

Review required by Section 73  
Food Production (Safety) Act 1998

# Integration of the NSW Food Safety System

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# Final Report

November 2002

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1 November 2002

The Hon Richard Amery MP  
Minister for Agriculture and  
Minister for Corrective Services  
Parliament House  
SYDNEY NSW 2000

The Hon Craig Knowles MP  
Minister for Health  
Parliament House  
SYDNEY NSW 2000

My dear Ministers

This is the third report I have been associated with which makes recommendations to advance your policies of providing the people of New South Wales with as much assurance as possible regarding the safety of food.

One can only reiterate the view, held by so many in this important area, of the necessity for objectives and the co-ordination of regulations and activities needing to follow function. Food safety is essentially about risk management. There is little doubt that there will always be risk of food-borne illness. It is equally certain that considerable financial savings for the community and the health of the population can be progressively made and improved, respectively.

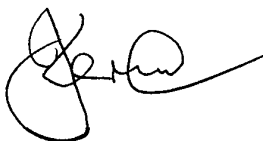
What is being recommended is neither a Rolls Royce nor an economy car model. The tools and techniques for the provision of food safety are many and varied in terms of their sophistication and applicability. They range from cutting-edge science to visual inspection and from enforcement to education. The recommendations are designed to put in place the base on which the many tools may be most sensibly employed and a basis on which the proposed NSW Food Agency can progressively become more effective.

It is fair and reasonable for the Agency to collect fees for the provision of services to commercial entities and for licence and registration fees to be used as cost recovery mechanisms in some cases, e.g. for premises. For some industries this is properly part of being in business and the Agency has to have enough consistency and credibility for the private sector to rely upon. However, the provision of food safety is a classic public good. The Council on the Cost and Quality of Government agrees with this judgment and the Review welcomed its perceptive observations and recommendations made as part of its overall assessment of the performance of Safe Food Production NSW, as it was structured earlier this year. If the job is to be done more successfully, more resources are needed.

The major issue for the Review was whether or not to retain or try to improve on the status quo arrangements for food safety and simply nominate one body, agency or Ministry as the "regulatory authority" or alternatively, examine the arguments for and advocate a through-chain co-ordinating agency. There are arguments for the preservation of the somewhat disjointed status quo. However, the evidence for and support for an independent, expertise-based Food Agency acting as policy driver and the co-ordinator of tested relevant activities in place was overwhelming. Some tasks are currently not being adequately performed and it is seen that there will be gains if a more concerted approach is taken. In general, there is an effectiveness dividend if arrangements for the tasks of government can be soundly co-ordinated. This is not to criticise what is in place so much as to specify where expertise boundaries lie and where working relationships can be put in place by one actor.

May I record with you my appreciation of the work of so many people on this Review, especially officials in the Department of Health, Safe Food Production NSW and NSW Agriculture. I am particularly grateful for the work and dedication of Craig Sahlin, Samara Lever, Stefan Fabiansson, Dale Gollan and Pam Gilchrist who acted as Secretariat to the Review.

Yours faithfully



The Hon John Kerin, AM, BA, BEc, Hon PhD (UNE), Hon D Litt (UWS), Hon D Sc (UTas), FAIAST, FTSE

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## ACKNOWLEDGEMENTS

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The quality of submissions, the time people were prepared to put in and the enthusiasm and thought of presenters in consultation convinced the writers of this report that most people believe that a through-chain agency's time has come. The Council on the Cost and Quality of Government was an intrinsic part of the Section 73 Review process.

With the usual disclaimers regarding omissions the Review Team wishes to record its appreciation for:

- The Council on the Cost and Quality of Government (Mr Byram Johnston, Review Chair and Ms Donna Rygate, Review Director)
  - Members of the Agency Steering Committee
  - Members of the Stakeholder Reference Group and its industry subcommittees
  - Member of the SafeFood Production Advisory Committee
  - NSW Health and SafeFood NSW officers
  - The stakeholders and their organisations in industry, consumer and public health associations, local government, unions, scientific, technical, education and academic organisations all of whom took the time and made the effort to give their insights into the best way forward.
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# EXECUTIVE SUMMARY

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The key recommendations of this Review are that the Government should establish a through-chain food regulatory agency for NSW, and that SafeFood NSW should provide the base for that agency. This would provide for targeted, efficient and effective resource allocation, consistency of approach to food regulation, and a single Government interface for stakeholders.

This report explains the rationale for this recommendation and sets out how the NSW food agency could be established.

## BACKGROUND

SafeFood Production NSW (SafeFood) was established in 1998 under the Food Production (Safety) Act as a stand-alone food safety agency to cover the primary produce and seafood industries. Section 73 of the Act requires a review of the SafeFood initiative which also considers whether the NSW food safety system should be further streamlined or integrated.

Government and industry have a joint responsibility to manage risks along the food chain to ensure a safe food supply. Individual food businesses should take operational responsibility for food safety through HACCP<sup>1</sup>-based food safety programs, supported by Good Manufacturing Practice (GMP) and Good Handling Practice (GHP).

Government's role has become two-fold. Firstly, through Risk Analysis, Government can provide an infrastructure to steer or target industry risk management practices in the right direction. Secondly, Government checks the adequacy of the control measures implemented by industry and whether food law is complied with. The extent of supervision will vary, but a robust co-regulatory approach is vital.

Food safety regulators have moved from a reactive, disease-triggered approach to a preventive, whole-of-chain system. The challenge for government in this co-regulatory environment is to achieve the right balance that will meet its paramount responsibility to protect public health and safety.

Ideally, the food regulatory system should enable Government to enunciate public health goals offering an achievable level of protection to the public. Scientific risk assessments will translate these goals into food safety objectives articulated for specific food and hazard combinations. Performance criteria along the food chain will give operational guidance to HACCP-based industry systems. The performance of the operator can thus be linked to an overall public health outcome, which can then be monitored through food-borne disease surveillance.

## THE CURRENT SYSTEM

Achievement of the ideal vision requires cooperative relationships among all agencies responsible for food. The current system is fragmented with an uneven coverage. Food regulatory arrangements in NSW involve a number of State agencies and the local government sector. NSW Health, Local Government, SafeFood, NSW Agriculture, NSW Fisheries, the NSW Environment Protection Authority, and the NSW Department of Fair Trading are all involved to some extent.

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<sup>1</sup> A HACCP system, which operates similarly to a quality assurance system, enables an individual business to identify food safety hazards and the critical control points in its processes, establish and monitor appropriate controls, and document their operation.

Considerable management and staff time is devoted to ensuring workable boundaries between these agencies, clear understanding of respective roles and responsibilities, and consistent approaches.

NSW Health, administers food legislation which gives it responsibility for:

- ensuring that food for sale is fit for human consumption and for food recalls;
- ensuring that food safety standards are observed;
- ensuring that food meets the composition, chemical, labelling and microbiological standards set out in the Food Standards Code; and
- a range of consumer and industry protection issues.

Public Health Units within the Area Health Services are responsible at State level for enforcement of these requirements in an estimated 50,000 food manufacturing, retail and food service businesses. In addition to its regulatory responsibilities, NSW Health is also the lead agency for surveillance and investigation of food-borne illness.

SafeFood is responsible for food safety in primary production and processing, including seafood. It regulates more than 10,000 businesses in the dairy, meat and shellfish industries and will soon cover a further 1,700 seafood businesses.

NSW Agriculture gives whole-of-farm advice to approximately 80,000 farms, addressing farm product integrity requirements along with economic, production, environmental, sustainability and welfare requirements for food production.

Local councils' involvement with businesses in their area is utilised in inspection and enforcement activities, primarily in the retail and food service sectors. Although local councils are not required to enforce the Food Act, food safety is seen as an integral part of wider public and environmental health responsibilities by many of the State's 172 councils.

## **PERFORMANCE REVIEW OF SAFEFOOD PRODUCTION NSW**

As part of the Review, the Council on the Cost and Quality of Government conducted a Performance Review of SafeFood. Its report makes 12 strategic recommendations and 8 operational recommendations. Many of these respond to findings that improvement is needed in areas including communications, information and training support for food safety scheme rollout, strategic human resource management, and performance measurement.

Significantly, the Council's first recommendation is that "the concept of a single through-chain agency be supported and SafeFood be that agency". The Review gives great weight to the Council's assessment that SafeFood provides a sound base upon which to establish a through-chain agency.

The Review supports all of the Council's recommendations, with minor qualifications. All but five of the Council's recommendations are linked to Review recommendations on the functions, form and funding of the proposed NSW food agency. (*See Recommendation 1*)

## A THROUGH-CHAIN AGENCY FOR NSW

The major purpose of recent reforms to the national food regulatory system was to address the fragmentation, lack of coordination, and inconsistency identified by the 1998 Blair Food Regulation Review. Several features of the new framework will require robust through-chain approaches by the States and Territories.

The Blair review recommended that the multiplicity of agencies at State/Territory level, exacerbated by the local government role, also be addressed. Most jurisdictions are taking steps to improve coordination or to rationalise their fragmented arrangements, but no consistent model has emerged.

There is growing international recognition that structural integration is needed if the benefits of a through-chain approach to food safety risk management are to be achieved in practice and sustained in the long-term. The precise form that structural integration may or should take will vary under differing governmental and institutional conditions. The Review considers both the rationale and the model for the establishment on 1 July 2002 of the New Zealand Food Safety Authority to be highly relevant to NSW.

Potential benefits of four kinds could be delivered by a through-chain agency.

**Targeted resource allocation.** A through-chain agency is better able to allocate regulatory resources (and also the industry compliance burden) commensurately with risks. Management of this process by a single agency will also reduce duplication and ensure complete coverage.

**Consistency of approach.** A through-chain NSW food agency will be able to drive consistency in a number of key areas:

- risk assessment and risk management;
- the balance between prevention and enforcement activities;
- operational policies and procedures;
- interpretation of standards and other legal requirements; and
- management of cross-border food regulation issues.

**Efficient and effective resource utilisation.** NSW Health food regulatory staff, currently around 40, and the 70 SafeFood staff are thinly spread across their responsibilities. Coordination of NSW Health staff is made more challenging by the dispersal of field staff within the Area Health Services. Bringing the staff together under a common management structure will enable more effective and efficient use of resources.

Pooling of staff with skills in risk analysis, policy development, and program development and implementation will better support a targeted whole-of-chain approach. Skill transfer will facilitate the development and implementation of preventive programs for the retail and food service sectors and a robust enforcement presence across the whole system. Planning and delivery of regulatory services to regional and rural areas, including the key local government liaison role, will be greatly enhanced by merging the field staff of the two agencies.

**Single NSW Government interface for stakeholders** The NSW food agency will provide a single point of contact with the NSW Government on food regulation matters. The Government's food regulatory efforts will be more visible and transparent, and its accountability clearer. A single agency will also ensure consistency in the management of key stakeholder relationships. Further, expert advice on food issues can be provided through a single Advisory Committee rather than through two as at present.

Many of these potential benefits can be discerned in Safe Food's "cross-commodity" progress to date, which suggests that the potential benefits of through-chain integration will be realised in practice.

### **Stakeholder opinion on the through-chain agency**

The 84 submissions to the Review confirm the impression gained during the consultation meetings that further integration of the NSW food regulatory system is strongly supported. This impression was confirmed by a comprehensive analysis of submissions which included segmentation of stakeholders by category.

### **Establishing a through-chain agency**

The Review therefore recommends that the food regulatory resources and expertise of NSW Health be merged with the resources and expertise of SafeFood Production NSW to establish a through-chain NSW food agency. (*see Recommendation 2*)

The Review undertook a benefit/cost analysis and concluded that the benefits of establishing the agency are likely to exceed the incremental cost of the funding proposals. The qualitative component suggests that a NSW food agency will be more likely than current arrangements to maximise the benefits of food regulation and related activities.

The quantitative component shows that the relatively modest cost of the proposal is likely to be balanced or exceeded by substantial potential benefits. The "break-even point" for the recurrent cost (\$738,747 annually) would be reached by **either**

- a 0.1% reduction in food-borne illness, given the latest estimates that food-borne illness costs NSW \$765 million annually; **or**
- a reduction of 0.3% in industry compliance costs, given the estimated NSW costs of \$226 million annually.

## **FUNCTIONS**

The Food Act provides the framework to enforce the Food Standards Code and for management of food regulation generally. A State agency or nominated official is designated as the "regulatory authority", currently the Director-General of NSW Health. The "regulatory authority" has overall responsibility for the system, together with any State or local government agencies designated as "enforcement agencies".

SafeFood's remit under the Food Production (Safety) Act is limited to food safety and it has no jurisdiction in the retail and food service sectors, except for retail butchers.

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At a minimum, the remit of the NSW food agency should include food safety at all points in the food supply chain. Thus it would be responsible as an “enforcement agency” for the Food Standards Code requirements relevant to food safety and for the additional requirements of food safety schemes under the Food Production (Safety) Act.

The Review considered two remaining questions:

- 1 Should the agency enforce all requirements of the Food Standards Code, in addition to food safety?
- 2 Should the agency also be designated as the “regulatory authority” and thereby be responsible for overall coordination of the food regulatory system?

### **ENFORCEMENT OF THE FOOD STANDARDS CODE**

The Food Standards Code sets out the compositional, microbiological, chemical, and labelling standards for food, as well as food safety and handling requirements for industry. It thus includes standards with food safety and non food safety implications. Either the non food safety requirements of the Code should be enforced by another NSW agency or the NSW food agency should take “enforcement agency” responsibility for all Food Standards Code requirements.

The Review prefers the second option as it would allow for a streamlined “one stop shop” approach. Priorities for resource allocation would be determined commensurately with food safety risk, or other regulatory priorities. In addition, this option would allocate responsibility for the entire Food Standards Code to the agency with food expertise and resources and day-to-day contact with the food industry.

### **COORDINATION OF THE FOOD REGULATORY SYSTEM AS THE “REGULATORY AUTHORITY”**

The major coordination issue will be the enforcement role of 172 local government councils. Designating the NSW food agency as the “regulatory authority” would further reduce fragmentation and inconsistency of approach at State and local government level, as the one agency would coordinate the food regulatory system.

The Review therefore recommends that the NSW food agency be designated as the “regulatory authority” under the Food Act and also be responsible for implementing the Food Production (Safety) Act. (*see Recommendation 3*)

### **CONSUMER INFORMATION AND EDUCATION**

The overall goal of the food regulatory system in NSW is to improve food safety, reduce food-borne illness and improve the general health of the community. Consumer information and education can promote this goal in circumstances where an “informed” consumer can reduce their exposure to food safety risks or improve their long-term health.

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The Review identified four areas for consumer information and education programs.

#### EDUCATING CONSUMERS ON FOOD HANDLING AND HYGIENE

Educating consumers with simple key messages on food handling and hygiene practices can play an important part in reducing preventable food-borne disease. It can also help establish a food safety culture in the community which over time should have a beneficial impact on food industry practice

#### EMPOWERING CONSUMERS THROUGH RISK COMMUNICATION

Some food safety risks cannot be controlled during processing or eliminated before sale. They are an intrinsic aspect of some foods and may only affect particular groups. Education of such consumers may be an important risk management option.

#### INFORMED CHOICES THROUGH NUTRITION INFORMATION AND EDUCATION

Healthy eating based on informed choice is well recognised as a mechanism for improving population health. Comprehensive new labelling requirements will soon be included in the Food Standards Code so that consumers have adequate information for informed choice when purchasing food.

Labelling requirements impose a significant compliance cost on the food industry. This investment is devalued unless the requirements are soundly based on expert input, including nutritional expertise, and consumers effectively use the information.

The Review identified “gap areas” in current public health nutrition work and recommended that the NSW food agency complement the work of NSW Health in two ways. Firstly, it should provide expert nutrition input to national policy and standards development. Secondly, it should develop and implement a systematic, coordinated framework for provision of nutrition information. There will be synergies with the agency’s general food safety information and education responsibilities.

#### MANAGING THE GOVERNMENT-CONSUMER INTERFACE

One consequence (and a potential benefit) of establishing a through-chain agency will be that the new agency becomes an obvious contact point for consumers. The agency will need to manage this interface proactively.

Consumer access should be facilitated through tools which might include a call centre, consumer information lines, and/or interactive website features. When approached on food issues outside its remit (e.g. trade) or where more specialised expertise is needed (e.g. a complex consumer dispute or personal nutritional advice), the agency should be able to provide appropriate and timely referrals.

The Review recommends that the NSW food agency have a consumer information and education function which addresses the key areas outlined above. (*see Recommendation 4*) However, a

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comprehensive business case will need to be prepared which considers program design, development and delivery issues in detail.

## **FUNCTIONS TO BE RETAINED BY NSW HEALTH**

Transfer of food regulatory functions from NSW Health to the NSW food agency necessitates clear definition of the related functions which are to be retained by NSW Health. (*see Recommendation 5*)

### FOOD-BORNE DISEASE EPIDEMIOLOGY

NSW Health should continue to be the recipient of statutory notifications of notifiable diseases and the lead agency for investigating food-borne illness. However, it should be able to draw on the expertise of the NSW food agency when needed.

Informal notifications of food-borne illness and outbreaks are also received from industry and members of the public. They can currently be directed to NSW Health, SafeFood or other agencies. It is likely that the NSW food agency will become the focal point for such notifications. Close collaboration between the agencies will be necessary to avoid duplication and gaps.

### NUTRITION POLICY AND HEALTH PROMOTION

NSW Health should retain its responsibility for public health nutrition. As recommended, the NSW food agency should address current gap areas by adopting a primary role in ensuring the effectiveness of labelling and other Food Standards Code requirements for the NSW consumer. A collaborative approach between the two agencies will enhance development and delivery of nutrition messages.

## **A FUNCTIONAL MODEL OF THE NSW FOOD AGENCY**

This Review built on the functional model of SafeFood developed during the 2001 Funding Review to provide an indicative functional model of the NSW food agency's activities. The model will assist in developing the agency's structure and programs and determining its resource requirements. (*see Recommendation 6*)

## **OTHER INTERAGENCY LINKAGES AND RESPONSIBILITIES**

Apart from linkages with NSW Health, the NSW food agency will need robust and formalised arrangements for strategic liaison and consultation with relevant agencies including NSW Agriculture, the Environment Protection Authority and the Department of Fair Trading. (*see Recommendation 7*)

The current boundaries between SafeFood NSW and NSW Agriculture are clear-cut. NSW Agriculture is responsible for on-farm inputs and has established a product integrity program for farmers. SafeFood NSW is responsible for food safety schemes through the commodity chain. However, there is potential overlap and a Memorandum of Understanding should be established to clarify respective roles and responsibilities.

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A Memorandum of Understanding is also suggested between the NSW food agency and EPA to cover the regulation of pesticides and also the management of environmental issues impacting on food production.

The need for a Memorandum of Understanding between the NSW food agency and Fair Trading should be explored to clarify future responsibilities regarding food labelling and other consumer issues.

## **FOOD REGULATION ENFORCEMENT BY LOCAL GOVERNMENT**

Local Government has played an important role in food regulation enforcement in NSW since 1896. The NSW food agency will need full support from local councils for food regulation enforcement to be effective at all levels.

Councils vary considerably in size, staff, skills, resources and commitment. Consistency of approach must be facilitated by the NSW food agency through information, briefings and practical training provided to relevant council staff. It is envisaged that all local councils would be responsible for basic food safety requirements in low risk food businesses, but some could also be involved in higher risk areas

To secure future local council involvement, the NSW Government should explore with local government models for mandating a local government role for food regulation in the Local Government Act. Outcomes and service delivery expectations should be specified, and funding mechanisms for cost recovery provided. (*see Recommendation 8*)

## **RISK PROFILE OF THE NSW FOOD INDUSTRY – A HIGH PRIORITY**

Science-based risk analysis is used to ensure that regulatory requirements target real risks, that priorities can be established, and that the most appropriate risk management options are identified. The overall aim is to ensure the most effective allocation of regulatory resources by government and compliance resources by industry.

The practicability, efficacy, and compliance cost of regulatory requirements were a major focus of many Review submissions. A risk profile of the NSW food industry would support a stratified approach to food safety risk management. The nature and extent of regulatory “verification” of compliance with standards should reflect the nature and extent of the food safety risks. It will be possible to identify industry sectors in which less rigorous audit or inspection processes may be sufficient, as well as those which should require audit by accredited food safety auditors, whether Government or third party. (*see Recommendation 9*)

## **FORM**

The threshold issue for the form of the NSW food agency is whether it should be a stand-alone agency, like SafeFood Production NSW, or as a business unit within a large agency. Given the generally positive findings of the Performance Review, the Review considers that the NSW food agency should be set up by building on the base provided by SafeFood and the Food Production (Safety) Act 1998. (*see Recommendation 10*)

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SafeFood's recently adopted functional structure, which replaced a commodity-based structure, should provide the base for the new agency's interim structure. (*see Recommendation 11*)

### **STAFF TRANSFER TO THE NSW FOOD AGENCY**

The Review recommends that NSW Health's Food Branch staff be transferred to the NSW food agency. Public Health Unit staff involved in food regulatory, advisory and enforcement activities should also be transferred. Some Public Health Unit staff have split responsibilities. The resources associated with these split responsibilities should be quantified and also transferred to the NSW food agency. (*see Recommendation 12*)

NSW Health and the NSW food agency will share responsibility for response to incidents of food-borne disease and food-related complaints. Before staff are transferred, a detailed response protocol should be developed to ensure continued effective response under the new arrangements. (*see Recommendation 13*)

NSW Health and SafeFood each maintain regional networks of field staff. To determine the most appropriate staff deployment by the new agency in rural and regional NSW, a strategic operational review will be needed.

The Review recommends that staff transferred from regional Public Health Units remain co-located with their Units until that review has determined the optimal regional network and accommodation arrangements have been finalised. Metropolitan Public Health Unit staff should be relocated as soon as it is clear that the response protocol is working. (*see Recommendation 14*)

The merger of SafeFood with NSW Health food regulatory staff will present a number of cultural, management and logistical challenges. It is particularly important that the initiative not be seen as a takeover by SafeFood but as the formation of a truly new food agency.

To ensure successful transition, a transition period of at least six months should precede establishment of the new agency. A joint SafeFood-NSW Health transition team should develop a detailed transition plan addressing all issues related to the transfer and integration of staff into the new agency. (*see Recommendation 15*)

SafeFood's inclusive strategic planning process was critical to the successful incorporation of its predecessor agencies and programs and the development of a united vision and strong strategic direction. The Review recommends that a strategic planning workshop with broad participation be held soon after establishment. The workshop should develop a strategic plan for the agency for the next three years. (*see Recommendation 16*)

It was beyond the scope of the Review to develop detailed proposals for the recommended consumer information and education function. The Review therefore recommends that a Development team, consisting of a Project Manager and a Research Assistant, be appointed for 12 months to develop program proposals, a structure, and a business case for the agency's Consumer Information and Education branch. (*see Recommendation 17*)

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## **AGENCY GOVERNANCE AND ACCOUNTABILITY**

Establishing the NSW food agency as a stand-alone agency will itself enhance accountability and ensure a clear focus on food regulatory issues. The new agency should be established as a government department with the CEO reporting to the Minister. (*see Recommendation 18*)

The Review examined three options for Ministerial responsibility:

- 1 The agency could report to the Agriculture Minister, like SafeFood;
- 2 The agency could report to the Health Minister, like the Food Branch and the Public Health Units within NSW Health; or
- 3 A separate portfolio, such as Food or Food Regulation, could be created.

The significant disadvantages of the first two options lead the Review to recommend that a separate portfolio of Food Regulation be created. A major benefit of the new agency will be the clear focus on food safety and related consumer issues. Creation of a separate portfolio, allocated at the Government's discretion, will help maintain that focus. The Minister for Food Regulation should be responsible for the Food Act, now allocated to the Minister for Health, and the legislation now allocated to the Minister for Agriculture as the SafeFood Minister.

However, section 10 of the Food Production (Safety) Act 1998 should be amended to limit the Minister's power to control and direct the NSW food agency in certain circumstances. (*see Recommendations 19 and 20*)

The Review recommends that an independent statutory Advisory Committee be established to support the Minister and the NSW food agency. The new Food Act provisions should be used to establish this Committee, which would replace the two existing NSW food advisory committees. (*see Recommendations 21 and 22*)

Both NSW Health and SafeFood consult with industry and consumer stakeholders through a variety of means. In addition, the Food Production (Safety) Act requires SafeFood to establish or nominate a mechanism for consultation with each industry regulated by a food safety scheme.

The Performance Review recommendation for a comprehensive consultative forum is even more appropriate for the NSW food agency with its broader remit. The Review recommends that the Minister establish an Industry and Consumer Consultative Committee, also using the new Food Act provisions. Over time, with the agreement of the relevant industries, the Consultative Committee should replace the existing commodity-specific forums. (*see Recommendations 23 and 24*)

## **FUNDING**

Most of the funding for the NSW food agency will be provided by the current government and industry funding of SafeFood and the current funding of food regulatory activities of NSW Health, all of which is provided by government. (*see Recommendation 25*)

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The SafeFood Funding Review in 2001 established a framework for shared funding by government and industry, based on a functional model of SafeFood's activities, which the Government intends to apply generally to food regulation.

The current food regulatory activities of NSW Health would fall almost entirely into categories which are or should be government-funded under the framework. The Review therefore recommends that the current funding of NSW Health food regulatory activities be transferred to the NSW food agency as recurrent government funding, with the quantum to be agreed through a "due diligence" process. (*see Recommendation 26*)

Additional government funding is recommended to:

- meet the costs of establishing the NSW food agency;
- address areas for improvement identified by the Performance Review of SafeFood; and
- ensure that the benefits of establishing the agency are actually captured.

The Review envisages a "transition period" of at least six months before the new agency is established and 12 months for integration of staff, functions and programs. The total additional funding sought is \$2.79 million over the first 18 months and recurrent funding of \$738,747 thereafter. This is equivalent to a modest 3.8% increase on recurrent spending.

## **TRANSITION COSTS**

The Review recommends funding of direct transition costs, estimated at \$980,000, in three categories (*see Recommendation 28*):

- Physical relocation of Food Branch and metropolitan Public Health Unit Staff.
- Database and information system integration.
- Internal and external communication needs.

## **CHANGE MANAGEMENT AND RELATED ISSUES**

The Performance Review recommended enhancement of SafeFood's internal infrastructure, particularly with respect to communications, change management and strategic human resources management. This should be encompassed within a change management strategy.

To develop and maintain capacity in these areas, the Review recommends the permanent appointment of a core team consisting of a senior human resources professional, a senior communications coordinator and a communications officer. For the transition period and the first year of establishment, the core team should be supplemented by a human resources officer and two communications officers.

The change management strategy will identify the resources needed to develop and maintain the agency's infrastructure. The agency should prepare a business case for any additional funding required to implement the strategy. (*see Recommendations 29 and 30, costed at \$1.1m during the 18 month period and \$396,000 p.a. thereafter*)

## **CONSUMER INFORMATION AND EDUCATION**

The recommended Development team should be funded for 12 months. *(see Recommendation 31, costed at \$258,340 during the 18 month period)*

## **REVIEW AND RECONFIGURING OF THE FOOD REGULATORY SYSTEM**

Recommendation 9 proposes that the new agency develop a risk profile of the NSW food industry. The risk profile will provide the basis to review and reconfigure regulatory requirements to ensure the most cost-effective targeting of risk. The process will be continuous, informed also by the epidemiological work of NSW Health described in Chapter 7 and by input from the agency's field staff and local government EHOs.

SafeFood currently employs two officers with the requisite skills, while NSW Health employs one with such skills in a senior managerial role. To enable Recommendation 9 to proceed, the Review recommends funding the appointment of two additional officers with skills and expertise in food safety risk analysis and program development. *(see Recommendation 32, costed at \$274,518 during the 18 month period, and \$274,518 p.a. thereafter)*

## **NUTRITIONAL EXPERTISE**

Recommendations 4, 6 and 17 establish the need for a senior public health nutritionist. The Review estimates that the proposed policy and standards development function will require 0.5 FTE of the position. The resources required for nutritional input to the development of the consumer information and education business case are estimated at 0.5 FTE over the 12 month period.

The recurrent resource requirements for the consumer information and education function will only be known once the business case is developed. The position should therefore be funded on a full time basis for the 12 months period and then 0.5 FTE thereafter. The extent to which recurrent funding in excess of 0.5 FTE is required beyond 12 months should be addressed in the business case. *(see Recommendation 33, costed at \$171,575 during the 18 month period, and \$68,630 p.a. thereafter)*

## **FUNDING OF NSW HEALTH'S FOOD SAFETY PROGRAM INITIATIVE**

The NSW Government has decided in principle that enterprise-based food safety programs should be mandatory for high-risk businesses identified by a national risk analysis project. NSW Health should not delay this important initiative during the transition period. However, future funding should be secured before responsibility passes to the NSW food agency. These arrangements should be determined during the transition period to ensure that the NSW food agency does not inherit responsibility for the initiative without the resources to implement it. *(see Recommendation 34)*

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## FUNDING PRINCIPLES

### COMPLIANCE AUDIT AND INSPECTION

The funding principles adopted by the NSW Government in 2001 provide for recovery of the costs of *Compliance Audit* and *Inspection*. The Review was requested to reconsider this in the light of views from sectors not covered by SafeFood.

Contestability of audit arrangements emerged as the major issue in submissions by industry, with most supporting the option of using third-party (i.e. private sector) auditors paid for by the food business.

The cost of verifying compliance with preventive systems by routine audit or inspection processes is a legitimate business cost and the Review therefore considers recovery of the reasonable costs of audit by State or local government officers to be appropriate.

Future arrangements are likely to involve a combination of NSW food agency auditors, third-party auditors, and local government EHOs. The funding principle would thereby ensure that food businesses meet these costs irrespective of the service delivery mechanism. (*see Recommendation 35*)

### STAKEHOLDER CONSULTATION

The funding principles for *Stakeholder Consultation* adopted in 2001 were based on a functional model which split the activity across the three core function categories so that its funding source varies with the purpose. In practice, SafeFood's consultation with industry takes place through the same forums in relation to all matters.

Consultation will be a core responsibility of the agency, which must embrace the full range of stakeholders including, but not limited to, industry. The Review recommends that this activity should be funded by government irrespective of the context. (*see Recommendation 36*).

### ROLLOUT OF NEW FOOD SAFETY SCHEMES

The Council's Performance Review identified difficulties with the rollout of the seafood safety scheme, particularly with respect to information and training provided for industry participants. The difficulties arose from funding arrangements for food safety scheme development which do not adequately cover a practical implementation phase.

Governments invest heavily in the development of new regulatory schemes, which generally impose significant compliance costs on industry. Industry is also expected to fund much of the cost of compliance "verification" through licence and service fees. The Review therefore recommends that funding to develop food safety schemes should cover the practical initial implementation phase. (*see Recommendation 37*)

## **MONITORING AND EVALUATION**

Establishing the new agency will bring substantial changes to the NSW food regulatory system. The new agency will need control systems to help it achieve its operational goals in the short term and deliver public health outcomes in the longer term. Monitoring and evaluation plays a key integrative role in change and performance. It is important to both current business performance and change effectiveness.

The Review recommends that SafeFood and NSW Health begin work during the transition period on a monitoring and evaluation framework which would provide the basis for reporting to the NSW Government and the community on the agency's success in achieving the intended outcomes of its activities, including associated public health goals. (*see Recommendation 38*)



# RECOMMENDATIONS

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## RECOMMENDATION 1

The recommendations of the Performance Review of SafeFood Production NSW by the Council on Cost and Quality of Government should be implemented subject to the linked recommendations of this report as summarised in Table 5.1.

## RECOMMENDATION 2

The food regulatory resources and expertise of NSW Health should be merged with the resources and expertise of SafeFood Production NSW to establish an agency responsible for food regulation at all points of the chain from production to retail (“the NSW food agency”).

## RECOMMENDATION 3

The NSW food agency should be the “regulatory authority” under the *Food Act* and also be responsible for implementing the *Food Production (Safety) Act 1998*.

## RECOMMENDATION 4

In addition to its regulatory functions, the NSW food agency should have a consumer information and education function. The agency’s consumer information and education programs should address:

- food safety and hygienic handling of food and related nutritional issues;
- specific food safety risks;
- labelling requirements of the Food Standards Code;
- basic nutrition and healthy eating messages; and
- a single access point for consumer and industry enquiries, with referral to other agencies where appropriate.

## RECOMMENDATION 5

NSW Health should retain responsibility for the following food related activities:

- notifiable disease system and surveillance of food-borne disease;
- epidemiological investigation and joint response to food-borne disease;
- nutrition policy; and
- health promotion activities.

## **RECOMMENDATION 6**

To undertake its responsibilities in Recommendations 3 and 4, the NSW food agency should be structured and resourced to undertake the following functions:

- coordination of the food regulatory system;
- policy and standard setting, including science policy and risk management;
- co-regulatory compliance;
- enforcement; and
- communication and community information, including consumer information and education.

## **RECOMMENDATION 7**

SafeFood Production NSW should negotiate a Memorandum of Understanding (MoU) with NSW Agriculture during the transition period on respective roles and responsibilities in the regulation of stock feeds, fertilisers and other food inputs. This MoU should provide the basis for an MoU between the NSW food agency and NSW Agriculture. During the transition period, SafeFood Production NSW should initiate discussions with the following agencies to determine the need for an MoU or some other strategic liaison arrangement:

- Environment Protection Authority in relation to the regulation of pesticides and to management of environmental issues impacting on food production; and
- Department of Fair Trading on advice and responsibilities regarding food labelling and other consumer issues.

## **RECOMMENDATION 8**

The responsibility of local government for food regulation should be clearly defined and appropriately resourced. The NSW Government should explore with local government the implementation of a model which would mandate a local government role:

- commensurate with the skills, expertise and range of responsibilities of local government Environmental Health Officers;
  - involving activities for which cost recovery would be appropriate;
  - funded by a mechanism for cost recovery such as an annual administration fee;
  - assisted by the NSW food agency through the provision of tools and/or training as appropriate;
  - coordinated by the NSW food agency through mechanisms such as approved local plans or service level agreements; and
  - supported by robust strategic liaison arrangements.
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## RECOMMENDATION 9

The NSW food agency should undertake a whole-of-chain scientific review of food safety risks in order to produce a risk profile of the NSW food industry. The risk profile should reflect an assessment of potential public health and economic impacts. The risk profile, which should be reviewed and updated periodically, should underpin a stratified approach to food safety risk management and the achievement of public health goals. The aim is to ensure the most effective allocation of regulatory resources by government and compliance resources by industry. Specifically this will involve identifying:

- the minimum compliance requirements for each industry sector with regard to its associated risks;
- the level of regulatory verification required to ensure compliance; and
- the most appropriate provider of the verification services i.e. NSW food agency officers, local government Environmental Health Officers, or private sector auditors.

## RECOMMENDATION 10

The *Food Production (Safety) Act 1998* should be amended to enable it to provide the legal, structural and funding base for the NSW food agency.

## RECOMMENDATION 11

The functional structure of SafeFood Production NSW adopted in mid 2002 should provide the base for an interim structure for the NSW food agency with the following provisos:

- a separate branch for consumer information and education activities should be established in accordance with Recommendation 17;
- functions related to coordination and management of the regulatory system should be allocated as appropriate among the Operations, Policy and Strategy, and Science Policy and Risk Management branches; and
- staff transferred from NSW Health and the Public Health Units should be allocated among the Operations, Policy and Strategy, and Science Policy and Risk Management branches in accordance with the approved interim management structure.

## RECOMMENDATION 12

The staff of the Food Branch of NSW Health and the food regulatory and enforcement staff of the Public Health Units should be transferred to the NSW food agency.

### **RECOMMENDATION 13**

A detailed protocol for response to food related complaints and incidents of food-borne disease should be developed by NSW Health and SafeFood Production NSW before transfer of the Public Health Unit staff to the new agency.

### **RECOMMENDATION 14**

All staff transferred from the Public Health Units should remain co-located within the Public Health Units for a sufficient period to ensure that the response protocol is working effectively. Staff transferred from non-metropolitan Public Health Units should remain co-located until the new agency has undertaken a strategic operational review to identify the best option for staff deployment in rural and regional areas. To facilitate the integration of these staff into the new agency, temporary co-location within Public Health Units should continue for no longer than reasonably necessary.

### **RECOMMENDATION 15**

Establishment of the new agency should be preceded by a minimum 6-month transition period to enable appropriate transition arrangements to be made. During this period, a joint SafeFood-NSW Health team should develop a transition plan, in consultation with the relevant unions as appropriate, addressing the following issues:

- in relation to all transferred staff:
  - interim management arrangements;
  - additional corporate support resources required;
  - accommodation, equipment and vehicle needs;
  - payroll, superannuation, and transfer of accrued entitlements;
  - industrial issues including terms and conditions of employment; and
  - immediate training needs;
- physical relocation of Food Branch staff;
- transfer of NSW Health databases or information systems to the new agency;
- implementation of the recommended response protocol;
- crisis management arrangements, including lead Minister role and access to expert advice;
- an internal communication program;
- a joint workshop of staff from the two agencies to develop a name and corporate identity for the new agency; and
- launch of the new agency and related stakeholder communication.

During the transition period, work should commence on a long-term change management strategy as detailed in Recommendations 28 and 29.

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## RECOMMENDATION 16

Within three months of its establishment, the new agency should convene a strategic planning workshop with the participation of a broad cross-section of staff to develop the agency's strategic plan for the next three years. The workshop should be directly or indirectly informed by representative stakeholder views.

## RECOMMENDATION 17

A Development team consisting of a Project Manager and a Research Assistant should be established to develop program proposals, structure, and a business case for the Consumer Information and Education branch.

## RECOMMENDATION 18

The existing public sector accountabilities of SafeFood Production NSW under Schedule 4 of the *Food Production (Safety) Act 1998* should be retained for the NSW food agency.

## RECOMMENDATION 19

The Government should establish a new portfolio of Food Regulation and allocate responsibility for the *Food Act*, the *Food Production (Safety) Act 1998*, the *Dairy Industry Act 2000*, and the *Meat Industry Act 1978* to the designated Minister.

## RECOMMENDATION 20

Section 10 of the *Food Production (Safety) Act 1998* should be amended to provide the following exceptions to the Minister's power to control and direct the NSW food agency:

- in relation to the contents of any advice, report or recommendation given to the Minister;
- in relation to decisions whether to grant, suspend or cancel a licence or registration;
- in relation to exercise of the NSW food agency's enforcement powers; and
- in relation to any decision to institute criminal or related proceedings.

## RECOMMENDATION 21

A Ministerial Advisory Committee with a broad range of expertise related to food should be established by statute to provide advice to the NSW food agency or direct to the Minister, either on request or on its own motion. The Chief Executive Officer of the NSW food agency should be a member of, but should not chair, the Advisory Committee.

## **RECOMMENDATION 22**

The Ministerial Advisory Committee should be appointed under the provisions of the *Food Act*. On establishment of the NSW food agency:

- the terms of the members of the Food Advisory Committee and the SafeFood Production Advisory Committee should be terminated;
- the provisions of the Food Production (Safety) Act 1998 which establish the Safe Food Production Advisory Committee should be repealed; and
- the Minister should appoint a new Advisory Committee with skills and expertise which reflect the objectives and functions of the new agency.

## **RECOMMENDATION 23**

An Industry and Consumer Consultative Committee should be established by statute as the primary means for the Minister and the NSW food agency to consult with the food industry and consumer and public health advocates. The Committee should seek to develop a “whole of industry” approach to major issues and its composition should be consistent with that objective. Sub-committees should be established where necessary to address specific sectoral issues. The Chief Executive Officer of the NSW food agency should be a member of, but should not chair, the Consultative Committee.

## **RECOMMENDATION 24**

The Consultative Committee should be appointed under the *Food Act* and should be nominated as the method of consultation for the purposes of individual food safety schemes under the *Food Production (Safety) Act 1998* with the agreement of the relevant industries.

## **RECOMMENDATION 25**

The transitional and core funding of the NSW food agency should consist of:

- (a) the current industry and government funding of SafeFood Production NSW;
- (b) recurrent government funding equal to the cost of the transferred staff from NSW Health and the Public Health Units and their food related activities; and
- (c) additional government funding as set out in Recommendations 28-33.

## **RECOMMENDATION 26**

The quantum of funding under Recommendation 25(b) should be agreed by SafeFood Production NSW and NSW Health in consultation with Premier’s Department and NSW Treasury on the basis of the work of the transition team proposed by Recommendation 15 and accepted methodologies for calculation of on-costs and corporate overheads.

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## RECOMMENDATION 27

During the transition period, SafeFood and NSW Health, in consultation with NSW Treasury as appropriate, should develop arrangements for the provision of laboratory services to the NSW food agency. The arrangements should reflect the following principles:

- the NSW food agency should not own and operate its own laboratory;
- the NSW food agency should have:
  - in-kind access to, or budget to purchase services from, relevant NSW Government laboratories; and
  - sufficient budget to purchase laboratory services from the private sector as needed; and
- the level of sampling and testing supported by these arrangements should be benchmarked with other States and Territories.

## RECOMMENDATION 28

An indicative amount of \$980,000 should be provided to cover direct transition costs including:

- physical relocation of Food Branch and metropolitan Public Health Unit staff, including associated fit-out costs;
- the integration of NSW Health databases and information systems as identified by the transition team; and
- immediate internal and external communication needs associated with establishing the new agency.

## RECOMMENDATION 29

To enable work to begin on a change management strategy and other areas identified by the Council on the Cost and Quality of Government, additional funding should be provided, initially to SafeFood Production NSW during the transition period, and continue for at least 18 months, for the employment of a change management team comprising:

- a core team of:
  - a senior strategic human resources professional, and
  - a communications team consisting of a senior Communications Coordinator and a communications officer; and
- supplementary transitional staff comprising a human resources officer and two communications officers.

Funding of the core team should be recurrent. The extent to which additional resources are required beyond 18 months should be addressed in the business cases relating to the new agency's change management strategy and consumer information and education function.

### **RECOMMENDATION 30**

As soon as possible after its establishment, the NSW food agency should develop a change management strategy which identifies the medium and long term resources needed to develop and maintain the agency's internal infrastructure to support and deliver change. The agency should prepare a business case for any additional funding required to implement the strategy.

### **RECOMMENDATION 31**

To enable implementation of Recommendation 17, funding should be provided, initially to SafeFood Production NSW during the transition period, for appointment of the Development team for 12 months.

### **RECOMMENDATION 32**

To enable implementation of Recommendation 9, recurrent funding should be provided to supplement the existing science policy resources of SafeFood Production NSW and NSW Health by the appointment of two senior officers with skills and expertise in food safety risk analysis and program development. The risk profile of the NSW food industry should:

- inform the development of the overall risk management strategy recommended by the Council on the Cost and Quality of Government; and
- provide the basis to seek additional funding, by business case or through the budget process, to effectively manage new or emerging risks.

### **RECOMMENDATION 33**

To enable nutritional input to the relevant functions outlined in Recommendation 6, funding should be provided for the appointment for 12 months of a senior public health nutritionist to provide nutritional input to:

- *(estimate 0.5FTE)* policy and standards development; and
- *(estimate 0.5FTE)* the program proposals and business case for the Consumer Information and Education branch (Recommendation 17).

The extent to which recurrent funding in excess of 0.5FTE is required beyond 12 months should be addressed in the Consumer Information and Education business case.

### **RECOMMENDATION 34**

NSW Health should continue to progress its initiative to implement Standard 3.2.1 (Food Safety Programs) in high-risk sectors identified by the National Risk Validation Project. During the transition period, NSW Health, SafeFood Production NSW and NSW Treasury should agree on how the initiative will be funded when responsibility passes to the NSW food agency.

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**RECOMMENDATION 35**

The activities of Compliance Audit and Inspection undertaken by the new agency should be funded by the food industry using the cost recovery mechanisms of the *Food Act* and/or the *Food Production (Safety) Act 1998* as appropriate.

**RECOMMENDATION 36**

Stakeholder Consultation activities undertaken by the new agency should be funded by Government irrespective of the purpose of the consultation.

**RECOMMENDATION 37**

Funding for the development of new food safety schemes should provide for information and training mechanisms to ensure the effective roll-out of these schemes.

**RECOMMENDATION 38**

SafeFood Production NSW and NSW Health should begin work during the transition period on a monitoring and evaluation framework, including outcome indicators, for the NSW food agency. This framework should provide the basis for reporting to the NSW Government and the community on the agency's success in achieving the intended outcomes of its activities, including associated public health goals.



## REQUIREMENTS AND SCOPE OF REVIEW

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SafeFood Production NSW (“SafeFood”) was established by the Food Production (Safety) Act 1998. Its functions under section 8 of that Act commenced on 18 December 1998. Section 73 of the Act provides:

**73 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of section 8.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.
- (4) In particular, the review is to address the following matters:
  - (a) the coverage and effectiveness of the food safety schemes in operation at the time of the review,
  - (b) the extent to which national food hygiene standards have been implemented in food safety schemes,
  - (c) whether food safety operations undertaken by different government agencies in New South Wales should be undertaken by a single agency and, if so, the means of achieving that objective.

The Review required by section 73 therefore was to commence soon after 18 December 2001 and the report on its outcome is to be tabled in Parliament no later than 18 December 2002.

The Review has two distinct components. Firstly, it must assess SafeFood’s performance against the objectives of the Act. Secondly, the Review must consider whether and how the NSW food safety system should be further streamlined or integrated.

The Government decided that the first component should be undertaken by a Performance Review of SafeFood, to be conducted by the Council on the Cost and Quality of Government. The Government appointed the Hon. John Kerin AM as the overall Reviewer and requested him to conduct the second component of the Review. It was agreed that a summary report of the Performance Review, including its findings and recommendations, would be provided to Mr Kerin for inclusion in his Final Report (see Appendix 1).

Close linkages were established between the two components of the Review, as set out in Chapter 5.

Responsibility for the Food Production (Safety) Act is allocated to the Minister for Agriculture. However, the Government decided that it would be appropriate for that Minister and the Minister for Health to oversee the Review jointly.

These arrangements are summarised in the Scope of Review, reproduced on the following page, which was provided to Mr Kerin.

## SCOPE OF THE REVIEW

- 1 The Review shall consider all matters required by section 73 of the *Food Production (Safety) Act 1998* (copy attached) and make appropriate findings and recommendations.
  - 2 To the extent that section 73 requires consideration of the performance of SafeFood Production NSW in terms of the objectives of the Act, the Review shall take account of the findings and recommendations of the Performance Review by the Council on the Cost and Quality of Government, which is scheduled to be completed no later than 30 July 2002. For the purpose of section 73(3), the Council's report on its Performance Review shall be included as part of the Review Final Report.
  - 3 Without limiting the scope of its work relevant to subsection 73(4)(c), the Review shall:
    - consider whether the *status quo* should be maintained;
    - consider a future option which would:
      - establish a food safety agency with functions which apply from food production to retail; and
      - retain the responsibility of NSW Health for notification, surveillance, investigation and response to food-borne illness, along with a role in providing advice and education on nutrition and food safety; and
    - address the following when considering future options (including the *status quo*):
      - recommendations as to appropriate portfolio responsibility;
      - allocation of functions, including responsibility for recall and the compositional and labelling requirements of the Food Standards Code;
      - resourcing the agency(ies), within the parameters established by the NSW Government Response to the Kerin Funding Review, and the deployment of existing resources in SafeFood, NSW Health, and local government;
      - costs and benefits of all options;
      - the role of local government and associated revenue requirements;
      - linkages among SafeFood, NSW Health, local government, and other relevant agencies which are essential for the option to work effectively; and
      - legislative issues, including necessary or recommended changes to the *NSW Food Act*, the *Food Production (Safety) Act*, or other relevant legislation.
  - 4 The Final Report of the Review shall be provided to the Minister for Agriculture and the Minister for Health by 1 November 2002.
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# 1 INTRODUCTION

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SafeFood Production NSW was established in 1998 under the *Food Production (Safety) Act* as a stand-alone food safety agency to cover the primary produce and seafood industries. Section 73 of the Act requires a review of the SafeFood initiative to be conducted in 2002.

While not all commodities are yet covered by food safety schemes, the Review provides an opportunity to advise on further improvements and to assess whether or not a through-chain agency should be established or if the status quo should remain. The Review is also designed to assess SafeFood's performance to date. This was separately undertaken by the Council on the Cost and Quality of Government, whose advice the Review needed to take into account.

Formal requirements aside, the Review is another stage in the NSW Government's primary policy objective of reducing the incidence of food-borne illness. The issue of further streamlining or integration was raised in the report by the 1997 task force which recommended establishing SafeFood. Improvements in the State's food safety and regulatory systems will assist in achieving the Government's objectives, knowing that any area of risk management does indeed involve risk.

An Issues Paper was released in June 2002 to elicit community, stakeholder and expert views and opinions on food safety. This document stated that:

An improved safety system would focus on risk prevention throughout the food chain in addition to reacting to illness at the point of consumption.

The goal should be a system which:

- makes sure food is safe from the point of production to consumption
- ensures state of the art technologies are used to assist in minimising risks to public health while maximising benefits to industry
- implements consistent standards
- educates industry and consumers in food safety
- is appropriately funded, co-ordinated and cohesive

It has been nationally agreed that the new Food Acts in each State and Territory shall designate an overall co-ordinator of food regulation, known as the "relevant authority" (or, in the NSW Act, the "regulatory authority"). The aim is to help ensure greater consistency in implementation and enforcement within and among States and Territories, recognising that food is manufactured everywhere and crosses borders at will.

In NSW, food safety is currently managed by a number of State agencies and by 172 local government councils. The NSW Department of Health has been working with the Department of Local Government and local councils to improve regulatory approaches throughout the State.

The crucial questions for the Review are whether or not the current arrangements are the most efficient and effective, whether the "regulatory authority" designation should attach to an existing Department or official, and whether there may be gains in having a through-chain or umbrella co-ordinating agency.

The crucial policy issues are objectives, functions, boundaries and resourcing. The Issues Paper was enthusiastically responded to in some 84 written submissions and 18 consultations were

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## INTRODUCTION

carried out with peak industry associations, consumer and public health organisations, scientific and technical experts, and State and local government representatives.

Some submissions were very comprehensive, representing deep insights into the questions posed by food safety provision and food regulation generally. Meetings were also held with a Stakeholder Reference Group, an Agency Steering Committee and the SafeFood Advisory Committee. A very clear majority of organisations, agencies and individuals favoured an independent through-chain agency with boundaries clearly defined.

If the agency is to achieve the necessary consistency, credibility and reputation, the Review considers that it must be resourced at an adequate level given that food safety is, essentially, a public good.

The recommendations of the Review are set out and explained in the relevant chapters. They are also set out in full following the summary. Because change involves people, it is recommended that new arrangements be put in place sensitively, and that the impact of change on people involved, along with the costs of transition, be recognised.

## 2 THE CHALLENGES OF FOOD REGULATION

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It is important to understand the dynamics of the external environment before examining the current structural arrangements for food regulation and considering options for improvement. Changes in food production and consumption, together with new trends in regulation, pose a number of challenges. Regulatory objectives may come into conflict as regulators use the new approaches to address emerging issues. This chapter provides a background to these trends and the issues which need to be considered when developing an effective regulatory approach.

### CHANGING NATURE OF THE FOOD CHAIN, CONSUMER PROFILE AND FOOD-BORNE PATHOGENS

Globalisation and technological advances have increased regional and international food trade and expanded the variety and complexity of the food chain. The food chain has become more interconnected than ever before, with rapidly changing links between producer, processor, retailer and consumer. End consumers have less knowledge of the origins of products and their ingredients, and little or no control over the processes through which products pass before they are purchased or consumed. Changing consumer demands and new technologies are replacing traditional methods of food production, processing and preparation, including those traditionally used in the home.

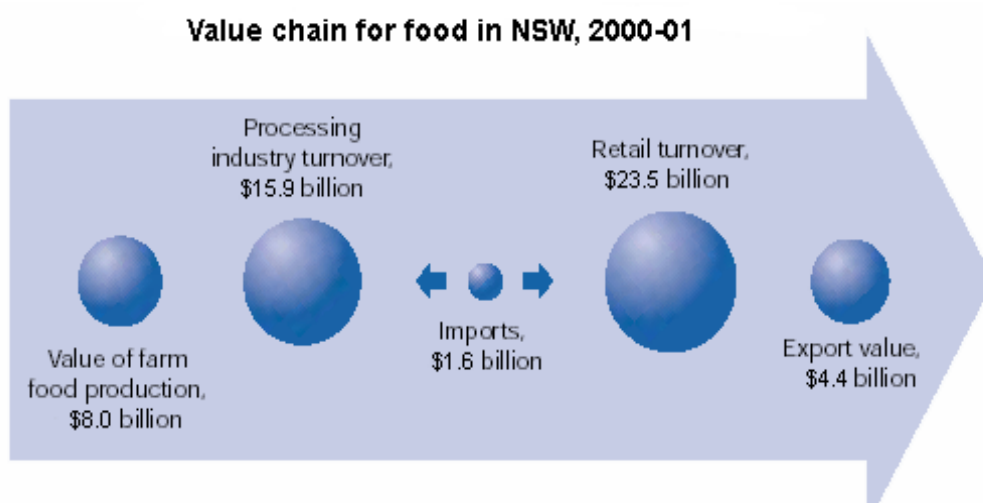


Figure 2.1 Modified from Australian Food Statistics 2002, ABARE/AFFA 2002, Canberra.

The profile of consumers is also changing. Immunological defence levels in Australians are decreasing with an ageing population and advances in medical science which prolong the lives of people with once-terminal illnesses. It is estimated that around 20% of the population fall into the so-called YOPI group, that is Young, Old, Pregnant or Immuno-compromised with impaired or vulnerable immunological status. Eating habits are seeing more people eating out of the home relying on take-away and other convenience options.

Changes in the nature of food-borne pathogens add to this complexity. Over time, micro-organisms evolve. Some food-borne pathogens have become more hardy and resistant to

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traditional preservative agents, such as high acid conditions and drying. For example, the strain of *E. coli* involved in the 1995 Garibaldi mettwurst food-borne outbreak in South Australia was a previously unrecognised but very virulent strain.

The line between perception and reality blurs as scientific knowledge increases, food production methods change, and consumers try to keep up. As more becomes known, complexity increases and less is understood. The challenge is to achieve the government's objective of ensuring a safe food supply, while at the same time enabling the food industry to expand and evolve as rapidly as it has. A proactive approach is vital.

Government and industry have a joint responsibility to ensure that the risks are understood and managed. Food safety regulators have been forced to move from a reactive, disease-triggered approach to a preventive, whole-of-chain system. Responsibility for food safety has broadened and is often shared between the agricultural and health portfolios, requiring cooperative working relationships among all agencies responsible for food. The fragmentation and uneven coverage provided by traditional approaches to food safety have been recognised, with agencies such as Safe Food Production NSW being established for this very reason.

## **REGULATORY TRENDS**

Regulatory reform in Australia is driven by the principle of minimum effective regulation. For example, in 1995 the Council of Australian Governments (COAG) endorsed a set of principles for standard-setting and regulatory action by Ministerial Councils and other standard-setting bodies. These principles require that regulatory measures be the minimum needed to achieve predetermined and beneficial outcomes. Regulatory measures should be supported by scientifically robust assessment processes, and should be performance and outcome based rather than prescriptive.

While these regulatory trends are intended to support fundamental economic reform, their application in industries accustomed to prescriptive regulation poses some implementation challenges. For example, the removal of many microbiological standards from the Food Standards Code has made it difficult for a food business to know when its product is safe, and difficult for regulators to prove that a product is unsafe. Furthermore, the cost of tests that enable industry participants to demonstrate that their process meets required outcomes are often prohibitive, resulting in a preference for prescriptive regulation. For reasons such as this, Australian food regulators are still grappling with the effective application of outcome-based regulation.

Mutual Recognition Agreements have removed barriers to interstate trade. COAG's November 2000 decision to establish a new food regulatory framework for Australia is a move towards an integrated approach to policy and standard-setting. All Commonwealth, State and Territory Ministers responsible for food regulation are represented on an expanded Australia New Zealand Food Regulation Ministerial Council and this broad representation is mirrored on the Food Regulation Standing Committee and its subordinate bodies. Under the new arrangements,



all national food standards will be developed by Food Standards Australia New Zealand (FSANZ), subject to approval by the Ministerial Council.

National standards set the framework under which food is prepared and offered for sale. State and Territory governments are responsible for implementation and enforcement of these standards. The move to uniform national food standards promises to reduce inconsistency among jurisdictions. However, the food regulatory system is still challenged by the differing implementation and enforcement of standards at State and Territory level.

## **COMPETING EXPECTATIONS AND OBJECTIVES**

Regulatory reform brings with it conflicting stakeholder expectations. For example, outcome-based regulation caters to industry demands for flexibility and a framework that does not inhibit innovation and creativity. On the other hand, there is also a demand for consistency in regulatory approach and a “level playing field”. Such conflicts add to the complexity of the regulatory environment which at times requires a balancing of competing expectations.

Conflicting priorities may also arise in relation to public health objectives. A relevant example here is the conflict between nutrition and food safety objectives. Conflict between short-term and long-term objectives results in a “kill them quick or kill them slow” debate. To reduce the risk of immuno-compromised people being exposed to food-borne pathogens, there has been a trend away from providing fresh fruit and vegetables in health care facilities. While this response may address the short-term food safety risks, it is also likely to compromise the nutritional wellbeing of the very patients it is intended to safeguard. This example illustrates the need for a multi-disciplinary approach to public health decisions, further complicating the regulatory system.

## **TOWARD AN IDEAL VISION**

The following chapter describes an ideal vision for food regulation. The challenge in developing a regulatory approach for the food industry is to achieve this vision within the rapidly changing and complex environment presented above.



## 3 AN IDEAL VISION

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Forget for the moment the current structures and future responsibilities of food enforcement agencies in NSW and focus on an ideal vision for a safe food supply.

History has demonstrated that science, when appropriately applied through food safety management systems, can dramatically improve food safety. Through science and technology we have reached a level of sophistication at which the food system can be understood to the point where risks can be managed.

The past century saw great improvements in the quality of our everyday foods. Microbiology progressed to the extent that we now know how to control growth of spoilage and pathogenic bacteria in foods. To mention but a few examples: refrigeration of perishable foods, pasteurisation of milk, and commercial canning of low acid foods all contributed to a safer food supply.

Our current food safety policies are the result of decades of efforts to address specific problems. They have not been developed in a coordinated, comprehensive manner, but they have served us well during the transition from an agrarian to an industrialised society during the past century.

Prevention is the future. Preventive measures are promoted all over the world to address changes in the pathogens, the foods available, and the available control technologies that affect food safety. Many food companies have adopted dynamic quality systems that integrate all their operations to produce safe and nutritious products, while others are still reluctant to make the investment and adopt the discipline needed to operate in a quality environment.

What is the ideal vision for food regulation to achieve a safe food supply for the 21<sup>st</sup> century?

### **FOOD POLICY AND PRACTICE BASED ON SOUND SCIENCE**

Food safety practice has evolved from inspection and end-product testing to become a science-based exercise focused on targeting and managing identified risks in the food production process. The aim is to produce “close to specification” all of the time. Nonetheless, natural variation in biological processes will continue to cause the occasional blip. In a through-chain system, food storage, distribution, retail and food preparation will be designed to cope with some variation by introducing extra hurdles to provide assurance of a safe product. A through-chain food safety system which provides an appropriate response to identified risks is the best guarantee of a safe product.

The Codex Alimentarius Commission of the United Nations encourages and promotes the two key food safety tools of Risk Analysis and Hazard Analysis Critical Control Point (HACCP).

Risk Analysis involves three inter-related processes known as Risk Assessment, Risk Management, and Risk Communication. It is a powerful tool that enables regulators and industry to assess food safety risks comprehensively and develop effective and practical

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management strategies. Applied properly, it can provide a sound foundation for the development of HACCP systems on a whole of industry or through-chain basis.

A HACCP system, which operates similarly to a quality assurance system, enables an individual business to identify food safety hazards and the critical control points in its processes, establish and monitor appropriate controls, and document their operation. The primacy of HACCP is that it places operators at the forefront of system development by melding their workplace skills with the technical skills of staff with more formal qualifications. It provides a systematic way of controlling the process rather than the product. Thus as long as the system is working to specification, the product will consistently be within the safety margins. The system is audited and reviewed on a regular basis to ensure that it continues to function effectively.

HACCP and quality assurance systems were once used to secure a competitive advantage. Not all players had such systems, so those that did were able to provide a degree of assurance to the market. HACCP is now becoming a condition of entry to most export markets. Some major markets, for example the USA and Europe, not only require HACCP systems, but also require government inspection or audit of these systems<sup>1</sup>.

## **MOVE TO A CO-REGULATORY APPROACH**

The use of Risk Analysis and HACCP systems has shifted responsibility for food safety. Individual food businesses can now take operational responsibility for food safety through HACCP-based food safety programs, supported by Good Manufacturing Practice (GMP), Good Handling Practice (GHP), and product testing where appropriate to verify that the system operates as intended. End-product testing is used as a feedback loop to fine-tune the system rather than as a pass-or-reject control tool.

Government's role has become two-fold. Firstly, by using Risk Analysis to establish standards and broad risk management strategies, Government can steer or target industry risk management practices in the right direction. Standards require verification on an ongoing basis, to ensure they effectively target risks and that emerging risks are identified and managed. Similar practices could have avoided major crises such as BSE in the UK and Europe.

Secondly, as the regulator, Government checks the adequacy of the control measures implemented by industry and whether food law is complied with. The extent of supervision will vary, but a robust co-regulatory approach is vital. Industry and government have key roles to play in bringing the links of the food chain together. The challenge for government in this co-regulatory environment is to achieve the right balance which will meet its paramount responsibility to protect public health and safety.

A paper by the US Food and Drug Administration (USFDA) described the respective roles as follows:

Under HACCP based regulatory programs there is a clear delineation of responsibilities between industry and regulatory agencies: Industry has the primary responsibility for the safety of food it produces and distributes; the government's principal role is to verify that industry is carrying out its responsibility, and to initiate appropriate regulatory action if necessary.<sup>2</sup>

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<sup>1</sup> The European Union recently upgraded its food safety apparatus with the establishment of the European Food Safety Authority. Australia can expect even closer European scrutiny of its food imports and the associated risk management and audit systems.

<sup>2</sup> US Food and Drug Administration, 1997. *Food Safety from farm to table. A National food safety initiative report to the President*. Dairy, Food and Environmental Sanitation, 17 (9): 555-574

The public accountability, transparency and consultation required under a co-regulatory system is extensive. As part of Risk Analysis, Risk Communication places a discipline on regulators to openly and extensively communicate about risks to industry and consumer stakeholders. The newly-established UK Food Standards Agency has adopted this approach, which was strongly supported by the Australian Consumers' Association in this submission to the Review.

## A THROUGH-CHAIN APPROACH

As Risk Analysis techniques become embedded into food regulation it no longer makes sense to think of food risk along commodity or industry sector lines. The interconnected nature of the food industry means that risk can be managed most effectively by taking the whole food industry into account. A recent article on the future of the US food safety system suggests that “reducing the burden of food-borne disease requires an integrated, holistic approach across the farm-to-table spectrum...The cumulative efforts of food producers/processors/retailers/consumers can virtually eliminate food-borne disease.”<sup>3</sup> This is an idealised outcome, but unfortunately reality is that a level of risk will always remain with most food products.

Risk assessment can quantify this risk and provide risk management options and “cost” scenarios. Society, through government food regulation, can establish an appropriate level of protection with the setting of public health goals for food safety. Public health goals can be linked to food safety objectives to provide industry processing standards. The standards will be translated into control measures in the form of performance criteria for process and product characteristics and utilised in HACCP systems (see Figure 3.1).

**Figure 3.1 Linking food industry performance to public health goals**



<sup>3</sup>Taylor, M (2002) Reforming Food Safety: A Model for the Future in *Food Technology*, vol 56, no 5, p 199

## **PUBLIC HEALTH GOALS**

Through a combination of scientific and societal considerations, societies ultimately reach decisions on the conflicting costs associated with the control of hazards. For example, decreasing the stringency of a food control measure will increase the burden of human and medical costs. Thus, the appropriate level of protection can be considered the “cost” that a society is willing to bear to achieve a specific level of control over a hazard, or the ultimate outcome. Outcome-based public health goals reflecting the appropriate level of protection are generally stated in units related to the incidence of disease (e.g. cases per 100,000 population). For example, one goal for food-borne disease could be a maximum of 12.3 cases per 100,000 population for campylobacteriosis per year. It could also be a reduction target, e.g. a 20% reduction of the current salmonellosis incidence in NSW. Achievement of the outcome can be measured retrospectively through surveillance of food-borne disease.

In practice, public health goals pose a problem in terms of implementing food control programs. Goals are not expressed in a form that are directly actionable either by the segment of the food industry that controls the hazard which contributes to the public health concern or by the food control agencies responsible for oversight of industry activities. Typically, they have to focus on such features as the frequency or extent of contamination of a specific food with a specific microbiological hazard, not on the incidence of a specified disease. Thus, the challenge is to convert a public health goal into a value that can be controlled by relevant segments of the food industry.

## **FOOD SAFETY OBJECTIVES**

Food safety objectives (FSOs) provide the solution. They are used to integrate risk assessment and current hazard management practices into a framework that can be used to achieve public health goals in a science-based, flexible manner. An FSO is a statement of the maximum frequency and/or concentration of a microbiological hazard in a food at the time of consumption that provides the appropriate level of protection. Its establishment relies on a formal assessment of risk, particularly the hazard characterization phase of a risk assessment, in which the relationship between the incidence of disease and the frequency and extent of contamination of specific foods with the microbiological agent is derived.

Although the FSO concept is relatively new and is still evolving, its acceptance is growing worldwide because it offers a practical means to convert public health goals into values or targets that can be used by regulatory agencies and industry. The FSO concept can be a useful tool for creating policies that are consistent with current science. The FSO development process should be transparent and facilitate input, both scientific and societal, from all affected parties. Efforts to maximize food safety must address technical feasibility, availability of intervention strategies, sensory quality, and the diversity of foods desired by consumers. A food safety objective that cannot be technically achieved will serve no purpose.

## PERFORMANCE CRITERIA

From the information provided in a food safety objective, regulatory authorities and food operators can select appropriate control measures to achieve the intended safe level of the hazard. A control measure is any action and activity that can be used to prevent or eliminate a food safety hazard or reduce it to an acceptable level. One or more control measures may be necessary at each stage along the food chain to ensure that a food is safe when consumed. In the design of control measures it is necessary to establish performance criteria (what needs to be achieved) and process and product criteria (how it will be achieved). Control measures will be addressed through good hygiene practices (GHP) and Hazard Analysis Critical Control Point (HACCP) systems.

A performance criterion is the required outcome of one or more control measures at a step or combination of steps that contribute to assuring the safety of a food. An FSO, on the other hand, is the frequency or extent of contamination at the time of consumption. In most instances the performance criteria apply much earlier in the food chain. For example, the maximum extent of a contaminant at the time of manufacture of a ready-to-eat food might have to be substantially below the FSO if the food supports the growth of the relevant pathogen between the time of manufacture and the time of consumption. Equally, a food that will always be cooked before consumption can have a more relaxed performance criterion taking into account handling and cooking practices.

The linking of public health goals, food safety objectives, performance criteria and food-borne disease surveillance data is a new concept to both governments and industry made possible through advances in risk assessment methodology. A through-chain agency may be better placed to drive the required whole-of-industry approach.

In summary, the ideal vision for a food safety system in the 21<sup>st</sup> 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-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 food-borne disease surveillance.

AN IDEAL VISION



## **4 THE CURRENT NSW SYSTEM**

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This chapter provides an overview of the NSW food regulatory system, describes the roles and responsibilities of the main State agencies and local government, and explains how NSW contributes to the national regulatory system.

### **OVERVIEW OF THE SYSTEM**

Current administrative arrangements for food regulation in NSW are complex and split among a number of State agencies and the local government sector. NSW Health, Local Government, SafeFood Production NSW, NSW Agriculture, NSW Fisheries, the NSW Environment Protection Authority, and the NSW Department of Fair Trading are all involved in food regulation to some extent. Considerable management and staff time is devoted to ensuring workable boundaries between these agencies, clear understanding of respective roles and responsibilities, and consistent approaches in relation to food.

State agencies also work closely with the Australian Quarantine and Inspection Service (AQIS) which is responsible for food imports and exports.

The main State agencies which, together with local government, oversee the production and supply of food to the public will be described in more detail below. The following briefly describes the remaining four agencies.

NSW Fisheries is the State's principal agency responsible for conserving the aquatic environment and managing fisheries resources. It is doing this by protecting and restoring fish habitats, promoting responsible and viable commercial fishing, supporting aquaculture industries and helping to provide recreational anglers with quality fishing opportunities. SafeFood is responsible for food safety issues in seafood.

The NSW Environment Protection Authority looks at environmental contamination with potential to spill over into water and food production in close collaboration with NSW Agriculture.

The NSW Department of Fair Trading is responsible for competition and consumer issues in general through the Fair Trading Act 1987 and have some limited involvement with food. However, most fair trading issues in food are currently dealt with under the food legislation.

The Australian Quarantine and Inspection Service is a national organisation with local representation in NSW and is responsible for controlling food imports to Australia, and thus to NSW, through the Imported Food Control Act 1992. Once in the country, NSW Health assumes responsibility for food under the general food legislation.

## NSW HEALTH

NSW Health, under the portfolio of the Minister for Health, administers the NSW Food Act 1989 and the NSW Food Regulation 2001, incorporating by reference the national Food Standards Code. These give it the responsibility for:

- ensuring that food for sale is fit for human consumption and for food recalls;
- ensuring that food safety standards are observed;
- ensuring that food meets the composition, chemical, labelling and microbiological standards set out in the Food Standards Code; and
- a range of consumer and industry protection issues.

Public Health Units within the Area Health Services are responsible at State level for enforcement of these requirements in food manufacturing, retail and food service businesses across NSW - in total an estimated 50,000 food businesses.

The NSW Department of Health has been involved in regulating food for close to a century. Before introduction of the Pure Food Act in 1908, Local Government carried sole responsibility for food matters. Implementation was patchy and rules varied from council to council. The Pure Food Act enabled much needed central coordination and consistent implementation of food laws, although local councils still had a very important role in enforcing the legislation.

In 1909, NSW Health formed the Food Branch to oversee implementation of the new Act. The Food Branch was initially staffed by only one food inspector. It doubled in size in the second year and continued to grow to 43 staff by early 1990.

In 1991-1992, NSW Health decided to decentralise field staff into Public Health Units within the Area Health Services. The Food Branch now comprises seven permanent or temporary professional staff in central administration. Seventeen regional Public Health Units have 26 full-time Food Inspectors in total, including 12 Senior Inspectors, to perform and supervise food tasks at a local level. There are an additional eight Environmental Health Officers with mixed responsibilities. It is estimated that their food activities equate to three full time equivalent positions. Figure 4.1 shows the State-wide distribution of food regulatory staff.



**Figure 4.1 Distribution of Food Inspectors and Environmental Health Officers with some food responsibilities across the 17 Area Health Services.**

Some submissions commented on the central versus decentralised approach:

Centralised administration and enforcement has many advantages. The main one being that it provides uniformity in enforcement and interpretation...

... Contrast this situation with a decentralised system where the same problem is subject to numerous interpretations with various levels of knowledge and understanding of the problem and the effect of their decision.

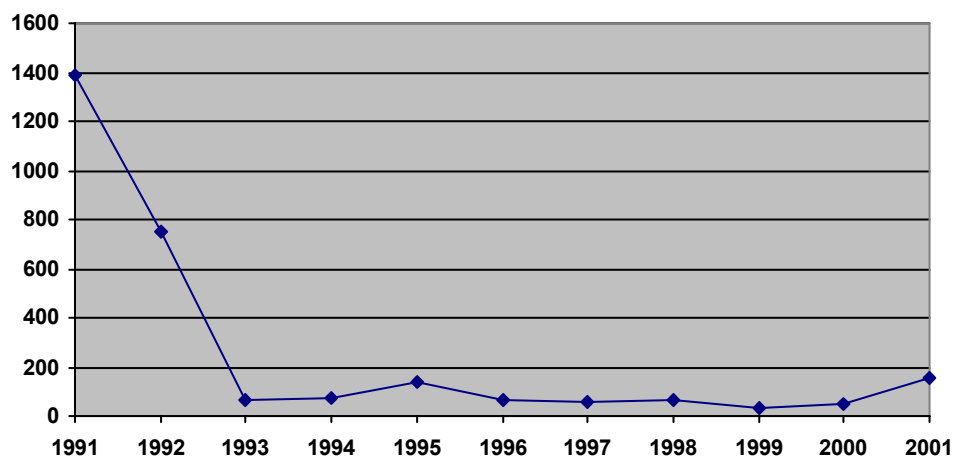
*Desmond Sibraa (p. 6)*

The NSW Food Bill 2002, which will replace the Food Act 1989, is currently before the NSW Parliament. It is based on the Model Food Act endorsed by the Council of Australian Governments (COAG) as part of the new national regulatory framework agreed in November 2000<sup>1</sup>. It will provide an enhanced framework for enforcement of food regulation and coordination of the food regulatory system.

However, it is one thing to have the framework in place, another to have uniform application across the State. It is interesting to note the consequences of decentralisation of the food resource in NSW Health in 1992 on the legal enforcement process illustrated in Figure 4.2.

<sup>1</sup> The new national framework is described in more detail in Chapter 6

**Figure 4.2 Food-related prosecutions initiated by the NSW Health between 1991-2001.**



### **DISEASE SURVEILLANCE AND INVESTIGATION**

In addition to its regulatory responsibilities, NSW Health is also the lead agency for surveillance and investigation of food-borne illness as part of its overall responsibility for communicable disease. Under the Public Health Act, specified diseases are required to be notified to NSW Health by doctors, laboratories and hospitals. These diseases include food borne illness in two or more related cases, gastroenteritis among people of any age in an institution, hepatitis A, haemolytic uraemic syndrome, cholera, salmonellosis, shigellosis, typhoid and shigatoxin-producing E. coli.

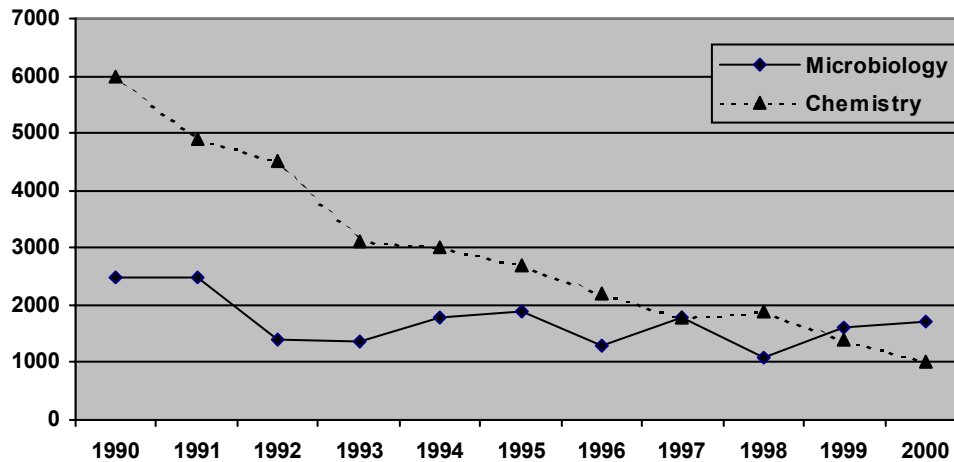
Each Public Health Unit has a multidisciplinary team to undertake investigations. Frequently the first step is an epidemiological investigation through a standard questionnaire about possible risk exposures. The epidemiological investigation will usually be complemented by an environmental investigation where evidence of suspect food handling practices is explored and food and environmental samples examined. Food staff will be involved in particular in the latter part of the investigation.

### **LABORATORY SERVICES**

The NSW Health Division of Analytical Laboratories (DAL) undertake chemical, bacteriological and biological analyses of samples of food, water, and a range of other substances on behalf of NSW Department of Health and other government agencies. Poor utilisation of the laboratory services since the decentralisation of Food Inspectors in 1992 has led to a decline in the capacity of the laboratory. This is of particular concern during public health emergencies such as large foodborne disease outbreaks. Figure 4.3 shows the number of samples submitted between 1990 and 2000.



Figure 4.3 Number of microbiological and chemical food samples analysed by DAL between 1990-2000.



In summary, while the approach to food regulation within NSW Health has been mainly reactive, there has been a significantly proactive public health component and food advisory function.

## SAFEFOOD PRODUCTION NSW

SafeFood Production NSW, within the portfolio of the Minister for Agriculture, is responsible for food safety in primary production and processing, including seafood. It currently regulates more than 10,000 businesses in the dairy, meat and shellfish industries and its preventive programs will soon cover a further 1,700 seafood businesses.

### ORIGINS OF SAFEFOOD

In 1997, a Food Safety Taskforce found that a fragmented food safety system in NSW had led to inconsistency, duplication and gaps in coverage. It recommended a long-term commitment to the integration of food safety systems, beginning with primary production and processing, including seafood. The NSW Government responded by establishing SafeFood Production NSW in 1998 as a stand-alone food safety agency under the *Food Production (Safety) Act 1998*.

SafeFood brought together the NSW Dairy Corporation, NSW Meat Industry Authority, the Shellfish Quality Assurance Program within NSW Fisheries, and several other food safety functions under one umbrella. Expansion into “gap areas” was to be based on scientific food safety risk analysis and the development of industry-based preventive programs.

SafeFood NSW is now the enforcement agency for food safety in the NSW primary produce and seafood industries. Its coverage extends from production, harvest or catch to the back door of retail. It also covers retail businesses where raw meat is further processed, such as butcher shops and supermarket meat departments. The current staff level is around 70.

## **FOOD SAFETY SCHEMES**

SafeFood fulfils its responsibilities by developing, implementing and managing “food safety schemes”, each of which is introduced by regulation under the Act. Each food safety scheme is based on scientific risk analysis and tailored to a specific industry or industries. Food safety schemes embody a preventive approach based around enterprise-level food safety programs “verified” by external audit. There is increasing emphasis on specifying outcomes rather than detailed prescriptive requirements. This is in common with other food safety regulators in the primary sectors and in accordance with the modern direction of national food legislation.

Food safety schemes have been implemented for the dairy and meat industries, are in the process of being implemented in the seafood industry, and are currently being developed for priority sectors in the plant products industries and for the goat and sheep milk industries.

The Dairy and Meat Food Safety Schemes are substantially the same as the food safety regimes enforced by the former dairy and meat agencies. During the 1990’s, each agency undertook a major strategic shift from end-product inspection and testing to the implementation of HACCP-based food safety systems at enterprise level.

The former dairy arrangements were reviewed by an independent scientific body and revised in consultation with the dairy industry during development of the Dairy Food Safety Scheme. SafeFood assumed responsibility for meat safety in August 2000 and has reviewed several key risk areas including fermented smallgoods. For both industries there is a virtually continuous shift in emphasis and deployment of resources as risks are reviewed and changes are made. However the changes and revisions since incorporation into SafeFood have been largely operational rather than strategic.

An integral element of the Shellfish Quality Assurance Program is supervision of the collection and monitoring of data on the water and oyster quality by industry participants. The data, which contains information from the point of harvest to the point of sale, is assessed by SafeFood and used as the basis for decisions on the closing/opening of harvest areas. SafeFood also assumed responsibility for shellfish depuration (formerly with NSW Health) and integrated this function into the overall shellfish safety arrangements. In 2001, SafeFood commenced a three-year program of detailed sanitary surveys of all shellfish harvest areas to enable “classification”<sup>2</sup> in accordance with international standard.

SafeFood collaborates with NSW Health in relation to enforcement of Food Standards Code requirements relevant to primary production and processing.

## **NSW AGRICULTURE**

NSW Agriculture is a multi-focus agency involved in research, extension, education and regulatory activities covering primary food production.

NSW Agriculture is responsible for primary industry regulation and related environmental management. It covers a range of on-farm issues related to “food inputs” such as stock feed and agriculture and veterinary chemicals.

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<sup>2</sup> Classification status determines the parameters of the risk management regime for oyster harvest.

NSW Agriculture recently established the Farm Product Integrity program to help ensure the wholesomeness of farm products in NSW. The term “farm product integrity” covers the whole area of standards, trade and safety issues. The program also coordinates the farm input legislation. NSW Agriculture is responsible for the Stock Foods Act 1904, Stock Medicines Act 1989, Fertiliser Act 1985 and Stock (Chemical Residues) Act 1975. The Fertiliser Act regulates contaminant standards and the Stock (Chemical Residues) Act regulates residue limits.

NSW Agriculture gives whole-of-farm advice to approximately 80,000 farms, addressing farm product integrity requirements along with economic, production, environmental, sustainability and welfare requirements for food production. It links effectively with other bodies operating in the food standards, product integrity, export trade and animal welfare areas, including NSW Health and SafeFood.

The State’s 48 Rural Lands Protection Boards, through a Memorandum of Understanding with NSW Agriculture, are primarily responsible for delivery of animal health services. The Boards deliver on-farm programs to monitor, prevent, control and eradicate endemic and exotic animal disease. This includes diseases with food safety implications, such as salmonella, anthrax, BSE and trichinosis, as well as diseases that may limit livestock production or threaten market access. The Boards also deliver similar monitoring, response and prevention programs for chemical residues in livestock.

## LOCAL GOVERNMENT

Local Government’s intimate knowledge of food businesses in their respective areas is utilised in inspection and enforcement activities at a local level, primarily in the retail and food service sectors. There are currently 172 local councils.

Current legislation does not require local government councils to enforce the Food Act on behalf of NSW Health. Nonetheless, food safety tends to be seen as an integral part of wider public and environmental health responsibilities by many councils and the majority appoint “authorised officers” to enforce the Food Act.

A NSW Health survey of councils in 2001 indicated that approximately 344 council staff, most of whom are Environmental Health Officers (EHOs), have part-time responsibilities for food, with the total resource being equivalent to 92 full time staff. The Area Health Services’ Public Health Units enforce the Act where there are clear gaps in coverage.

Many submissions to the Review commented on the local council situation and their relationship with NSW Health:

In the last decade there has been significant change in the way Councils do business, dictated by changes under the Local Government Act. That legislation determines that Councils must undertake certain activities, and may undertake others. An example of what may be undertaken is food surveillance work. Because this is essentially an optional undertaking, there has been inconsistent resourcing of this field, and a consequent uneven level of activity, for which Councils sometimes get criticised.

*Penrith City Council p. 7*

Local Government has always had a role in enforcing food safety standards at local and regional levels. Over the last decade this has become increasingly difficult because of funding problems and added responsibilities imposed on Local Government health and environment staff. Generally communities respond better to local authorities, at both the legislative and educational levels, than to people from the outside. Local Government has a continuing role in food safety but the issue of staffing and funding has to be addressed urgently.

*Australian United Fresh Fruit & Vegetable Association Ltd p.4*

Councils have generally had a good working relationship with NSW Health, however, all food regulations and requirements have been enforced by Council in recent years with NSW Health only becoming involved in major issues.

*Severn Shire Council p.1*

The current activities of many local government councils include:

- food sampling, monitoring of compliance with the Food Standards Code and enforcement actions;
- approval of food premises and dissemination of information to assist or guide the operator in best practice regimes;
- investigations of complaints and some foodborne illness events;
- conducting education and training for food handlers.

Although many activities are reactive in approach, local government EHOs, most of whom have a range of public health responsibilities in addition to food, are aware of the HACCP principles and many have undertaken food safety auditing courses.

## **NSW CONTRIBUTION TO THE NATIONAL REGULATORY SYSTEM**

In November 2000, the Council of Australian Governments (COAG) signed a new Food Regulation Agreement to establish an integrated food regulatory framework for Australia (and New Zealand under related treaty arrangements). A key feature of these reforms is to bring the health-related and agriculture-related components of the food regulatory system together in a single framework.

The Australia New Zealand Food Authority (ANZFA) has been reconstituted as Food Standards Australia New Zealand (FSANZ). It will focus entirely on developing food standards. The draft standards may be amended or rejected by an expanded Food Regulation Ministerial Council. The Council includes Ministers nominated by each State and Territory jurisdiction. NSW, like most jurisdictions, has nominated both its Health Minister (as Lead Minister) and its Agriculture Minister as members of the Council.

The Ministerial Council also sets national food regulation policy. The Council is advised by the Food Regulation Standing Committee. The Committee comprises the heads of Commonwealth, State and Territory agencies involved in food regulation. NSW Health, SafeFood NSW, and NSW Agriculture are all represented on the Standing Committee and participate in its subordinate bodies.



As in most jurisdictions, an elaborate system has been developed for jurisdictional consultation and decision-making across several portfolios. In addition to the direct representation of Health and Agriculture portfolio agencies, input from other agencies, such as the Department of State and Regional Development, is frequently required. Coordination before, during, and after meetings is crucial to develop a whole-of-jurisdiction position and review implementation.



# 5 PERFORMANCE REVIEW OF SAFEFOOD PRODUCTION NSW

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## BACKGROUND TO THE COUNCIL'S PERFORMANCE REVIEW

Section 73 of the Food Production (Safety) Act 1998 requires the Minister to “review (the) Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives”. Because the primary purpose of the Act is to establish SafeFood Production NSW with statutory functions related to food safety, an essential component of the Section 73 review must be to assess SafeFood’s performance to date. In this context, subsection 73(4) also requires the review to assess:

- (a) the coverage and effectiveness of the food safety schemes in operation at the time of the review; and
- (b) the extent to which national food hygiene standards have been implemented in food safety schemes.

It was agreed that all of these matters would be addressed by a Performance Review of SafeFood undertaken by the Council on the Cost and Quality of Government. The Council carried out this review between February and June 2002. Recommendations of the Council’s Performance Review were endorsed by the NSW Government in October 2002. It was also agreed that a summary report setting out the review’s findings and recommendations would be provided for inclusion in the Section 73 Review report to be tabled in Parliament. The Council’s summary report is provided at Appendix 1.

The Council’s standard methodology analyses a range of internal and external factors across 12 performance areas. The analysis is supported by an extensive program of consultation with agency clients and stakeholders.

Close links were established between the Council’s Performance Review and the overall Section 73 Review. While it was clearly the task of this Review to make final recommendations on the integration of food safety arrangements in NSW, the Council’s review necessarily examined the strategic setting for SafeFood and the implications of future options.

## THE COUNCIL'S KEY FINDINGS AND CONCLUSIONS

The Council made a number of strategic and operational findings which led to conclusions regarding the agency’s *appropriateness, effectiveness, efficiency* and *prudence*. These are set out in the Council’s report and briefly summarised below.

### STRATEGIC FINDINGS

SafeFood is “an agency in transition”. The Council noted the considerable changes to SafeFood’s policy and operating environment since its establishment. New national food regulatory changes are in place, including a model Food Act requiring each State and Territory to nominate a “relevant authority” to lead and coordinate its food regulatory activities.

The Council notes that “continuing fragmentation of agencies and responsibilities may not assist in ensuring a consistent and strategic approach to food safety”.

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While SafeFood has implemented science-based food safety schemes in the dairy, meat and seafood sectors, the Council found difficulties in the rollout of the new seafood safety scheme with regard to information and training of industry participants.

The Council found that most clients and stakeholders reported a positive relationship with the agency, although less so in the “newer” sectors such as seafood. While SafeFood has established a range of consultative forums, there is no formal mechanism for communication with the full range of stakeholders. There is also no systematic measurement, for example by surveys, of client satisfaction.

The Council reported that issues related to food safety audit, including potential use of third party auditors, were raised by some clients and stakeholders. It noted that use of third party auditors would require consideration of public health risks, capability and accountability of providers, costs of the scheme, and issues of liability.

### **OPERATIONAL FINDINGS**

The Council noted that in April 2002 SafeFood moved from a commodity-based “silo” structure to a function-based structure. This new arrangement should lead to a more integrated approach at operational level, although industry-specific expertise should be retained.

The current staff level is about 70, following transfer of the National Livestock Reporting Service to an industry body in July 2002. The Council found that SafeFood’s internal infrastructure has not always been sufficiently resourced to support its external activities and services. Human resource issues and challenges, including loss of skills and knowledge through impending retirements, loom large and a strategic human resources plan is needed.

Results of the Council’s survey of staff were generally positive in terms of staff involvement in strategic and branch planning, knowledge of management’s expectations, and support by management. Internal communication channels were good. However, communication to external stakeholders needed improvement by means of an integrated communications plan and dedicated Communications and Public Relations Coordinator.

The Council noted that the Government’s shared corporate services strategy would impact on processes and systems. Corporate services costs were estimated at approximately 18% of total operating expenses. This was considered reasonable at this stage of the agency’s development and likely to reduce once new food safety schemes are all operating and organisational arrangements have settled.

While there is no overall risk management strategy in place, individual risk areas have been addressed, financial management is satisfactory, and there is a comprehensive emergency management plan in place.

## REVIEW CONCLUSIONS

### APPROPRIATENESS

- appropriate for agency to exist and undertake its current activities
- legislative policy objectives remain valid given the risks of food-borne illness and social and economic costs
- expansion of SafeFood's role to become a "through-chain" agency considered logical

### EFFECTIVENESS

- dairy and meat programs considered effective
- difficult to determine effectiveness of new schemes, such as seafood, at this stage
- service effectiveness should improve as new structure beds down and Customer Management System becomes fully operational; better communication and training for "new" clients would also assist

### EFFICIENCY

- agency considered reasonably efficient having regard to its transitional status and inheritance of different systems and processes from predecessor organisations
- scope for further gains with new structure, IT systems enhancement, and shared corporate service arrangements

### PRUDENCE

- demonstrated by food safety risk management through the industry-based schemes, together with the emergency management plan
- financial management considered satisfactory
- overall risk management plan required

As required by section 73(4)(a) and (b), the Council also came to specific conclusions regarding *coverage and effectiveness of food safety schemes and extent of implementation of national food hygiene standards* (see Appendix 1, p.5). These included:

- NSW was the first State to establish a single agency responsible for food safety in the production and processing of all primary produce and seafood;
- existing Food Safety Schemes are consistent with national Food Safety Standards; and
- NSW is ahead of other States and Territories in developing and implementing preventative food safety regulation in the primary production and seafood industries.

## **LINKAGES BETWEEN THE COUNCIL'S RECOMMENDATIONS AND THE OVERALL REVIEW RECOMMENDATIONS**

The Council made 12 Strategic recommendations and 8 Operational recommendations (see Appendix 1, pp.6-9). Many of these respond to findings that improvement is needed in areas including communications, information and training support for food safety scheme rollout, strategic human resource management, and performance measurement.

Most significantly for this Review, the Council's first recommendation is that "the concept of a single through-chain agency be supported and SafeFood be that agency". It is, of course, for this Review to consider whether the through-chain option is preferable to current arrangements. However, given the Review's conclusion as set out in Chapter 6 that NSW establish an agency responsible for food regulation at all points of the chain from production to retail, the Council's assessment that SafeFood provides a sound base upon which to establish that agency is given great weight by the Review.

The Council also recommends (Recommendation 4) that "*further resourcing for SafeFood be considered in light of adoption of these recommendations*". It is clear from the Council's recommendations as a whole that additional resources may be needed in three contexts:

- to improve SafeFood's capacity to undertake its current role and functions;
- to enable SafeFood to undertake additional responsibilities as a through-chain agency; and
- where existing resource needs may become more acute with the additional through-chain responsibilities (e.g. strategic human resource management; communications)

The Review has carefully considered the Council's findings and conclusions and supports all of the recommendations made, with minor qualification given the Review's detailed recommendations on the functions, form and funding of the proposed through-chain agency. All but five of the Council's recommendations are linked in some way to one or more of the Review's recommendations. Those linkages are set out in Table 5.1.

### **RECOMMENDATION 1**

**The recommendations of the Performance Review of SafeFood Production NSW by the Council on the Cost and Quality of Government should be implemented subject to the linked recommendations of this report as summarised in Table 5.1.**

**Table 5.1 Linkages between the Council’s recommendations and the Review recommendations**

Council’s Recommendations	Linked Review Recommendations
(1) Support a through-chain agency based on SafeFood NSW.	(2) Merge SafeFood NSW and NSW Health food regulatory staff to form the NSW food agency.  (10) SafeFood legislation to provide legal, structural and funding base for the NSW food agency.  (11) SafeFood’s new functional structure to provide interim structure for NSW food agency.
(2) If a through-chain agency is set up, training and transitional arrangements be put in place to delineate roles and responsibilities.	(13) Detailed protocol for response to complaints and disease incidents to be developed before transfer of Public Health Unit staff.  (14) Transferred PHU staff to remain co-located within the PHUs until the response protocol is working effectively. Non-metropolitan PHU staff to remain co-located until best options for staff deployment in rural and regional areas identified.  (15) Minimum six months transition period before establishing new agency to enable joint SafeFood-NSW Health team to develop detailed transition plan and begin work on long-term change management strategy.
(3) SafeFood to negotiate MOUs or other arrangements (including funding agreements) with NSW Health, NSW Agriculture, Local Government and Shires Association, and Department of Fair Trading.	(7) SafeFood to negotiate an MOU with NSW Agriculture during the transition period to provide the basis for an MOU with the NSW food agency. SafeFood to initiate discussions with the Environment Protection Authority and the Department of Fair Trading to determine need for MOU or other strategic liaison arrangements.  (8) NSW Government should explore with local government the implementation of a mandated local government role, funded locally but assisted and coordinated by the NSW food agency.  (13), (14) and (15) as set out above.  (25) Core funding of the new agency should include: (b) recurrent government funding equal to the cost of the transferred NSW Health and Public Health Unit staff and their food-related activities.  (26) Quantum of the 25(b) funding should be agreed by SafeFood and NSW Health in consultation with Premier’s Department and NSW Treasury.  (27) During the transition period, SafeFood and NSW Health, in consultation with NSW Treasury, should develop arrangements for the provision of laboratory services to the NSW food agency.
(4) That further resourcing for SafeFood be considered on adoption of the CCQG recommendations.	(28) An indicative amount of \$980,000 should be provided to cover direct costs of transition to the new agency.  (29),(30),(31),(32),(33),(35),(36) and (37) as set out below.

**Table 5.1 Linkages between the Council’s recommendations and the Review recommendations (continued)**

Council’s Recommendations	Linked Review Recommendations
<p>(5) Comprehensive consultative forum to be established to provide SafeFood with advice from industry and consumer stakeholders.</p>	<p>(23) Establish an Industry and Consumer Consultative Committee by statute as the primary means for the Minister and the NSW food agency to consult with the food industry and consumer and public health advocates.</p> <p>(24) Appoint the Consultative Committee under the Food Act 2002 and nominate it as the consultation method for individual food safety schemes, with agreement of the relevant industries.</p> <p>(36) Stakeholder Consultation activities of the NSW food agency should be funded by government irrespective of the purpose of the consultation.</p>
<p>(10) SafeFood to implement activity-based costing system to monitor current costs and assist in considering levels of future contribution by industry and government.</p>	<p>(35) Compliance Audit and Inspection activities of the NSW Food agency should be funded by industry using existing cost recovery mechanisms.</p> <p>(36) as set out above.</p> <p>(37) as set out below.</p>
<p>(11) In the context of becoming the through-chain agency, SafeFood be made a budget sector agency with provision for user charges retention.</p>	<p>(25) Core funding of the new agency to consist of :</p> <p>(13) SafeFood’s current industry and government funding;</p> <p>(14) recurrent government funding equal to the cost of the transferred NSW Health staff and their activities;</p> <p>(15) additional government funding as recommended.</p>
<p>(13) That SafeFood develop mechanisms such as surveys and website use to assess client views and receive feedback.</p> <p>(14) That an integrated communications plan be developed which addresses communication strategies with clients and stakeholders, website information requirements, and overall marketing of the agency.</p>	<p>(29) For work to begin on a change management strategy and other identified areas (e.g. Communications, public education), additional funding to be provided, initially to SafeFood during the transition period and continuing for at least 18 months, to employ:</p> <p>(18) a core team of:</p> <p>(7) a senior strategic human resources professional, and</p> <p>(8) a communications team consisting of a senior Communications Coordinator and a communications officer; and</p> <ul style="list-style-type: none"> <li>• supplementary transitional staff comprising a human resources officer and two communications officers.</li> </ul> <p>Funding of the core team should be recurrent. The extent to which additional resources are required beyond 18 months should be addressed in the business cases relating to the new agency’s change management strategy and Consumer Information and Education function.</p>
<p>(15) SafeFood, in conjunction with industry and training providers, develop information and training mechanisms to ensure the effective roll-out of food safety schemes.</p>	<p>(37) Funding for the development of new food safety schemes should provide for information and training mechanisms to ensure the effective roll-out of these schemes.</p>



**Table 5.1 Linkages between the Council’s recommendations and the Review recommendations (continued)**

Council’s Recommendations	Linked Review Recommendations
<p>(16) SafeFood, in conjunction with NSW agencies, industry and consumer groups, develop a strategy to better co-ordinate, develop and implement public education campaigns and related strategies on food safety issues and risks.</p>	<p>(17) Establish a Development team (Project Manager and Research Assistant) to develop program proposals, structure, and a business case for a Consumer Information and Education branch of the NSW food agency.</p> <p>(31) The funding be provided, initially to SafeFood during the transition period, to appoint the Development team for 12 months.</p> <p>(33) Funding be provided for a senior public health nutritionist who, in part, will provide nutritional input to the CI&amp;E business case.</p>
<p>(17) SafeFood to develop a set of outcome indicators, in the context of a monitoring and evaluation framework, to measure its performance.</p>	<p>(38) SafeFood and NSW Health to begin work during the transition period on a monitoring and evaluation framework, including outcome indicators, for the NSW food agency. Framework to provide the basis for reporting to the NSW Government and the community on achievement of intended outcomes including associated public health goals.</p>
<p>(13) SafeFood to articulate a change management strategy including emphasis on internal infrastructure needed to support and deliver change.</p> <p>(14) SafeFood to finalise a strategic human resources plan with particular attention to skill requirements and training for a new structure, recruitment strategy to attract new staff, a formal induction program and development public performance management, and development system.</p>	<p>(29) as set out above.</p> <p>(30) The NSW food agency should develop a change management strategy identifying the medium and long-term resources needed for the agency’s internal infrastructure to support and deliver change. A business case should be prepared for any additional funding required to implement the strategy.</p>
<p>(20) SafeFood to develop an overall risk management strategy having regard to organisational risks, the operation of the various industry schemes, and emerging or unclear risks (particularly in the context of a “through-chain” agency).</p>	<p>(9) The NSW food agency should undertake a whole-of-chain scientific review of food safety risks in order to produce a risk profile of the NSW food industry. The risk profile should underpin a stratified approach to food safety risk management and the achievement of public health goals.</p> <p>(32) To enable implementation of Recommendation 9, the existing science policy resources of SafeFood and NSW Health should be supplemented by funding the appointment of two senior officers with skills and expertise in food safety risk analysis and program development. The risk profile of the NSW food industry should:</p> <p>(7) inform the development of the overall risk management strategy; and</p> <p>(8) provide the basis to seek additional funding, by business case or through the budget process, to effectively manage new or emerging risks.</p>



## 6 A THROUGH-CHAIN AGENCY FOR NSW

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This chapter will provide the rationale for selecting an optimal future food regulatory system for NSW. The main task for the Review is to determine whether the NSW system should simply be further streamlined or whether a fully integrated entity should be established. There are two main options:

- maintenance of current arrangements, perhaps with additional measures such as MoUs to improve coordination; or
- structural integration to establish a through-chain NSW food agency.

Chapter 5 summarises the outcomes of the Performance Review of SafeFood Production NSW (SafeFood) by the Council on the Cost and Quality of Government. The Council supported the concept of a through-chain food regulatory agency and found that SafeFood would provide a sound base upon which to establish such an agency.

The Review agrees with the Council and recommends that NSW complete the integration of the food regulatory system begun in 1998 by establishing a through-chain agency, hereafter referred to as “the NSW food agency”.

This chapter sets out the Review’s reasons under the following headings:

- Implications of the new national framework
- National and international trends
- Potential benefits of a NSW food agency
- Demonstrated benefits of the SafeFood initiative
- What the stakeholders thought

The Chapter concludes with a benefit-cost analysis of the proposal.

### IMPLICATIONS OF THE NEW NATIONAL FRAMEWORK

In November 2000, the Council of Australian Governments (COAG) signed a new Food Regulation Agreement to establish an integrated food regulatory framework for Australia (and New Zealand under related treaty arrangements). The key features of the new framework were outlined in Chapter 4 (see pp.20-21).

The major purpose of these national reforms was to address the fragmentation, lack of coordination, and inconsistency identified by the 1998 Food Regulation Review conducted by Dr Bill Blair. The reforms challenge the States and Territories to ensure that implementation and enforcement of national food standards is integrated, coordinated, and consistent. Several features of the new framework will require robust through-chain approaches by the States and Territories.

Firstly, the Food Standards Code will be a “one stop shop” for national food standards covering all sectors of the food chain. FSANZ is now embarking on the development of through-chain Primary Production and Processing Standards (which will be included as a new chapter in the Code), beginning with seafood. These standards, which will be risk-based, will potentially apply to activities at any point in the supply chain.

Secondly, new Food Acts based on a national model will be the primary mechanism for implementation and enforcement of standards. Each jurisdiction is required to designate a “relevant authority” (in NSW, to be known as the “regulatory authority”) to coordinate and ensure consistency in the activities of all “enforcement agencies”, including local government.

Thirdly, the Food Regulation Standing Committee has established a Development and Implementation Sub-Committee, with members from each jurisdiction, as the ongoing national mechanism to:

- develop implementation policy; and
- develop and oversee a consistent approach to enforcement of food regulation and standards.

Fourthly, options for the implementation of the deferred Food Safety Standard 3.2.1 (Food Safety Programs) in identified high-risk food industry sectors are being developed for consideration by the Ministerial Council in 2003. If adopted, these food safety program requirements will probably be implemented by State and Territory Health Departments. However, similar requirements for the dairy and meat industries are in place in most jurisdictions (and for seafood in NSW) under the supervision of Agriculture-based regulators.

## NATIONAL AND INTERNATIONAL TRENDS

### STATES AND TERRITORIES

The 1998 Blair Review provided a concise description of food regulatory arrangements within the States and Territories:

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

State and Territory health departments usually delegate the power to enforce the Food Standards Code and food hygiene regulations to local governments<sup>1</sup>.

In addition to his recommendations to integrate the national framework, Blair recommended that the multiplicity of agencies at State/Territory level, exacerbated by the local government role, also be addressed. He stated that “adding new ‘coordinating’ agencies, as some government officials proposed, could exacerbate the problem” and recommended that:

Each State and Territory government should take steps to integrate its food regulatory agencies, from paddock to plate, and thereby reduce the number of State and Territory food regulatory agencies<sup>2</sup>.

Most jurisdictions are taking steps to improve coordination or to rationalise their fragmented arrangements, but no consistent model has emerged. The current position in the NSW border states is briefly described below.

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<sup>1</sup> Blair (1998) *Food: a Growth Industry*, pp14-15

<sup>2</sup> *ibid*, p68

## QUEENSLAND

Queensland Health administers the Food Act in conjunction with local government councils which have mandated responsibility for enforcement in their areas.

In 2000, SafeFood Production Queensland was established along similar lines to SafeFood Production NSW. It has absorbed the former Queensland Livestock and Meat Authority and Dairy Authority and is developing food safety schemes for the seafood and egg industries.

A review of the Food Act is currently underway which may strengthen coordination of the local government role by Queensland Health, but further structural integration appears not to be on the agenda.

## SOUTH AUSTRALIA

The Department of Human Services administers the Food Act in conjunction with local government councils which have mandated responsibility for enforcement in their areas.

There is a separate Dairy Authority and the Department of Primary Industry and Resources includes a Meat Hygiene Unit and a unit which administers a Shellfish Quality Assurance Program.

Consideration is being given to options for streamlining food legislation covering primary produce and seafood, which in turn may involve some structural integration in these sectors.

## VICTORIA

Food Safety Victoria, a unit within the Department of Human Services, administers the Food Act in conjunction with local government councils which have mandated responsibility for enforcement in their areas.

Separate dairy and meat legislation is administered respectively by Dairy Food Safety Victoria and the Victorian Meat Authority. Seafood programs are being developed, to be administered through an expanded and renamed VMA.

The role of Food Safety Victoria includes the coordination of policy across all food safety agencies and establishment of MoUs covering service delivery responsibilities.

The Victorian Auditor-General's Office is currently undertaking a performance audit entitled *Management of Food Safety in Victoria*. The overall objective of the audit is to assess whether the regulatory framework for the management of food safety in Victoria efficiently and effectively minimises the risks of food related illness.

## INTERNATIONAL TRENDS

For similar reasons to those driving the integration agenda in Australia, a number of countries have established regulatory agencies with through-chain responsibilities. Several examples are briefly described below. The highly relevant example of New Zealand – which established a through-chain Food Safety Authority on 1 July 2002 – is considered in more detail. While none of these initiatives appears to have been formally evaluated to date, they are working models of through-chain agencies established in similar conditions to those in Australia.

### FOOD STANDARDS AGENCY (UK)

Before the FSA, responsibility for food regulation was shared by a number of agencies, principally the Department of Health and the Ministry of Agriculture, Fisheries and Food (MAFF) together with local authorities. The FSA was set up to address a serious erosion of consumer and producer confidence in the food regulatory system, following several major food safety failures including management of the human health impacts of Bovine Spongiform Encephalopathy (BSE).

The key factors identified as contributing to this erosion of confidence were<sup>3</sup>:

- the potential for conflicts of interest within MAFF arising from its dual responsibility for protecting public health and for sponsoring the agriculture and food industries;
- fragmentation and lack of co-ordination between the various government bodies involved in food safety; and
- uneven enforcement of food law.

The FSA was established in 2000 as an independent through-chain agency with wide-ranging powers and comprehensive food regulatory functions including policy and standards development, research and surveillance, compliance and enforcement, and consumer information and education. The significant role of local authorities in relation to enforcement was retained, but the FSA sets standards and monitors performance.

### FOOD SAFETY AUTHORITY OF IRELAND

The FSAI was established in 1999 for similar reasons to those in the UK. It is responsible for food safety at all points in the food chain. While the FSAI itself has comprehensive powers, compliance and enforcement activities are mostly carried out by 47 “official agencies”, including local authorities, under service contracts with the FSAI. As the FSAI describes the system:

Previously, food safety control was dispersed across 47 of these agencies. The FSAI coordinates, standardises and harmonises this activity through service contracts. A key objective is to ensure there are no gaps in the continuum from farm to fork.

We specify standards to the agencies and review the efficacy of food inspection services. The agencies’ performance is measured against an agreed framework. We provide assistance to the agencies to ensure delivery of our standards.<sup>4</sup>

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<sup>3</sup> UK Government (1998) *The Food Standards Agency: a Force for Change*, 1.1

<sup>4</sup> FSAI (2002) [www.fsai.ie/about/first\\_steps.htm](http://www.fsai.ie/about/first_steps.htm), p5

## CANADIAN FOOD INSPECTION AGENCY

The CFIA was established in 1997 to bring together the inspection and related services of four federal departments. Food standards and policies are developed by Health Canada. The CFIA is responsible for implementation and enforcement of these standards across commodity lines from farm or point of entry to retail level or export, except where provincial or municipal authorities are responsible under Canada's federal system<sup>5</sup>.

The CFIA carries out its inspection and enforcement work with its own staff (4,600 people). Significantly, a Food Safety Risk Analysis Unit within CFIA develops risk analysis policy and provides scientific and risk management support to the agency's food inspection programs.

## NEW ZEALAND FOOD SAFETY AUTHORITY

Australia and New Zealand have established by treaty a joint food standards system. New Zealand nominates three Board members of Food Standards Australia New Zealand (FSANZ) and is represented on the Food Regulation Ministerial Council and Standing Committee. With limited exceptions, the Food Standards Code applies in New Zealand.

In the absence of a State-level tier of government, responsibility for implementing and enforcing the Food Standards Code rests with the national government and local authorities. Thus the food regulatory responsibilities of the NSW and New Zealand Governments are comparable, leaving aside responsibilities in relation to imports and exports.

Before 1 July 2002, New Zealand had two separate food regulatory regimes:

- the Ministry of Health (MoH) administered the Food Act, which covered food sold on the domestic market, including imported food; and
- the Ministry of Agriculture and Forestry (MAF) administered food and related legislation largely aimed at primary production and processing, and exports.

According to the New Zealand Government, the separate regimes generated the following issues for producers, processors and consumers<sup>6</sup>:

- inconsistencies and a lack of coordination in the way food safety was managed;
- increasing consumer concerns about food safety issues;
- a shortage of skills in some specialist areas; and
- potential for inconsistencies to develop in New Zealand's approach to imports and exports.

Attempts were made over a number of years to align the MoH and MAF approaches to risk management in the production and processing of food under all Acts. Other efforts to increase harmonisation of the two regimes included the establishment of an officials committee on food administration in 1993, a food safety coordinating group in 1996, and a project to harmonise risk-based management programs.

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<sup>5</sup> CFIA (2002) *CFIA Fact Sheet*, p1

<sup>6</sup> New Zealand Government (2002) *New Zealand Food Safety Authority – Post Election Brief*, p3

Ultimately the New Zealand Government concluded that structural integration was necessary. The food regulatory functions, staff and resources of MoH and MAF were combined to form the New Zealand Food Safety Authority (NZFSA). Despite its name, the NZFSA is responsible for all food regulatory issues, in addition to food safety.

The NZFSA is established as a “semi-autonomous body” within MAF, to enable it to share corporate services and related infrastructure. Its independence in carrying out its functions is secured in three ways:

- a separate portfolio of Food Safety was established and allocated to a Minister other than the Minister responsible for MAF;
- the NZFSA budget is provided by a separate Parliamentary vote allocated to the Minister for Food Safety, who has a Purchase Agreement with the Director-General of MAF; and
- the head of the NZFSA is responsible to the Minister for Food Safety for policy advice, the administration of food legislation, and the day-to-day running of the agency

The rationale for this initiative was explained as follows<sup>7</sup>:

Bringing the two regimes together was to help address these concerns and to also provide a strong, coordinated approach to reducing the incidence of food-borne illness within New Zealand.

The benefits of establishment are:

- reducing duplication;
- allowing the management of food and related product risks from “production to consumption”;
- providing for the integration of the regulatory functions to ensure effective use of scarce resources (e.g. greater depth of resources in the areas of microbiology, risk assessment and toxicology);
- providing for a consistent approach to the regulation of all food and related production, whether for export or for sale on the domestic market; and
- strengthening the ability to determine an “appropriate level of protection” for New Zealand consumers.

The examples set out above reflect growing international recognition that structural integration is needed if the benefits of a through-chain approach to food safety risk management (and other food regulatory issues) are to be achieved in practice and sustained in the long-term.

The conclusions of the New Zealand Government were echoed by a former Administrator of the US Food Safety and Inspection Service and Deputy Commissioner for Policy at the US Food and Drug Administration when commenting on the need for reform of the US food safety system<sup>8</sup>:

We need instead a single food safety agency to devise and implement an integrated national food safety plan, set priorities, allocate resources, and be held accountable for the results. Anyone who has managed in government knows that these leadership and management functions cannot be performed effectively by committee or through coordination. They require an organisational and leadership structure that is designed around and capable of accomplishing the newly defined food safety mission.

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<sup>7</sup> *ibid*

<sup>8</sup> Taylor, M (2002) *Reforming Food Safety: a Model for the Future* in *Food Technology*, vol 56, no.5, p194



The precise form that structural integration may or should take will vary under differing governmental and institutional conditions. Accordingly, the Review considers both the rationale and the model for establishing the New Zealand Food Safety Authority to be highly relevant to NSW.

## **POTENTIAL BENEFITS OF A NSW FOOD AGENCY**

The Review has identified potential benefits of four kinds:

- targeted resource allocation;
- consistency of approach;
- efficient and effective resource utilisation; and
- single NSW Government interface for industry, consumers and other stakeholders.

Each of these potential benefits would enhance the efficiency and effectiveness of the NSW food regulatory system.

### **TARGETED RESOURCE ALLOCATION**

Modern food safety risk management uses science to identify and prioritise risks and determine the best risk management options. This can mean that some risks which arise at a certain point in the chain might be addressed more cost-effectively at a later point in the chain, for example by a “kill step” such as pasteurisation. A through-chain agency is better able to allocate regulatory resources (and also the industry compliance burden) commensurately with these risks. Management of this process by a single agency will also reduce duplication and ensure complete coverage.

A through-chain agency can also respond more swiftly and flexibly to changing circumstances, for example emerging risks, shifts in relative risk, and changes in enforcement priorities.

In supporting a NSW food agency, the Australian Meat Council (jointly with three other peak meat industry associations) said (p.2):

We believe that the establishment of a single through-chain agency will improve food safety outcomes. Such improvement will flow from focusing Government food safety resources on those industries, sectors and individual businesses that contribute the greatest risk to public health. While progress toward this ideal has been made, food regulatory resources largely continue to be allocated on the basis of tradition rather than public health risk. Allocation of those resources on the basis of risk will only be achieved by consolidating food safety functions within a single agency responsible for prioritising Government investment in managing food safety risk.

Improvement... will also be achieved by identifying and filling gaps in the current regulatory system. The NSW meat industry notes that all post-farmgate red meat businesses (from primary production through to retail) are regulated by SafeFood. Currently SafeFood’s regulation of competitor protein industries (such as chicken and seafood) ceases at the back door of the retail premises. We believe this creates an unacceptable gap in the food safety systems of these industries and places the red meat industry at a competitive disadvantage. Identifying and remedying these gaps will be a natural consequence of consolidation of food safety responsibilities within a single through-chain agency. Similarly, inadequate supervision of downstream food service businesses, which serve meat meals, creates a gap in paddock-to-plate food safety systems for the red meat industry and should be addressed.

Food Standards Australia New Zealand (FSANZ) referred to COAG's decision to give it whole-of-chain responsibility for standards development and said (p.1):

This decision has been taken, in part, from recognition that there can be better management through a whole-of-chain approach: there is little point in rigorous food safety standards in the processing sector if the product has already been compromised. A through-chain approach also reduces inconsistency and duplication in the use of scarce resources. We believe the advantages of a whole-of-chain regulator are considerable.

This theme is further explored in the discussion leading to Recommendation 9.

## **CONSISTENCY OF APPROACH**

As seen in some of the international examples considered earlier, inconsistency of approach is one of the major challenges of a fragmented regulatory system, despite serious attempts at "harmonisation". A through-chain NSW food agency will be able to drive consistency in at least five areas.

Firstly, as discussed in the previous section, a consistent approach to risk assessment and risk management will be taken. The agency can also establish an appropriate balance between prevention and enforcement activities and adjust the regulatory approach as risks and industry performance require. This is particularly significant, given the differing expertise, cultures and traditions within NSW Health (enforcement-oriented) and SafeFood (prevention-oriented).

Secondly, a single agency will establish common operational policies and procedures covering areas such as licensing, audit and inspection, and use of sanctions and penalties.

Thirdly, a single agency will be better able to ensure consistent interpretation of standards and other legal requirements, including work with local government councils on these issues.

Fourthly, it will be easier to develop standardised cost recovery arrangements, where applicable. SafeFood is already seeking to address inconsistencies in its inherited cost recovery arrangements and the position will be complicated in the event that preventive approaches (e.g. food safety program requirements) are implemented in sectors covered by NSW Health.

Fifthly, a single agency will be able to establish clear boundaries and robust strategic liaison arrangements with other NSW agencies and local government. Similarly, it will be easier to address cross-border food regulation issues through a single agency.

## **EFFECTIVE AND EFFICIENT RESOURCE UTILISATION**

The food regulation functions require organisational expertise in a range of disciplines and a State-wide operational role. NSW Health food regulatory staff, currently numbering around 40, and the 70 staff within SafeFood are thinly spread across their responsibilities. Within NSW Health, coordination is made more challenging by the dispersal of field staff under the management and control of the Area Health Services.

Bringing all these staff together in a single agency under a common management structure will enable more effective and efficient use of resources in at least three ways. Firstly, the pooling of specialised staff with skills in risk analysis, policy development, and program development and implementation will better support a targeted whole-of-chain approach.

Secondly, skill transfer at all levels will be of great benefit. As previously mentioned, NSW Health and SafeFood staff will separately bring strong skills and expertise in, respectively, enforcement and preventive co-regulatory approaches. Skill transfer will facilitate the development and implementation of preventive programs for the retail and food service sectors and a robust enforcement presence across the whole system.

Thirdly, planning and delivery of regulatory services to regional and rural areas, including the key role of local government liaison and assistance, will be greatly enhanced by merging the field staff of the two agencies. Over time, the optimal deployment of staff in rural and regional areas, and the supporting infrastructure, can be worked out (see Recommendation 14).

These observations are supported by the submissions from NSW Health, Lgov NSW (formerly the Local Government and Shires Associations), and the Australian Institute of Food Science and Technology (AIFST).

Coordination of food safety functions and the responsibility for food regulations and food safety is a challenge in the complex NSW structure. Further complicating the matter is the decentralised food monitoring system introduced by NSW Health in 1992. Localisation of staff in Area Health Service regions closer to local government action provides an excellent local link but decentralised reporting makes attempts to provide central coordination more difficult.

To achieve a consistent through-chain approach and equitable supervision of all the different steps in the food production chain, a streamlining of resources through the formation of an integrated food agency makes eminent sense. This would lead to better utilisation of scarce resources and a harmonised introduction of new food safety rules expected over the next ten years. It would also be easier to harness expertise in scientific disciplines relevant to food safety through an organisational critical mass. A central organisation would be better placed to provide advice and food safety training to industry and would be a better focal point for consumer complaints ...

NSW representation at a national level would also be clearer and coordination of responses to national initiatives easier.

*NSW Health, pp.1, 3-4*

[O]ne of the more compelling reasons for a single through-chain agency is that over time that agency can build up the skills, expertise and experience, across the risks throughout the chain and in various sectors, in a way that a number of separate agencies could not achieve. This skills, expertise and experience 'bank' would seem more effective in delivering food safety across the whole food chain.

Further, a through-chain agency would bring a sharper focus to food safety than the present situation where there are single-focus agencies like SafeFood and multi-focus agencies such as NSW Health, the Department of Agriculture and Local Government. A through-chain agency would enhance the attention paid to food safety at the State level in comparison for example to the present situation in Health where food safety has to compete with the massive priorities of the Hospital and Health Service system and with other priorities in public and environmental health.

*Lgov NSW, p.3*

A single agency will be well placed to protect consumer health, maintain public confidence in food and protect the State's profile as an exporter of safe foods. It will do this by overcoming fragmentation of food safety personnel in small, ineffectual groups, dilution of food safety within much larger departments such as Agriculture and Health and will minimise gaps in coverage occurring at the interface between the domains of different departments.

*Australian Institute of Food Science and Technology, p.4*

## **SINGLE NSW GOVERNMENT INTERFACE WITH INDUSTRY, CONSUMERS AND OTHER STAKEHOLDERS**

The NSW food agency would provide a single point of contact with the NSW Government on food regulation matters. For the community at large, the Government's food regulatory efforts would be more visible and transparent, and its accountability – shared with local government – would be clearer. A number of submissions on behalf of industry, consumers and professional bodies emphasised the importance to stakeholders. For example:

Under the current system, there is a great deal of confusion relating to the number of regulatory bodies involved in various aspects of food safety and food labelling regulations. It would be considered of great benefit for industry for there to be developed a single point of contact between industry and regulators in regards to all aspects of the food regulatory system

*Sanitarium Health Food Company, p.1*

The fragmented responsibility for food safety by different agencies ... denies consumers their right to expect the food they consume to be safe. One central agency that is dedicated entirely to food safety, and working together with industry and local councils on a daily basis could result in stronger arrangements to provide more efficient and effective food regulation, providing the agency itself is completely accountable and transparent with well defined responsibility.

*Restaurant & Catering NSW, p.1*

[T]he development of a through chain agency is likely to have a number of advantages: [including]

- A single agency would provide increased accountability as there is less ability to shift responsibility between agencies.
- A single agency would provide a single point of reference for professional groups and consumers to present their views to regulators.

*Dieticians' Association of Australia, p.2*

ACA on occasion is the recipient of calls from consumers who simply do not understand the breakdown of responsibilities and areas of expertise of the varying departments agencies and levels of government. These calls in our opinion are not a small minority who fail to get the appropriate answers and information from a largely workable system as is the case in other industries with which we deal. Instead, it appears that these calls are the persistent consumers who keep calling until they are put in touch with the appropriate agency or body. Consumer feed-back is consistently that avenues for consumer information on food issues are not apparent to the NSW community ...

The through-chain agency should be a 'one-stop shop' for consumers, providing advice on all aspects of ensuring and providing safe food for themselves and their dependents. Consumers require one agency to seek information from, lodge complaints with and act on their behalf to ensure safe food from industry.

*Australian Consumers' Association, pp.8, 15*

While the benefits to consumers of a through-chain agency will be substantial, some caution is needed as to the extent of the "one stop shop". There will still be some matters for which another agency may be more appropriate: for example, a Community Health Centre for specific advice on nutrition, or the Department of Fair Trading in relation to a complex consumer dispute. Nonetheless, the NSW food agency should be able to provide appropriate and timely referrals in such cases.

From a Government perspective, a single agency would ensure consistency in the management of key stakeholder relationships, particularly with industry and with consumer and public health advocates (see Recommendations 23 and 24). Expert advice on food issues could be

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provided through a single Advisory Committee rather than through two as at present (see Recommendations 21 and 22).

The range of potential benefits is summarised in Table 6.1 below.

**Table 6.1 Potential benefits of the NSW food agency**

<b>Targeted resource allocation</b>
<ul style="list-style-type: none"> <li>• resource allocation (both industry and government) commensurate with risk and agreed public health goals</li> <li>• reduced duplication and complete coverage</li> <li>• swift and flexible response to changing circumstances e.g. emerging risks, shifts in relative risk, changes to enforcement priorities</li> </ul>
<b>Consistency of approach</b>
<ul style="list-style-type: none"> <li>• consistent approach to risk assessment and risk management, including balance between prevention and enforcement activities)</li> <li>• common operational policies and procedures (licensing, audit and inspection, sanctions and penalties)</li> <li>• consistent interpretation of standards and other legal requirements</li> <li>• standardised cost recovery arrangements</li> <li>• management of boundaries with other NSW agencies, local government, and cross-border issues</li> </ul>
<b>Effective and efficient resource utilisation</b>
<ul style="list-style-type: none"> <li>• pooling of specialised human resources (risk analysis, policy and program development)</li> <li>• better planning and delivery of regulatory services to rural and regional areas</li> <li>• skill transfer between staff from both agencies (e.g. preventive programs; enforcement programs)</li> <li>• focus on core business of food regulation</li> </ul>
<b>Single NSW Government interface with industry, consumers and other stakeholders</b>
<ul style="list-style-type: none"> <li>• single point of contact for food businesses and consumers</li> <li>• greater transparency and accountability</li> <li>• common approach to management of key stakeholder relationships, including expert advisers</li> </ul>

## **DEMONSTRATED BENEFITS OF THE SAFEFOOD INITIATIVE**

NSW began its integration of the food regulatory system when it established SafeFood in late 1998. When structural integration was complete in August 2000, SafeFood had brought together in a single agency the NSW Dairy Corporation, the NSW Meat Industry Authority, the NSW Shellfish Quality Assurance Program (from NSW Fisheries), and regulation of shellfish depuration and microbiological standards for fermented smallgoods (from NSW Health).

SafeFood is still developing its regulatory programs and supporting infrastructure, but sufficient progress has been made to reflect on whether benefits of the kind identified in the previous section can be demonstrated by SafeFood’s experience to date. In this regard, the Review has

been assisted by the Performance Review of SafeFood (see Chapter 5) and by the report of the SafeFood Funding Review undertaken in 2001.

SafeFood was set up to integrate fragmented commodity-specific food safety arrangements for primary produce and seafood and develop programs for unregulated “gap areas”. In addition to SafeFood’s work on “gap areas”, many of the benefits suggested in the previous section can be discerned in SafeFood’s “cross-commodity” progress to date. These are presented in summary form below.

### **TARGETED RESOURCE ALLOCATION**

- Integration of MIA and NSW Health responsibilities in relation to fermented smallgoods enabled unsafe fermentation methods used by some producers to be targeted by surveillance, industry training, and enforcement;
- Duplication in regulation of multi-commodity cold stores removed;
- Specialist Enforcement Unit which operates across all commodities established.

### **CONSISTENCY OF APPROACH**

- Standard Risk Analysis methodology developed and used for development and review of all food safety schemes;
- Operational procedures for licensing, audit and inspection standardised as part of development of a single IT-based Customer Management System;
- Funding Review established funding principles which provide the basis to develop consistent cost-recovery arrangements for all commodity sectors.

### **EFFECTIVE AND EFFICIENT RESOURCE UTILISATION**

- Inherited commodity-based agency structure recently replaced by a functional structure which consolidates operational staff into one branch;
- Skill transfer and multi-skilling has enhanced operational expertise and enabled more flexible deployment of field staff;
- Integration of depuration with the other components of shellfish regulation has enabled development of a product tracking system which supports greater compliance with regulatory requirements and effective recall of unsafe product.

### **SINGLE NSW GOVERNMENT INTERFACE WITH INDUSTRY, CONSUMERS AND OTHER STAKEHOLDERS**

- Consistent approach taken to consultation with industry across commodities;
  - “Whole-of-industry” focus on common issues being fostered with industry stakeholders;
  - Steps taken to build relationships with consumer and public health advocates;
  - SafeFood Advisory Committee provides expert input on issues across commodities.
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The findings and recommendations of the Performance Review of SafeFood confirm that the partial integration of NSW food safety arrangements intended by the SafeFood initiative has been successful and provides a platform to complete the integration process. The summary above suggests that the potential benefits of through-chain integration will be realised in practice.

## WHAT THE STAKEHOLDERS THOUGHT

The Review received 84 submissions in response to the Issues Paper from industry associations, consumer and public health advocates, scientific and technical experts, local government councils and others (see list at Appendix 4). Many of these provide a comprehensive response to the issues identified in the paper. Taken as a whole, the submissions confirm the impression gained during the Review's meetings with the Stakeholder Reference Group, the industry sub-committees, and individual groups of stakeholders that further integration of the NSW food regulatory system is strongly supported.

A range of views were expressed about the many aspects of detail around the functions, form and funding of a NSW food agency and all have been taken into account when developing the report's recommendations.

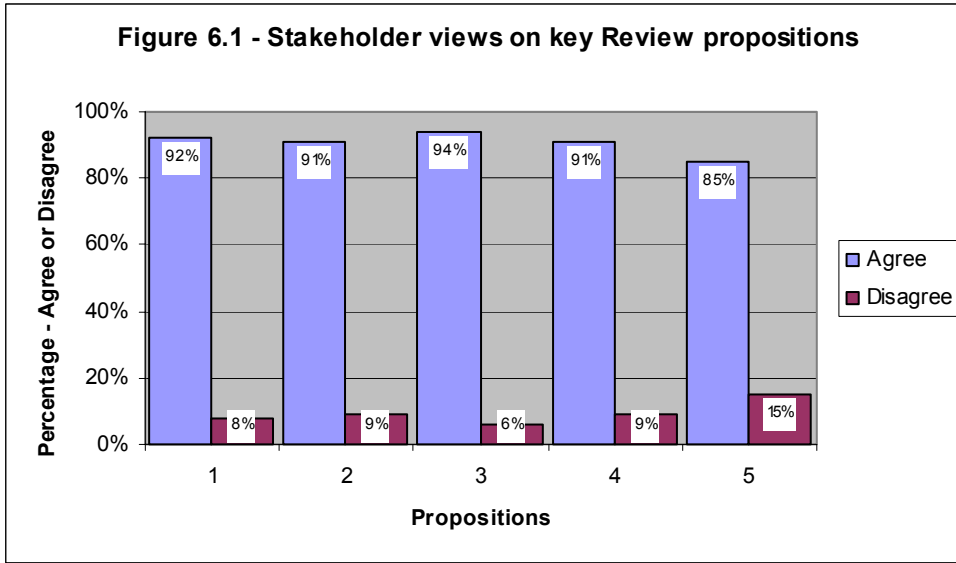
To supplement the use of selected extracts from the submissions, the Review analysed all of the submissions to assess whether they agreed or disagreed with five key propositions which underpin the Review's recommendations. These are:

- 1 A through-chain agency ("the NSW food agency") should be established.
- 2 The NSW food agency should be responsible for the entire Food Standards Code (i.e. not just for food safety).
- 3 The NSW food agency should also coordinate the food regulatory system.
- 4 The NSW food agency should have a consumer information and education role.
- 5 The NSW food agency should be established as a stand-alone agency.

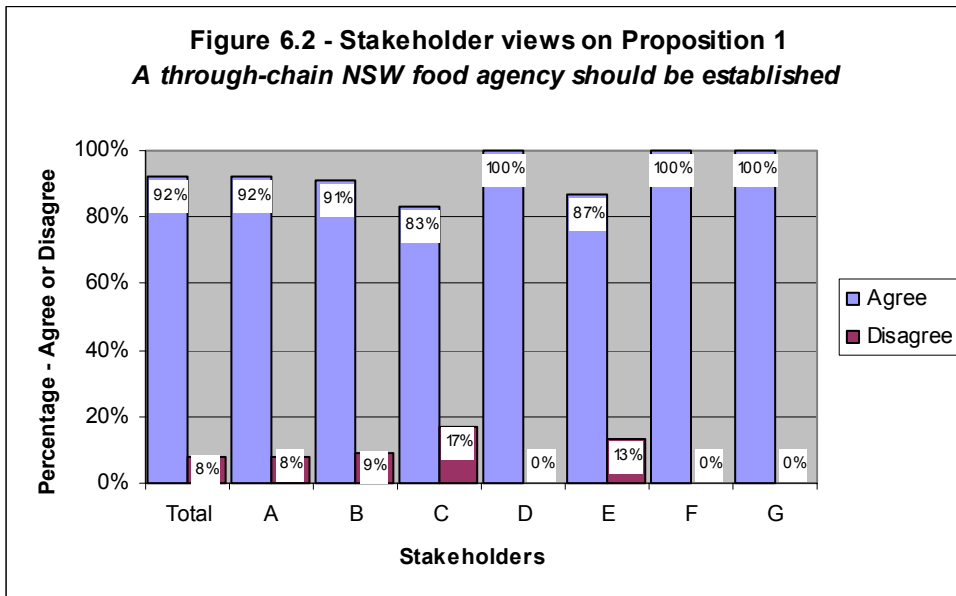
The overall stakeholder views on these propositions are shown in Figure 6.1<sup>9</sup>.

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<sup>9</sup> Percentages were derived from all submissions which clearly expressed agreement or disagreement with the relevant proposition. Raw figures are provided at Appendix 5



The submissions were also segmented by stakeholder category<sup>10</sup>. The segmented stakeholder views on Proposition 1 are shown in Figure 6.2 below. Figures showing the segmented views on the remaining propositions are included at the appropriate point in succeeding chapters.



## BENEFIT-COST ANALYSIS

The proposal to establish a through-chain NSW food agency is an **enabling** proposal rather than a **program** proposal. It seeks to establish the best platform from which to deliver the Government’s food regulation and related programs.

<sup>10</sup> A – Primary Produce and Seafood, B – Other Food Industry, C – Consumers & Public Health, D – Scientific & Technical, E – Local Government, F – NSW Government, G – Other Government.



## COSTS

The NSW Government's food regulation spend is approximately \$19.1 million per annum<sup>10</sup> (including \$6.6 million cost-recovered from industry by SafeFood). The cost of establishing the NSW food agency, by building on the base provided by SafeFood, is estimated at \$2.79 million over the first 18 months and recurrent costs of \$738,747 per annum thereafter (see Appendix 6). The recurrent costs, which equate to a 3.8% increase on the current food regulation spend, reflect the enhanced internal infrastructure (staff and on-costs) needed to:

- address areas for improvement identified by the Performance Review of SafeFood; and
- ensure that the benefits of establishing the agency are actually captured.

The recurrent costs do **not** include estimates for:

- the cost of a future Consumer Information and Education branch (see Recommendation17);
- funding implementation of the change management strategy after the first 12 months (see Recommendation29); and
- additional funding which may be sought to manage new and emerging risks which may be identified by the risk profile of the NSW food industry (see Recommendation32).

This is because the Review is unable to provide a meaningful estimate of these costs **and** they will only be incurred on the basis of separate business cases which will quantify benefits and costs.

## BENEFITS

The benefit of establishing the NSW food agency is greater efficiency and effectiveness of the NSW food regulatory system. As outlined in more detail earlier in this chapter, the key benefit drivers are:

- targeted resource allocation;
- consistency of approach;
- efficient and effective resource utilisation; and
- single NSW Government interface for industry, consumers and other stakeholders.

Whatever option is adopted, food regulation is undertaken in a dynamic strategic and operational environment. New regulatory initiatives will be proposed through national and State processes and, where adopted, will require implementation either under current arrangements or by the proposed NSW food agency. In assessing the likely benefits of establishing this agency, the first question should be:

*What are the major challenges for NSW in achieving better outcomes from food regulation and related activities?*

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<sup>10</sup> Based on SafeFood budget for 2002/03 of \$13.1m and *indicative* estimate from NSW Health of \$6m (including Food Branch and PHU food regulatory staff and associated costs). Does not include expenditure by local government.

The Review considers that NSW faces six major challenges, many of which are more or less shared by other Australian jurisdictions. These are:

- 1 Developing and implementing preventive food regulatory programs for the retail and food service sectors of the supply chain.
- 2 Reallocating existing food regulatory resources commensurately with risks and preferred risk management options (likely to involve a net shift from identified low-risk primary production and processing sectors to identified high-risk retail and food service sectors).
- 3 Maintaining the most effective balance between prevention and enforcement activities.
- 4 Defining the local government role in food regulation and providing on-going coordination and support.
- 5 Informing and educating consumers on safe food handling practices and use of food standards, including statutory labels, to improve personal health.
- 6 Ensuring that the food regulatory approach is informed and driven by evidence (sourced from both epidemiological research data and compliance/enforcement activities) and explicit public health goals or food safety objectives.

#### **QUALITATIVE BENEFIT/COST ANALYSIS**

Assuming that progress in these six areas will drive achievement of food safety outcomes, a comparative assessment of the likely capacity of current arrangements and the proposed NSW food agency to deliver would be a useful component of the benefit/cost analysis. This is set out in Table 6.2.

**Table 6.2 Capacity to address the major food regulatory challenges for NSW**

NSW FOOD AGENCY	CURRENT ARRANGEMENTS
<i>Developing and implementing preventive food regulatory programs for the retail and food service sectors of the supply chain.</i>	
<ul style="list-style-type: none"> <li>• Efficiencies from pooling of specialist staff from the two agencies.</li> <li>• NSW Health industry knowledge and regional networking can be complemented by SafeFood expertise and experience in development and implementation of preventive programs.</li> <li>• Skill transfer from staff of former SafeFood facilitated.</li> <li>• Economies in contracting for goods or services (e.g. training, implementation tools).</li> </ul>	<ul style="list-style-type: none"> <li>• Expertise, experience and culture within NSW Health reflects traditional reactive enforcement role.</li> <li>• Skill transfer, efficiencies and economies difficult to achieve across agency boundaries.</li> </ul>
<i>Reallocating existing food regulatory resources commensurately with risks and preferred risk management options (likely to involve a net shift from identified low-risk primary production and processing sectors to identified high-risk retail and food service sectors).</i>	
<ul style="list-style-type: none"> <li>• Pooled science policy resources and through-chain remit make agency well-placed to build whole-of-chain risk profile to identify priority risks and most effective risk management options.</li> <li>• Single-agency coverage and management facilitates:               <ul style="list-style-type: none"> <li>- resource-shifting, including management of impacts on cost-recovery; and</li> <li>- flexible response to changing or emerging risks.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Difficult to develop and implement common approach across agency boundaries.</li> <li>• Resource shifting across agency boundaries very difficult and further complicated by cost recovery impacts.</li> </ul>
<i>Maintaining the most effective balance between prevention and enforcement activities.</i>	
<ul style="list-style-type: none"> <li>• New agency will be able to harness skills of both prevention-oriented (SafeFood) and enforcement oriented (NSW Health) field staff and managers</li> <li>• Pooled field resources will facilitate a dual operational structure with separate enforcement arm able to be flexibly deployed.</li> <li>• Single-agency coverage and management will facilitate swift adjustment of regulatory approach.</li> </ul>	<ul style="list-style-type: none"> <li>• “Prevention” and “enforcement” resources split between two agencies.</li> <li>• Separate management and traditional cultures in each agency hamper development of a common and optimal regulatory approach.</li> <li>• Coordinated approach made more challenging by decentralised management of NSW Health field staff through 17 PHUs.</li> </ul>

**Table 6.2 Capacity to address the major food regulatory challenges for NSW (continued)**

NSW FOOD AGENCY	CURRENT ARRANGEMENTS
<i>Defining the local government role in food regulation and providing on-going coordination and support.</i>	
<ul style="list-style-type: none"> <li>• Single NSW food agency better able to:                             <ul style="list-style-type: none"> <li>- negotiate respective State/local roles and responsibilities, including possible mandated role;</li> <li>- coordinate as “regulatory authority” and provide targeted support or assistance.</li> </ul> </li> <li>• Enhanced distribution of field staff across NSW due to economies of scale will improve operational liaison with local government.</li> </ul>	<ul style="list-style-type: none"> <li>• Coordination task for NSW Health as “regulatory authority” more complex with three sets of bilateral relationships i.e.                             <ul style="list-style-type: none"> <li>- NSW Health/local government</li> <li>- SafeFood/local government</li> <li>- NSW Health/SafeFood</li> </ul> </li> <li>• Field staff who provide support and maintain operational liaison with local government are separately managed through 17 PHUs.</li> </ul>
<i>Informing and educating consumers on safe food handling practices and use of food standards, including statutory labels, to improve personal health.</i>	
<ul style="list-style-type: none"> <li>• Subject to business case, NSW food agency will have dedicated consumer information and education role.</li> <li>• Synergy likely between enforcement and education roles of NSW food agency.</li> <li>• More consistent and effective relationship with consumers through single point of contact, including participation in advisory and consultative processes.</li> </ul>	<ul style="list-style-type: none"> <li>• No dedicated programs targeting consumers.</li> <li>• Expertise in safe food handling (including specialised commodity-specific issues) spread between two agencies</li> <li>• No single point of contact for consumers; possibility of inconsistent messages</li> </ul>
<i>Ensuring that the food regulatory approach is informed and driven by data (sourced from both epidemiological research and compliance/enforcement activities) and explicit public health goals or food safety objectives.</i>	
<ul style="list-style-type: none"> <li>• Collaboration between the NSW food agency and NSW Health will be required. Respective roles and responsibilities will be clear i.e.:                             <ul style="list-style-type: none"> <li>- NSW food agency responsible for industry risk analysis, setting food regulatory approach and ensuring data on compliance/enforcement activities (including local government) is captured in useful form;</li> <li>- NSW Health takes lead role in disease investigation (until food-borne cause established) and disease surveillance;</li> <li>- Both agencies collaborate in setting of relevant public health goals and/or food safety objectives based on epidemiological data, risk analysis, and operational realities.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Collaboration between NSW Health and SafeFood will be required. Progress likely to be compromised by factors set out at (1) – (4) above in terms of:                             <ul style="list-style-type: none"> <li>- split responsibility for food regulatory approach;</li> <li>- split responsibility for compliance/enforcement activities and associated data collection;</li> <li>- potential for cross agency agreement on relevant public health goals and/or food safety objectives.</li> </ul> </li> </ul>

The comparative assessment in Table 6.2 suggests that a NSW food agency will be more likely than current arrangements to maximise the benefits of food regulation and related activities.

### **QUANTITATIVE BENEFIT-COST ANALYSIS**

Benefit-cost analysis of food regulatory or related proposals has recently been undertaken in several contexts, including:

- Proposed national Food Safety Standards [*ANZFA: May 1999*];
- Costs and benefits of implementing Food Safety Standard 3.2.1 (Food Safety Programs) [*Commonwealth Department of Health and Ageing: May 2002*];
- Economic evaluation of water quality improvement measures intended to ensure the safety of oyster consumption [*enHealth Council: July 2002*]; and
- Implementation of food safety programs in high risk industry sectors [*NSW Health and Commonwealth Department of Health and Ageing: October 2002*].

Each of these studies systematically identifies the costs to government and industry of implementing specific food regulatory or related proposals and seeks to quantify the likely benefits, primarily through potential reduction in the incidence of food-borne illness. These studies are of limited use for present purposes, primarily because the potential benefits of establishing the NSW food agency are both incremental and diffused across all NSW food regulatory and related activities. However, they are useful in providing baseline estimates of the cost of food-borne illness.

It will not be possible to quantify the potential benefits with any rigour and thereby derive a benefit-cost ratio. However, the relatively modest and incremental costs of the proposal can be put into perspective by identifying the areas in which economic benefits may be achieved and quantifying the benefits required to balance or exceed the cost of the proposal.

There are four areas in which economic benefits may be realised:

- reduced food-borne illness;
- minimised compliance costs;
- enhanced public health outcomes; and
- protection of brand equity and product integrity of NSW food.

### **REDUCED FOOD-BORNE ILLNESS**

The major economic benefit of food regulation is minimisation of the cost of food-borne illness.

In 1999, the Australia New Zealand Food Authority (ANZFA, now Food Standards Australia New Zealand), estimated that there are 4.2 million individual cases of food-borne illness in Australia each year with an economic cost to the community of \$2.6 billion<sup>11</sup>. These estimates, which are broadly equivalent to US figures based on more extensive data, have attracted both support and criticism since their publication.

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<sup>11</sup> ANZFA (1999) *Food Safety Standards – Costs and Benefits*: 27-35

The most recent Australian estimate of the incidence and cost of food-borne illness is contained in the report *Food Safety Management Systems – Costs, Benefits and Alternatives* published in May 2002 by the Commonwealth Department of Health and Ageing (DoHA). This study surveyed the literature, including critiques of the ANZFA estimates, and constructed a confidence interval between 1.5 million and 5 million cases per annum, with a median figure of 3 million cases (p.70)<sup>12</sup>. The study quantified costs at a median figure of \$2.26 billion per annum. This equates to a NSW incidence and cost, based on pro rata population, of 1,015,556 cases per annum costing \$765 million.

It is readily apparent that even a marginal increase in the effectiveness of the food regulatory system in reducing food-borne illness will generate a substantial economic benefit. **For the recurrent cost of the proposal (\$738,747 per annum), the “break-even point” would be reached with only a 0.1% reduction in food-borne illness.**

This may be simplistic, given that the benefits may not begin to flow for several years and transitional costs of \$2.79 million also need to be amortised. However, the calculation should provide some confidence that benefits will exceed costs, unless the qualitative benefits summarised in Table 6.2 are utterly unrealised in practice.

Further confidence may be gained by considering a recent World Health Organisation (WHO) surveillance report, cited in the DoHA report (p.17) on the sources of outbreaks in England between 1993-1998. The report categorised the cases by percentage, in terms of the setting apparently responsible for the illnesses. If the figures in the WHO study held true for NSW, Table 6.3 shows the indicative incidence and costs of food-borne illness distributed by sector source.

**Table 6.3 Indicative incidence and cost of food-borne illness by sector source**

Sector Source	% of cases	Indicative NSW cases	Indicative NSW costs
restaurants and food service	55%	555,509	\$418,483,745
private houses	12%	125,929	\$94,866,516
retirement homes and hospitals	11%	111,711	\$84,155,781
shop/retailer	7%	68,042	\$51,258,521
school/university	4%	41,638	\$31,367,155
military base	3%	27,420	\$20,656,419
other	8%	85,307	\$64,264,414
<b>Total</b>	<b>100%</b>	<b>1,015,556</b>	<b>\$765,052,550</b>

The DoHA report stresses that for several reasons, including that outbreaks are a very small percentage of total incidence, this analysis should be seen only as a “useful first indication of potential risk areas”. It also does not address the fact that the ultimate cause of illness in a particular case may occur earlier in the food supply chain.

<sup>12</sup> Preliminary data from OzFoodNet, a surveillance network recently established by the Commonwealth Department of Health and Ageing, indicates that these estimates may be conservative. Subject to confirmation in a final report later this year, the data indicates that there are more than 7 million cases of food-borne illness in Australia each year (NSW Health and Commonwealth Department of Health and Ageing (October 2002) *Final Report of the National Risk Validation Project*)

Nevertheless, it illustrates the potential benefit from an integrated regulatory approach which uses whole-of-chain data on risks and actual illness to target priority areas, including poor handling practices in the home.

The 0.1% “break-even point” may also be put into perspective by noting that the new UK Food Standards Agency has set a Business Plan target to reduce food-borne illness by 20% between April 2001 and April 2006.

### **MINIMISED COMPLIANCE COSTS**

Food regulation imposes compliance costs on food businesses. The potential benefits of establishing the NSW food agency include a reduction of the overall compliance burden on business through:

- a through-chain regulatory approach using leading-edge science to target real risks;
- better coordination to ensure consistency of approach and reduced duplication, including overlap between State and local government activities; and
- consistent interpretation of standards and other legal requirements.

Compliance costs were a major focus of the 1998 Food Regulation Review (the Blair Review). While the review was unable to quantify the total compliance burden for Australia, Blair cited a Commonwealth study of small business which found that:

...many of the food regulatory compliance burdens have their origins in inconsistencies and duplication within and between regulatory agencies and in non uniform coverage and application of food regulations<sup>13</sup>.

Similarly, a survey of medium to large businesses found that a proportion of regulatory costs arose from “inefficiencies, inconsistencies, duplication and lack of coordination” (p.34).

The DoHA report cited above estimates the total compliance cost of current food regulations in Australia to be \$669 million (p.46), equivalent to a pro rata NSW figure of \$226 million. On this basis, a reduction of 0.3% in overall compliance costs through the factors above would match the recurrent cost of establishing the NSW food agency.

### **ENHANCED PUBLIC HEALTH OUTCOMES**

A key initiative for the NSW food agency will be to augment regulatory enforcement of the labelling requirements of the Food Standards Code by informing and educating consumers on the use of label information. The aim is to improve personal health through better nutrition and healthy eating choices. As noted in Chapter 7, the introduction of mandatory nutrition labelling from 20 December 2002 will provide the opportunity for enhanced public health outcomes.

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<sup>13</sup> cited in Blair (1998) *Food; a Growth Industry*, p33

In this regard, the Commonwealth Parliamentary Secretary for Health and Ageing recently stated that:

It is estimated that 320 to 460 lives could be saved each year in Australia and New Zealand with the introduction of mandatory nutrition labelling...These labelling changes are not cosmetic. They have major public health implications. Diet related risk factors account for 13% of [the] burden of disease [costing] the health system between \$32 million and \$42 million each year – with much more in terms of personal costs for people suffering diet-related disease<sup>14</sup>.

The base costs of the NSW food agency proposal include a team to develop a proposal and business case for the consumer information and education function. It is anticipated that a full assessment of benefits and costs in relation to this function will be provided in that context.

### **PROTECTION OF BRAND EQUITY AND PRODUCT INTEGRITY OF NSW FOOD**

A major benefit of food regulation is the maintenance of consumer confidence in the food supply. When the food regulatory system breaks down or is ineffective, the impact on consumer confidence and the commercial consequences can be catastrophic. Two recent and well-known examples involved oysters (Wallis Lake outbreak) and uncooked fermented smallgoods (Garibaldi outbreak).

Early in 1997 there was an outbreak of hepatitis A associated with oysters farmed at Wallis Lake in NSW. Reports of the outbreak caused an immediate 85% drop in oyster sales in NSW and influenced seafood prices in general. Seafood prices fell by 25% causing an estimated loss to the NSW seafood industry of \$30 million before sales recovered at the end of the year<sup>15</sup>.

Between December 1994 and February 1995, 23 children were diagnosed with Haemolytic Uraemic Syndrome in South Australia and some other States. The cause of the disease was identified as a dangerous strain of E. coli found in a fermented mettwurst product produced by the Garibaldi company. Companies producing mettwurst saw an immediate sales drop of 90% and other lines of smallgoods fell 50% in February of that year. Several smallgoods manufacturers, including Garibaldi, were placed in receivership as a consequence. Sales of mettwurst fell by more than 20% for several years after the incident. The cost to the Australian smallgoods industry has been calculated at over \$400 million<sup>16</sup>.

As outlined earlier in this chapter, the integration of primary produce and seafood regulation under SafeFood NSW enabled greatly improved targeting of the very real risks associated with these products. The potential benefits are difficult to measure until disaster strikes. Nevertheless, better targeting of resources to risks and elimination of regulatory “gaps” will further reduce the risk of major outbreaks which would severely undermine the brand equity and product integrity of NSW food.

On the basis of the qualitative and quantitative analyses above, the Review considers that the public benefits of establishing the NSW food agency are likely to exceed the incremental costs set out in Appendix 6.

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<sup>14</sup> FSANZ (2002) *Food Standards News*, 40: p2

<sup>15</sup> NSW Health and Commonwealth Department of Health and Ageing (October 2002) *Final Report of the National Risk Validation Project*, Appendix D pp7-13

<sup>16</sup> *ibid*, pp27-37



## 7 FUNCTIONS

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The first step in building a model for the NSW food agency is to define its responsibilities for implementation and enforcement of State legislation regulating food. Most important is the Food Act, which is also the primary means for implementation and enforcement of food standards, principally the national Food Standards Code, which automatically applies in NSW by regulation under the Food Act.

### LEGISLATIVE RESPONSIBILITIES

The new Food Act, based on the national model agreed by COAG in November 2000, provides the framework for management of food regulation. Section 3 sets out the objects of the Act:

- to ensure food for sale is both safe and suitable for human consumption;
- to prevent misleading conduct in connection with the sale of food; and
- to provide for the application in this State of the Food Standards Code.

Under the Act, one State agency or nominated official is designated as the “regulatory authority”. At present this is the Director-General of the Department of Health. The “regulatory authority” has overall responsibility for the system, together with any State or local government agencies designated as “enforcement agencies”.

Enforcement agencies (which include the “regulatory authority” and any other persons or bodies prescribed by regulation under the Act) are clothed with most of the powers and functions relevant to the implementation and enforcement of food regulatory requirements. In addition the “relevant authority” has a number of powers and functions which enable and require it to manage the State’s food regulatory arrangements.

The Food Standards Code sets out the compositional, microbiological, chemical, and labelling standards for food, as well as food safety and handling requirements for industry. It includes standards with food safety and non food safety implications. Within these categories, there are differing schools of thought on the categorisation of some standards. For example, some nutritional, compositional and labelling standards have both direct and indirect food safety implications.

Food safety and handling requirements for industry reside in the Food Safety Standards in Part 3 of the Code, which were introduced in 2001 and have largely replaced State-based food hygiene regulations. However, these Standards only apply to “food businesses”, which is defined to exclude primary production (including catch or harvest of seafood and aquaculture), some on-farm processing, and initial transportation.

Work has begun on national commodity-specific Primary Production and Processing Standards which will be included in a new Part 4 of the Code. These through-chain standards will progressively replace separate national standards, such as the ARMCANZ Meat Standards<sup>1</sup>, and also commodity-specific food safety standards in the States and Territories.

The current remit of SafeFood Production NSW under the Food Production (Safety) Act 1998 is limited to food safety and the agency has no jurisdiction in the retail and food service sectors, except for retail butchers. Further, while its commodity-based food safety schemes cover many

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<sup>1</sup> These standards were developed by a national government/industry committee and approved by the former Ministerial Council known as the Agriculture and Resource Management Council of Australia and New Zealand. They have been implemented in each State and Territory, usually under Agriculture sector legislation.

processing and manufacturing activities, they do not at present cover “multi-commodity” food manufacturing.

At a minimum, the remit of the NSW food agency should include food safety at all points in the food supply chain. Thus it would be responsible as an “enforcement agency” for the Food Standards Code requirements relevant to food safety and for the additional requirements of food safety schemes under the Food Production (Safety) Act.

Two key questions remain:

- 1 Should the agency’s remit extend to all requirements of the Food Standards Code, in addition to food safety?
- 2 Should the agency also be designated as the “regulatory authority” and thereby be responsible for overall coordination of the food regulatory system?

## **ENFORCEMENT OF THE FOOD STANDARDS CODE**

There are two options, in each case assuming a continuing “enforcement agency” role for local government councils. **Either** the non food safety requirements of the Code should be enforced by another NSW agency **or** the NSW food agency should take “enforcement agency” responsibility for all Food Standards Code requirements.

One advantage of the first option is that the NSW food agency would maintain a strong focus on food safety. NSW Health would retain responsibility for enforcement of non food safety requirements (or responsibility could be transferred to the Department of Fair Trading, as the primary consumer protection agency). However, this would perpetuate the fragmentation of food regulatory responsibility among State government agencies and a fragmented public face for government.

Further, as noted above, the delineation between food safety and non food safety issues is not always clear. The degree of crossover, and differing impacts depending on context, would further complicate the allocation of responsibility. It would also (inefficiently) require an agency with minimal continued food involvement (i.e. NSW Health or Fair Trading) to develop and/or maintain a specialised expertise base unrelated to its other responsibilities.

The second option would allow for a streamlined “one stop shop” approach. Priorities for resource allocation would be determined commensurately either with food safety risk, or other regulatory priorities. In addition, this option would allocate responsibility for the entire Food Standards Code to the agency with food expertise and resources and day-to-day contact with the food industry.

NSW Health strongly supported the second option pp4-5:

The Food Act and the Food Standards Code include elements of both food safety and industry/consumer protection in an integrated system. Separation of those elements is problematical. Relocation of food safety only from NSW Health would result in that separation and many crossover issues difficult to resolve would arise on an on-going basis.

This is not just a question of the Food Standards Code. The review must also consider the provisions of the Food Act, in particular those aspects dealing with adulteration, false description and other

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fraudulent practices. The revised Code is much less prescriptive than the old Code, and many practices, which were previously a breach of the Code, are now dealt with under the Act.

Addition of sodium metabisulphite to mince is but one example to illustrate the point of shared responsibilities. Sodium metabisulphite is prohibited in minced meat according to the Food Standards Code and is thus a matter for NSW Health. However, food safety in butcher shops is an issue for SafeFood NSW. Addition of sodium metabisulphite can mask colour deterioration over time in mince and thus be used to deceive consumers. However, it can also mask growth of food pathogens in the mince and it is a potent allergen in sensitive people. In theory enforcement would thus fall within two authorities with the risk of duplication of work.

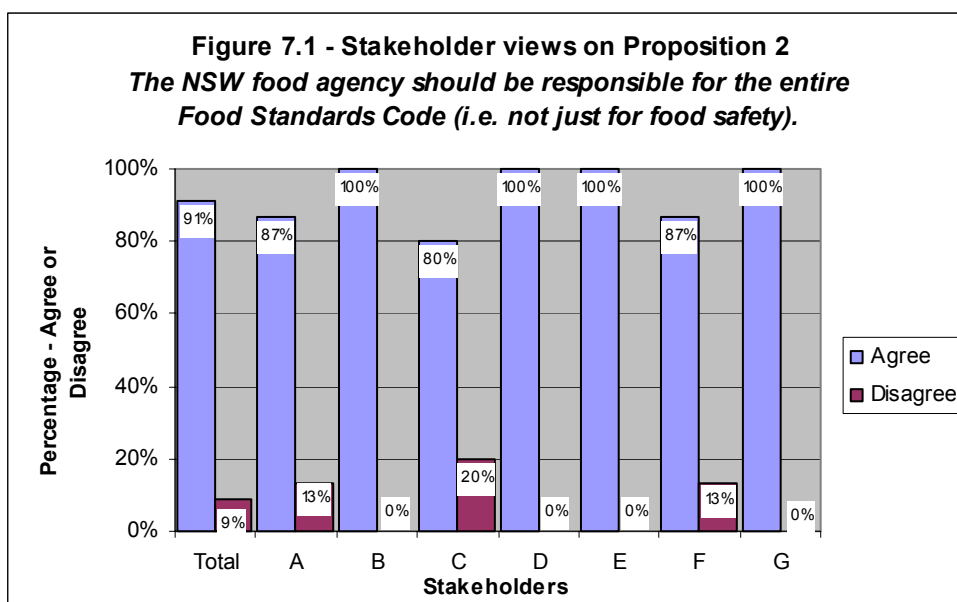
Effective enforcement requires coverage of all issues and consequently the review should consider the negative implications of separating safety and non-safety food matters. The current overlap of coverage of food issues is inefficient and inevitably leads to duplication and confusion. NSW Health strongly supports the integration of all food activities in the one agency. **NSW Health is of the strong view that all of its direct food activities should be considered as a whole and either remain with Health or all move to a through-chain agency** (emphasis added).

The same view was frequently expressed on behalf of industry and consumer stakeholders, for example:

Fragmenting the Code and having part administered by one agency and the remainder by another would be inefficient and counterproductive. Both the food industry and consumers want to be able to get advice on the Food Standards Code from one agency and not have to shop around.

*Australian Food and Grocery Council, p.7*

Stakeholders in all categories overwhelmingly supported the through-chain agency being responsible for both the safety and non safety requirements of the Code as shown in Figure 7.1<sup>2</sup>.



<sup>2</sup> The methodology used in the stakeholder analysis is explained in Chapter 6 and the raw figures are provided in Appendix 5. The stakeholder categories are: A – Primary Produce and Seafood, B – Other Food Industry, C – Consumer and Public Health Advocates, D – Scientific and Technical, E – Local Government, F – NSW Government Agencies, G – Other Government Agencies.

## **COORDINATION OF THE FOOD REGULATORY SYSTEM AS THE “REGULATORY AUTHORITY”**

If the NSW food agency is given responsibility as an “enforcement agency” for the entire Food Standards Code (together with responsibility for food safety scheme requirements), it remains to be considered whether there is any merit in NSW Health retaining the coordination role as “regulatory authority”.

The same issues of expertise and efficiency cited above would apply, but there may be benefit in separating the coordination and implementation roles. The view of NSW Health was (p.4):

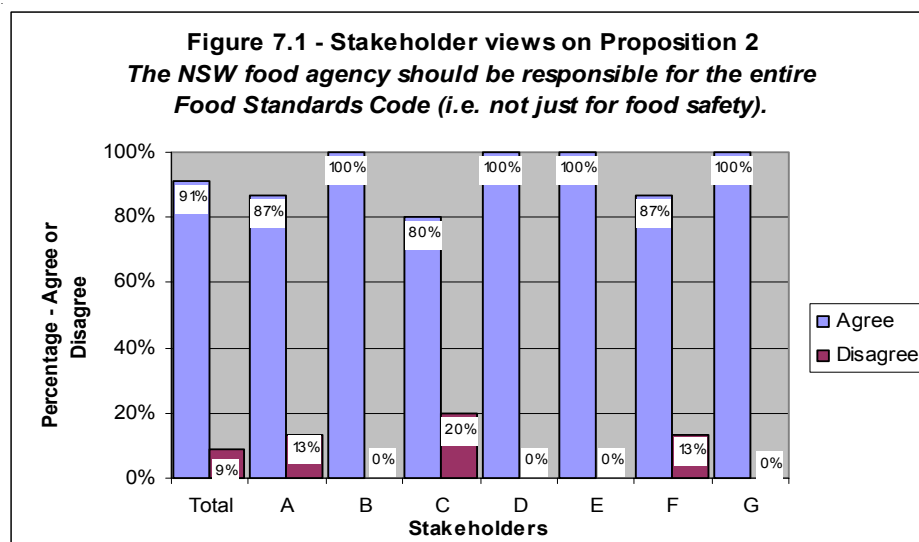
The Director-General of the NSW Department of Health is empowered under the Food Act 1989 to administer the overarching food legislation. With enactment of the NSW Food Bill 2002 the Director-General of the NSW Department of Health will become the “relevant authority” for administering the new Act.

It would be sensible to change the relevant authority to a through-chain agency should all major food tasks be centralised with the agency. This will make no difference to the current situation where NSW Health has the duality of roles as a regulator/adviser and an auditor/enforcer of food safety. There is an international trend to separate the two functions. However, this can be handled through the formation of separate divisions within the one agency. The regulatory/advisory role is very much influenced by collaborative national action, while enforcement is a local initiative. NSW Health considers it important to give the new agency sufficient powers through becoming the relevant authority under the food legislation.

The major coordination issue will be the enforcement role of 172 local government councils. In this regard, the Australian Consumers’ Association considered that (pp.23-4):

...a more streamlined proposal is to transfer management of the highly variable local government food safety work to a through-chain agency which is the ‘relevant authority’. Thereby maintaining the interface between two parties, rather than the alternate proposal involving three. Such a system would see NSW Health involved as coordinator in addition to a through-chain agency. The latter option would be more difficult to manage from ACA’s perspective.

Stakeholders overwhelmingly supported the through-chain agency also taking on the coordination role, as shown in Figure 7.2 below<sup>3</sup>.



The Review considers that there would be little point in setting up a through-chain agency only to maintain fragmentation at State level with respect to enforcement and/or coordination. It may be noted that, despite its name, the New Zealand Food Safety Authority established in July 2002 is responsible for the entire Food Standards Code and for coordination of local authorities' activities.

### RECOMMENDATION 3

The NSW food agency should be the “regulatory authority” under the *Food Act* and also be responsible for implementing the *Food Production (Safety) Act 1998*.

### CONSUMER INFORMATION AND EDUCATION

The overall goal of the food regulatory system in NSW is to improve food safety, reduce food-borne illness and improve the general health of the community. Consumer information and education can promote this goal in circumstances where an “informed” consumer can reduce their exposure to food safety risks.

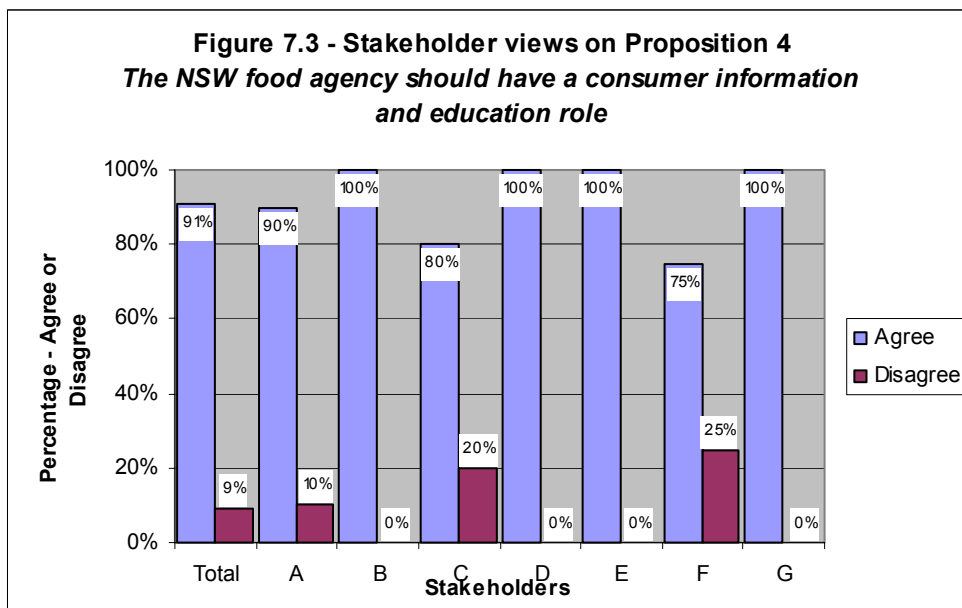
Consumer information and education can empower consumers by informing them how to:

- handle food properly thus preventing self-inflicted food-borne illness (**through basic food handling and hygiene information and education**);
- mitigate risks that are within their direct control (**through risk communication**); and
- make informed purchase and eating decisions affecting their long-term health (**through nutritional information and education**).

<sup>3</sup> The methodology used in the stakeholder analysis is explained in Chapter 6 and the raw figures are provided in Appendix 5. The stakeholder categories are: A – Primary Produce and Seafood, B – Other Food Industry, C – Consumer and Public Health Advocates, D – Scientific and Technical, E – Local Government, F – NSW Government Agencies, G – Other Government Agencies.

In addition, it will be important for the new agency to communicate effectively with consumers and manage their expectations.

In their meetings with the Review and in submissions, stakeholders stressed the importance of consumer information and education. As shown in Figure 7.3, of the 47 submissions which clearly expressed a view, 91% supported the NSW food agency undertaking the consumer information and education role<sup>4</sup>. In most cases, including the Consumer and Public Health category, respondents who disagreed with Proposition 4 considered the role to be important, but felt it should be undertaken by NSW Health.



The following extracts from submissions present general stakeholder views on consumer information and education. More specific views are included in the relevant area of discussion:

While there is not a need in ACA’s view for a through-chain agency to reinvent education programs and campaigns for consumers, there is a crying need for more accessible information for consumers. This must be a core function of a through-chain agency.

*Australian Consumers’ Association, p.19*

Diabetes Australia-NSW believes that the through-chain agency should undertake functions related to consumer information and education. Once again, the current system forces much of the burden of these vital roles onto non-government agencies such as ourselves.

*Diabetes Australia-NSW, p.1*

Following is a discussion of the key areas of consumer information and education which should be undertaken by the NSW food agency, and possible delivery mechanisms.

### **EDUCATING CONSUMERS ON FOOD HANDLING AND HYGIENE**

Preventive risk management of the food production system involves assessing the risks in the system and using appropriate risk management strategies to control them. From a through-

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<sup>4</sup> The methodology used in the stakeholder analysis is explained in Chapter 6 and the raw figures are provided in Appendix 5. The stakeholder categories are: A – Primary Produce and Seafood, B – Other Food Industry, C – Consumer and Public Health Advocates, D – Scientific and Technical, E – Local Government, F – NSW Government Agencies, G – Other Government Agencies.

chain perspective, consumer handling of food completes the food production chain; the integrity of which can only be maintained by proper handling at the consumer end.

The New Zealand Food Safety Authority bases its consumer education activities on this rationale<sup>5</sup>:

Most food safety regulation does not go beyond the point of retail sale. While physical and chemical hazards present in food can be controlled during processing or eliminated prior to sale, microbiological hazards are different. Pathogenic microbes can be reduced to "safe" levels in ready to eat foods prior to the point of sale, but many foods contain pathogenic microbes that accompany product past the point of sale. Consumers may also inadvertently add pathogens to product at a point after sale or mishandle foods in a way that may allow growth of potentially hazardous microbes.

Educating consumers on the realities of food safety and the risks that they themselves might create is important if New Zealand is to have a totally effective food safety programme. It is incumbent upon all involved in the food process to participate in educating purchasers and consumers in general to risks of this nature.

According to a WHO study cited in a recent report by the Commonwealth Department of Health and Ageing<sup>6</sup>, unsafe handling of food in the home contributes to approximately 12% of food-borne outbreaks.

The same report (p.18) cites another study of audits carried out in the US which evaluated household behaviour in 1997, 1998 and 2000. The study found that:

A large proportion of households did not meet adequate performance and had 'critical violations' where these were defined as being able of themselves to cause food-borne illness or injury. The most common critical violations in the home were:

- cross contamination;
- neglected handwashing;
- improper leftover handling; and
- improper food preparation.

Similar implicating factors were identified in a recent study on Australian and international food-borne outbreaks which found that<sup>7</sup>:

The traditional, significant factors in food-borne illness: preparation of food in bulk, inadequate cooking or reheating, improper temperature control, faulty personal hygiene of food handlers remain the most important factors contributing to food-borne disease outbreaks.

A number of submissions present stakeholder views on the importance of educating consumers on food handling:

Public education in safe food handling is undoubtedly a major tool in the prevention of food-borne illness.

*Australian Poultry Industries Association, p.2*

Clubs NSW takes the view that if the through-chain agency is truly to cover food safety consistently from "paddock to plate", it also needs to take into account residential as well as retail "plates", and conduct a concerted consumer information campaign on food safety in the home to complement its efforts at industry level. Such a campaign would need in particular to educate the general public on the most common cause of food-borne illness, provide general information on proper storage and handling of food in the home and elsewhere, and advise on reading food labels and warnings.

*Clubs NSW, p.4*

A through-chain agency should not stop at the retail sector, but must extend to the consumer. It is clear that more resources need to be devoted to consumer information. Studies in Australia have

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<sup>5</sup> New Zealand Food Safety Authority (2002) [www.nzfsa.govt.nz](http://www.nzfsa.govt.nz) (Policy & Law)

<sup>6</sup> Department of Health and Ageing (2002) *Food Safety Management Systems – Costs, Benefits and Alternatives*, p.17

<sup>7</sup> NSW Health and Commonwealth Department of Health and Ageing (October 2002) *Final Report of the National Risk Validation Project*, p.32

## FUNCTIONS

estimated that 20% of all food-borne illnesses are due to practices in the home...One trend in the food service sector is increased use of more pre-prepared foods in the home. With recent changes in the school curricula, fewer consumers even have basic understanding of food handling principles.

*Dieticians Association of Australia, p.6*

Educating consumers with simple key messages on food handling and hygiene practices will play an important part in reducing preventable food-borne disease. It will also help establish a food safety culture in the community which over time should have a beneficial impact on food industry practice:

Consumer information and education functions are also essential for best-practice operation of the industry. If consumers understand basic hygiene practices, signs of fresh and quality produce they will expect such standards. Furthermore, information on complaint and redress mechanisms is essential for natural justice functions of an effective regulatory system. Dissatisfied customers must have access to information to correctly assert their rights in the food market place. Such information should be provided by the agency which is responsible for regulating the industry.

*Australian Consumers' Association, p18*

## EMPOWERING CONSUMERS THROUGH RISK COMMUNICATION

Some food safety risks cannot be controlled during processing or eliminated prior to sale. They are an intrinsic aspect of certain foods and may only affect particular at-risk groups. For example, a study undertaken by the University of Tasmania for SafeFood NSW entitled *The Risk Assessment of Selected Seafoods in NSW* included mercury in finfish and *Listeria monocytogenes* in ready-to-eat products in the top 10 priority risk areas for the NSW seafood sector. Each risk affects known subsets of the population and cannot be entirely eliminated from the food supply. The study suggested risk communication as an important tool to reduce the exposure of susceptible subsets of the population to these risks<sup>8</sup>:

Large predatory fish may contain elevated levels of mercury. Consuming large amounts of these fish on a regular basis may expose a consumer to hazardous levels of mercury. Young children and pregnant women are at greater risk of damage from mercury exposure. .... Education of such consumers may be an important risk management option.

Certain groups within the population are much more susceptible to clinical listeriosis. These include pregnant women, or those with AIDS or other immunosuppressive conditions. The potentially fatal consequences make education of susceptible individuals an obvious risk mitigation strategy.

Risk Communication has been embraced by the UK Food Standards Agency in its 2001-2006 Strategic Plan as part of its Public Information and Choice strategy: *Consumers need to know about food issues, including risks, to be able to make sense of labels and other information about food and diet.*<sup>9</sup>

Submissions to the review by other Australian Government agencies recognised the importance of a through-chain agency's role in risk communication:

FSANZ does not support SafeFood assuming responsibility for consumer information and education, save for those activities which are incidental to its overriding responsibility of the protection of public health and safety, such as food safety, food composition (eg mercury in fish) and advisory and warning statements.

*Food Standards Australia New Zealand, p.1*

Risk communication is an important core function for any regulator. The BSE issue in the United Kingdom illustrates the consequences if this function is not well coordinated and managed by

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<sup>8</sup> unpublished, pp.viii-ix

<sup>9</sup> UK Food Standards Agency (2002) <http://www.food.gov.uk/multimedia/pdfs/stratplan.pdf>



government...Surveys that are conducted into consumer attitudes and opinions indicate that consumers want to be in control of the level of risk they may be exposed to when making food choices.

*Safe Food Queensland, p.3*

## **INFORMED CHOICES THROUGH NUTRITION INFORMATION AND EDUCATION**

Healthy eating based on informed choice is well recognised as a mechanism for improving population health. The rise of obesity and other chronic nutrition-related conditions in developed countries is causing Governments in countries such as the UK, USA, Australia and New Zealand to assess the long term implications of food policy on public health.

To this end, comprehensive new labelling requirements will soon be included in Part 1 of the Food Standards Code to ensure that consumers have adequate information to enable them to make informed choices when purchasing food. Most packaged foods for retail sale or for catering purposes are required to bear a label setting out all the information prescribed in the new Code. Labels will now be required to include nutrition information panels, percentage of main ingredient, new date markings, and full disclosure of major allergens. Food Standards Australia New Zealand (FSANZ) estimates that mandatory nutrition information labelling alone will result in between 320 to 460 fewer deaths from diet related disease each year.

FSANZ recognises that these health advantages will not be achieved if consumers do not have enough information on how to interpret these new labels, particularly nutrition information panels. They have prepared education material to assist consumer understanding.

The New Zealand Food Safety Authority supports the view that labelling requirements need to be supplemented with other mechanisms of educating the consumer<sup>10</sup>:

The provision of adequate information will enable consumers to make informed choices and help prevent fraud and deception. Good food labelling is important in helping achieve this outcome, but the view that labelling will address all eventualities is simplistic and the assumption that people can and will read a label is flawed.

The UK Food Standards Agency has also emphasised the importance of labelling for informed consumer choice. One of the key strategies in the 2001-2006 Strategic Plan cited above is to *promote honest informative labelling, and encourage and support initiatives to improve the clarity and value of information provided to consumers.*

As discussed later in this chapter, the NSW Health Centre for Health Promotion plays a key role in nutrition from a health/disease perspective, known as public health nutrition. Effective public health nutrition action requires a comprehensive approach incorporating environmental, educational, economic, technical and legislative measures, as well as collaboration within the health sector and with other sectors. The public health nutrition priorities for NSW in 2002-2007, as presented in the Eat Well NSW strategy, are: promoting fruit and vegetable consumption; promoting healthy weight; promoting breast feeding; and food security.

Strategies arising from the NSW Childhood Obesity Summit, held in September 2002, will have implications for the future health promotion work of NSW Health. A strong theme of the Summit was the need for a public education campaign about overweight and obesity. NSW

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<sup>10</sup> New Zealand Food Safety Authority (2002) [www.nzfsa.govt.nz](http://www.nzfsa.govt.nz) (Policy & Law)

Health's involvement in promotion of general healthy eating guidelines may increase in the future in relation to the Summit resolutions.

The submission by NSW Health's Centre for Health Promotion details the role of NSW Health in public health nutrition and identifies relevant gaps in its public health nutrition functions:

Given resource constraints, NSW Health takes a strategic approach to consumer education on healthy eating for health and disease prevention. For example, consumer nutrition education may be undertaken to advance the above-mentioned priority areas. General consumer education on healthy eating per se is not a major focus area. This approach inevitably means that there are gaps in provision of consumer education functions.

Gaps in NSW Health public health nutrition functions relevant to the Food Standards Code include:

- Expert nutrition input on the development of national Foods Standards
- Consumer education on food labelling
- Marketing and dissemination of authoritative, general information on healthy eating for the general population. For example, consumer information provided by NSW Health is distributed to Area Health Services and others from the NSW Health Better Health Centre on request. However, there is considerable room for improvement in increasing consumer awareness of/ access to reliable information on healthy eating.
- Integration of food safety and nutrition information eating e.g. advice on healthy eating in pregnancy needs to integrate nutrition and food safety (such as listeria, heavy metal consumption) considerations.
- Coordination of population-based nutrition education initiatives on general healthy eating.

### Recommendations

Should the proposed through-chain agency be adopted, that this agency addresses the above-mentioned gaps in NSW Health public health nutrition by adopting a primary role in:

- Providing expert nutrition input, in addition to food/ food safety input, into NSW submissions concerning national food standards to FSANZ
- Increasing ability of consumers to interpret food labels in the context of healthy eating for optimal health and prevention of chronic disease.
- Improve marketing and dissemination of products designed to increase consumer knowledge and understanding of general healthy eating.
- Improving coordination of food and nutrition perspectives in the development of food standards and consumer education resources.

*NSW Health Centre for Health Promotion, p.3*

Labelling and related requirements impose a significant compliance cost on the food industry. This investment is devalued unless the requirements are soundly based on expert input, including nutritional expertise, and consumers can make effective use of the information. The Review considers that the NSW food agency should address the gap areas identified above in two ways:

- by providing expert nutrition input to the various national policy and standard-setting processes; and
  - through activities which ensure that NSW consumers have the basic nutrition knowledge to make use of the information on food labels.
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## INPUT TO NATIONAL POLICY AND STANDARD-SETTING

As outlined in Chapter 6, food standards are set nationally and implemented by the States and Territories. The States and Territories contribute to these national regulatory policies and standards through various mechanisms such as the Food Regulation Ministerial Councils, the Food Regulation Standing Committee, and the Development and Implementation Sub-Committee. The new agency should provide expert nutrition input to the various national policy and standard development processes as identified in Recommendation 6. To resource this role, Recommendation 33 proposes the appointment of a senior public health nutritionist (0.5 FTE).

## NUTRITION INFORMATION AND EDUCATION

The NSW Health Centre for Health Promotion submission indicates that there are numerous sources of relevant material. However, the marketing and dissemination of this material needs to be improved. While State agencies, local government, and non-government organisations are involved in providing advice, there is no coordination.

Stakeholder submissions supported the inclusion of nutrition messages in consumer information and education activities. Many also stressed the importance of collaborating with and complementing the approaches of other State and Commonwealth agencies:

At present, not one agency/organisation systematically provides nutrition advice. It is likely that if a through-chain food agency is created and should it provide general advice and consumer education, consumers would have the expectation that this agency would provide advice on nutrition as well.

*Food Standards Australia New Zealand, p.2*

Provision of a trustworthy source of consumer food information will assist in achieving better health outcomes with respect to diet related disease in the community in addition to assisting with assumed tasks of the agency, including adoption of the FSC.

*Australian Consumers' Association, p.19*

Consumer education should encompass a broad approach, which includes nutrition education and information... There is currently a lack of coordination and investment in consumer food and nutrition information. A single agency could take up this role effectively improving the public health nutrition effort in this area, coordinating with health, local government and Education.

*Public Health Association, p.1*

Any through-chain agency must also be in a position to provide relevant advice to consumers or steer them in the right direction to find the information they are seeking. It is essential that they provide relevant information on food safety and nutrition education responsibilities should be related to general practice food choice matters and understanding of food labelling. More specialist public health activities and policy making, as well as intersectoral collaborations to change environmental influences on nutrition, should remain the proper responsibility of NSW Health.

*Dieticians Association of Australia, p.7*

It is clear that there is much public health nutrition expertise available within organisations such as the NSW Health Centre for Health Promotion, Food Standards Australia New Zealand, the Commonwealth Department of Health and Ageing, the National Health and Medical Research Council, and Nutrition Australia. The gap area that the NSW food agency should fill is to ensure that this expertise reaches the NSW consumer in a targeted and meaningful manner.

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The aim should be to facilitate consumer access to the basic nutrition knowledge necessary to make use of the information that mandatory labelling provides. This will require the agency develop and implement a systematic, coordinated framework for provision of nutrition information. The marketing and dissemination of products intended to increase consumer knowledge and understanding of healthy eating will need to be improved.

The agency's activities should make use of the resources and expertise in existing organisations and complement it where necessary. There will be synergies with the new agency's food safety information and education responsibilities. The overall infrastructure for consumer communication will be able to be utilised in providing nutrition-related information.

### **MANAGING THE GOVERNMENT-CONSUMER INTERFACE**

One consequence (and a potential benefit) of establishing a through-chain agency and moving from a decentralised to a centralised system will be that the new agency becomes an obvious contact point for consumers. The agency will need to manage this interface proactively. It will need to communicate to the general public on its functions and operations, and establish its profile as the NSW food agency. Consumer access should be facilitated through tools which might include a call centre, consumer information lines, and/or interactive website features.

The agency will also be approached on food issues outside its remit (e.g. trade) or where more specialised expertise is needed (for example, a complex consumer dispute or personal nutritional advice). The agency should be able to provide appropriate and timely referrals in such cases.

### **CONSUMER INFORMATION AND EDUCATION PROGRAMS AND DELIVERY**

To establish its consumer information and education programs, the agency will need to determine: consumer needs; segmentation and targeting mechanisms; other State, Commonwealth and local government programs; activities by non government organisations; the scale and reach of proposed programs, and resourcing implications.

There was a range of stakeholder views relating to program development. For example, industry submissions expressed a desire to work with the through-chain agency in developing and disseminating key messages. Consumer advocates suggested that such a partnership might not be a trusted source of information:

Consumer education and information is an area in which government agencies should be involved. Consumers need information in a number of different forms and in community languages. There is ample opportunity for government and industry to work together to foster a better understanding of food safety in the community.

*Meat and Livestock Australia, p.1*

The TCA should be responsible for determining in consultation with industry, the appropriate level of information and education and the appropriate method of delivery. Delivery may be through mass media mechanisms or targeted through industry organisations such as NSW SIC, MFMA, Sydney Seafood School and SFM Fishline.

*NSW Seafood Industry Council, p.5*

While studies show that Government is viewed sceptically by consumers, it is considered a more balanced source of information than many others.... Put simply, consumers will not trust information,

or an agency for that matter, which appears to be functioning to serve the industry. This is not in the best interests of any party, be it consumers, industry or Government.

*Australian Consumers Association, p.18*

Delivery mechanisms available to the through-chain agency for consumer messages are wide and varied. Stakeholder suggestions included:

A multifaceted information and education program is required which uses basic communication tools including:

- **A user-friendly consumer focused website.** A site is required to provide a range of nutritional advice and updates on latest food safety issues. It should provide advice for consumers who are concerned about emerging issues such as acrylamide in food to basic feeding advice for new mothers.
- **A Consumer Advice Line.** Fundamental to an effective consumer information function is provision of basic avenues for contact and interaction. This must include a small call centre or advice line with capacity for communication with key English as a second language (ESL) communities considering NSW community needs.
- **Consumer information packages and brochures for interface agencies.** Renegotiation and realignment of agency responsibilities will require consumer information and promotion material to assist users in understanding the new system and the appropriate section to deal with. The NSW system currently has, and will continue to have with a through chain agency, many interfaces with other State departments and areas for interaction with the community. The local government interface is a potentially valuable interface for interaction and communication with the community.
- **Coordinated information projects with other State agencies.** A through-chain agency should provide a resource for other agencies including the Department of Education, for educational resources and contacts with the food industry. The agency should provide a valuable resource to bring the food industry to mutually beneficial education and promotion events, and vice versa with other state agencies.

*Australian Consumers' Association, p.19*

A coordinating agency should:

- Set the strategic direction to be taken in educating consumers
- Produce, for the sake of consistency, the educative resources and materials, and
- Distribute the material through a regional network to enforcement agencies including local government.

*Australian Institute of Environmental Health (NSW Division), p9*

There are clearly many options for the design, development and delivery of consumer information and education programs, and many different views on the options. The Review recommends that the NSW food agency should have a consumer information and education function which addresses the key areas outlined above. However, a comprehensive business case will need to be prepared for the agency's Consumer Information and Education branch which considers program design, development and delivery issues in detail. This is discussed in Recommendation 17.

## **RECOMMENDATION 4**

In addition to its regulatory functions, the NSW food agency should have a consumer information and education function. The agency's consumer information and education programs should address:

- food safety and hygienic handling of food and related nutritional issues;
- specific food safety risks;
- labelling requirements, including nutrition information panels, of the Food Standards Code;
- basic nutrition and health eating messages; and
- a single access point for consumer and industry enquiries, with referral to other agencies where appropriate.

Transfer of food regulatory functions from NSW Health to the NSW food agency necessitates a clear understanding of related functions which are to be retained by NSW Health. The Review was required to consider an option which would:

retain the responsibility of NSW Health for notification, surveillance, investigation and response to food-borne illness, along with a role in providing advice and education on nutrition and food safety. (see p. xxv)

The next part of this chapter explains the role of NSW Health in these areas in support of a recommendation which defines its retained role.

## **FUNCTIONS TO BE RETAINED BY NSW HEALTH**

### **FOOD-BORNE DISEASE EPIDEMIOLOGY**

#### **THE CURRENT SITUATION**

Food-borne disease epidemiology has a dual purpose in protecting public health during outbreaks and improving industry performance to prevent future outbreaks. It serves the following objectives:

- limiting and ensuring rapid control of outbreaks or clusters of food-borne disease;
  - measuring the burden, trends and changing patterns of food-borne disease including the detection of epidemics and pandemics;
  - detecting the specific etiologic agents, food vehicles, implicated operations, processing and handling failures associated with food-borne disease;
  - providing information to assist the food industry in the identification of critical control points in the path from farm to plate that can be monitored to reduce contamination by food-borne pathogens;
  - identifying populations at high risk;
  - identifying new or emerging pathogens;
- 
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- providing guidance for risk assessment to assist the planning, implementation, and evaluation of prevention and control programs;
- providing information for the development and evaluation of food safety policy and the regulatory implements used to improve food safety; and
- prioritising the allocation of food safety resources.

NSW Health is responsible for investigations of gastrointestinal infections and intoxications, of which food-borne disease is a component. Area Health Service Public Health Units investigate notifications and outbreaks of gastrointestinal illness. Disease surveillance is undertaken using the authorisations contained in the NSW Food Act and the NSW Public Health Act. A 1991 review of the Public Health Act introduced an emphasis on laboratory notification of notifiable diseases rather than the previous reliance on notification primarily by medical practitioners. Food-borne diseases constitute about 40% of gastrointestinal illness and a number of food-borne conditions are notifiable under the Public Health Act.

The responses required to statutory notifications are listed in the NSW Health Notifiable Diseases Manual and responses to food-borne outbreaks are prescribed by the NSW Health *Outbreak Management Plan for Food-borne Illness or Gastroenteritis in two or more related cases*. Public Health Units use a range of health professions to undertake these functions including food inspectors, environmental health officers, public health nurses, surveillance officers, public health officers, epidemiologists and medical officers. The involvement of food inspectors is now generally limited to field investigation such as sampling and inspection of implicated premises.

NSW Health Communicable Diseases Surveillance and Control Branch is responsible for the state-wide analysis of food-borne outbreak data, detection of clusters of illness, coordination of response, dissemination of information and application of information into policy and regulation.

NSW Health Food Branch and regional food inspectors provide an important link between health practitioners and the food industry. They translate epidemiological information into practical action for the food industry, guided by food regulatory requirements, to prevent future food-borne illness outbreaks.

The Public Health Act has recently been reviewed with important changes imminent to include strengthening the public health role of local government, making the Act more responsive to emerging risks, providing a range of options for enforcement and reduction of public health risk and clarifying the role of Public Health Units.

#### FUTURE DIRECTION FOR FOOD-BORNE ILLNESS INVESTIGATIONS

Incorporation of the NSW Health food area into a through-chain food agency will create an interface challenge for investigations of food-borne illness. A Memorandum of Understanding specifying future responsibilities will clarify the situation and provide for an appropriate and timely response from both agencies. Timeliness of data flow is essential for effective investigation for a number of reasons including:

## FUNCTIONS

- food history information is rapidly lost from the memory of cases;
- food residues are discarded or consumed;
- implicated pathogens are only present in foods for a limited time; and
- cases only excrete pathogens for limited periods.

NSW Health should continue to receive statutory notifications of notifiable diseases. It is also suggested that NSW Health remain the lead agency for investigating food-borne illness with its multitude of public health expertise. However, it should be able to draw on the food expertise likely to be available in the NSW food agency when needed.

Informal notifications of food-borne illness and outbreaks are also received from industry and members of the public. They can currently be directed to NSW Health, SafeFood NSW or other agencies. It is likely that the NSW food agency will become a focal point for such notifications. Close collaboration between the agencies will be necessary to avoid duplication and gaps. To collate or analyse data received it is suggested that a web-based database into which cross-agency staff could enter notifications be developed to significantly enhance detection of related cases of illness, complaints and food contamination.

Food safety and healthy nutrition go hand in hand. The next section will describe the current Activities Within NSW Health And A Possible Role For The NSW Food Agency.

## NUTRITION POLICY

### THE CURRENT SITUATION

NSW Health is actively involved in the public health nutrition area. Public health nutrition is a broad term which focuses on nutrition issues that affect the whole population rather than the specific dietary needs of individuals. The impact of food production, distribution, access and consumption on the nutritional status and health of particular population groups is taken into account together with the social and environmental determinants of food consumption as well as food and nutrition knowledge, skills, attitudes and behaviours in the broader community.

Through the Centre for Health Promotion, NSW Health funds a range of structures and organisations which contribute to the public health nutrition effort in NSW (see Figure 7.4).

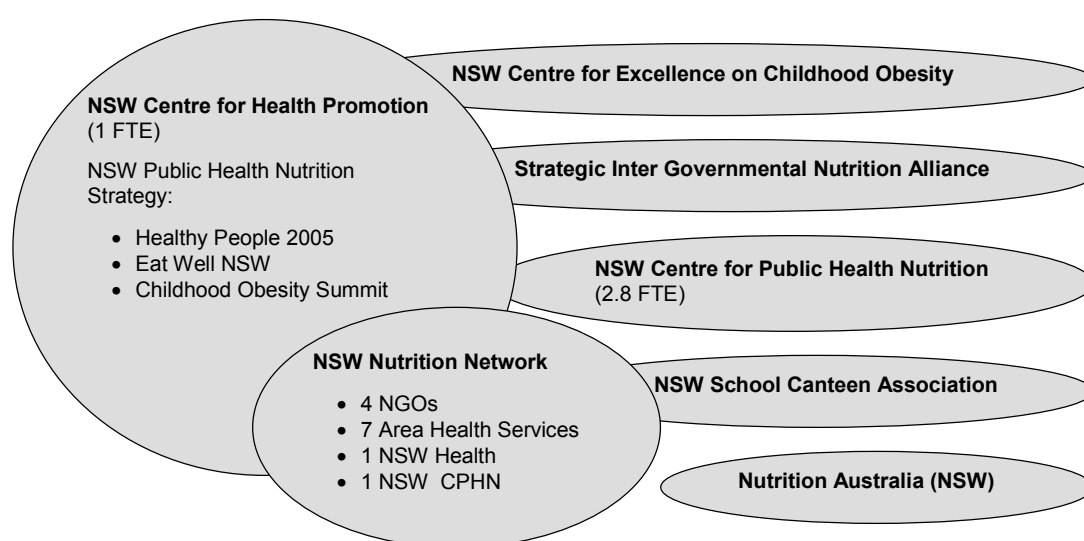
These include:

- *The NSW Centre for Public Health Nutrition.* This Centre reviews research findings regarding nutrition policy and programs and produces authoritative documents that will support the development of effective nutrition interventions in NSW.
  - *The NSW Centre for Excellence in Obesity Research.* This Centre is in the process of being established at the instigation of the Minister for Health in response to resolutions from the Summit.
  - *The NSW Nutrition Network.* This Network is comprised of public health nutrition representatives from each Area Health Service, key non Government organisations,
-



NSW Health Department and the NSW Centre for Public Health Nutrition. It is an important mechanism for implementation and co-ordination of statewide initiatives.

- *Strategic Inter Governmental Nutrition Alliance (SIGNAL)*. This is a national partnership of government health authorities formed to coordinate action to improve the nutritional health of Australians.
- *The NSW School Canteen Association*. NSW Health has funded this Association since its establishment in 1991 to promote healthy food choices in school canteens in NSW.
- *Nutrition Australia (NSW)*. This organisation is funded to provide nutrition information and education for consumers, students and influential groups such as teachers.



**Figure 7.4 Supporting structures for NSW Health's Nutrition activities**

#### FUTURE DIRECTION OF NUTRITION ACTIVITIES

The NSW Childhood Obesity Summit was held in September, 2002, and made 145 resolutions. The NSW Government is preparing a response to the Summit resolutions. Strategies arising from the Summit will have implications for the future work of NSW Health. A strong theme of the Summit was the need for a public education campaign about overweight and obesity. If a campaign is developed and implemented, a component of the campaign would almost certainly include a population-based approach to healthy eating. Hence, NSW Health involvement in promotion of general healthy eating guidelines may increase in the future in relation to the promotion of healthy weight.

NSW Health should retain its responsibility for public health nutrition. As outlined in support of Recommendation 4, the NSW food agency should address current gap areas by adopting a primary role in ensuring the effectiveness of labelling and other Food Standards Code

## FUNCTIONS

requirements for the NSW consumer. It will do this firstly by providing expert nutrition input to the various national policy and standard development processes, and secondly through activities that ensure that NSW consumers have the basic nutrition knowledge to make use of labelling and related Food Standards Code requirements.

A collaborative approach will be necessary between NSW Health and the NSW food agency in developing and delivering nutritional messages. This could be linked to health promotion activities described below.

### **HEALTH PROMOTION ACTIVITIES**

#### THE CURRENT SITUATION

Current health promotion activities within NSW Health involve developing, managing and coordinating a prevention response for national priority areas which include tobacco control, nutrition, physical activity, sun protection, and injury prevention. NSW Health also develops initiatives in capacity building, research and evaluation, which support the work of the various units within the Department and the Area Health Services. The role encompasses state-wide strategic and policy direction as well as the identification and dissemination of best practice.

Present activities also include major information and media campaigns, coordinated on a large scale, to favourably impact on community attitudes and practices in relation to special health risks. The aim is to influence community attitudes and beliefs relating to health risks in order to prompt both organisations and individuals to take action to improve health.

#### FUTURE ACTIVITIES IN HEALTH PROMOTION

The emphasis on public health and health promotion is expected to remain or increase over the next few years within NSW Health. Although major health messages important to general public health will be the focal point for the organisation, the possibility of delivering integrated messages that can assist the NSW food agency in reaching the general public should be explored.

### **RECOMMENDATION 6**

**NSW Health should retain responsibility for the following food related activities:**

- **notifiable disease system and surveillance of food-borne disease;**
- **epidemiological investigation and joint response to gastrointestinal infections and intoxications;**
- **nutrition policy; and**
- **health promotion activities.**

## A FUNCTIONAL MODEL OF THE NSW FOOD AGENCY

It is not for this Review to recommend in detail how the NSW food agency should carry out its functions. However, a functional model of the new agency is useful for several purposes.

Firstly, the SafeFood Funding Review in 2001 developed a functional model of SafeFood's activities which underpins the framework for shared funding by government and industry. The Review understands that the Government, when adopting this framework, intended that these funding principles be applied generally to food regulatory activities, including the activities of a future through-chain agency<sup>11</sup>.

Secondly, the model will assist in developing a structure and key program areas for the agency and in determining its resource requirements.

The Funding Review's model for SafeFood is reproduced at Table 7.1. Twenty eight activities in four categories were identified. Cost recovery was considered appropriate for the activities in *Scheme Implementation and Compliance*, **except** *Consumer Information and Education*, and for a proportional share of *Corporate Services* and some other overheads.

**Table 7.1 Functional model of SafeFood's activities**

Policy and Standard Setting	Scheme Implementation and Compliance	Enforcement	Overheads
Risk Analysis	Certification	Incident Response	General Management
Formulation and Review of Standards	Compliance Audit	Recall	Strategic Planning and Change Management
Formulation and Review of Policy	Environmental Monitoring	Prosecutions	Corporate Services
Interagency Coordination and Harmonisation	System Testing	Stakeholder Consultation	Corporate Communications
Surveillance/Research	Inspection of Vehicles, Vessels, Premises, and Product		Professional Development
Stakeholder Consultation	Licensing		Government Requirements
SafeFood Production Advisory Committee	Industry Advice And Training		Emergency Management Plan
	Operational Training and Accreditation		
	Stakeholder Consultation		
	Consumer Information and Education		

<sup>11</sup> Subject to recommendations on funding for several activities referred to this Review for reconsideration (see Recommendations 35 and 36)

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Detailed descriptions of each category are set out in the Review's Final Report at pp9-16<sup>12</sup>. Some key points in relation to each category are:

### **POLICY AND STANDARD SETTING**

- includes risk analysis, science policy and policy development work to develop food safety schemes and provide input to national standards development processes
- includes policy and science policy input to national and State policy development processes
- *Interagency Coordination and Harmonisation* covers agency "boundary" management and strategic liaison
- *Surveillance/Research* covers both routine and targeted monitoring of food safety risks and emerging issues
- includes statutory advisory and consultative requirements

### **SCHEME IMPLEMENTATION AND COMPLIANCE**

- includes a range of activities required to implement and ensure compliance with co-regulatory food safety schemes
- includes statutory consultative requirements

### **ENFORCEMENT**

- food safety scheme implementation and compliance work is largely about preventive systems; Enforcement is the range of activities in the "policing" role required when preventive systems break down and/or food laws are breached

### **OVERHEADS**

- in addition to *Corporate Services*, includes all activities required to ensure SafeFood is able to fulfil its purpose and functions

This Review built on the SafeFood functional model to develop an indicative functional model of the NSW food agency's activities, shown at Table 7.2. The categories and activities in italics are additional to those in the SafeFood model.

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<sup>12</sup> The Final Report and the NSW Government response may be viewed and downloaded from SafeFood's website at [www.safefood.nsw.gov.au](http://www.safefood.nsw.gov.au)

Table 7.2 Indicative functional model of NSW food agency activities

<b>Policy and Standard Setting</b>	<b>Co-regulatory Compliance</b>	<b>Enforcement</b>
Risk Analysis Formulation and Review of Standards Formulation and Review of Policy Surveillance/Research Ministerial Advisory Committee <i>Regulatory System Development</i> <i>Monitoring and Evaluation</i>	Certification Compliance Audit Environmental Monitoring System Testing Inspection of Vehicles, Vessels, Premises, and Product Licensing Industry Advice And Training <i>Registration of Food Businesses and Approval of Food Premises</i>	Incident Response <i>and Complaint Investigation</i> Recall Prosecutions
Stakeholder Consultation		
<b>Coordination of the Food Regulatory System</b>	<b>Communication and Community Information</b>	<b>Overheads</b>
Interagency Coordination and Harmonisation <i>Approval of Laboratories</i> <i>Approval of Analysts</i> <i>Approval of Food Safety Auditors</i> <i>Approval of Training Providers and Educators</i> <i>Notification of Food Businesses</i> <i>Coordination of Enforcement Agencies</i>	Corporate Communications Emergency Management Plan <i>Risk Communication</i> <i>Consumer Information and Education (Food Safety/Nutrition)</i> <i>Complaint Management</i> <i>Issues Management</i> <i>Incentive/Endorsement Programs</i>	General Management Strategic Planning and Change Management Corporate Services Staff Development, Training, and Accreditation Government Requirements <i>Performance Management</i>
Stakeholder Consultation		

Key points to note about the model are:

### **POLICY AND STANDARD SETTING**

- the NSW agency will have a broader brief, at both State and national level, due to its through-chain coverage and responsibility for the entire Food Standards Code, including related nutrition issues.
- *Regulatory System Development* in part includes high-level review of the regulatory system and consequential changes to policies and programs (see Recommendations 8 and 9); it

## FUNCTIONS

also includes “industry assist” work undertaken to support implementation of new regulatory programs (see Recommendation 37)

- *Monitoring and Evaluation* will be a key activity to ensure the effectiveness, efficiency and accountability of the agency (see Recommendation 38)

### **CO-REGULATORY COMPLIANCE**

- in addition to the co-regulatory food safety schemes, this category now includes similar “preventive program” activities enabled by the new Food Act
- *Industry Advice and Training* is likely to be a major focus in the retail and food service sectors, as noted in many submissions

### **ENFORCEMENT**

- now applies through-chain and includes the major *Complaint Investigation* activities now undertaken by NSW Health

### **COORDINATION OF THE FOOD REGULATORY SYSTEM**

- includes all the specific responsibilities of the “regulatory authority” under the new Food Act
- *Coordination of Enforcement Agencies* will include a range of activities mainly focused on supporting, assisting and coordinating food regulation at local government level

### **COMMUNICATION AND COMMUNITY INFORMATION**

- the new agency will be very much in “the public eye”; it will need to manage issues and communicate effectively
- enquiries and complaints (including “enforcement” issues) must be handled in a timely, responsive, and coordinated way
- *Risk Communication* activities could be integrated with *Consumer Information and Education* programs

### **OVERHEADS**

- SafeFood Performance Review recommended development of a system for *Performance Management*; also links to *Monitoring and Evaluation*

The model also highlights the need for stakeholder consultation in relation to all the agency’s activities, including internal consultation in relation to the agency’s infrastructure and support systems. See also Recommendations 23-24 and 37.

The Review offers this functional model as a guide to development of the new agency’s structure and consideration of its resourcing requirements. Specific funding recommendations are contained in Chapter 9.

## RECOMMENDATION 6

- **To undertake its responsibilities in Recommendations 3 and 4, the NSW food agency should be structured and resourced to undertake the following functions:**
- **coordination of the food regulatory system;**
- **policy and standard setting, including science policy and risk management;**
- **co-regulatory compliance;**
- **enforcement; and**
- **communication and community information, including consumer information and education**

## OTHER INTERAGENCY LINKAGES AND RESPONSIBILITIES

Apart from linkages with NSW Health, it is vital to have robust and formalised arrangements for strategic liaison and consultation with other agencies also involved in food regulatory activities at both State and Local Government level. Recommendation 7 deals with arrangements relevant to NSW Agriculture, the Environment Protection Authority and the Department of Fair Trading.

### LINKAGE WITH NSW AGRICULTURE

The current boundaries between SafeFood NSW and NSW Agriculture are clear-cut. NSW Agriculture is responsible for on-farm inputs and has established a product integrity program for farmers to help ensure the wholesomeness of farm products in NSW. SafeFood NSW is responsible for food safety schemes and through-chain integrity. However, there are crossovers in the focus on the safety of the food produced.

NSW Agriculture is responsible for legislation covering agricultural inputs including stock feed, stock medicines, fertilisers and chemical residues. The legislation meets a range of government purposes additional to those of product integrity. These include environment protection, animal welfare and the protection of agricultural land. It is considered appropriate that NSW Agriculture remain responsible for input-related legislation in consultation with the NSW food agency.

However, the NSW food agency should undertake regulatory and audit activities on farm consistent with the Food Production (Safety) Act 1998. Experience may show that the new agency needs to be more involved in some areas of production where safety rather than quality is the issue. NSW Agriculture is well placed to assist the NSW food agency with such issues.

## FUNCTIONS

A Memorandum of Understanding should be established to ensure that no gaps occur between the activities for which NSW Agriculture is responsible and the activities of the NSW food agency. Specific issues to be covered could include:

- identifying and assessing on-farm contributions to food safety risks;
- identifying and funding research priorities;
- development of policy; and
- response planning, delivery and assessment.

### **LINKAGE WITH NSW ENVIRONMENT PROTECTION AUTHORITY**

The EPA took on the administration of the then Pesticide Act 1978 in 1995 from NSW Agriculture. The Pesticide Act 1999, which commenced in July 2000, significantly strengthens the EPA's powers. It gives EPA the power to enforce the proper use of pesticides in NSW after the point of sale, including those used in agriculture, on public lands and on domestic and commercial premises.

Pesticides include herbicides, fungicides, insecticides, fumigants, bactericides, rodenticides, baits, lures, repellents and pesticides used on animals to control external parasites. Some will be used in food production and residues will be relevant to food safety and thus the responsibility of the NSW food agency. A Memorandum of Understanding is thus suggested between the NSW food agency and EPA to cover the regulation of pesticides and also the management of environmental issues impacting on food production.

### **LINKAGE WITH THE NSW DEPARTMENT OF FAIR TRADING**

The NSW Department of Fair Trading receives about 100 formal complaints relating to food matters out of approximately 28,000 annual complaints. It is thus a very small component of Fair Trading's activities. It has a well developed although informal referral system for health related complaints to NSW Health. Its main priority relates to weights and measures, that is non-delivery of product.

Although the system is working well now, it is suggested that the need for a formal Memorandum of Understanding between the NSW food agency and Fair Trading should be explored to clarify future responsibilities regarding food labelling and other consumer issues.

### **RECOMMENDATION 7**

**SafeFood Production NSW should negotiate a Memorandum of Understanding (MoU) with NSW Agriculture during the transition period on respective roles and responsibilities in the regulation of stock feeds, fertilisers and other food inputs. This MoU should provide the basis for an MoU between the NSW food agency and NSW Agriculture.**

**During the transition period, SafeFood Production NSW should initiate discussions with the following agencies to determine the need for an MoU or some other strategic liaison arrangement:**



- **Environment Protection Authority in relation to the regulation of pesticides and to management of environmental issues impacting on food production; and**
- **Department of Fair Trading on advice and responsibilities regarding food labelling and other consumer issues.**

## **FOOD REGULATION ENFORCEMENT BY LOCAL GOVERNMENT**

### **THE CURRENT SITUATION**

Local Government has been involved in food regulation enforcement in NSW since the first introduction of specific food laws in 1896. The participation of local councils is crucial to success at the local level. Councils' relationships with local business place them in a unique position to provide an effective service which is appropriate to local needs. Soon after the adoption of the Pure Food Act in 1908, which removed the prescribed role of local councils in food regulation enforcement, it became clear that their assistance was needed. Thus the NSW Government wrote to local councils in 1911 requesting that they appoint food inspectors to facilitate enforcement, and they have been involved ever since.

Changes to the Local Government Act in 1993 focused on financial transparency and customer demand and scrutiny. Nomination of priorities became an essential ingredient in planning and resourcing future services. Since there is no mandated role for local councils in food regulatory enforcement, lack of resources have lately forced some local councils to withdraw from the area. Still, most of the State's 172 local councils do appoint council officers to enforce the Food Act at least on a part-time basis.

Council officers involved with food are most often Environmental Health Officers covering a wide range of public health related areas. These include air, water and noise pollution, environmental health issues, waste disposal, animal control, legionnaire's disease and other communicable disease management, health education and promotion, and food safety surveillance. The point at which a full time food surveillance officer becomes an option has been estimated at 250-300 food premises in the area. This should be contrasted with the fact that more than half of councils have less than 120 food premises in their area.

In 1995, NSW Health tried to further specify the role of local councils in food regulation enforcement activities. An integrated system was proposed in which the retail and food service sectors would be the responsibility of local councils and food manufacturers and processors would be centrally managed. The process was caught up in the general shift to a greater emphasis on preventive and enterprise-based food safety programs and never implemented. Without a specific role in food safety, it has been predicted that local council involvement will continue to decline:

Despite the difficulties and constraints Local Government is still carrying out the lion's share of the food safety regulatory enforcement in NSW. The issues paper expects that involvement will continue. Local Government involvement will decline unless it is mandatory and funded.

*The Australian Institute of Environmental Health (NSW Division), p7*

## **FUTURE DIRECTION**

It is as clear now as it was in 1911 that a central food agency will need the full support from local councils for food regulation enforcement to be effective at all levels. The nature of this role may change with the move to a preventive and risk-based approach irrespective of the outcome of this Review. It should be recognised that additional resources may be required to reduce risk and deal with change. Further, the timing and extent of implementation of Food Safety Standard 3.2.1 (Food Safety Programs) have still to be agreed, and thus the exact nature of local council involvement cannot yet be defined, although general principles can be established.

Lgov NSW pointed out the broadening experience of local council practitioners (p.11):

...it needs to be acknowledged that Local Government practitioners are aware of the HACCP principles and may have undertaken food safety auditing courses. Also it is important to note that one of the major resources in the food safety system in NSW is the local knowledge of food businesses and risks held by local government.

To secure future local council involvement, food surveillance responsibilities should be mandated in the Local Government Act, food safety outcomes and service delivery expectations should be specified and funding mechanisms for cost recovery provided. Core roles and responsibilities should be negotiated in detail and mutually agreed and resolution of what a shift to preventive food safety programs means for the low risk end of food businesses. Councils vary considerably in size, staff, skills, resources and commitment and consistency in approach must be facilitated by the NSW food agency through information, briefings and practical training provided to relevant council staff.

A flexible approach might be necessary commensurate with available expertise and service level agreements organised with willing participants. Central resources could fill initial gaps until full collaboration has been achieved. It is important to acknowledge the strength of many local councils in the food safety enforcement area and build on those strengths in streamlining a future food regulatory system. It is envisaged that all local councils be responsible for basic food safety requirements in low-risk food businesses but some could also be involved in the medium to high-end risk area pending the final specification of food safety system implementation.

## **RECOMMENDATION 8**

**The responsibility of local government for food regulation should be clearly defined and appropriately resourced. The NSW Government should explore with local government the implementation of a model which would mandate a local government role:**

- **commensurate with the skills, expertise and range of responsibilities of local government Environmental Health Officers;**
  - **involving activities for which cost recovery would be appropriate;**
  - **funded by a mechanism for cost recovery such as an annual administration fee;**
  - **assisted by the NSW food agency through the provision of tools and/or training as appropriate; and**
-

- **coordinated by the NSW food agency through mechanisms such as service level agreements.**

## **RISK PROFILE OF THE NSW FOOD INDUSTRY – A HIGH PRIORITY**

The use of scientific Risk Analysis, based on the principles established by the Codex Alimentarius Commission of the United Nations, to underpin food safety regulation is well established.

The risk analysis process has three components known as Risk Assessment, Risk Management and Risk Communication. Risk Assessment uses science to identify and prioritise risks so that informed decisions can be made about their control. Risk Management is about devising practical and effective means of controlling those risks. It also factors in the “real world” of limited resources, operational constraints, consumer expectations and so on. Risk Communication is about ensuring maximum awareness, understanding, and interaction among all the food safety “players”.

Food Standards Australia New Zealand (FSANZ) uses risk analysis, including a detailed risk assessment methodology, in its development of national food standards. SafeFood NSW developed a risk analysis methodology which it uses when developing and reviewing its commodity-based food safety schemes. Most recently, risk analysis methodology was used in the National Risk Validation project to identify four high-risk food industry sectors which may become a priority for implementation of HACCP-based food safety programs in accordance with Standard 3.2.1 of the Food Standards Code (currently a voluntary standard; see discussion preceding Recommendation 34).

Science-based risk analysis is used to ensure that regulatory requirements target real risks, that priorities can be established, and that the most appropriate risk management options are identified. The overall aim is to ensure the most effective allocation of regulatory resources by government and compliance resources by industry.

A number of submissions took up this theme when supporting the concept of a through-chain agency. For example:

There should be a consistent approach to food safety matters driven by risk analysis...One of the benefits of a through-chain agency is that the agency should be able to look at the whole food chain and assign resources on a risk basis. This can be determined by a proper risk analysis including examination of all risk management options.

*K Richardson, Food Science Australia, pp.1-2*

A single food agency in New South Wales would enable the State to better control food safety by seamlessly applying science, risk analysis and HACCP in a preventative fashion throughout the food chain with priority being applied to the areas of highest risk.

*Australian Institute of Food Science and Technology, pp.3-4*

There needs to be a scientific assessment of food safety risks for each industry and for each link in the chain. This includes frozen imported seafood. AQIS responsibility covers our product to the point of entry Australian port. This program should then pick up the issues from this point onwards. Management focus should be directed towards areas of greatest risk and the cost of funding of such regulation, training, and auditing should be borne by those segments that present the greatest risks.

*Seafood Importers Association of Australasia, p.2*

## **A STRATIFIED REGULATORY APPROACH IS NEEDED**

NSW, along with all other States and Territories, utilises a patchwork of regulatory approaches to food safety risk management, including HACCP-based food safety program requirements, inspection regimes, and virtual self-regulation. These arrangements largely reflect history and tradition, rather than comparative assessment of risk and evaluation of preferred risk management options.

Both SafeFood NSW and NSW Health are working to identify significant gaps in effective regulatory coverage and are developing preventive program requirements for these sectors. Nonetheless, this work is not informed or driven by a whole-of-chain assessment of relative risk. As ClubsNSW noted (p.6):

There is an attraction to aligning resources toward high risk areas. However, what constitutes a “high risk food business” is not yet clear at the level of food service and retail. As the [Issues Paper] observes, NSW Health is currently undertaking a risk assessment of food businesses, and it is therefore difficult to comment in any depth on this.

Previous and current risk assessments notwithstanding, ClubsNSW believes that there would be a need for a through-chain agency to undertake a proper investigation into the risk profile of all areas under its supervision in order to balance degrees of risk between sectors, business types and commodities.

A risk profile of the NSW food industry would also support a **stratified** approach to food safety risk management. Under this approach, the nature and extent of regulatory “verification” of compliance with standards would reflect the nature and extent of the food safety risks. For example, HACCP-based food safety programs verified by rigorous external audit might be required only for higher-risk businesses and/or those which undertake complex production or processing operations. Alternatives, including use of templates or checklists verified by inspection processes, might be appropriate in lower risk sectors. In some areas, mandatory training programs might be the regulatory priority.

## **ENSURING COST-EFFECTIVENESS**

The practicability, efficacy, and compliance cost of regulatory requirements were a major focus of many submissions to the Review. For example:

On the matter of preventative food safety plans, ClubsNSW notes that while HACCP systems and training are appropriate for primary food production, in retail food businesses it is not always suitable, given that food processing is less systematic than in the primary production sectors.

ClubsNSW has drawn conclusions from reports by The Allen Consulting Group, Minter Ellison and NSW Health that mandatory food safety plans for all food businesses would be inappropriate, but that for high risk businesses, safety plans (or alternative approaches that recognise the nature of these businesses) would be suitable.

*Clubs NSW, p.6*

For a consistent approach to be ensured, the through-chain agency would need to determine and clearly define the appropriate level of review and auditing that is to take place for each risk category of food premises. This may be determined via the food notification form and liaison with all Local Government Authorities.

Other issues to be considered are whether the food safety plans, should be required to be implemented for all levels of risk categories. Workplace restrictions such as language barriers and general work practices may limit the operators from following the food safety plans.

*South Sydney City Council, p.2*

The AFGC agrees that resources need to be allocated commensurately with risk and that food businesses can be risk assessed according to factors such as food type, size of business, susceptibility of the population consuming the food, etc.

Of equal importance as any of these risk factors is the competence in, and commitment to, food safety of the individual food business. The AFGC considers that, in any allocation of resources on the basis of risk, strong recognition is given to the competencies in, and commitment to, food safety of the individual food business.

*Australian Food and Grocery Council, p.11*

[M]ost retailers are currently receiving [and in the future are going to receive] unnecessary multiple audits at unnecessarily technical levels with subsequent high and excessive fees attached...

Regulatory requirements for record-keeping, audits, inspections and other areas of compliance needs to be balanced against the need for clarity in risk assessment (especially taking into account the range of food products being handled and the risk assessment of each category), the size of the business and its customer base, the predictability in audit requirements, and other areas in which costs might be generated by regulatory requirements.

*Metcash Trading Ltd and National Association of Retail Grocers, pp.5, 7-8*

In this context, the issues associated with food safety audit requirements assume critical importance.

Although regulatory audits required by SafeFood NSW are undertaken on a second-party basis by SafeFood's auditors, NSW Health intends to use "approved" third-party auditors when implementing Standard 3.2.1 in high-risk food service sectors. In the medium to long-term, it is likely that regulatory audits will be undertaken by a combination of NSW food agency auditors, third party auditors, and local government Environmental Health Officers (EHOs)<sup>13</sup>.

The current unsatisfactory national infrastructure for auditor training and accreditation is therefore a major concern. This has been recognised by Commonwealth funding, under the National Food Industry Strategy, of a five-year project to develop a national framework including agreed auditor competencies, accreditation arrangements, and training mechanisms.

In the meantime, a risk profile of the NSW food industry would provide the basis to identify industry sectors in which less rigorous audit or inspection processes may be sufficient (and perhaps be undertaken by EHOs) as well as those which should require audit by properly accredited specialised food safety auditors (whether Government or third party). The Australian Institute of Food Science and Technology stated (p.6):

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<sup>13</sup> See also Performance Review recommendations 7 and 8 at Appendix 1, p6-7

AIFST believes that the current system [of auditor accreditation or certification] is costly for industry, inefficient and inconsistent, causing industry to question its credibility [emphasis in original]. The professional standing of food scientists and technologists is probably being eroded because of this situation. Improved training, accreditation or certification systems would improve this situation.

Clearly, the Agency's food safety auditors would only perform a proportion of the State's audits. For the number of food businesses in New South Wales several hundred auditors would be required to service the sector. Auditors would be drawn from the Agency, local government environmental health officers and private providers. The distribution of auditors across the sector and the frequency of audit would be negotiated according to the priorities established by risk analysis.

It may be that only Auditors with specific, high level training and extensive industry experience should be permitted to assess the Hazard Analysis and Risk Assessment components of Medium to High Risk food businesses in the future.

*Australian Institute of Food Science and Technology, p.6*

## **A WHOLE-OF-INDUSTRY RISK PROFILE IS THE STARTING-POINT**

If the potential benefits of establishing the NSW food agency are to be realised in practice, the Review considers it essential that the agency develop a risk profile of the NSW food industry to underpin and inform its overall approach to risk management. For reasons of both cost and timeliness, this would not involve detailed risk analysis of the kind undertaken by FSANZ or by SafeFood when developing its food safety schemes. As noted by SafeFood Production Queensland (p.1):

Risk analysis as it applies to food safety is a relatively new discipline. Resources to undertake this scientific analysis are scarce ... Our experience with food safety schemes in meat and dairy indicate that risk profiling rather than risk analysis is probably the appropriate tool for supporting through chain regulation at this stage. Full-blown risk analysis 'through chain' is likely to take years to complete. This is a costly exercise and it does not seem sensible for States, Territories and FSANZ to embark on independent risk analyses ...

However, some enhancement of the combined science policy resources of NSW Health and SafeFood will be required to develop the risk profile and use it to review and reconfigure the regulatory framework (see Recommendation 32).

## **RECOMMENDATION 9**

**The NSW food agency should undertake a whole-of-chain scientific review of food safety risks in order to produce a risk profile of the NSW food industry. The risk profile should reflect an assessment of potential public health and economic impacts.**

**The risk profile, which should be reviewed and updated periodically, should underpin a stratified approach to food safety risk management and the achievement of public health goals. The aim is to ensure the most effective allocation of regulatory resources by government and compliance resources by industry. Specifically this will involve identifying;**

- **the minimum compliance requirements for each industry sector with regard to its associated risks;**
  - **the level of regulatory verification required to ensure compliance; and**
  - **the most appropriate provider of the verification services i.e. NSW food agency officers, local government Environmental Health Officers, or private sector auditors.**
-

## 8 FORM

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The threshold issue for the form of the NSW food agency is whether it should be established as a stand-alone agency, like SafeFood Production NSW, or as a business unit within a large agency. If stand-alone, the NSW food agency could be set up by building on the foundation provided by SafeFood and its legislative base, the Food Production (Safety) Act 1998.

### **A STAND-ALONE AGENCY?**

Considerations include efficiency, effectiveness, and public perception. The NSW food agency will always be comparatively small, probably no more than 150 staff. It may be administratively less costly to “house” the agency within a large department such as NSW Health or NSW Agriculture which would provide corporate and business support. In part, this approach was taken by New Zealand which established its Food Safety Authority as a “semi-autonomous body” within the Ministry of Agriculture and Forestry.

However, there are strong reasons against setting up the NSW food agency as a business unit within either NSW Health or NSW Agriculture. These are well summarised in the submission by the Southern Area Health Service on behalf of the NSW Public Health Directors’ Forum(p.1):

The through-chain agency would be best placed as a separate agency, to highlight the importance of food safety, to prevent food safety being overshadowed by other business and to improve accountability. The inclusion of SafeFood’s activities within NSW Health would be inappropriate and would not represent the core business of NSW Health.

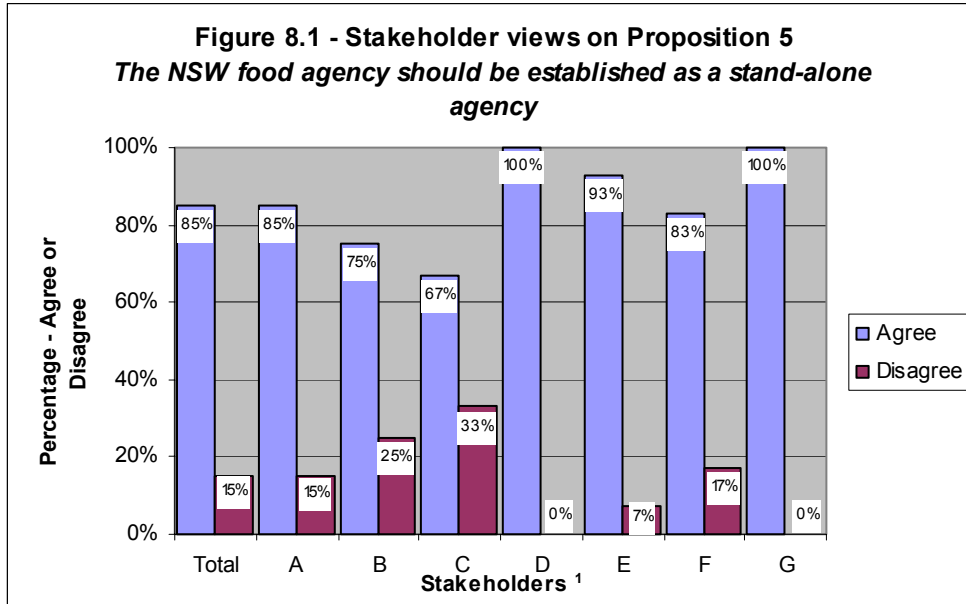
As the ‘relevant authority’ the through-chain agency would be in a position to have a broad view of the food regulatory system and could facilitate relationships with the other agencies such as Agriculture and Health. There is a potential conflict of interest if SafeFood is included within NSW Agriculture, where to paraphrase the Issues Paper, industry pressure (real or perceived) is more likely to compromise the public health and safety objective.

The Australian Consumers’ Association (p.12) was particularly concerned about the agency’s capacity to secure adequate funding:

A through-chain agency should be an independent agency, equipped with its individual budget and parliamentary reporting mechanisms to ensure adequate funding for safe food in NSW. It is acknowledged that food is only one of many responsibilities of Health Departments across Australian jurisdictions and can be viewed as a lesser priority for stretched health dollars when compared to the need for more hospital beds or cancer research.

As outlined in Chapter 4, the New Zealand model seeks to address similar concerns through funding by a separate Parliamentary vote and by policy and operational accountability to a new Minister for Food Safety. Unlike New Zealand, NSW has an existing stand-alone food regulatory agency in SafeFood.

Submissions to the Review were overwhelmingly in favour of a stand-alone option, as shown in Figure 8.1<sup>1</sup>.



Given the generally positive findings of the Performance Review of SafeFood by the Council on the Cost and Quality of Government (see Chapter 5 and Appendix 1), the Review considers that the NSW food agency should be set up by building on the base provided by SafeFood and the Food Production (Safety) Act 1998 (“the Act”).

Amendments of several kinds to the Act will be needed, including a change of agency name, when determined, and extension of its coverage and statutory functions to reflect the broader remit detailed in Chapter 7. Some Review recommendations, such as Recommendations 20 and 22, will also require amendment of the Act.

In the medium term, consideration should be given to whether the Act’s food safety scheme mechanism should be retained in addition to Food Act provisions. Provisions in the two Acts relating to powers and penalties should also be harmonised if both are to be retained.

The Act does not mandate an organisational structure, other than appointment of a CEO. As noted favourably by the Performance Review, SafeFood recently moved away from an inherited structure based on commodity “silos” to a structure based on the agency’s functions. These included: Operations (including the Enforcement Unit), Science Policy and Risk Management, and Policy and Strategy, in addition to corporate and business support functions.

The NSW food agency will have functions of three kinds additional to those of SafeFood:

- implementation and enforcement of food regulatory requirements beyond food safety;
- coordination and system management as the “regulatory authority”; and
- consumer information and education.

<sup>1</sup> The methodology used in the stakeholder analysis is explained in Chapter 6 and the raw figures are provided in Appendix 5. The stakeholder categories are: A – Primary Produce and Seafood, B – Other Food Industry, C – Consumer and Public Health Advocates, D – Scientific and Technical, E – Local Government, F – NSW Government Agencies, G – Other Government Agencies.



The most appropriate interim structure and management arrangements should be determined during the transition period (see Recommendation 15). It seems likely that the staff and functions related to the broader operational role and coordination will fit appropriately within a similar functional structure to that of SafeFood. Thus the interim structure may look similar to Figure 8.2 below.

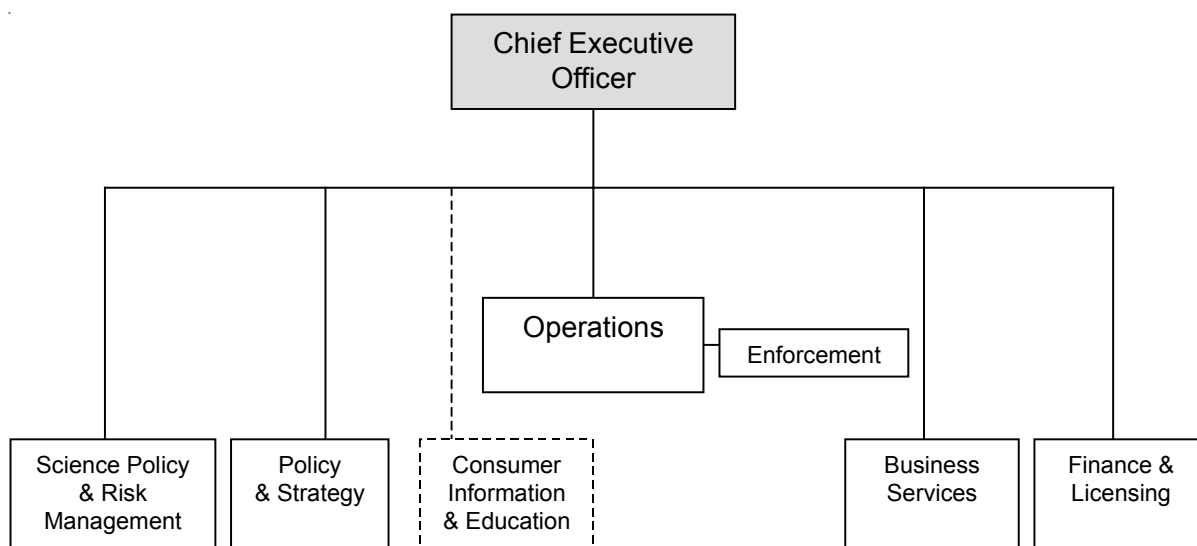


Figure 8.2 NSW Food Agency - Indicative Interim Structure

## RECOMMENDATION 10

The *Food Production (Safety) Act 1998* should be amended to enable it to provide the legal, structural and funding base for the NSW food agency.

## RECOMMENDATION 11

The functional structure of SafeFood Production NSW adopted in mid 2002 should provide the base for an interim structure for the NSW food agency with the following provisos:

- a separate branch for consumer information and education activities should be established in accordance with Recommendation 17;
- functions related to coordination and management of the regulatory system should be allocated as appropriate among the Operations, Policy and Strategy, and Science Policy and Risk Management branches; and
- staff transferred from NSW Health and the Public Health Units should be allocated among the Operations, Policy and Strategy, and Science Policy and Risk Management branches in accordance with the approved interim management structure.

## **STAFF TRANSFER TO THE NSW FOOD AGENCY AND THE INITIAL DIRECTION**

### **ISSUES**

As has been mentioned previously, NSW Health has a long history in food regulation and food safety. The Food Branch was formed in 1909 by the then Board of Health, initially with one food inspector. By 1980, the Branch had grown to 27 food inspectors and two food technologists. The numbers peaked in 1990 with a total of 43 food staff employed by the central unit, the Food Branch.

In 1991, NSW Health decentralised its food enforcement staff into regional Public Health Units. The Food Branch was left as the central authority for food regulation and as a support unit for regional staff. Overall, the number of dedicated food staff employed by NSW Health has since declined, but some resources have been redeployed in associated activities.

The Food Branch currently consists of seven professional staff and three support staff. A further three professional staff and one support staff have been budgeted for during a three year period to assist in implementing new food safety regulations, but not yet employed. Demand on central unit time is expected to increase in a status quo situation because of implications of the new national framework discussed in Chapter 6.

There is some variation between Public Health Units on the type of officer employed for food regulatory activities. Of the 17 Public Health Units, 12 regions have specialist food inspectors and currently employ a total of 12 senior food inspectors, 14 food inspectors, one environmental health officer, and some support staff. The remaining five Public Health Units employ seven environmental health officers with part responsibility for food issues. Public Health Units have an important role in direct enforcement of food regulations and also in liaison with local councils to support and harmonise their enforcement activities.

Some Public Health Units have significantly increased their activities in surveillance of food-borne disease outbreaks. Dedicated units have been built to cover general disease epidemiology with the capacity to also explore food-borne disease outbreaks. The Hunter Public Health Unit has been recognised for the work of its dedicated epidemiological staff in tracing disease in general and food-borne illness in particular. Other Public Health Units rely on their skilled food inspectors to undertake the epidemiological work. No attempt has been made to identify exact resources utilised across the State for these tasks since it will vary within region and over time. As discussed in Chapter 7, a central Communicable Diseases Surveillance and Control Branch has recently been created to better coordinate epidemiological activities.

NSW Health food staff are further supported by head office staff for administrative resources. Line management, employee relations, salary, training, and specialised communication are tasks among many others provided by head office. A special budget item is earmarked for prosecutions of breaches of the Food Act and Regulation. Staff of the Legal Branch further provide initial advice on food matters.

## **FUTURE DIRECTION**

The creation of the new agency removes the need for NSW Health to retain food regulatory and coordination staff in a central unit in the new system. It is thus recommended that all staff with the Food Branch be transferred to the NSW food agency. Public Health Unit staff involved in food regulatory, advisory and enforcement activities should also be transferred. Some Public Health Unit staff have split responsibilities. A process should be developed and applied to identify how the resources associated with these split responsibilities are transferred to the NSW food agency to enable it to undertake its new mandated role. The agency will have to cover all regions currently covered by NSW Health.

## **RECOMMENDATION 12**

**The staff of the Food Branch of NSW Health and the food regulatory and enforcement staff of the Public Health Units should be transferred to the NSW food agency.**

NSW Health and the NSW food agency will share responsibility for response to incidents of food-borne disease and food related complaints. NSW Health will be the lead agency for responding to food-borne disease and should be entitled to full and immediate assistance from the NSW food agency in investigations of food-borne disease outbreaks. Before the staff are transferred, a detailed response protocol should be developed to ensure that effective response capacity is maintained. NSW Health will retain staff dedicated to epidemiological investigations.

## **RECOMMENDATION 13**

**A detailed protocol for response to food related complaints and incidents of food-borne disease should be developed by NSW Health and SafeFood Production NSW before transfer of the Public Health Unit staff to the new agency.**

NSW Health food staff in Public Health Units have been effectively integrated in the regional structure for ten years. SafeFood NSW similarly has a regional operational structure. It is anticipated that the NSW food agency will need to maintain this regional network to cover the whole of NSW.

Work on an efficient structure to cover rural and regional NSW will need to be preceded by a strategic operational review which among other things will need to assess the existing resource deployment of the two agencies and how they are best utilised by the new agency. In addition, appropriate staff accommodation will need to be assessed for the regional network. Accommodation options include expanding the network of home offices, creating a number of regional hubs for the new agency, and/or shared accommodation with other State agencies with existing regional networks, such as EPA or NSW Agriculture.

If a decision is made to establish the new agency, work on the strategic operational review should start immediately. Due to the potential impact on the regional network and on decisions regarding staff accommodation in these areas, staff transferred from regional Public Health Units should remain co-located with their Units until the review has determined the optimal regional network and accommodation arrangements have been finalised.

It should be possible to re-locate metropolitan Public Health Unit staff much sooner. However, this should not be done until it is clear that the response protocol is working.

## **RECOMMENDATION 14**

**All staff transferred from the Public Health Units should remain co-located within the Public Health Units for a sufficient period to ensure that the response protocol is working effectively. Staff transferred from non-metropolitan Public Health Units should remain co-located until the new agency has undertaken a strategic operational review to identify the best option for staff deployment in rural and regional areas. To facilitate the integration of these staff into the new agency, temporary co-location within Public Health Units should continue for no longer than reasonably necessary.**

Establishing the NSW food agency by merging SafeFood with NSW Health food regulatory staff will involve several challenges. The decentralised regional Health staff will have to be brought within a centralised management structure. This will improve coordination, harmonise approaches among regions, and provide flexibility in resources deployment. However, there are significant differences in cultural background. SafeFood staff come from a predominantly agricultural environment and a tradition of partnership with industry, while NSW Health staff come from a public health environment and a traditional emphasis on enforcement.

There is a significant size difference between the two existing agencies with SafeFood staff numbers close to double the size of the NSW Health food regulatory staff. The Food Branch has been struggling to get attention among one health system crisis or another and staff could see this move as yet another takeover. It is thus imperative that formation of the NSW food agency not be seen as a takeover by SafeFood but the formation of a truly new through-chain food agency.

A change of this magnitude is likely to be difficult for all staff involved. To ensure the transition is managed successfully and to provide time for staff to adapt, a transition period of at least six months should precede establishment of the new agency. A joint SafeFood-NSW Health transition team should be formed to develop a detailed transition plan addressing all relevant issues related to transferring and integrating staff into the new agency. The strategic operational review will consider the longer-term structural, role definition and training needs of staff.

Specifically, the transition plan should include interim management arrangements for transferred staff, corporate support resources and accommodation requirements, and equipment and vehicle needs. Human resource and industrial relations issues will also need to be determined and award conditions developed. Immediate training needs for new staff, for example on IT or records systems will need to be determined.

The logistics of physical relocation of Food Branch staff and metropolitan Public Health Units will need to be determined. In addition, integration of information systems in the form of databases and archives will require careful planning.

Response capability under the new system will need to be ensured in two ways. Firstly, the response protocol for food-borne disease outbreaks outlined above will need to be implemented and tested. Secondly, higher level crisis management arrangements will need to be established, involving consideration and agreement on Ministerial roles in a crisis situation, along with access to expert advice.

The role of internal and external communication during the transition is crucial to the success of the transition. A joint workshop of staff from the two agencies should be organised to consider a future name and corporate identity for the new agency. Once the identity is established, the new roles and responsibilities of the agency will need to be communicated to key external stakeholders.. More detail on managing the agency's interface with consumers is provided in Chapter 7.

The transition plan deals with short-term and immediate aspects of the transition process. The new agency will also need to develop a capacity to manage long-term change. The Performance Review of SafeFood by the Council on the Cost and Quality of Government recommended (see Appendix 1, p.9):

18. That SafeFood articulate a change management strategy which, amongst other things, puts some emphasis on the development and maintenance of SafeFood's internal infrastructure to support and deliver change.

In recommending the establishment of a through-chain agency, developing a change management strategy becomes even more significant. Further discussion on the associated resource requirements is provided at Recommendations 29 and 30.

## **RECOMMENDATION 15**

Establishment of the new agency should be preceded by a minimum 6-month transition period to enable appropriate transition arrangements to be made. During this period, a joint SafeFood-NSW Health team should develop a transition plan, in consultation with the relevant unions as appropriate, addressing the following issues:

- **in relation to all transferred staff:**
  - **interim management arrangements;**
  - **additional corporate support resources required;**
  - **accommodation, equipment and vehicle needs;**
  - **payroll, superannuation, and transfer of accrued entitlements;**
  - **industrial issues including terms and conditions of employment; and**
  - **immediate training needs;**
- **physical relocation of Food Branch and metropolitan Public Health Unit staff;**
- **transfer of NSW Health databases or information systems to the new agency;**
- **implementation of the recommended response protocol;**
- **crisis management arrangements, including lead Minister role and access to expert advice;**
- **an internal communication program;**
- **a joint workshop of staff from the two agencies to develop a name and corporate identity for the new agency; and**
- **launch of the new agency and related stakeholder communication.**

During the transition period, work should commence on a long-term change management strategy as detailed in Recommendations 29 and 30.

SafeFood's strategic planning process has been a key driver of its achievements to date and was favourably noted by the Performance Review. It was critical to the successful incorporation of the predecessor agencies and programs into SafeFood and development of a united vision and strong strategic direction.

The success of the strategic planning process is attributable to the broad inclusion of staff from all areas of the organisation. Staff involvement in developing the Plan builds staff buy-in to the strategic direction and continuing implementation of initiatives arising from the process.

Shortly after the new agency is established, a strategic planning workshop should be held to develop a new unified direction. A broad cross-section of staff should participate in the workshop. The process would be further enhanced by input from stakeholder representatives. The workshop should develop a strategic plan for the agency covering goals and objectives for the following three years in line with the NSW and national direction for overall food regulatory activities.

## **RECOMMENDATION 16**

**Within three months of its establishment, the new agency should convene a strategic planning workshop with the participation of a broad cross-section of staff to develop the agency's strategic plan for the next three years. The workshop should be directly or indirectly informed by representative stakeholder views.**

Consumer Information and Education was proposed by Recommendation 4 as a key function for the NSW food agency. The recommendation also set out broad program areas which should be addressed. However, the level of expertise and consultation required to further develop this function is beyond the scope of this Review.

The Review therefore recommends that a comprehensive business case be developed for the consumer information and education function. It should be based on thorough consideration of the issues and appropriate consultation. A Development team, consisting of a Project Manager and a Research Assistant, should be established to develop program proposals, a structure, and a business case for the Consumer Information and Education branch. It is estimated that the development team will be required for a 12-month period. The development team will need to be assisted by a Senior Public Health Nutritionist, as detailed in Recommendation 33, to contribute to the program proposals and business case as it relates to nutrition information and education.

## **RECOMMENDATION 17**

**A Development team consisting of a Project Manager and a Research Assistant should be established to develop program proposals, structure, and a business case for the Consumer Information and Education branch.**

## **AGENCY GOVERNANCE AND ACCOUNTABILITY**

### **GOVERNMENT DEPARTMENT OR STATUTORY AUTHORITY**

The Issues Paper prepared for the Review identified two broad governance options for a stand-alone agency (p.34):

- 1 Government department with CEO reporting direct to the relevant Minister, as for SafeFood; or
- 2 Statutory authority with a CEO reporting to an independent Board, which in turn would report to the Minister.

For small agencies, a Board adds significantly to direct and indirect overhead costs. Many of the advantages of a Board could also be captured by an expert and independent Advisory Committee. While an Advisory Committee would have no corporate governance function, this may be less important in a non-commercial context.

Schedule 4 of the Food Production (Safety) Act 1998 ensures that SafeFood has the same accountabilities for financial and general management as most Government departments. In exercise of its wide statutory powers, SafeFood is also subject to review by the Administrative Decisions Tribunal or the courts.

The Review considers that establishing the NSW food agency as a stand-alone agency will itself enhance accountability and ensure a clear focus on food regulatory issues. Given existing mechanisms for public sector accountability, the overhead costs of establishing the agency as a statutory authority with an independent Board are not justified by the need for accountability. The Review agrees with the submission by Lgov NSW which states (p.20):

[T]he best vehicle is a Government Department with a Chief Executive Officer reporting to the relevant Minister and involving an independent advisory body. Setting up an enhanced 'Food Safety Department' sends a clear message to the community that there is a clear focus on food matters, and public health and safety is paramount, which should help maintain public confidence. There is the same regulatory independence, transparency and prudential oversight that is required of any Department.

## **RECOMMENDATION 18**

**The existing public sector accountabilities of SafeFood Production NSW under Schedule 4 of the *Food Production (Safety) Act 1998* should be retained for the NSW food agency.**

### **MINISTERIAL RESPONSIBILITY**

The Issues Paper identified three options for Ministerial responsibility:

- 1 The agency could report to the Agriculture Minister, as have SafeFood NSW and its predecessor agencies;
- 2 The agency could report to the Health Minister, as do the current Food Branch and Public Health Units within NSW Health; or
- 3 A separate portfolio, for example Food or Food Regulation, could be created.

The advantages and disadvantages of these options were summarised as follows (p.35):

Advantages of reporting to the Agriculture Minister:

- greater ability to engage industry – essential to current co-regulatory approaches which focus on prevention;
- food safety would be less likely to be marginalised by major portfolio issues unrelated to food; and
- synergy would exist with other portfolio responsibilities related to food production.

Advantages of reporting to the Health Minister:

- industry pressure is less likely to compromise the public health and safety objective;
- public confidence may be greater;
- synergy would exist with other portfolio responsibilities related to public health.

Both of these options would have corresponding disadvantages.



Creating a separate portfolio could transcend the “Health vs Agriculture” debate. The portfolio could be Food Safety, Food Regulation or simply Food. This would depend on the agency’s remit (in particular whether it is responsible for the entire Food Standards Code). Like any portfolio, the Food portfolio would be allocated to a Minister at the Government’s discretion.

Possible advantages of creating a separate portfolio include:

- it could provide a clear focus on food safety, together with accountability to Parliament and the community;
- it could enhance transparency, including the balancing of public health and industry priorities; and
- it could raise the profile of food regulatory issues.

A number of submissions commented on this issue with no clear trend emerging. Industry submissions did not universally support the Agriculture option, nor was the Health option universally supported by submissions from that sector. There was significant support for the creation of a separate portfolio, as in New Zealand recently. Lgov NSW stated (p.20):

Lgov NSW suggests that the difficulty of choosing between the agency reporting to Agriculture Minister or reporting to the Health Minister, is fraught with difficulties as the Issues Paper outlines. As the advantages differ qualitatively there is no evident way to assess any net benefit of one over the other. It is more appealing to create a new Ministerial role for Food Regulation, with the Government allocating that role at its discretion. This would have the advantages of:

- providing a clear focus and higher profile for food standards and safety
- providing clearer accountability to Parliament and the community
- bringing a new balance to public health and industry priorities.

Significantly, the submission by the Australian Consumers’ Association, which in 1998 trenchantly opposed SafeFood’s reporting arrangements to the Minister for Agriculture, indicates that it could support a model which provides for an independent agency reporting to a separate portfolio (p.12):

Furthermore, and perhaps more importantly from a public confidence and trust perspective, is the public demand for their enforcement and protection agencies to be truly independent from competing interests so that consumer protection is not overtly or covertly compromised through structural or cultural arrangements of any such agency.

Such that this is best addressed through the establishment of an independent agency which is answerable to the parliament and the Minister for Health or for a new portfolio of ‘Food Safety’.

The Review considers that it would be inappropriate for a food regulatory agency which covers the whole of the food chain to report to the Agriculture Minister, whose food-related responsibilities relate mainly to primary production (not including seafood).

A major benefit of the NSW food agency initiative is a clear focus on, and high profile for, food safety and related consumer issues. Creation of a separate portfolio of Food Regulation, to be allocated at the Government’s discretion, will help maintain that focus. The Minister for Food Regulation would be responsible for the Food Act, now allocated to the Minister for Health, and the legislation now allocated to the Minister for Agriculture as the SafeFood Minister.

However, the Review considers that section 10 of the Food Production (Safety) Act 1998 should be amended to limit the Minister's power to control and direct the NSW food agency in certain circumstances.

Under section 10, SafeFood is "in the exercise of its functions, subject to the control and direction of the Minister". While ultimate accountability for the agency and its performance properly rests with the Minister as a member of the elected Government, it is well accepted that Ministers should refrain from involvement in day-to-day operational matters.

Public confidence and trust in the agency's regulatory independence may be compromised if there is a perception of undue Ministerial influence over regulatory decisions. These decisions include:

- whether to grant, suspend or cancel a licence or registration;
- the exercise of the NSW food agency's enforcement powers; and
- whether to institute criminal or related proceedings.

These decisions are subject to review or ultimate determination by either the Administrative Decisions Tribunal (ADT) or the courts. Thus the agency is accountable for proper exercise of its regulatory powers on a case-by-case basis. There is no need for control and direction by the Minister in individual cases and attempts to do so would likely be perceived as political interference. Of course, if the ADT or the courts found that the agency repeatedly exercised its powers improperly, the Minister would need to take appropriate action.

There are examples of NSW legislation which constrains the Minister's power to control and direct regulatory agencies in certain instances, including decisions to institute criminal proceedings and in relation to advice or recommendations to the Minister<sup>2</sup>. The Review recommends that these decisions and the regulatory decisions cited above should be exempted from the Minister's power to control and direct the NSW food agency.

## **RECOMMENDATION 19**

**The Government should establish a new portfolio of Food Regulation and allocate responsibility for the *Food Act 2002*, the *Food Production (Safety) Act 1998*, the *Dairy Industry Act 2000*, and the *Meat Industry Act 1978* to the designated Minister.**

## **RECOMMENDATION 20**

**Section 10 of the *Food Production (Safety) Act 1998* should be amended to provide the following exceptions to the Minister's power to control and direct the NSW food agency:**

- **in relation to the contents of any advice, report or recommendation given to the Minister;**
- **in relation to decisions whether to grant, suspend or cancel a licence or registration;**
- **in relation to exercise of the NSW food agency's enforcement powers; and**
- **in relation to any decision to institute criminal or related proceedings.**

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<sup>2</sup> For example, s13 of the *Protection of the Environment Administration Act 1991* and s18 of the *Workplace Injury Management and Workers Compensation Act 1998*

## **AN INDEPENDENT ADVISORY COMMITTEE**

As noted in the Issues Paper, an independent Advisory Committee could be a cost-effective way to provide a measure of independent oversight of, and input to, the agency's strategic and policy direction. Two statutory Advisory Committees currently exist to provide advice to the Government on food regulatory issues.

Section 77 of the Food Act 1989 (soon to be repealed and replaced by the Food Act 2002) establishes a 14-member Food Advisory Committee, appointed by the Minister and chaired by an employee of NSW Health or an Area Health Service. The section is highly prescriptive with regard to the composition and expertise of the Committee. The Committee advises the Director-General of NSW Health on matters related to food regulation.

Sections 16-18 of the Food Production (Safety) Act 1998 establishes the SafeFood Production Advisory Committee, appointed by the Minister and chaired by the Chief Executive Officer of SafeFood. Composition and expertise requirements are more flexible. The Committee currently comprises six members in addition to the CEO. It provides advice to SafeFood and/or the Minister on food safety and other matters related to SafeFood's functions.

The Review considers that an independent statutory Advisory Committee should be an essential element of the institutional arrangements supporting the Minister for Food Regulation and the NSW food agency. It follows from this that the Committee should advise the Minister as well as the agency and should be able to provide advice on its own motion when it considers this appropriate or necessary.

Unlike the existing Committees, this Committee should have a Chair who is independent of the NSW food agency. This will enhance public perceptions of the Committee's independence and its capacity to provide advice to the Minister which may differ from that of the agency. However, the Review recommends that the Chief Executive Officer be a member of the Committee to ensure that its role in providing high-level strategic and policy advice is recognised and facilitated.

Clauses 116 and 117 of the Food Bill 2002 (likely to be enacted shortly) provide for the appointment of Ministerial advisory committees to provide advice to either the Minister or the "regulatory authority" on any issues related to food. Composition and procedural requirements are highly flexible at the Minister's discretion. Members must have expertise in one or more of the following areas:

- the food industry;
- public health;
- the interests of consumers;
- the enforcement of food legislation;
- nutrition, toxicology, microbiology and/or food technology; and/or
- in the opinion of the Minister, appropriate expertise, qualifications or experience as will enable them to make a valuable contribution to the Committee.

The Review recommends that these provisions be used to establish the independent Advisory Committee.

Members of both existing Committees were recently reappointed: the Food Advisory Committee until June 2004 and the SafeFood Production Advisory Committee until November 2003. On establishment of the NSW food agency, the Review recommends that the terms of all members be terminated, the new Advisory Committee be appointed, and the relevant provisions of the Food Production (Safety) Act be repealed.

## **RECOMMENDATION 21**

**A Ministerial Advisory Committee with a broad range of expertise related to food should be established by statute to provide advice to the NSW food agency or direct to the Minister, either on request or on its own motion. The Chief Executive Officer of the NSW food agency should be a member of, but should not chair, the Advisory Committee.**

## **RECOMMENDATION 22**

**The Ministerial Advisory Committee should be appointed under the provisions of the *Food Act*. On establishment of the NSW food agency:**

- **the terms of the members of the NSW Food Advisory Committee and the SafeFood Production Advisory Committee should be terminated;**
- **the provisions of the Food Production (Safety) Act 1998 which establish the SafeFood Production Advisory Committee should be repealed; and**
- **the Minister should appoint a new Advisory Committee with skills and expertise which reflect the objectives and functions of the new agency.**

## **STAKEHOLDER CONSULTATION**

The Review sees a useful distinction between the role of the proposed Ministerial Advisory Committee in providing expert advice or recommendations and the broader purposes of consultation with stakeholders. This is not to suggest that consultation may not be a source of expert input; rather, that the NSW food agency should be aware of the views and perspectives of the industries which it regulates and the consumers whose interests it serves. Effective consultation also requires the agency to provide stakeholders with the information they need to make a meaningful contribution.

Both NSW Health and SafeFood consult with industry and consumer stakeholders through a variety of formal and informal mechanisms. In addition, the Food Production (Safety) Act requires SafeFood to establish or nominate a mechanism for consultation with each industry regulated by a food safety scheme. Existing mechanisms include the Dairy Industry Conference (established by the Dairy Industry Act 2000), the Meat Industry Advisory Committee, the NSW Shellfish Committee and the NSW Seafood Industry Conference (both established by the Food Production (Seafood Safety Scheme) Regulation 2001). Consumers are or may be represented on some but not all of these bodies.

The Performance Review of SafeFood by the Council on the Cost and Quality of Government noted the existence of these mechanisms and found that (see Appendix 1, p.2):

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Whilst there is general client feedback at these meetings, there is no overall mechanism such as surveys to assess client satisfaction. Nor does the agency have a formal mechanism for ongoing communication with the full range of stakeholder groups (although most stakeholders consulted during the review reported a positive relationship with the agency).

The Council recommended (p6):

5. That a comprehensive consultative forum be established to provide SafeFood with regular and ongoing advice from industry and consumer stakeholders.

The Review considers that the Council's recommendation is even more appropriate for a NSW food agency with through-chain responsibility for all food regulation and for consumer information and education.

The Australian Consumers' Association also emphasised the need for robust State level consultative arrangements to support policy and standards development under the new national food regulatory system (pp13-14):

ACA sees the need for formal State consultation mechanisms for formulation of positions represented in national food policy development and standard setting processes ...

The establishment of a cross-departmental approach to national food standard development and the recent changes to the binational system has increased the role of State and Territory jurisdictions in national food standards setting. ACA sees this change beginning to be translated in consumers' minds to State and Territory Governments, transferring accountability and expectations for the FSC and its enforcement to their own State Governments ...

ACA believes that this emerging trend must be met by rigorous and transparent State consultation mechanisms, to ensure that consumer concerns are incorporated into State positions and taken forward to the National sphere, lessening the chance for later backlash. At the end of the day, despite the binational food regulatory system, it is the State and Territory Governments that will be held accountable for food regulation, as it is they who enforce it.

As the NSW food agency develops its whole-of-chain approach, it will become increasingly important for stakeholders to provide a whole-of-industry perspective and views. This was recognised by the dairy, meat and seafood industries who provided a joint submission to last year's SafeFood Funding Review and in the cross-commodity sharing of material included in many industry submissions to this Review. While sectoral issues will always arise, these can be addressed by sub-committees or special working groups.

In discussions with the Review, most (although not all) industry associations were comfortable with the idea of a comprehensive stakeholder forum, which could also address sectoral issues by subcommittee or working group. However, the submission by the Australian Meat Council jointly with three other meat industry associations states (p.6):

The NSW meat industry stresses its desire for a stand-alone meat industry advisory structure ... Establishment of an all industries 'Food Industry Conference' as the only formal mechanism for meat industry consultation is not acceptable to the NSW Meat Industry. We would, however, support an all (regulated) industries 'Food Industry Conference' as an additional consultation forum.

The Review recommends that a comprehensive Consultative Committee be established. As with the Ministerial Advisory Committee recommended above, the Chief Executive Officer of the NSW food agency should be a member of the Committee, but should not chair it. The Consultative Committee could be established by the Minister under the same flexible statutory provisions as the Advisory Committee.

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Over time, the Review anticipates that the Consultative Committee could be nominated as the consultative mechanism required for the various food safety schemes and replace the separate commodity-specific forums. However, this should be done only with the agreement of each industry concerned.

### **RECOMMENDATION 23**

**An Industry and Consumer Consultative Committee should be established by statute as the primary means for the Minister and the NSW food agency to consult with the food industry and consumer and public health advocates. The Committee should seek to develop a “whole of industry” approach to major issues and its composition should be consistent with that objective. Sub-committees should be established where necessary to address specific sectoral issues. The Chief Executive Officer of the NSW food agency should be a member of, but should not chair, the Consultative Committee.**

### **RECOMMENDATION 24**

**The Consultative Committee should be appointed under the *Food Act 2002* and should be nominated as the method of consultation for the purposes of individual food safety schemes under the *Food Production (Safety) Act 1998* with the agreement of the relevant industries.**

## 9 FUNDING

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This chapter recommends how the NSW food agency outlined in Chapters 7 and 8 should be funded.

### OVERVIEW OF RECOMMENDED TRANSITIONAL AND CORE FUNDING

It follows from Recommendation 2 that most of the funding for the NSW food agency will be provided by the current government and industry funding of SafeFood Production NSW (2002/03 budgeted expenditure: \$13.1 million, of which \$6.6 million is cost-recovered from industry) and the current funding of food regulatory activities of NSW Health (estimated at around \$6 million per annum), all of which is provided by government.

As the boundaries with other State agencies, principally NSW Agriculture, are expected to remain largely unchanged, the Review is not recommending the transfer of funding from any other agencies.

### THE GOVERNMENT/INDUSTRY FUNDING FRAMEWORK

The SafeFood Funding Review in 2001 established a framework for shared funding by government and industry, based on a functional model of SafeFood's activities<sup>1</sup>.

Under this framework, cost recovery is considered appropriate for most activities related to food safety scheme implementation and compliance and for a proportion of overheads. The Review understands that the Government, when adopting this framework, intended that these funding principles be applied generally to food regulatory activities, including the activities of a future through-chain agency.

### THE FUNDING OF NSW HEALTH REGULATORY ACTIVITIES

An indicative functional model of the NSW food agency, which integrates the food regulatory activities of NSW Health and SafeFood within a through-chain agency, was outlined in Chapter 7 (see pp.73-76). The Review considers that the current food regulatory activities of NSW Health would fall almost entirely into the categories of *Policy and Standard Setting, Enforcement, Communication and Community Information*, and *Coordination of the Food Regulatory System*.

The first three categories are government funded under the principles adopted in 2001. In relation to the fourth, the Review assumes that overall coordination of the regulatory system would be seen as a government responsibility and funded accordingly. The Review also notes that most of the food regulatory work undertaken by local government Environmental Health Officers (estimated at 92 FTE staff) would fall into the model's category of *Co-regulatory Compliance* for which cost recovery is considered appropriate.

For these reasons, the Review recommends that the current funding of NSW Health food regulatory activities be transferred to the NSW food agency as recurrent government funding, subject to Recommendations 26 and 27. However, the preventive, co-regulatory programs

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<sup>1</sup> The functional model is briefly discussed in Chapter 7 at pp.73-74. The funding framework is comprehensively set out in the Final Report of the Funding Review and the NSW Government's response, both of which may be viewed and downloaded from SafeFood's website at [www.safefood.nsw.gov.au](http://www.safefood.nsw.gov.au).

currently being developed by NSW Health (see Recommendation 34) may well require some cost recovery under the funding principles, once implemented.

### **ADDITIONAL GOVERNMENT FUNDING**

Recommendations 28 to 33 provide for additional government funding to:

- meet the costs of establishing the NSW food agency;
- address areas for improvement identified by the Performance Review of SafeFood; and
- ensure that the benefits of establishing the agency are actually captured.

The Review envisages a “transition period” of at least six months before the new agency is established (see Recommendation 15), and 12 months for integration of staff, functions and programs. This period would also see development of the risk profile of the NSW food industry (Recommendation 9) and the business case for the consumer information/education function (Recommendation 17).

The total additional funding sought is \$2.79 million over the first 18 months and recurrent funding of \$738,747 thereafter. The benefit/cost analysis undertaken by the Review is set out in Chapter 6. Costings for each recommendation are provided and summarised in Table 9.8.

### **NSW FOOD AGENCY – TOTAL FUNDING**

Once established, the total budget of the NSW food agency in today’s dollars will be around \$20 million per annum. The Review was unable to obtain comparable estimates of food regulatory spending in other States due to the dispersal of food regulatory responsibilities through different agencies and significant variation in the role of local government<sup>2</sup>. However, as noted in Chapter 6, the recurrent additional funding recommended is equivalent to a modest 3.8% increase on current spending.

## **RECOMMENDATION 25**

**The transitional and core funding of the NSW food agency should consist of:**

- (a) the current industry and government funding of SafeFood Production NSW;**
- (b) recurrent government funding equal to the cost of the transferred staff from NSW Health and the Public Health Units and their food related activities, and**
- (c) additional government funding as set out in Recommendations 28-33.**

### **FUNDING TRANSFER FROM EXISTING ORGANISATIONS**

NSW Health spending on food regulatory activities is integrated in general public health activities of the Department and can only be roughly estimated at \$6 million annually at this stage. This figure does not include costs for specialised staff involved in the investigation of

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<sup>2</sup> **Note:** the cost of NSW Health food regulatory activities was itself difficult to estimate due to the dispersal of costs through 17 Public Health Units and other corporate structures within NSW Health.



food-borne illness centrally and in some Public Health Units, but does include utilisation of general food staff for this same purpose.

The transition team suggested in Recommendation 14 will identify current food activities in detail within the existing two agencies and develop clear lines of responsibility between the NSW food agency and NSW Health for the future. Once the specific food tasks and associated personnel to be excised from NSW Health have been identified in detail a proper costing can be undertaken using accepted methodologies for calculation of on-costs and corporate overheads.

The quantum of recurrent core funding to be transferred from NSW Health to the NSW food agency to cover those food related activities should be determined by SafeFood Production NSW and NSW Health in consultation with Premier's Department and NSW Treasury. A retrospective due diligence period of six months should be established to take account of late changes in the funding base.

The following calculation is only a starting point for detailed funding negotiations and is included for transparency reasons. The base case of an annual investment of \$6 million in the food area by NSW Health has been calculated using the components indicated in Table 9.1:

**Table 9.1 Estimated food regulatory expenditure in NSW Health**

<b>Activity components</b>	<b>Budget</b>
<ul style="list-style-type: none"> <li>Central funding of the Food Branch food policy and regulatory activities (salaries, goods and services [8 staff] \$0.6; on-costs [30% for cars, building, superannuation etc] \$0.2 million; projects and publications \$0.5 million)</li> </ul>	\$1.3 million
<ul style="list-style-type: none"> <li>Food enforcement activities in Public Health Units (salaries, goods and services [29 staff] \$2.2 million; on-costs [30% for cars, building, superannuation etc] \$0.7 million)</li> </ul>	\$2.9 million
<ul style="list-style-type: none"> <li>Funding for implementation of nationally consistent food legislation (funded over three years) (salaries, goods and services [5 staff] \$0.4; projects and publications \$0.4 million)</li> </ul>	\$0.8 million
<ul style="list-style-type: none"> <li>Legal costs (internal and external)</li> </ul>	\$0.1 million
<ul style="list-style-type: none"> <li>Provision of laboratory services (internal and external)</li> </ul>	\$0.3 million
<ul style="list-style-type: none"> <li>Corporate support (15% calculated as a reasonable estimate using CCQG comments; no amount for local administrative staff support)</li> </ul>	\$0.8 million
<ul style="list-style-type: none"> <li><b>Less</b> food surveillance by enforcement staff staying with NSW Health</li> </ul>	(\$0.2 million)
<b>Total</b>	<b>\$6.0 million</b>

The above calculation includes estimates for legal costs using internal NSW Health staff and the Crown solicitor when appropriate. Prosecutions have decreased considerably over the last three years (see Chapter 4), but are expected to pick up somewhat with implementation of the Food Bill 2002 and a centralised enforcement unit providing back-up skills to field staff. The calculations also include an estimate for laboratory services.

The Division of Analytical Laboratories (DAL) undertake chemical, bacteriological and biological analysis of food, water and environmental samples on behalf of NSW Health. A NSW Health survey in 1999 showed a total of 1,962 food samples submitted to DAL for analysis from the NSW Health Food Branch, Public Health Units and Local Government. Of those samples, 976 were analysed for bacterial indicator organisms and pathogens and 986 for chemical analysis.

The decline in sampling over the last ten years was described in Chapter 4. Demand for compositional testing is expected to increase with new food labelling requirements coming into force on 20 December 2002. Equally, enforcement of new food safety program requirements can be expected to increase the demand for microbiological testing. DAL does not provide a costing for tests performed but a very rough estimate of \$150 per test has been used for the purpose of this review. It is expected that current funding for laboratory analysis will prove insufficient. It has decreased at least three-fold over the last ten years.

## **RECOMMENDATION 26**

**The quantum of funding under Recommendation 25(b) should be agreed by SafeFood Production NSW and NSW Health in consultation with Premier's Department and NSW Treasury on the basis of the work of the transition team proposed by Recommendation 14 and accepted methodologies for calculation of on-costs and corporate overheads.**

## **RECOMMENDATION 27**

**During the transition period, SafeFood and NSW Health, in consultation with NSW Treasury as appropriate, should develop arrangements for the provision of laboratory services to the NSW food agency. The arrangements should reflect the following principles:**

- **the NSW food agency should not own and operate its own laboratory;**
- **the NSW food agency should have:**
  - **in-kind access to, or budget to purchase services from, relevant NSW Government laboratories; and**
  - **sufficient budget to purchase laboratory services from the private sector as needed; and**
- **the level of sampling and testing supported by these arrangements should be benchmarked with other States and Territories.**

## **TRANSITION COSTS**

Recommendation 15 provided detail on arrangements required during the transition period. They fall into the following three categories:

- 1 Physical relocation of Food Branch and metropolitan Public Health Unit Staff.
  - 2 Database and information system integration.
  - 3 Internal and external communication needs.
-

Following is an explanation of each category. The direct costs of the transition are estimated at 980,000. Cost breakdowns are provided below and in more detail in Appendix 6.

### **PHYSICAL RELOCATION OF FOOD BRANCH AND METROPOLITAN PUBLIC HEALTH UNIT STAFF**

SafeFood NSW is currently building a new head office at Newington. Building needed to commence before the outcomes of this Review will be known. The building has been designed in such a way that if the integration goes ahead and a new agency is established, NSW Health Food Branch and metropolitan PHU staff will be able to be accommodated in the new building. If, on the other hand, integration does not proceed, it will be possible for SafeFood to lease the second floor.

For reasons such as cultural integration and operational efficiency, a priority in the creation of the new agency will be to co-locate central staff as quickly as possible. As outlined in Recommendations 12 and 14, NSW Health Food Branch staff will be relocated to the new agency on establishment. Metropolitan Public Health Unit staff will be relocated to the new agency once it is clear that the response protocol is working. It is estimated that 24 NSW Health staff will be involved in this relocation.

Costs of physical relocation and fit-out of the new building are detailed in Appendix 6. In summary, the relocation of NSW Health staff is estimated at \$50,000. Detailed estimates provided by the building contractors for the fit-out costs associated with accommodating the transferred staff in the Newington building are \$680,000.

### **DATABASE AND INFORMATION SYSTEM INTEGRATION**

NSW Health has recently developed a notification database to manage industry notification requirements of the new Standard 3.2.2 of the Food Standards Code. The number of business notifications that will be handled by this database is estimated at 50,000. NSW Health manages the database. Local government receive and process some of the notifications. The database is a web-enabled Sybase system which is accessible by local government. Integrating this system with SafeFood's IT-based Customer Management System will be a complex process.

There are a number of smaller databases such as those handling prosecutions, industry organisations, etc which will also need to be integrated, along with a comprehensive paper-based records system.

The cost of integrating these systems is estimated at \$150,000.

## INTERNAL AND EXTERNAL COMMUNICATION NEEDS

Recommendation 15 identified a number of communication activities integral to the transition process. The costs associated with these include:

- transition team requirements, including immediate staff training needs for IT systems and other processes;
- internal communication program, including internal newsletters, workshops, staff handbooks, etc;
- corporate identity for new agency, including consultancy fees, stationary printing, and staff consultation workshop; an
- stakeholder communication program, including notifying stakeholders of agency's establishment, roles and responsibilities through print advertisements and other appropriate channels.

Communication costs of the transition are estimated to be \$100,000.

**Table 9.2 Breakdown of direct transition costs**

<b>Item</b>	<b>Cost</b>
Physical relocation of 24 Food Branch and metropolitan Public Health Unit staff	\$50,000
Fit-out costs related to accommodation for the transferred NSW Health staff	\$680,000
Integration of NSW Health databases and information systems	\$150,000
Internal and external communication needs associated with establishing the agency.	\$100,000
<b>Total</b>	<b>\$980,000</b>

## RECOMMENDATION 28

An indicative amount of \$980,000 should be provided to cover direct transition costs including:

- physical relocation of Food Branch and metropolitan Public Health Unit staff, including associated fit-out costs;
- the integration of NSW Health databases and information systems as identified by the transition team; and
- immediate internal and external communication needs associated with establishing the new agency.

**Table 9.3 Resource Requirements relating to Recommendation 28**

<b>Expense Item</b>	<b>Time horizon</b>	<b>Transition Period (6 months)</b>	<b>1st Year</b>	<b>Subsequent</b>
Direct transition costs	One-off	980,000	0	0
<b>Total</b>		<b>980,000</b>	<b>0</b>	<b>0</b>

## CHANGE MANAGEMENT AND RELATED ISSUES

The Performance Review of SafeFood by the Council on the Cost and Quality of Government made a number of recommendations relating to SafeFood's internal infrastructure, particularly with respect to communications, change management and strategic human resources management. The Performance Review report recommended (see Appendix 1, p.9):

13. That SafeFood develop mechanisms such as surveys and website use to assess client views and receive feedback.
14. That an integrated communications plan be developed which addresses communication strategies with clients and stakeholders, website information requirements, and overall marketing of the agency.
18. That SafeFood articulate a change management strategy which, amongst other things, puts some emphasis on the development and maintenance of SafeFood's internal infrastructure to support and deliver change.
19. That SafeFood finalise its strategic human resource plan giving particular attention to the skills requirements and training for the new organisation structure, recruitment strategies to attract new staff (eg from universities), introduction of a performance management and development system.

As discussed in Recommendation 15, establishing the new agency will increase the importance of these areas. Substantial demands will be placed on these functions during integration. For example, with respect to communications, the new agency will need to communicate its roles and responsibilities to stakeholders, manage public expectations, and put in place an internal communication strategy. Similarly, with respect to human resources, industrial issues, including award conditions, require attention. Future training needs and potential multi-skilling of staff will need to be addressed, along with job definitions and organisation structure issues. Further, SafeFood's difficulty in managing with very limited resources in this area to date will be amplified in the larger, more complex organisation.

At a minimum, to develop and maintain communications, change management and strategic human resource capacity, the new agency will require the permanent appointment of a core team consisting of a senior human resources professional, a senior communications coordinator and a communications officer.

To manage the increased strain on these areas during the transition and in the first year of establishment, the core team will need to be supplemented with additional staff. The new agency should appoint a human resources officer and two communications officers for this 18-month period.

One of the first priorities during the transition period for the team will be to develop a change management strategy which identifies the medium and long-term resources needed to develop and maintain the agency's infrastructure to support and deliver change. The agency should prepare a business case for any additional funding required to implement the strategy.

In addition, the resource requirements that will be identified in the business case for consumer information and education (see Recommendation 17) may impact on resources requirements in the communications area.

## RECOMMENDATION 29

To enable work to begin on a change management strategy and other areas identified by the Council on the Cost and Quality of Government, additional funding should be provided, initially to SafeFood Production NSW during the transition period, and continue for at least 18 months, for the employment of a change management team comprising:

- a core team of:
  - a senior strategic human resources professional, and
  - a communications team consisting of a senior Communications Coordinator and a communications officer; and
- supplementary transitional staff comprising a human resources officer and two communications officers.

Funding of the core team should be recurrent. The extent to which additional resources are required beyond 18 months should be addressed in the business cases relating to the new agency's change management strategy and the consumer information and education function.

## RECOMMENDATION 30

As soon as possible after its establishment, the NSW food agency should develop a change management strategy which identifies the medium and long term resources needed to develop and maintain the agency's internal infrastructure to support and deliver change. The agency should prepare a business case for any additional funding required to implement the strategy.

Table 9.4. Resource Requirements relating to Recommendations 29 and 30

Expense Item	Time horizon	Transition Period (6 months)	1st Year	Subsequent
Strategic Human Resources staff	One senior officer and one officer for first 18 months. Senior officer funded on a recurrent basis.	129,170	258,340	137,259
Communications staff	One senior officer, one officer and two junior officers for first 18 months. Senior officer and one officer funded on a recurrent basis.	239,178	478,355	258,340
<b>Total</b>		<b>368,348</b>	<b>736,695</b>	<b>395,599</b>

## CONSUMER INFORMATION AND EDUCATION

Recommendation 17 establishes the need for a development team consisting of a Project Manager and a Research Assistant to develop program proposals, structure, and a business case for the Consumer Information and Education branch. It is estimated that the development team will be required for a 12-month period.

### RECOMMENDATION 31

To enable implementation of Recommendation 17, funding should be provided, initially to SafeFood Production NSW during the transition period, for the appointment of the Development team for 12 months.

Table 9.5 Resource Requirements relating to Recommendation 31

Expense Item	Time horizon	Transition Period (6 months)	1st Year	Subsequent
Consumer Information and Education development team	12 Months	129,170	129,170	0
<b>Total</b>		<b>129,170</b>	<b>129,170</b>	<b>0</b>

## REVIEW AND RECONFIGURING OF THE FOOD REGULATORY SYSTEM

Recommendation 9 proposes that the new agency undertake a whole-of-chain review of food safety risks in order to produce a risk profile of the NSW food industry. The risk profile would provide the basis to review and reconfigure the food regulatory system. The focus would be on establishing minimum compliance requirements based on risk, cost-effective means to “verify” compliance, and the most appropriate providers of verification services. This process would be a continuing one, informed also by the epidemiological work of NSW Health described in Chapter 7 and by “feedback” from the agency’s field staff and local government EHOs.

A major reason for establishing a through-chain agency is to enable such a review to be undertaken and for review, redesign, and re-targeting of regulatory programs to follow. The head of the newly-established New Zealand Food Safety Authority recently announced a “bottoms-up review of the regulatory framework within New Zealand”. In addition to reviewing compliance requirements, the process would “establish who should be involved in the regulatory process ... forming them into a coherent regime that gives consistent delivery of standards across the whole country”<sup>3</sup>.

<sup>3</sup> quoted in New Zealand journal article, reference not available

Use of risk analysis and risk profiling in food regulatory design is relatively new and the requisite skills are not found in abundance in food regulatory agencies. While some of the work in developing the risk profile may well be cost-effectively out-sourced, the bulk of the work will involve building on existing data and using it to consider the practical implications for the design and delivery of regulatory programs. The Review believes this work is best done “in-house” and that it will be essential for the new agency to build up a “critical mass” of expertise in applied science policy.

The Review understands that SafeFood currently employs two officers with the requisite skills, while NSW Health employs one with such skills in a senior managerial role. Clearly additional staff resources are required to enable Recommendation 9 to proceed. Further funding may be appropriate, subject to business case results, particularly in relation to new or emerging risks.

### RECOMMENDATION 32

To enable implementation of Recommendation 9, recurrent funding should be provided to supplement the existing science policy resources of SafeFood Production NSW and NSW Health by the appointment of two senior officers with skills and expertise in food safety risk analysis and program development. The risk profile of the NSW food industry should:

- **inform the development of the overall risk management strategy recommended by the Council on the Cost and Quality of Government; and**
- **provide the basis to seek additional funding, by business case or through the budget process, to effectively manage new or emerging risks.**

Table 9.6 Resource Requirements relating to Recommendation 32

Expense Item	Time horizon	Transition Period (6 months)	1st Year	Subsequent
Science Policy	Recurrent	0	274,518	274,518
<b>Total</b>		<b>0</b>	<b>274,518</b>	<b>274,518</b>

### NUTRITIONAL EXPERTISE

Recommendations 4, 6 and 17 establish the need for a senior public health nutritionist position with two key elements. Firstly, it will provide nutritional input to the policy and standards development functions discussed in Recommendation 4 and 6. Secondly, the position will play a pivotal role in developing the nutrition aspects of the consumer information and education program proposals and business case discussed in Recommendation 17.

The policy and standards development functions are unlikely to require a full-time nutritional resource. It is estimated that ongoing resource needs in this area will be 0.5 FTE of the senior public health nutritionist role. The resources required for the nutrition component of the consumer information and education function are estimated at 0.5 FTE for the development of the business case over a 12 month period.



The ongoing resource requirements for the consumer information and education function will only be known once the business case and program proposals are developed. The senior public health nutritionist position should therefore be funded on a full time basis for a 12 month period. The extent to which recurrent funding in excess of 0.5 FTE is required beyond 12 months should be addressed in the Consumer Information and Education business case.

### RECOMMENDATION 33

To enable nutritional input to the relevant functions outlined in Recommendation 6, funding should be provided, initially to SafeFood Production NSW during the transition period, for the appointment for 12 months of a senior public health nutritionist to provide nutritional input to:

- (estimate 0.5FTE) policy and standards development; and
- (estimate 0.5FTE) the program proposals and business case for the Consumer Information and Education branch (Recommendation 17).

The extent to which recurrent funding in excess of 0.5EFT is required beyond 12 months should be addressed in the Consumer Information and Education business case.

Table 9.7 Resource Requirements relating to Recommendation 33

Expense Item	Time horizon	Transition Period (6 months)	1st Year	Subsequent
Public Health Nutritionist	Position decreased to 0.5 EFT after first 12 months	68,630	102,945	68,630
<b>Total</b>		<b>68,630</b>	<b>102,945</b>	<b>68,630</b>

### FUNDING OF NSW HEALTH'S FOOD SAFETY PROGRAM INITIATIVE

In 1995 the Australia New Zealand Food Standards Council (now the Food Regulation Ministerial Council) gave its support to reform of food hygiene regulation and directed the Australia New Zealand Food Authority (now Food Standards Australia New Zealand) to develop nationally consistent food safety standards. It did so and presented four standards:

- 3.1.1. Interpretation and Application
- 3.2.1. Food Safety Programs
- 3.2.2. Food Safety Practices and General Requirements
- 3.2.3. Food Premises and Equipment

The new standards were a significant departure from previous food hygiene regulations by requiring the food industry to take more responsibility for producing safe food. The key objectives of the reform process were to better protect public health and safety, promote Australia's reputation as a clean, green and safe supplier of food to the export market, and promote consistency in regulatory requirements and industry performance in relation to food safety.

In July 2000, the Council adopted Standards 3.1.1, 3.2.2 and 3.2.3 and these standards are now part of the Food Standards Code. In NSW, the Food Standards Code automatically applies under the Food Regulation 2001. The standards came into force on 24 February 2001.

Standard 3.2.1 would require individual food businesses to implement a food safety program, that is, to:

- develop and implement a food safety program based on HACCP principles; and
- have this program audited by an approved auditor.

The Council requested further study of the efficacy and costs of food safety programs for a range of food businesses. Pending the results of a two-year program of work funded by the Commonwealth, the Council in November 2000 agreed that Standard 3.2.1. should be adopted as a voluntary standard. It was understood that some jurisdictions (such as Victoria) would meanwhile proceed with implementation of 3.2.1 on a unilateral basis.

NSW has decided in principle that the standard should be made mandatory for high-risk businesses identified by risk analysis. Implementation beyond these sectors may follow in line with future national requirements. On 29 May 2001, the Minister for Health told Parliament:

For high-risk food areas, mandatory food safety programs will be required. Already many high-risk manufacturers have these food safety programs in place voluntarily ... NSW Health is committed to consulting widely with the food industry and consumers on the implementation of this food safety program initiative. In line with national requirements, current inspection processes will be phased out in favour of an audit process that will ensure that food businesses are taking responsibility for producing safe food.

As a first step, NSW initiated and jointly funded with the Commonwealth the *National Risk Validation Project* to determine the benefit/cost ratio of implementing food safety programs across different industry sectors according to their risk classification. The study is now complete. The high-risk sectors identified in the study include:

- food service operations for sensitive populations (hospitals, aged care and nursing homes);
- catering operations serving food to the general public;
- production, harvesting, processing and selling of raw, ready-to-eat seafood; and
- production of manufactured and fermented meat.

Food safety schemes introduced by SafeFood already require food safety programs, equivalent to those required by 3.2.1, in the seafood and meat sectors above. NSW Health is responsible for the catering sectors, which include an estimated 7,000 food businesses.

The Review understands that preliminary proposals, including funding estimates, for implementing 3.2.1 in the catering sectors are being considered within NSW Health. Further, a national working group has been established by the Food Regulation Standing Committee to develop options for implementation of 3.2.1 for Ministerial consideration in 2003 based on the two-year program of work now completed.



It would be inappropriate for NSW Health to delay this important initiative during the transition period before the NSW food agency is established. However it will be critical that future funding of the initiative is secured before responsibility passes to the NSW food agency. Potential sources include:

- funding transferred from NSW Health (see Recommendations 25 and 26);
- Treasury funding as part of the initial funding to establish the new agency or a subsequent business case; and/or
- funding through the usual budget process.

The appropriate funding arrangements should be determined during the transition period to ensure that the NSW food agency does not inherit responsibility for the initiative without the resources to implement it.

### **RECOMMENDATION 34**

**NSW Health should continue to progress its initiative to implement Standard 3.2.1 (Food Safety Programs) in high-risk sectors identified by the National Risk Validation Project. During the transition period, NSW Health, SafeFood Production NSW and NSW Treasury should agree on how the initiative will be funded when responsibility passes to the NSW food agency.**

### **FUNDING PRINCIPLES – COMPLIANCE AUDIT AND INSPECTION**

The funding principles adopted by the NSW Government in 2001 provide for cost recovery in relation to the activities of *Compliance Audit* and *Inspection*. These activities support co-regulatory arrangements which place responsibility on food businesses to meet outcome-based standards such as the national Food Safety Standards and/or requirements to implement enterprise-level food safety programs. Compliance is “verified” by audits or inspections by government or private sector auditors, or by local government EHOs.

Food safety audit in sectors covered by SafeFood is undertaken by accredited auditors employed by SafeFood and the cost of the regulatory program is recovered by audit or inspection fees. The SafeFood Funding Review recommended that cost recovery continue for these activities but that the funding principle be reconsidered by this Review, particularly in the light of views from sectors not covered by SafeFood.

Contestability of audit arrangements emerged as the major issue in submissions by industry, with most supporting the option of using third-party (i.e. private sector) auditors. A variety of views were expressed on who should pay. In most cases, it was implicit that the fees of third party audits would be met by the business. The NSW Seafood Industry Council argued that Government should pay for the necessary supervisory arrangements (p.6):

There is a case to argue that audit and inspection are to a large degree for the public good. Some part of the funding of these activities should therefore be provided by Government ...

On the matter of audit and inspection services, NSW SIC is strongly of the view that these must be contestable. The costs of a supervisory regime (auditing the auditors) will be a small price to pay for ensuring that compliance audit costs are fair and reasonable, established through a commercial, competitive process.

There may also be advantages to industry in maintaining or establishing third-party audit which includes quality management elements in addition to food safety. Unless the TCA has the ability to provide audit services for these elements, it may be more cost-effective for industry to have the audit conducted by a third party accredited by the TCA.

Some submissions suggested a sharing of costs under arrangements allowing third party audit with some of the costs being met through an annual registration fee. For example:

Single food premise registration fee should cover audit requirements. Fees must be regulated and devised by NSW Health (not Local Government). Consultation must be undertaken with industry on any fee structure, but in principle, it should be risk based. All audit / inspection services must be contestable, initially through Local Government, then through Safe Food NSW. Rulings at this level should be binding across all Local Governments / Councils.

*CML Food Liquor and Logistics Group, p3*

The Australian Institute of Food Science and Technology argued that government should pay for audit and inspection (p.7):

The food industry has significant responsibilities to consumers of its products through obligations under common law (due diligence). It is entirely appropriate that food industry suppliers, distributors and manufacturers fund their own quality systems to address these obligations. However the functions of audit and inspection should be publicly funded ...

Funding arrangements should be primarily risk-based. Generally speaking, high-risk activities should be subject to more frequent audit, however, the funding system must also recognise and give due credit to organisations that have invested considerable resources and expertise in establishing, monitoring and auditing their own food safety systems to reduce such risks.

As noted by AIFST, the implementation of preventive systems to manage food safety risks is a cost of being in business, and these costs will and should vary with the risks involved. The Review considers that the reasonable costs of verifying compliance with those preventive systems by routine audit or inspection processes is also a legitimate business cost and thus appropriate for cost recovery where undertaken by State or local government officers.

The contestability issue is briefly discussed in Chapter 7 (p.81) with the conclusion that future arrangements are likely to involve a combination of NSW food agency auditors, third-party auditors, and local government EHOs. The funding principle would thereby ensure that food businesses meet these costs irrespective of the service delivery mechanism.

The question of who should pay for the supervisory infrastructure required to support third party arrangements is, in the current NSW system, a hypothetical one. Some activities, such as approval or accreditation of auditors, are probably coordination functions to be funded by government (although the auditors could be charged accreditation fees). Other activities might be legitimately regarded as enforcement work and thereby government funded. Further consideration will be needed when the detail of future supervisory arrangements is known.

## RECOMMENDATION 35

**The activities of Compliance Audit and Inspection undertaken by the new agency should be funded by the food industry using the cost recovery mechanisms of the *Food Act* and/or the *Food Production (Safety) Act 1998* as appropriate.**

## FUNDING PRINCIPLES – STAKEHOLDER CONSULTATION

The funding principles for *Stakeholder Consultation* adopted in 2001 were based on a functional model which split the activity across the three core function categories so that its funding source varied with the purpose. Thus consultation is funded by government in relation to *Policy and Standard Setting* and *Enforcement*, but industry funded in relation to *Scheme Implementation and Compliance*. In practice, SafeFood's consultation with industry takes place through the same forums in relation to all matters. Consumers are represented in some forums and not others.

Chapter 8 explores in detail the stakeholder consultation which will be required of the NSW food agency and recommends a statutory Industry and Consumer Consultative Committee as the primary consultative mechanism. The Performance Review recommended additional mechanisms including surveys.

Consultation will be a core responsibility of the agency which must embrace the full range of stakeholders including, but not limited to, industry. Industry already bears the considerable costs of its participation in these processes and should continue to do so. The NSW Seafood Industry Council stated (p.6):

In regard to stakeholder consultation there are benefits to both Government and industry from ensuring that consultation is fair, transparent and complete and that it results in fair, reasonable and deliverable outcomes. Industry will incur a cost from the consultation process and will derive a benefit from it. Government will also derive a benefit from the process and should therefore contribute to its cost.

Noting the need to include the diverse range of stakeholders, the Australian Food and Grocery Council stated (p.10):

Extending the range and operation of SafeFood to cover the complete through-chain for all food will increase the number and diversity of stakeholders to an extent that assessing and obtaining consultation funding equitably from the variety of industries would not be possible. The consumer advocate argument that insufficient effort and resources may be applied to involve non-industry stakeholders (including consumers and scientists) if funded by industry also has merit. Indeed, why should industry subsidise consultation with non-industry stakeholders?

The Review agrees and recommends that this activity should be funded by government irrespective of the context. However, this funding should not extend to payment of sitting fees or other expenses of participation except under exceptional circumstances.

## **RECOMMENDATION 36**

**Stakeholder Consultation activities undertaken by the new agency should be funded by Government irrespective of the purpose of the consultation.**

## **FUNDING PRINCIPLES – ROLLOUT OF NEW FOOD SAFETY SCHEMES**

SafeFood has implemented food safety schemes in the dairy, meat and seafood industries. As outlined in Chapter 4, these schemes are based on scientific risk analysis and introduced by regulation. The dairy and meat industries have a long history of food safety regulation through the former Dairy Corporation and Meat Industry Authority and their predecessor organisations.

The seafood industry has not had the same history of regulation. The Seafood Safety Scheme was introduced by regulation in December 2001. It is the first comprehensive regulatory scheme for seafood safety in Australia. Implementation of the scheme has proved challenging, in particular preparing industry for the new regulation and helping to build their capacity to comply with its requirements.

Despite the lengthy and comprehensive scheme development process, many practical “industry realities” affecting implementation only became fully apparent once the scheme was introduced. These included the level of knowledge and awareness of many small-scale or marginal industry participants, the often rudimentary systems currently in place, and the extent of support and capacity-building needed. In some sectors, revised assessment of real risks was appropriate.

To overcome these difficulties, SafeFood recently delayed implementation of many key requirements and commenced with industry a joint pilot program to establish the information, training and other support needed for effective implementation.

The SafeFood Performance Review by the Council on the Cost and Quality of Government identified these difficulties with the rollout of the seafood safety scheme, particularly with respect to information and training provided for industry participants. The difficulties had their origin in the funding arrangements for food safety scheme development, whereby development is funded only until the scheme’s introduction by regulation. At this point, under principles established by the 2001 Funding Review, the cost of industry advice and training should be cost-recovered from the relevant industry.

The experience with seafood safety scheme implementation highlights a gap area in the funding regime. Submissions from the NSW Seafood Industry Council, Master Fish Merchants Association and Seafood Importers Association of Australia all commented on the difficulties which arise from under-resourcing the implementation process. For example:

At present SafeFood is seriously under-resourced to implement the Seafood Safety Scheme. There is a need for government to provide funding for the establishment of this and other new schemes at industry level. It is noted that the under-resourcing of SafeFood will impact on the implementation process as new industries address their safety schemes.

*NSW Seafood Industry Council, p.6*

The Performance Review recommended (see Appendix 1, p8):

15. That SafeFood in conjunction with industry and training providers, develop information and training mechanisms to ensure the effective rollout of food safety schemes.

The food safety scheme development process clearly requires a practical implementation phase involving:

- piloting or other investigation to assess implementation requirements;
- an “industry assist” program to support implementation; and
- a certification process to confirm successful implementation and/or identify where additional training or support is needed.

Governments invest heavily in the development of new regulatory schemes, particularly in “gap areas” such as seafood safety. These schemes generally impose significant compliance costs on industry. In addition, industry is expected to fund much of the cost of compliance “verification” through licence and service fees. For these reasons, the Review considers that funding to develop food safety schemes should also cover the practical initial implementation phase outlined above.

### **RECOMMENDATION 37**

**Funding for the development of new food safety schemes should provide for information and training mechanisms to ensure the effective roll-out of these schemes.**

Table 9.8 Summary of Additional Funding Recommended

<b>Summary - Additional Funding Recommended</b>				
<b>Expense Item</b>	<b>Time horizon</b>	<b>Transition Period (6 months)</b>	<b>1st Year</b>	<b>Subsequent</b>
Direct transition costs	One-off	980,000	0	0
Strategic Human Resources staff	One senior officer and one officer for first 18 months. Senior officer funded on a recurrent basis.	129,170	258,340	137,259
Communications staff	One senior officer, one officer and two junior officers for first 18 months. Senior officer and one officer funded on a recurrent basis.	239,178	478,355	258,340
Consumer Information and Education development team	12 Months	129,170	129,170	0
Public Health Nutritionist	Position decreased to 0.5 EFT after first 12 months	68,630	102,945	68,630
Science Policy	Recurrent	0	274,518	274,518
<b>Total</b>		<b>1,546,147</b>	<b>1,243,328</b>	<b>738,747</b>
<b>Total (first 18 Months)</b>			<b>2,789,475</b>	



# 10 MONITORING AND EVALUATION

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Establishing the new agency will bring substantial changes to the NSW food regulatory system. The new agency will need control systems to help it achieve its operational goals in the short term and deliver public health outcomes in the longer term. Monitoring and evaluation plays a key integrative role in change and performance. It is important to both current business performance and change effectiveness.

The Performance Review of SafeFood by the Council of the Cost and Quality of Government saw the potential contribution which a monitoring and evaluation framework could make to the effectiveness of SafeFood. It recommended (see Appendix 1, p.8):

17. That SafeFood, with advice and assistance from the Review and Reform Division of Premier's Department, develop a set of outcome indicators to measure its performance (to be developed in the context of a monitoring and evaluation framework.

The Review supports this recommendation and considers it important that the new agency establishes control systems which operate at the three levels of organisational effectiveness:

- 1 Individual level
- 2 Agency level
- 3 Societal level

## INDIVIDUAL LEVEL

At the individual level, it is important for each participant in the organisation to see how their activities contribute to achievement of the organisation's goals. This level recognises that the organisation is only as strong as its staff, whose individual efforts combine to achieve those goals. Strategically aligned performance management systems will need to be considered as part of the strategic human resources function discussed in Recommendation 29.

## AGENCY LEVEL

As outlined in Recommendation 16, the new agency's strategic plan will be important in setting its direction and making the most of the opportunities which integrating the NSW food regulatory system will provide. Through feedback of performance data, control systems at agency level help ensure that agreed strategies are being implemented and agency-level goals met. Feedback systems enable the agency to make timely adjustments if the agency's actions are not achieving desired outcomes.

The new agency will need to establish appropriate performance measures and feedback loops. Advice and assistance from the Review and Reform Division of Premier's Department will help at this level, along with food-borne disease surveillance discussed below.

## SOCIETAL LEVEL

Integrating the NSW food regulatory system brings expectations from Government, the community, and industry that there will be positive societal and public health benefits. As outlined in Chapter 3, advances in risk analysis enable the linking of public health goals, performance criteria and food-borne disease surveillance data to measure public health

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outcomes. In this way the effectiveness of the regulatory system can be assessed. Furthermore, the use of food safety objectives offers a practical means to convert public health goals into values or targets that can be used by regulatory agencies and industry.

The use of food safety objectives is in its infancy. It is clear however that the strategic approach of the new food agency will be enhanced through feedback loops enabled by food-borne disease surveillance and epidemiology, key strategic focus areas of NSW Health. During the transition period, SafeFood and NSW Health should work together on a monitoring and evaluation framework, including outcome indicators, for the NSW food agency. This framework should provide the basis for reporting to the NSW Government and the community on the agency's success in achieving the intended outcomes of its activities, including associated public health goals.

Over time, priorities for the new agency will change due to the changing nature of the food chain, consumer profile and food-borne pathogens. New risks will emerge and technology will change, along with consumer demands and public expectations. In addition to the scientific approach mentioned above, the new agency will need systems in place which monitor these external impacts and help it evolve to remain ahead of them.

The ideal vision for food safety in the 21<sup>st</sup> century is a system which is flexible enough to meet the evolving nature of the food supply-demand continuum. It should include clearly enunciated public health goals set by Government and offer an achievable level of protection for consumers.

### **RECOMMENDATION 38**

**SafeFood Production NSW and NSW Health should begin work during the transition period on a monitoring and evaluation framework, including outcome indicators, for the NSW food agency. This framework should provide the basis for reporting to the NSW Government and the community on the agency's success in achieving the intended outcomes of its activities, including associated public health goals.**

# APPENDIX 1

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## PERFORMANCE REVIEW SUMMARY

### SAFEFOOD PRODUCTION NSW

#### Background

In late 2001, the Minister for Agriculture requested the assistance of the Council on the Cost and Quality of Government (CCQG) in undertaking a Performance Review of SafeFood Production NSW ('SafeFood'). This followed from the Kerin funding review of 2001 which, amongst other things, recommended that efficiency issues, including the cost of overheads, be subject to further and independent review.

The Minister proposed that CCQG undertake a full Performance Review examining the appropriateness, efficiency, effectiveness and prudence of SafeFood. This would comprise one element of the review required under section 73 of the Food Production (Safety) Act 1998.

The other component of the section 73 review, the evaluation of options for a single agency covering all food safety operations from "paddock to plate", has been conducted by the Hon John Kerin AM.

#### Council Methodology and Processes

Performance Reviews are conducted in accordance with the Council's endorsed Review Methodology (October 2001). This requires analysis of a range of external and internal factors across twelve performance areas leading to key conclusions. An important component of the Council's approach is to ascertain client and stakeholder views and an extensive program of consultations was undertaken for this review.

The Council uses a collaborative model for conducting reviews with a Steering Committee, including agency and central agency representation, overseeing each review. In this case, the Steering Committee was chaired by Mr Byram Johnston, Council member and Chief Executive of IQ Australia. SafeFood was represented by Mr George Davey, Chief Executive. Representatives also attended from the Premier's Department, NSW Treasury, The Cabinet Office and NSW Health. The Review Director was Ms Donna Rygate, seconded from the Environment Protection Authority. Mr Frank Greathead of the Review and Reform Division, Premier's Department, assisted in the latter part of the review.

Close links were established between the Performance Review and the Kerin Review. Whilst the latter was requested to make specific recommendations on future functional and organisational arrangements for food safety in New South Wales, the Performance Review also examined, in part, the strategic setting for SafeFood and possible options.

## KEY FINDINGS

Council's Performance Review methodology requires an examination of a range of external and internal factors, leading to findings at both the strategic and operational levels. Some particular findings arising from this analysis were:

### *Strategic*

The Food Production (Safety) Act (1998) established SafeFood as the first stage of a possible "paddock to plate" agency with specific regulatory functions for primary produce and seafood. NSW Health retained responsibility for the retail (except meat), restaurant and takeaway sectors, with local government also acting in an enforcement role.

SafeFood is an agency in transition. There have been considerable changes in SafeFood's policy and operating environment since its establishment, including changes to national food safety regulatory arrangements and a review of funding policy principles at State level. Other jurisdictions are, or are considering, following the NSW lead in establishing a single food safety agency.

An updated Food Standards Code and a new Food Act for NSW based on model legislation at national level were introduced during the year. The latter will require the nomination of a "relevant authority" to lead and co-ordinate food safety activities in the State (under existing arrangements this will be NSW Health).

Whilst current relationships between State agencies are reasonable, continuing fragmentation of agencies and responsibilities may not assist in ensuring a consistent and strategic approach to food safety (which is clearly the underlying principle of a "through chain" food safety agency).

SafeFood has implemented food safety schemes in the dairy, meat and seafood sectors based on scientific risk analysis principles. Some difficulties have been experienced with the rollout of the seafood safety scheme, particularly with the information and training required for industry participants. Other schemes are being developed for plant and plant products, and goat and sheep milk. Not surprisingly, internal resources for the delivery of services have been heavily concentrated in the established areas of meat and dairy.

In client and stakeholder interviews, the review found that a clear majority of clients reported a positive relationship with SafeFood. However, there was some differentiation between the established industries, specifically dairy and meat, and elements of the "newer" sectors, including seafood. The former were generally satisfied and in regular liaison with SafeFood, whilst some in the latter perceive themselves as less involved.

SafeFood has a range of committees, working groups and other forums for ongoing consultation with various clients. Whilst there is general client feedback at these meetings, there is no overall mechanism such as surveys to assess client satisfaction. Nor does the agency have a formal mechanism for ongoing communication with the full range of stakeholder groups (although most stakeholders consulted during the review reported a positive relationship with the agency).

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Issues raised by clients and stakeholders during the review included reducing the number of audits and considering the use of third party auditing in some areas. Certainly, there is some potential for audits to be undertaken by third parties, properly accredited, but this will require considerable exploration of public health risks, the capability and accountability of providers, the costs in structuring a scheme and issues of liability.

SafeFood has an updated and concise strategic plan to 2004. The plan sets interim goals for 2002 and a set of broad outcomes for achievement. One of its goals is to develop a monitoring and evaluation framework by the end of this year which will include specific outcome measures and indicators. These would supplement the range of outputs currently available and reported.

### *Operational*

At the commencement of the review, SafeFood had a commodity-based organisation structure (meat, dairy and seafood) reflecting the predecessor organisations or schemes from which they were derived. In April 2002, SafeFood moved from this “silo” structure to a more function-based structure. This new arrangement should lead to a more integrated approach, particularly at the operational level, although it will be important to retain specific industry knowledge and expertise.

The current staff level is about 70 EFT. Staff in the National Livestock Reporting Service (non-core to SafeFood’s functions) transferred to an industry body on 1 July 2002. Resources for SafeFood can be expected to require enhancement in the event it becomes the through chain food safety agency.

SafeFood’s internal infrastructure has not always been sufficiently resourced to support its external activities and services. Further attention is now being given to the systems and strategies required to ensure services are delivered at the optimum levels and in the desired manner.

SafeFood is facing a number of human resource issues and challenges such as the impending loss of skills and knowledge over the next few years through staff retirements. It is to develop a strategic human resource plan which will need to consider a formal skills analysis, longer term strategies for recruiting staff, and staff training requirements.

The Review undertook a survey of all SafeFood staff with generally positive results. A clear majority of staff is involved in strategic and branch planning, know what is expected of them and believe management is approachable and supportive. In interviews, there was a feeling amongst some staff of a dominant “dairy” culture in the organisation.

Whilst internal communication channels were generally considered effective and clear, there was a general view that external communication to all stakeholders could be improved. An integrated communications plan is to be developed this year and the organisation recently created a position of Communications and Public Relations Co-ordinator.

The Government's shared corporate services strategy is likely to impact on processes and systems. SafeFood contracted with the Central Corporate Services Unit to provide payroll and basic human resource services from mid 2002.

Many SafeFood staff work from field or home-based offices. Whilst the existing systems for remote staff pose some backup problems, the impending adoption of the Citrix Metaframe system will allow data to be accessed from, and saved on, the main server.

SafeFood's corporate services costs were estimated at approximately 18% of total operating expenses. This level of overheads is considered reasonable given the organisation's state of development and transitional basis. It is anticipated this will be reduced once the new schemes are fully operating and the new organisational arrangements have been settled.

SafeFood does not have an overall risk management strategy; however individual strategies are in place re IT, records, fraud/corruption and insurance. Financial management is satisfactory with the organisation managing within budget limits. There is a comprehensive emergency management planning (EMP) framework in place.

### **Review Conclusions**

The Performance Review reached the following conclusions about SafeFood.

It remains *appropriate* for an agency such as SafeFood to exist and for its activities to be undertaken. The policy objectives set out in its governing legislation remain valid in 2002. In particular, there is a continuing community need for the program and its activities due to the risks of food-borne illness and the resultant social and economic consequences for the community. Expansion of SafeFood's role as a "through chain" agency is considered a logical step, subject to the Kerin review recommendations.

Programs in the dairy and meat areas are considered *effective* as these are long-established and appear to be working well. It is difficult to determine effectiveness in other sectors, such as seafood, as these schemes are at different stages of development and there is a general absence of performance data. Service effectiveness should be improved further when the new Customer Management System becomes fully operational and the new organisation structure is bedded down. Other improvements in areas such as stakeholder communication and training for 'new' clients should also assist.

The agency is considered reasonably *efficient* having regard to its transitional status and its inheritance of different systems and processes from the predecessor organisations. However, there is scope for further gains and benefits with the reorganised structural arrangements, IT systems enhancement and corporate services sharing arrangements.

*Prudence* is demonstrated by the management of food safety risks through the implementation of the various industry schemes and having an emergency management plan in place to handle incidents and crisis situations. Financial management is considered satisfactory. An overall risk management plan is required.

### **Specific Conclusions**

Under section 73 of the legislation, the Performance Review also examined the coverage and effectiveness of food safety schemes currently operating in New South Wales, and the extent of implementation of national food hygiene standards within these food safety schemes.

The conclusions can be summarised as follows:

- NSW was the first State to establish a single agency responsible for food safety in the production and processing of all primary produce and seafood.
  - Food Safety Schemes are now in place for dairy, meat and seafood and schemes are being developed for goat and sheep milk products, and plant products.
  - Each Scheme is tailored to a particular industry or sector and is prescribed by regulation under the Food Production (Safety) Act (1998).
  - The existing Food Safety Schemes are consistent with the following national Food Safety Standards where their coverage coincides (processing/manufacturing):
    - Standard 3.1.1 - Interpretation and Application;
    - Standard 3.2.1 - Food Safety Programs;
    - Standard 3.2.2 - Food Safety Practices and General Requirements; and
    - Standard 3.2.3 - Food Premises and Equipment.
  - The Meat Food Safety Scheme is consistent with the revised *Australian Standard for Hygienic Production and Transportation of Meat and Meat Products for Human Consumption*, endorsed by the Agriculture and Resource Management Council of Australia and New Zealand.
  - NSW is ahead of other States and Territories in developing and implementing preventative food safety regulation in the primary production and seafood industries.
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## RECOMMENDATIONS

In line with its normal practice, Council made a number of recommendations to Government following the Performance Review. A list of recommendations follows.

Council is supportive of the concept of a through chain food safety agency being established in New South Wales and, subject to the Kerin review outcomes, supports SafeFood becoming that agency. However, in that event, it would be necessary for the specific roles and responsibilities of other agencies with residual or intersecting responsibilities in food safety to be clearly delineated.

Further, in light of the Performance Review findings, and in order to position SafeFood for a possible through chain agency role, recommendations have been made in the operational area for strategies and measures to improve organisational performance and capability.

### Strategic recommendations

#### Through Chain Agency

1. Subject to the findings of the Kerin review, the concept of a single “through chain” food safety agency in NSW be supported and SafeFood be that agency.
2. In the event of a through chain agency being set up, appropriate planning & transitional arrangements be put in place to delineate roles & responsibilities.
3. SafeFood negotiates Memoranda of Understanding or other arrangements (including funding agreements) with:
  - ☐ NSW Health on the provision of food borne illness notification and surveillance, and management of public health incidents;
  - ☐ NSW Agriculture on respective roles and responsibilities in the regulation of stock foods, fertilisers and other related legislation impacting on food safety;
  - ☐ Local Government & Shires Associations on the role of local councils in enforcement processes; and
  - ☐ Department of Fair Trading on advice and responsibilities regarding food labelling and other consumer issues.

In establishing these arrangements, duplication of resources and activities with those agencies should not occur; if necessary, the levels of resources devoted to food safety in relevant agencies should be reviewed after three years.

4. That further resourcing for SafeFood be considered in the light of adoption of these recommendations.
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**Consultation**

5. That a comprehensive consultative forum be established to provide SafeFood with regular and ongoing advice from industry and consumer stakeholders (SafeFood's recent proposal to the Minister for a similar body would meet this requirement).

**Legislation**

6. That SafeFood's legislation be amended to clarify that SafeFood only regulates animal food to the extent necessary to protect human health.

**Audits**

7. That SafeFood, in conjunction with NSW Health, develop possible approaches and options for use of third party auditors for consideration by the Ministers for Agriculture and Health. Issues would include:
  - ◀ an assessment of public health and safety risks,
  - ◀ the scale and number of audits required,
  - ◀ the costs of services,
  - ◀ the accreditation and accountability arrangements required for auditors, and
  - ◀ issues of government and industry liability.

An overall strategy would be presented to Ministers by April 2003.

8. SafeFood to examine opportunities for rationalising audits and similar processes with other government and industry organisations, with a report to the Minister for Agriculture by end of 2002.

**Fees and Charges**

9. That SafeFood's review to standardise fees and charges and the procedures applied across regulated industries be expedited and reported to the Minister as soon as possible.

**Funding Issues**

10. That SafeFood further develop and implement an appropriate activity based costing system in order to monitor current costs and assist in considering the levels of future resources required for industry and government contributions (particularly in the event a through chain agency is established).
11. That, in the context of becoming the through chain food safety agency, SafeFood be made a budget sector agency with provision for user charges retention.
12. That Government funding for the shellfish estuary classification scheme be continued.

## **Operational recommendations**

### **Communications**

13. That SafeFood develop mechanisms, such as the use of surveys and Website processes, to assess client views and receive feedback.
14. That an integrated communication plan be developed which addresses regular communication strategies with clients and stakeholders (taking account of client feedback), Website information requirements and overall marketing of the organisation.

### **Education and training**

15. That SafeFood, in conjunction with industry and training providers, develop information and training mechanisms to ensure the effective rollout of new food safety schemes.
16. That SafeFood, in conjunction with agency (NSW Health, Fair Trading, NSW Agriculture), industry and consumer groups, develop a strategy to better coordinate, develop and implement public education campaigns and related strategies on food safety issues and risks (subject to the outcomes of the Kerin review).

### **Organisational strategies**

17. That SafeFood, with advice and assistance from the Review and Reform Division of Premier's Department, develop a set of outcome indicators to measure its performance (to be developed in the context of a monitoring and evaluation framework).
18. That SafeFood articulate a change management strategy which, amongst other things, puts some emphasis on the development and maintenance of its internal infrastructure to support and deliver change.
19. That SafeFood finalise its strategic human resource plan giving particular attention to skills requirements and training for the new organisation structure, recruitment strategies to attract new staff (eg from universities), introduction of a formal induction program and development of a performance management and development system.
20. That SafeFood develop an overall risk management strategy having regard to organisational risks, the operation of the various industry schemes, and emerging or unclear risks (particularly in the context of a "through chain" agency).

*CCQG*  
*July 2002*

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## APPENDIX 2

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### THE REVIEW'S PUBLIC CONSULTATION PROGRAM

The Ministers for Agriculture and Health agreed that the Review should proceed in a highly consultative fashion. They specified that the consultation program would reflect the principles of inclusion, openness and transparency.

A number of advisory bodies were established to assist the consultation process. Set out below are details of these bodies and the Review consultation program.

### ADVISORY BODIES

#### STAKEHOLDER REFERENCE GROUP

The Stakeholder Reference Group (SRG) was established as the primary source of advice to the Reviewer on consultation and related aspects of the Review process. In particular, the SRG helped to ensure that the Review's consultation program was both adequate and effective. The following three categories were used to determine SRG membership:

- *Consumers/General Public* – at least two, including a representative of the Australian Consumers' Association and a representative from a public interest or other relevant community group.
- *Food industry* – one representative nominated by the SafeFood Regulated Industries Subcommittee and one representative nominated by the Retail, Food Service and Manufacture Industries Subcommittee (see below).
- *Scientific and technical experts* – one or more drawn from the SafeFood Advisory Committee, Food Advisory Committee, CSIRO and/or professional associations.

See Appendix 3 for membership and meeting details.

#### INDUSTRY SUBCOMMITTEES

Two industry subcommittees of the SRG were established. The SafeFood Regulated Industries Subcommittee covered the industries currently regulated by SafeFood (Dairy, Meat, and Seafood), and the Retail, Food Service and Manufacture Industries Subcommittee covered the retail, food service and manufacture industries. The subcommittees assisted the SRG and the Review to ensure that consultation appropriately targeted relevant industries, and provided specialist advice when needed.

See Appendix 3 for membership details.

## **AGENCY STEERING COMMITTEE**

An Agency Steering Committee (ASC) was established to advise the Review on major decisions related to the conduct of the Review. The ASC consisted of senior nominees from relevant Government agencies and was the forum for state and local tiers of government to discuss the implications of specific issues and options raised by the Review.

See Appendix 3 for membership and meeting details.

## **CONSULTATION PROGRAM**

The consultation program was developed to reflect the principles of inclusion, openness and transparency as requested by the Ministers.

The program was developed with the assistance of the SRG, Industry Subcommittees and ASC. The objective of the program was to ensure that all stakeholders had the opportunity to participate in the Review.

Key components of the consultation program are summarised below.

### **ISSUES PAPER**

An independent consultant was engaged to prepare a comprehensive Issues Paper, which was finalised in consultation with the ASC and SRG. Comments were also provided by the industry subcommittees.

A companion brochure which provided a concise summary of the Issues Paper was also prepared.

### **REVIEW PROMOTION**

Prior to releasing the Issues Paper, the SRG, the industry subcommittees, and the ASC advised the Reviewer on what stakeholders should be targeted, and appropriate consultation methods.

The Issues Paper was mailed to over 1000 individuals or organisations including industry and consumer stakeholders as well as government agencies, it was also available electronically from the SafeFood website. The Reviewer wrote to key stakeholders inviting them to contribute to the Review and providing them with copies of the brochure to display or distribute to stakeholders. Additional copies were provided on request and over 2000 brochures were distributed.

The following additional promotional tools were used:

- 1 Advertisements were placed in newspapers and journals including, the Sydney Morning Herald, the Daily Telegraph, Food Australia, The Land, Packaging, Hospitality, and Australian Dairy Foods.
  - 2 Flyers that introduced the Review and referred stakeholders to further information on how to participate were distributed in the Food Australia journal and Catch magazine.
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## **SUBMISSION PROCESS**

Stakeholders were invited to make submissions during the four-month consultation period which ended on 31 August 2002. Submissions were accepted in written, typed, or electronic formats. Where possible electronic submissions were posted on the SafeFood website..

## **TARGETED CONSULTATION**

In parallel with the submission process, specialist bodies, peak associations, and other interested groups and individuals were invited to meet with the Reviewer. The Review held a total of 17 meetings with small groups, in most cases organised around common areas of interest or expertise. See Appendix 3 for details on meeting dates and participants. Where relevant, members of the SRG, the industry subcommittees, and/or the ASC participated in these meetings.

## **WORKSHOP**

A workshop with members of the ASC, SRG and the industry subcommittees was held near the end of the consultation period. The workshop provided an opportunity for government representatives and key stakeholders to discuss the broader issues raised by the Review.



## APPENDIX 3

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### AGENCY STEERING COMMITTEE AND STAKEHOLDER REFERENCE GROUP MEMBERSHIP AND MEETINGS

#### AGENCY STEERING COMMITTEE (ASC)

NAME	AGENCY
Hon. John Kerin	Section 73 Reviewer
Vicki D'Adam	The Cabinet Office
Elizabeth Dewar	NSW Treasury
Donna Rygate (to April)	Council on the Cost and Quality of Government
Frank Greathead (from May)	Council on the Cost and Quality of Government
George Davey	SafeFood NSW
Ross O'Donoghue (to April)	NSW Health
Dr Steve Corbett (from May)	NSW Health
Ian Roth	NSW Agriculture
Noel Baum	Lgov NSW (formerly the Local Government and Shires Associations of NSW)
Karen Paterson	Department of Local Government

#### ALTERNATE OR PRESENT BY INVITATION

NAME	AGENCY / POSITION
Nazli Munir	The Cabinet Office
Phaedra Parkins	The Cabinet Office
Laurence Federico	NSW Treasury
Peter Connelly	Council on the Cost and Quality of Government
Dr Stefan Fabiansson	NSW Health
Kate Herring	Environment Protection Authority

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**STAKEHOLDER REFERENCE GROUP (SRG)**

NAME	ORGANISATION OR COMPANY	STAKEHOLDER CATEGORY
Hon. John Kerin	Section 73 Reviewer	N/a
Dr Greg Stewart	NSW Health	Public Health Expert
Rebecca Smith	Australian Consumers' Association	Consumers/General Public
Jane Moxon	Public Health Association of Australia	Consumers/General Public
Dr Heather Yeatman	Food Standards Australia New Zealand Board SafeFood Advisory Committee	Scientific and Technical
Prof Ken Buckle	Food Advisory Committee SafeFood Advisory Committee	Scientific and Technical
Murray McAfferty	Australian Institute of Environmental Health	Scientific and Technical
Robert Goldman	Restaurant and Catering NSW	Retail, Food Service and Manufacture Industries
John Roach	NSW Seafood Industry Council	SafeFood Regulated Industries

**ALTERNATE OR PRESENT BY INVITATION**

NAME	ORGANISATION / COMPANY	STAKEHOLDER CATEGORY
Prof Jim Hourigan	University of Western Sydney	Scientific and Technical

**SAFEFOOD REGULATED INDUSTRIES SUBCOMMITTEE**

NAME	ORGANISATION / COMPANY	STAKEHOLDER CATEGORY
Ron Della Vedova	National Foods Limited	Dairy Industry
Stuart Silver	Dairy Farmers	Dairy Industry
Kevin Cottrill	National Meat Association of Australia	Meat Industry
Tom Maguire	National Meat Association of Australia	Meat Industry
John Roach	NSW Seafood Industry Council	Seafood Industry
Grahame Turk	Sydney Fish Market	Seafood Industry



**RETAIL, FOOD SERVICE AND MANUFACTURE INDUSTRIES SUBCOMMITTEE**

NAME	ORGANISATION / COMPANY	STAKEHOLDER CATEGORY
Tony Downer	Australian Food and Grocery Council	Manufacture Industry
Robert Goldman	Restaurant and Catering NSW	Food Service Industry
Emily Perry	The Registered Clubs Association of New South Wales	Food Service Industry
Sonya Vaughan	Australian Retailers Association (NSW)	Retail Industry
Charles Shields	Australian Hotels Association	Food Service Industry

**REVIEW SECRETARIAT**

Craig Sahlin, SafeFood NSW  
 Samara Lever, SafeFood NSW  
 Dr Stefan Fabiansson, NSW Health  
 Dale Gollan, SafeFood NSW  
 Pam Gilchrist, SafeFood NSW

**ASC AND SRG MEETINGS**

PARTICIPANTS	DATE	COMMENTS
ASC and Issues Paper Consultants	09/04/02	Discussion of Review process, draft Issues Paper and consultation program.
SRG and Issues Paper Consultants	10/04/02	Discussion of Review process, draft Issues Paper and consultation program
ASC and SRG	15/08/02	Discussion of key areas of concern arising from the consultation program; status quo arrangements; potential through chain agency models; benefit cost analysis and information and education functions.
ASC	24/09/02	Discussion of draft Review recommendations.

## STAKEHOLDER MEETINGS HELD DURING THE CONSULTATION PERIOD

PARTICIPANTS	DATE
Retail and Food Service Industry	24/07/02
Australian Food and Grocery Council and other manufacture organisations	25/07/02
Meat Industry Organisations	26/07/02
Seafood Industry Organisations	26/07/02
Consumers, General Public and Public Health Experts	30/07/02
NSW Farmers Association	30/07/02
Dairy Industry Organisations	01/08/02
Food and Grocery Organisations	02/08/02
Scientific and Technical Experts	05/08/02
Plant Products Industry Organisations	05/08/02
Mr Desmond Sibraa, Mr William Beale and Mr Gordon Hale	06/08/02
Local Government and Shires Associations and the Institute of Environmental Health	06/02/08
Regulated Industries Subcommittee	09/08/02

## APPENDIX 4

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### LIST OF SUBMISSIONS

1. Association of Child Care Centres of NSW
2. Australian Consumers' Association
3. Australian Cook Chill Council
4. Australian Food and Grocery Council
5. Australian Honey Bee Industry Council, Federal Council of Australian Apiarists' Association and Honey Packers' and Marketers' Association of Australia
6. Australian Institute of Environmental Health
7. Australian Institute of Food Science & Technology Inc
8. Australian Meat Council Ltd, National Meat Association of Australia, Country Meat Works Association of NSW and NSW Retail Meat and General Council
9. Australian Native Shellfish
10. Australian Poultry Industries Association
11. Australian United Fresh Fruit & Vegetable Association Ltd
12. Ballina Shire Council
13. Bathurst City Council
14. Baulkham Hills Shire Council
15. Bellingen Shire Council
16. Bird, Mr Philip; Beer, Mr Ian; and McMahon, Mr John, NSW Health Department
17. Blue Mountains City Council
18. Campbelltown City Council
19. Cancer Council, NSW
20. Central Sydney Area Health Service
21. CML Food, Liquor & Logistics Group and Supermarkets (Coles & BiLo)
22. Council of the City of Lithgow
23. Country Women's Association of NSW
24. Countrywide Australasia Ltd
25. Cowra Shire Council
26. Darby, Mr Craig, Hastings Council
27. Department of Fair Trading
28. Diabetes Australia, NSW
29. Dietitians Association of Australia
30. Environment Protection Authority
31. Fairfield City Council
32. Food Operations Pty Ltd
33. Food Standards Australia New Zealand
34. Goodman Fielder Ltd
35. Gosford City Council
36. Griffith City Council
37. Hurstville City Council
38. Illawarra Area Health Service
39. Lgov NSW (formerly the Local Government and Shires Associations of NSW)
40. Liquor Merchants Association of Australia Ltd
41. Macquarie Area Health Service
42. Manfredi, Mr Stefano, bel mondo

43. Master Fish Merchants' Association of Australia
  44. McMahon, Mr John
  45. Meat and Livestock Australia Ltd
  46. Metcash Trading Ltd and the National Association of Retail Grocers of Australia
  47. Mid North Coast Area Health Service
  48. Millett, Mr Paul, Northern Sydney Public Health Unit
  49. National Council of Women NSW Inc
  50. National Registration Authority
  51. NCS International Pty Ltd
  52. Nestle Australasia Ltd
  53. New South Wales Dairy Industry Conference
  54. Northern Sydney Area Health Service
  55. NSW Agriculture
  56. NSW Farmers Association
  57. NSW Health Department
  58. NSW Health Department, Centre for Health Promotion
  59. NSW Seafood Industry Council
  60. Oyster Farmers' Association of NSW Ltd
  61. Parramatta City Council
  62. Penrith City Council
  63. Port, Mr David
  64. Public Health Association of Australia
  65. Queensland Health
  66. Registered Clubs Association of NSW
  67. Restaurant & Catering NSW
  68. Richardson, Mr Keith, Food Science Australia
  69. Ryde City Council
  70. Safe Food Production Queensland
  71. Sanitarium Health Food Company
  72. Seafood Importers Association of Australasia
  73. Severn Shire Council
  74. Shields, Mr John, South Western Sydney Area Health Service
  75. Sibraa, Mr Desmond, Beale, Mr William and Hale, Mr Gordon
  76. South Sydney City Council
  77. Southern Area Health Service NSW
  78. Southern Highlands Group Pty Ltd
  79. State Council of Rural Lands Protection Boards
  80. Sydney Fish Market Pty Ltd
  81. TAFE NSW, Western Institute
  82. Tweed Shire Council
  83. Uralla Shire Council
  84. Wellington Council
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# APPENDIX 5

## STAKEHOLDER ANALYSIS

To supplement the use of selected extracts from the submissions, the Review analysed all of the submissions to assess whether they agreed or disagreed with five key propositions which underpin the Review's recommendations. These are:

- 1 A through-chain agency ("the NSW food agency") should be established.
- 2 The NSW food agency should be responsible for the entire Food Standards Code (i.e. not just for food safety).
- 3 The NSW food agency should also coordinate the food regulatory system.
- 4 The NSW food agency should have a consumer information and education role.
- 5 The NSW food agency should be established as a stand-alone agency.

Table 1 provides a summary of stakeholder views. Stakeholders were segmented into the following categories:

- Primary Produce and Seafood Industries
- Other Food Industry
- Consumers & Public Health
- Scientific & Technical
- Local Government
- NSW Government
- Other Government

The Review received 84 submissions. Four submissions merely provided information about the respondent agency or association and were therefore excluded from the analysis. A submission from NSW Health's Centre for Health Promotion was received after analysis was conducted. Therefore, 79 submissions were analysed.

Data contained in the comment column of the table were derived by recording and tallying whether each submission contained comments relevant to the respective proposition.

Data contained in the percentage "agree" or "disagree" rows were derived by recording and tallying whether or not the comments could fairly be interpreted as expressing clear agreement or disagreement with the relevant proposition. The "agree" and "disagree" tallies were expressed as relative percentages.

Table 1. Stakeholder Analysis Data Segmented by Category

Stakeholder Category	Proposition															
	1			2			3			4			5			
	Submissions	Comment	Agree	Disagree	Comment	Agree	Disagree	Comment	Agree	Disagree	Comment	Agree	Disagree	Comment	Agree	Disagree
<b>Primary Produce and Seafood Industries</b>																
Sub totals	14	13	12	1	9	7	1	1	10	9	1	12	9	1	13	11
Percentage Agree or Disagree			92	8	87	13	90	10	85	15						
<b>Other Food Industry</b>																
Sub totals	12	11	10	1	5	5	0	5	3	0	8	8	0	9	6	2
Percentage Agree or Disagree			91	9	100	0	100	0	75	0	100	0	75	0	75	25
<b>Consumers &amp; Public Health</b>																
Sub totals	7	7	5	1	6	4	1	5	3	1	6	4	1	7	4	2
Percentage Agree or Disagree			83	17	80	20	75	25	80	20	67	33				
<b>Scientific &amp; Technical</b>																
Sub totals	6	6	5	0	3	3	0	6	3	0	4	4	0	5	4	0
Percentage Agree or Disagree			100	0	100	0	100	0	100	0	100	0	100	0	100	0
<b>Local Government</b>																
Sub totals	22	20	13	2	8	4	0	8	8	0	10	10	0	15	13	1
Percentage Agree or Disagree			87	13	100	0	100	0	100	0	100	0	93	7		
<b>NSW Government Agencies</b>																
Sub totals	12	11	8	0	9	7	1	8	7	0	9	6	2	9	5	1
Percentage Agree or Disagree			100	0	87	13	100	0	75	25	83	17				
<b>Other Government Agencies</b>																
Sub totals	4	3	1	0	1	1	0	1	0	0	2	2	0	2	1	0
Percentage Agree or Disagree			100	0	100	0	100	0	100	0	100	0	100	0	100	0
<b>Other</b>																
Sub totals	2	2	1	0	0	0	0	0	0	0	0	0	0	1	1	0
Percentage Agree or Disagree			100	0	0	0	0	0	0	0	0	0	0	100	0	0
<b>Totals (excluding percentages)</b>	79	73	55	5	41	31	3	43	33	2	51	43	4	61	45	8
<b>Totals (percentages)</b>			92	8	91	9	94	6	91	9	91	9	9	85	15	

## APPENDIX 6

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### SUMMARY OF ADDITIONAL FUNDING RECOMMENDED

The cost of establishing the NSW food agency, by building on the base provided by SafeFood, is estimated at \$2.79 million over the first 18 months and recurrent costs of \$738,747 per annum thereafter.

The estimated recurrent costs do **not** include costs for which meaningful estimates can only be provided following extensive further work beyond the scope of the Review. These costs would only be incurred following approval of separate business cases which will quantify benefits and costs, and include:

- funding a future Consumer Information and Education branch (see Recommendation 17);
- funding implementation of the change management strategy beyond the first 12 months; and
- additional funding to manage new and emerging risks which may be identified by the risk profile of the NSW food industry (see Recommendation 32).

Set out below is a summary of the additional funding recommended.

### DIRECT TRANSITION COSTS

The review report recommended that an indicative amount of \$980,000 should be provided to cover direct transition costs including:

- physical relocation of Food Branch and metropolitan Public Health Unit staff, including associated fit-out costs;
- the integration of NSW Health databases and information systems as identified by the transition team; and
- internal and external communication needs associated with establishing the new agency.

A breakdown of these costs is provided in the Table 1 below:

**Table 1 Breakdown of direct transition costs**

<b>Item</b>	<b>Explanation</b>	<b>Cost</b>
Physical relocation of 24 Food Branch and metropolitan Public Health Unit staff	Costing based on those incurred when transferring MIA staff to SafeFood head office in 2000. Costings adjusted to account for the multiple locations of metropolitan PHU staff.	\$50,000
Fit-out costs related to accommodation for the transferred NSW Health staff	A building for SafeFood in Newington is currently being constructed Fit-out costs are based on detailed estimates provided by the building contractors of additional costs associated with accommodating NSW Health staff in the new building	\$680,000
Integration of NSW Health databases and information systems	<ul style="list-style-type: none"> <li>• NSW Health systems which will need to be integrated with SafeFood's systems include:</li> <li>• Notification database recently developed by NSW Health to manage industry notification requirements of new Standard 3.2.2 of the Food Standards Code. It is a web-enabled Sybase system and accessible by local government which receives most of the notifications. Integrating this system with SafeFood's IT-based Customer Management System will be a complex process.</li> <li>• Smaller databases, eg prosecutions, industry organisations, etc</li> <li>• Comprehensive paper-based records system</li> </ul>	\$150,000
Internal and external communication needs associated with establishing the new agency.	<ul style="list-style-type: none"> <li>• Transition team requirements</li> <li>• Internal communication program</li> <li>• Corporate identity for new agency</li> <li>• Stakeholder communication program</li> </ul>	\$100,000
<b>Total</b>		<b>\$980,000</b>

## FUNDING FOR ADDITIONAL STAFF

### STAFF RECOMMENDED DURING TRANSITION PERIOD

The review recommends appointment during the transition period of the following staff:

- A Project Manager and a Research Assistant to develop a business case for the Consumer Information and Education branch for 12 months. (Recommendations 17, 31)





- A senior public health nutritionist to provide nutritional input to policy and standards development and the business case for the Consumer Information and Education branch. (Recommendation 33)
- A change management team to begin work on a change management strategy, other areas identified by the Council on the Cost and Quality of Government, and an associated business case, for a period of at least 18 months, comprising:
  - a core team of:
    - a senior strategic human resources professional, and
    - a communications team consisting of a senior communications coordinator and a communications officer; and
  - supplementary transitional staff comprising a human resources officer and two communications officers. (Recommendation 29)

### **STAFF RECOMMENDED ON ESTABLISHMENT OF AGENCY**

The review recommends appointment of the following staff on establishment:

- Two senior officers with skills and expertise in food safety risk analysis and program development to develop a risk profile of the NSW food industry and the agency's overall risk management strategy. This will provide the basis to seek additional funding, by business case to effectively manage new or emerging risks. (Recommendations 9, 32)

### **SUMMARY OF RECURRENT STAFF FUNDING RECOMMENDED**

Of the staff mentioned above, recurrent funding beyond the transition period is recommended for:

- Strategic human resources manager
- Senior communication coordinator
- Communications officer
- Two senior science policy officers
- Public health nutritionist (0.5 EFT)

The extent to which additional staff resources are required will be addressed in the relevant business cases.

The recommended staffing levels and time horizons are summarised in Table 2 below.

**Table 2 Recommended additional staff resources and time horizons.**

<b>Time Horizon of additional staff resources</b>			
<b>Resource</b>	<b>Transition Period (6 months)</b>	<b>1st Year</b>	<b>Subsequent</b>
<b>SHRM Team</b>			
Senior Officer 11/12	✓	✓	✓
Officer 9/10	✓	✓	X
<b>Communication Team</b>			
Senior Officer 11/12	✓	✓	✓
Officer 9/10	✓	✓	✓
Junior Officer 7/8	✓	✓	X
Junior Officer 7/8	✓	✓	X
<b>Consumer Information &amp; Education Development team</b>			
Senior Officer 11/12	✓	6 months	X
Officer 9/10	✓	6 months	X
<b>Public Health Nutrition</b>			
Senior Officer 11/12	✓	6 months @ 1.0EFT 6 months @ 0.5EFT	0.5EFT
<b>Science Policy</b>			
Senior Officer 11/12	✓	✓	✓
Senior Officer 11/12	✓	✓	✓

## **SUMMARY OF ADDITIONAL FUNDING RECOMMENDED**

Based on the above, the following estimates are provided for direct transition costs and costs of the recommended staff.

Table 3 Estimates for direct transition costs and costs for recommended staff.

<b>Summary - Additional Funding Recommended</b>				
<b>Expense Item</b>	<b>Time horizon</b>	<b>Transition Period (6 months)</b>	<b>1st Year</b>	<b>Subsequent</b>
Direct transition costs	One-off	980,000	0	0
Strategic Human Resources staff	One senior officer and one officer for first 18 months. Senior officer funded on a recurrent basis.	129,170	258,340	137,259
Communications staff	One senior officer, one officer and two junior officers for first 18 months. Senior officer and one officer funded on a recurrent basis.	239,178	478,355	258,340
Consumer Information and Education development team	12 Months	129,170	129,170	0
Public Health Nutritionist	Position decreased to 0.5 EFT after first 12 months	68,630	102,945	68,630
Science Policy	Recurrent	0	274,518	274,518
<b>Total</b>		<b>1,546,147</b>	<b>1,243,328</b>	<b>738,747</b>
<b>Total (first 18 Months)</b>			<b>2,789,475</b>	

