provisions in Victorian food legislation

<i>Act</i>	<i>Registration/ licensing</i>	<i>Penalty^a</i>	<i>Appeal / Review^b</i>
Food Act	Food premises must be registered with municipal council (s35)	First offence—50 penalty units Subsequent offence—100 penalty units	Magistrates' Court (s42)
	Food transport vehicle is not required to be registered		
Dairy Act	Dairy business must be licensed by DFSV (s22)	120 penalty units	VCAT (s27)
	Dairy transport vehicle must be licensed by DFSV (s22)	120 penalty units	
Meat Industry Act	Meat processing facility must be licensed by PrimeSafe (s40)	First offence—100 penalty units Subsequent offence—500 penalty units, or 24 months imprisonment or both	VCAT (s24)
	Meat transport vehicle must be licensed by PrimeSafe (s42A)	First offence—50 penalty units Subsequent offence—100 penalty units	
Seafood Safety Act	Seafood business must be licensed by PrimeSafe (s9)	First offence—100 penalty units Subsequent offence—500 penalty units or 24 months imprisonment or both	VCAT (s60)
	Seafood transport vehicle is not required to be licensed		

^a A penalty unit is approximately \$110. ^b VCAT = Victorian Civil and Administrative Tribunal.

Source: VCEC.

Registration/licensing

The provisions in the Food Act, Dairy Act, Meat Industry Act and Seafood Safety Act relating to registration and licensing differ significantly, as illustrated in table B.1. It is difficult to understand why these differences continue to exist—for example, why repeated failure to register a supermarket under the Food Act may lead to a fine of up to \$11 000, while repeated failure to license a butcher shop under the Meat Industry Act may lead to a fine of up to \$55 000 and two years imprisonment.

The position in other jurisdictions does not exhibit such inconsistencies. In New South Wales, s100 of the Food Act requires the proprietor of a food business to notify the NSW Food Authority before he or she commences to conduct a food business, irrespective of whether the business relates to groceries, dairy, meat or fish—unless the business is exempt. A person who fails to give notification is punishable by a fine of 500 penalty units (or 2500 penalty units in the case of a corporation). The definition of food business is wide enough in that state’s Food Act to include premises that would be registered under the Food Act in Victoria, meat processing facilities that would be licensed under the Meat Industry Act and businesses that would be licensed under the Seafood Safety Act and Dairy Act.

Disclosure of information

Section 54 of the Food Act prohibits an authorised officer from disclosing information obtained in the administration of the Food Act unless an exception applies, such as in respect of proceedings. Other exceptions permit disclosure of information by authorised officers only to the Secretary of DHS (s54A), the Food Safety Council (s54B), a municipal council (s54C) and a public statutory body (s54D), or elsewhere with the consent of the individual from whom the information was sourced.

Section 16 of the Dairy Act provides that an officer of DFSV must not make ‘improper use’ of any information acquired in the course of his or her duties to obtain a personal benefit. The Act does not however expressly confer power on an officer of DFSV to disclose information to the public; consequently the Act does not allow an officer to disclose information on prosecutions or other disciplinary action, such as licence suspension or cancellation.

Section 57 of the Meat Industry Act is restrictive. Section 57(1) prohibits PrimeSafe officers and employees from disclosing any information acquired under either the Meat Industry Act or the Seafood Safety Act on the affairs of another person, except as required in the performance of their duties. If a disclosure is not actually ‘required’, it may not lawfully be made.

In other Australian jurisdictions, there is a single regime for disclosure of information relating to food businesses.

Immunity and protection from liability

A legitimate concern of officers who administer and enforce the provisions of the Food Act, Dairy Act, Meat Industry Act and Seafood Safety Act is their potential liability for losses suffered by businesses or consumers if they act negligently. Section 56(1) of the Food Act provides that authorised officers and employees of councils are not personally liable for anything done or omitted in good faith when performing functions under the Act. The definition of 'authorised officer' includes officers authorised under the Dairy Act, Meat Industry Act and Seafood Safety Act, as well as persons authorised under the Food Act and the Health Act (s4). The liability of council employees attaches to the responsible council, and that of other authorised officers attaches to the Secretary of DHS (s56(3)).

Section 60 of the Dairy Act is substantially similar. There is no apparent provision in the Meat Industry Act to grant inspectors immunity for good faith but negligent action under the Act. Section 47 provides for immunity of board members of PrimeSafe when performing functions under the Meat Industry Act or the Seafood Safety Act, but this protection does not extend to inspectors.

Inconsistent investigation procedures

The investigation procedures under the Food Act, Meat Industry Act, Seafood Safety Act and Dairy Act are all expressed differently; in some cases, the differences appear significant and not justified by the different characteristics of the food to which they apply. Sections 21–23 of the Food Act detail procedures for taking samples during an investigation under the Food Act. They require, among other things, that the sample be purchased. The procedures for taking samples under s72(2)(g) of the Meat Industry Act are much less prescriptive.

Inconsistent penalties

Inconsistent penalties for failure to register or obtain a licence are noted above, but there are other differences in penalties too. If, for example, a butcher sells meat that is unfit for human consumption and is prosecuted under s37A of the Meat Industry Act, then the butcher may be fined a maximum 100 penalty units; yet if prosecuted under s9 of the Food Act, the butcher may be fined \$100 000 and imprisoned for two years.

Interdepartmental review of Victorian food legislation

In addition to the inconsistencies discussed, there may be other anomalies in Victorian food legislation. The Commission has thus recommended that DHS and the Department of Primary Industries establish a joint committee to examine

Victorian food legislation for inconsistencies, with a view to remedying them where appropriate (chapter 8).

B.2.5 Other laws relevant to food regulation

Other Acts operating within the Victorian food regulatory environment include:

- *Health Act 1958* (Vic.)—this Act vests municipal councils with responsibility to act to prevent disease and promote public health. DHS recently completed an extensive review of the Health Act, examining the adoption of broad health initiatives, including the prevention of ‘lifestyle’ diseases such as obesity
- *Bread Industry Act 1959* (Vic.)—this Act creates certain offences in the bread industry, for example for suppliers who refuse to supply any bread manufacturer or persons proposing to commence business as a manufacturer with supplies necessary to manufacture bread
- *Control of Genetically Modified Crops Act 2004* (Vic.)—this Act prohibits or restricts the cultivation of genetically modified crops in designated areas of the state
- *Gene Technology Act 2001* (Vic.)—this Act aims to protect the health and safety of people and the environment by identifying risks posed by, or as a result of, gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms
- *Fair Trading Act 1999* (Vic.)—this Act is administered by CAV; it largely mirrors the consumer protection provisions of the Trade Practices Act and promotes fair trading practices, protects consumers and provides for the safety of goods (including food) or services supplied in trade or commerce and disclosure of information on them. The Fair Trading Act prohibits misleading and deceptive conduct and other unfair business practices
- *Trade Measurement Act 1995* (Vic.)—this Act provides for the regulation of measurement of goods for sale, including food. It is uniform with the trade measurement Acts in the other states and territories.

Appendix C: Basis for estimated savings

In chapter 9 the Victorian Competition and Efficiency Commission described the estimated savings that could accrue from changes it proposed. Section 9.10 set out the basis for savings from the proposed low risk category of businesses, single register for all businesses, targeted training requirements and removing annual inspection requirements for registration. However, it only briefly outlined the savings from the proposed removal of the food safety program (FSP) requirements. This appendix details the assumptions underlying the Commission's estimated savings from this proposal, and summarises the net savings for the Commission's proposals in chapters 8, 9, 10 and 11.

C.1 Removing the food safety program requirement for class 2 businesses

The Commission has estimated that if its proposal to remove the requirement for FSPs applied to current registered business in the four main food groups, it would save about \$30.5 million annually.

C.1.1 Assumptions underlying the business savings

The estimated savings are based on assumptions about:

- the number of businesses that would no longer require an FSP
- implementation and ongoing administrative costs of the new arrangements relative to current ones
- the cost to businesses of introducing, becoming familiar with and operating under the new arrangements.

Number of businesses

The number of premises to which the recommended removal of the FSP requirement would apply is derived from data in table 6.6. That table describes the number of class 1 and class 2 businesses (and premises) requiring an FSP or equivalent (that is, it accounts for the proportion of registered premises exempt from the FSP requirement—about 6.6 per cent). The Commission's proposal relates to only class 2 businesses regulated under the *Food Act 1984* (Vic.). Accordingly, the Commission has reduced the number of businesses for which savings are expected, by accounting for:

- businesses registered by Dairy Food Safety Victoria and PrimeSafe, and thus not regulated under the Food Act (which meant subtracting 675 businesses

from the manufacturing total, and 1254—butchers and seafood outlets—
from the retailing total)

- the proportion of businesses that are class 1 businesses and still require an FSP (which is 6 per cent of registered premises based on information from the Department of Human Services)
- businesses that councils might deem as requiring an FSP (given their risk profile¹ or their serial or serious noncompliance²—1000 and 1100 respectively). These businesses are assumed to incur both ongoing and implementation costs.

The Commission has assumed that 10 per cent of non-exempt class 2 premises that would formerly have renewed their FSP each year (3600) would no longer incur the implementation cost of current FSP templates (\$110, see below). The Commission also assumed that councils would deem about 1250 of the 2250 new entrants to the industry (based on 5 per cent growth) as having a low risk profile that would not require an FSP and therefore would not incur the implementation and ongoing costs of an FSP.

Implementation and ongoing costs

The implementation cost³ used to estimate potential savings reflect the cost for the simplified templates currently in general use across class 2 businesses. This cost, of \$110, is minimal compared with The Allen Consulting Group estimates (which were based on developing one's own FSP), and the templates are assumed to take two hours (at a cost of \$55 per hour) to download, read and understand.

Ongoing administrative costs from instituting an FSP and qualifying for council registration are derived from the costs in table 6.5 (chapter 6). Allowing for actual inflation of 15 per cent in the period from when those costs were estimated to 2006-07, these costs are \$3095, \$1415, \$1415 and \$1840 for the manufacturing, wholesaling, retailing and cafés/bars/restaurants industries respectively. However, the costs described in table 6.6 are averages for class 1 and class 2 businesses: the Commission's proposal applies to only class 2

¹ Derived from a 5 per cent growth rate on 45 000 premises (2250), of which less than half (1000) are conservatively assumed to meet councils' risk criteria for requiring an FSP.

² Derived from information from various councils which suggests these businesses account for between 4 per cent and 10 per cent of businesses. A mid-point would represent about 3150 businesses, of which a maximum of about one third (1100) are assumed to warrant councils to require a business to have an FSP to resolve their noncompliance issues.

³ This is the initial cost of developing and implementing an FSP and associated requirements.

businesses, so the Commission has reduced the ongoing cost used to estimate savings by:

- the proportionate contribution of class 1 businesses (which, as noted, constitute about 6 per cent of premises) to the average cost
- the higher ongoing costs likely to be experienced by class 1 businesses (assumed to be about 50 per cent higher than for class 2 businesses).

The net result of excluding the effect of class 1 businesses is therefore estimated to reduce the average ongoing cost derived from table 6.6 by about 3 per cent.

Cost to businesses of new arrangements

The Commission considers that all registered premises for which an FSP would no longer be required would need some education and training to understand their responsibilities under the new regime. In addition, those premises would still face some cost in meeting the simpler registration and record keeping requirements. The Commission expects that these costs, combined, would involve almost half the ongoing cost formerly incurred. As a result, residual ongoing costs are estimated to be about \$800 for each business. This cost would apply to the balance of the registered premises (33 581) expected to no longer require an FSP.

C.2 Summary of savings from proposed changes

The Commission estimates that the proposed changes listed in section 9.10 offer the potential to deliver net savings to businesses of about \$34 million (table C.1).

Table C.1 Estimated savings from proposed changes

<i>Proposed changes</i>	<i>Estimated net saving in first year</i>
	<i>\$m</i>
Reduced regulatory requirements for low risk businesses	0.0
Removal of the FSP requirement for class 2 businesses	30.5
Single register for all (including mobile) premises	2.0
More targeted training requirements (mid-range estimate)	1.7
Removing annual inspection requirements for registration	0.0
Total estimated administrative cost savings	34.2

Source: VCEC estimates.

The proposals would also impose some costs on councils and the Victorian Government and on business. Previous experience with extensive changes to Victoria's food regulations suggest the implementation costs to government might amount to around \$3 million (chapter 9). For business, the proposal to allow on-the-spot fines could result in costs of about \$1.5 million each year, depending on the number and size of fines (chapter 10).

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