

SafeFood NSW

Kerin Funding Review

Final Report

July 2001

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12 July 2001

The Hon Richard Amery MLA
Minister for Agriculture and
Minister for Land and Water Conservation
Parliament House
SYDNEY NSW 2000

My dear Minister

I am grateful to have had the opportunity to address the issue of funding for SafeFood Production NSW (SafeFood). I have adhered to the Terms of Reference, as set by the Cabinet, and have been cognisant of the Government's current policy with respect to funding and the many other policy and practical issues essential to the efficient functioning of the agency. As a member of the Safe Food Production Advisory Committee, I am also aware of the many issues associated with SafeFood as it develops to become a valuable part of the Government's responsibility in the food safety area.

To my mind, the nub of the Review was about principles. While accepting that economic principles should be the starting point when considering the most sensible way to approach funding in our mixed economy, I still cannot emphasise too much that the paramount purpose of SafeFood is to give the public the maximum possible assurance that their food is safe.

It is not without point that the public will always hold the Government accountable, and legally accountable, if there are breakdowns in food safety. It is for this reason that I have debated the economic principles as argued by NSW Treasury, the consultant's report by Hassall and Associates Pty Ltd, and the Productivity Commission, and concluded that funding should be shared. I have done so because of a practical knowledge and experience of the real, day-to-day challenges faced by SafeFood, let alone the politics of policy formulation in the farm sector.

The cost sharing approach can be legitimately debated at the margin and some issues will purely involve a value judgement, apart from principles others may articulate. However, the recommendations to you represent my judgement of what is a principled approach and what will be achievable in enabling SafeFood to be the competent, professional, adaptive organisation that I understand the Government wants it to be.

As stated in the Report, I thank all those who helped so constructively in the formulation of my recommendations.

In view of SafeFood's current financial situation, quick resolution of the Government's position on the transitional funding recommendations, in particular, is urgently needed.

Yours faithfully

The Hon John Kerin, AM, BA, BFC, Hon PhD (UNE), Hon D Litt (UWS), FIAST.

Foreword

The world keeps changing and government keeps getting more complex.

When I grew up, the butcher, the baker and the greengrocer delivered to the door. We didn't have electric power, only ice chests and cool safes. Most food was cooked in the home and for the majority of households all food was cooked in the home – and not as quickly. Girls were taught domestic science (or cooking) at school and mothers made preserves, jams and pickles and devised means of safe food storage.

A woman's work was never done and few women worked in the paid workforce. Diets were limited (meat 2-3 meals a day – if you were lucky) and only the rich ate in restaurants, or they were visited on special occasions by the rest of us. No one had heard of “fast” food outlets though there were fish and chip shops as well as “Parthenon Cafes”.

That was 50-60 years ago – the good old days?

In today's Australian multicultural society, our eating choices are more diverse in content, ethnicity, surroundings and location. Product ranges are expanding. Food manufacturing and retailing is concentrating at the same time as fast food chains are expanding via franchise arrangements. While some consumers are experimenting more in food choice, a large proportion are spending less and less time on meal preparation in the home. Knowledge of food preparation and storage and its safe handling is probably lessening at the average household level. Never before have we had so much choice, yet known so little about what we are consuming.

Because of both diversity and the potential for error in food production, manufacture and handling can adversely affect more people. Thus the requirement for government regulation, and the setting of food safety policies and standards, has become more insistent. These policies and standards are being set nationally and internationally – food like people crosses borders at will. The implementation of these policies and standards falls on State and local governments domestically and on the national government with respect to exports and imports. As well as the task of implementation, State governments have the responsibility to set policies and standards to fit local and historical conditions.

Government, at both State and local level, has long been engaged in many aspects of managing and enforcing food safety standards. As more knowledge has been gained of pathogens and the misuse of chemicals on-farm, as our researchers have gained a better knowledge of microbiology, and as the concepts of “paddock to plate” and “clean and green” have developed, Australian governments have had to reassess their approach to food safety. As new national requirements have developed, and as its statutory marketing arrangements have crumbled (along with those in other States), the NSW Government has been in the forefront of adapting to the emerging challenge.

Previously, various marketing authorities had a dual role of market facilitation and quality provision as well as food safety provision at early stages in the food production chain. It was both sensible policy and a practical move to incorporate this expertise into Safe Food Production NSW (SafeFood). All food safety and quality assurance systems work best from the ground up. It is both sensible and practical for the Minister for Agriculture to be at the head of arrangements where primary producers are intimately involved and to have SafeFood in a quasi-autonomous role reporting directly to the Minister as an independent regulator.

The current arrangements for SafeFood hatched in 1997 are still under development and in transition. This Review primarily addresses the issue of the funding of SafeFood but touches on many other aspects of the challenges the organisation faces. Adequate funding is a very important issue but one should never lose sight of SafeFood's primary purpose - to do all that it can to guarantee safe food for the general public in this State and for our customers elsewhere.

Acknowledgements

This Review brings together contributions by many people and organisations. The Issues and Options Paper prepared by Hassall and Associates involved its authors in a rigorous examination of the issues. The authors also consulted and liaised with people in Safe Food Production NSW (SafeFood), the Agency Steering Committee, the Stakeholder Reference Group, and SafeFood's Advisory Committee. The paper proved to be essential in concentrating attention on those key issues the Review was to address.

While the Review's task was to draw together many disparate points of view and form clear recommendations, I am particularly grateful for the constructive manner in which submissions were provided by NSW Treasury, the combined industry group, and the Australian Consumers' Association. I am sure the consultant will join me in expressing particular thanks to Craig Sahlin, Samara Lever and Sian Malyn for their provision of all factual information requested.

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Part 2

Chapter 1	Issues and Options Paper for the Kerin Food Safety Funding Review (Prepared by: Hassall & Associates Pty Ltd, May 2001)
Chapter 2	SafeFood: Funding Principles (Prepared by: NSW Treasury, February 2001)
Chapter 3	Industry Submission to the Kerin Food Safety Funding Review (Prepared by: Dairy, Meat and Seafood Industry Stakeholders)
Chapter 4	Submission on the Kerin Food Safety Funding Review (Prepared by: Australian Consumers' Association, June 2001)

Executive Summary

In December 1998, the NSW Government established Safe Food Production NSW (SafeFood) as a major step toward the goal of a single NSW Food Safety Authority.

The Government intended that SafeFood would be fully funded by industry through licence fees, audit fees and levies. However, implementation of full cost recovery proved controversial, coming to a head with the introduction of new licence and audit fees for the dairy industry in late 2000 following its deregulation from 1 July that year.

In January 2001, the Premier approved the establishment of this Review to examine SafeFood's funding arrangements and related issues.

SafeFood's **paramount purpose** is to protect the public from foodborne disease by minimising food safety risks. It does this by developing, implementing and managing "Food Safety Schemes", tailored to specific industries and introduced by regulation.

The food safety environment is changing rapidly. To keep pace, food safety regulators have moved from a reactive, disease-triggered approach to preventative, whole-of-chain systems. Food safety practice has evolved from inspection (end-products and premises) to become a science-based exercise focussed on targeting and managing risk.

Food safety has also become a high-profile public health issue. The community expects Governments to act effectively. Mishandling of the BSE issue led to the resignation of the German Health and Agriculture Ministers in January this year and led the UK Government to establish a new Food Standards Agency directly accountable to Parliament. In June 1999, the Belgian Health and Agriculture Ministers resigned over their handling of dioxin contamination of chicken meat and eggs.

SafeFood implementation is complete or well underway in Dairy, Meat, Seafood, and Plant Products. SafeFood covers around 10,000 enterprises in the dairy and meat industries, and around 500 shellfish farmers. The draft Seafood Safety Scheme, to be introduced shortly, will cover an additional 2500 enterprises. SafeFood's recurrent budget is about \$10 million and it has around 80 staff.

The Review consultants developed a functional model to describe SafeFood's activities and aid consideration of the principles and issues relevant to funding.

They divided SafeFood's activities into three functional categories:

- **Policy and Standard Setting** (*around 16% of budget*)
- **Scheme Implementation and Compliance** (*around 47% of budget*)
- **Enforcement** (*around 6% of budget*)

To support delivery of these functions, there is a fourth category, including activities such as general and strategic management, corporate services, and servicing government requirements, described as **Overheads** (around 31% of budget).

The report makes 17 recommendations in the chapters dealing with Efficiency and Effectiveness, Principles for Funding Food Safety, Funding Options, and Transitional and Service Delivery Issues.

Efficiency and Effectiveness

During its short life, SafeFood has seen constant change, restructure, downsizing, regulatory harmonisation, and physical relocation. While SafeFood has achieved a lot, considerable work lies ahead to develop a uniform approach, “break down the silos”, and reduce costs.

Efficiency and effectiveness are hard to measure definitively due to SafeFood’s short life, new challenges and industries, and the nature of food safety assurance. The Review consultants found “a lack of any indications of significant inefficiencies”. Given this, and the fact that SafeFood is still developing, “first principles” evaluation of the efficiency and effectiveness of each operating unit is not a priority.

The consultants observed that expenditure on **Overhead** activities appears high, but is consistent with an agency engineering and bedding down structural change. SafeFood has reduced costs wherever possible. Nonetheless, an external assessment could identify further opportunities and would be useful from the perspective of SafeFood’s industry stakeholders. [see Recommendation 1]

Principles for Funding Food Safety

Economic principles are not the only principles to take into account with respect to food safety. Further, those applied depend on which ones are selected. Economic principles may be valid in the abstract. However, for many reasons outlined – particularly in terms of equity, complexity and practicality – a secure revenue base for SafeFood will require a combined industry and government income stream if it is to be workable. This will be needed on a continuing basis beyond transitional funding requirements. Efficiency in the ongoing activities of SafeFood will require attention to issues such as incentives, costs, equity and cross-subsidisation, taking into account economic principles. [see Recommendation 2]

Funding Options

The Productivity Commission’s April 2001 draft report provides the basis to develop a framework for shared funding by considering the nature of SafeFood’s activities, their purpose, and the flow of benefits. This approach involves certain cost categories being funded by government, other costs being funded by industry, and overhead costs being shared. [see Recommendation 3]

Funding by Government

The Review considers that government funding may be appropriate where:

1. The activities are undertaken for government;
2. Independence of the regulator is a paramount concern;
3. The activity is necessary to prevent information failure; and/or
4. Positive externalities or public goods are evident and the benefits extend to the wider community.

SafeFood's **Policy and Standard Setting** work provides the framework for the regulatory regime. While consultation with industry and other stakeholders is important, SafeFood must remain at "arms length" from industry – and be perceived as independent – as it undertakes these activities.

For **Enforcement**, the "polluter pays" principle would support recovery of costs from offending enterprises, but the only mechanism to do so is via fines and court costs, which are mostly paid to Consolidated Revenue. Further, funding decisions on the level of enforcement should be made by government, and not be subject to the inevitable pressures from industry under transparent funding arrangements.

The Review also recommends that **Consumer Information and Education** activities, as distinct from industry or product promotion, should be government funded. Government should determine what is required, which agency should undertake the work, and fund it accordingly. *[see Recommendation 4]*

The Review also adopted the Productivity Commission's view that **Government requirements** such as Ministerial and Parliamentary briefings, and reporting on government indicators, should be funded by government.

SafeFood's **Emergency Management Plan** needs to be independent from industry and should not be subject to industry scrutiny. The cost of EMP development and maintenance, as well as a contingency fund, should be funded by government.

SafeFood's **Strategic Planning and Change Management** activities are largely directed to the implementation of government policy, including national strategies, and should be government funded.

Corporate Communications is largely about Government being seen to be "on the job" and Government should pay for it. *[see Recommendation 5]*

Funding by Industry

Within NSW, funding arrangements for equivalent food safety activities differ depending upon the portfolio and agency involved. Cost recovery principles should be

applied to food safety regulation in a consistent way across government, particularly where different agencies undertake equivalent activities. This view was supported by the Productivity Commission. *[see Recommendation 6]*

In effect, the consultants considered that all activities in the **Scheme Implementation and Compliance** category (except **Consumer Information and Education**, dealt with above) should be funded by industry.

The Review agrees with their rationale, but considers that funding arrangements for **Compliance Audit, Inspection, and Stakeholder Consultation** should be determined as part of the section 73 review. *[see Recommendation 7]*

Joint Funding

Overhead activities are essential supports to SafeFood's core activities. In the absence of special considerations such as those which led to Recommendation 5, overhead costs should be jointly shared in proportion to the funding of the core activities. *[see Recommendation 8]*

Charging Mechanisms

The structure of fees and levies used by SafeFood to recover its costs from industry lack consistency between industries and reflect both pragmatism and inherited funding structures. It can also be criticized for deficiencies in relation to equity and efficiency.

In practice, the charging mechanism cannot be considered in isolation from the quantum of funds to be raised. Industry stated that it will accept commercially benchmarked charges for services such as audit, plus a "sensible" licence fee. The difficulty for SafeFood is that (assuming service fees meet the costs of those services) its licence fees (or levies) must meet the cost of all other activities it is required to fund.

Recommendations 7 and 8, if implemented, would require industry to meet around 27% of SafeFood's budget, or around \$2.6 million per annum. It seems feasible that a "sensible" licence fee structure could generate sufficient revenue. However, Recommendation 10 leaves a further 26.5% unresolved, most of which relates to audit and inspection services which might be funded by additional fees-for-service.

In any event, licence fees should be scaled to take account of both business risk and business performance. *[see Recommendation 9]*

The Section 73 Review

The SafeFood legislation requires a review beginning as soon as possible after 18 December this year, with its report to be tabled no later than 18 December 2002. A possible outcome of the review is that SafeFood's remit would be extended to include the retail and food service sectors now covered by NSW Health.

Both the Australian Consumers' Association and the Industry Stakeholders expressed great concern that the present review should not pre-empt the section 73 review.

Retail and food service sectors in NSW consist of approximately 30,000 businesses. If SafeFood's remit were extended to cover retail and food service sectors, audit and inspection arrangements will be a major consideration. This will relate both to funding and to service delivery options (including the third-party audit option).

Given the strong and divergent views expressed about these issues, the Review considers that current funding via fees-for-service should continue pending the section 73 review and refrains from recommending how those activities might be funded under a future SafeFood. *[see Recommendation 10]*

Transitional and Service Delivery Issues

Funding

Transitional funding is clearly needed. The consultants' projections presented in the Issues and Options Paper show that without additional funding **either**:

- dairy and meat charges must increase by between 45% and 70% over the next two years, and the charges in the draft Seafood Safety Scheme must be fully implemented; **or**
- SafeFood's recurrent expenditure must be cut by around 35% (\$3-4 million per annum).

Expenditure cuts of this magnitude cannot be made without seriously compromising SafeFood's capacity to protect public health and safety. Staff salaries and salary on-costs make up nearly 60% of expenditure. Substantial retrenchment of staff would be needed to save 35% of budget. The loss of expertise, experience and corporate knowledge would have serious long-term consequences for SafeFood, in addition to the immediate increase in food safety risks. The Government's substantial investment in the SafeFood initiative could well be wasted.

The shared funding option developed by the consultants, based on the Productivity Commission's draft report, provides an appropriate basis for funding of around \$3.5 million during the transitional period. *[see Recommendation 11]*

If this funding is provided, SafeFood will still need to raise \$6.4 million from industry in 2001/02. Allocation of these costs within the respective supply chains will raise issues of fairness, efficiency, market power, affordability and interstate competitiveness.

It will take time to develop a consistent cost recovery framework reflecting the appropriate principles. SafeFood will need to consult **across** industries as well as through its industry-specific consultation bodies. *[see Recommendation 12]*

There appears to be a strong case to reconsider the funding provided for transition of the former Meat Industry Authority to SafeFood. Government funding of transition costs reasonably linked to the Government's initiative to integrate NSW food safety arrangements would help repair SafeFood's difficult relations with the meat industry and improve the food safety focus.

The transitional funding issue also provides an opportunity for the Government to divest SafeFood of responsibility for the National Livestock Reporting Service under orderly arrangements without threatening the viability of SafeFood's core business. *[see Recommendation 13]*

SafeFood urgently needs additional resources for enforcement activities across the dairy, meat, and shellfish industries. In December 2000, SafeFood's statutory Advisory Committee unanimously carried a detailed resolution for consideration by the Minister confirming its view that there are serious health concerns apparent in these sectors which should be addressed by an appropriate enforcement program.

SafeFood has developed a proposal for an Enforcement Unit, with a budget of \$250-300,000 p.a., to undertake:

- immediate and rapid response to food safety incidents or potential threats;
- effective response to information suggesting unlicensed premises;
- a range of surveillance and spot check or inspection activities; and
- preparation of potential prosecution cases.

The Review notes that, until July 1999, the Government funded enforcement by NSW Health of the shellfish depuration requirement **alone** at a cost equivalent to around 50% of that required for the proposed Enforcement Unit.

Further, in 1999 the Queensland Government funded the establishment of a Meat Safety Enforcement Unit with 5 staff and a budget of around \$600,000 within the self-funding Queensland Meat and Livestock Authority. *[see Recommendation 14]*

Service Delivery

The main issue is whether SafeFood's current second-party audit arrangements should become contestable. The debate boils down to two key issues: regulatory effectiveness and economic efficiency i.e. cost.

The paramount consideration in any move away from the current arrangements must be the Government's ultimate accountability to ensure the safety of food. Effective supervision of a third-party system will require SafeFood to have a detailed and practical knowledge of the risks and hazards in the relevant industry.

The recent regulatory failures involving HIH Insurance and Ansett demonstrate failures of both second and third party auditing. If, as has been suggested in other areas, it is essential to legislate for third-party auditors to report breaches to government, one may

as well stay with second-party auditing where there is both independence and teeth. *[see Recommendation 15]*

On the cost issue, SafeFood maintains that if it does not have to carry “Government” costs, it can deliver audit services at comparable cost to those competitors. It is prepared to benchmark its audit charges provided that all relevant cost factors are taken into account. These factors may include, for example, the cost of delivery to rural and regional areas. *[see Recommendation 16]*

The benchmarking process should be transparent and industry should be involved in developing an appropriate methodology. *[see Recommendation 17]*

List of Recommendations

Recommendation 1

A credible external review of SafeFood's Overhead activities and associated business practices, for example a Program Review by the Council on the Cost and Quality of Government, should be conducted to identify opportunities to limit or reduce the cost of these activities.

Recommendation 2

Principles that may apply to the funding of SafeFood should range beyond the strictly economic and take into account equity, practicality, and an assessment of the structure of the industries being regulated. Above all else, no principle of funding should imperil the policy objectives or scientific integrity of SafeFood.

Recommendation 3

SafeFood should be funded on a shared basis by Government and industry, and the contribution by each should be determined with reference to the specific activities which require funding.

Recommendation 4

The following core activities of SafeFood should be funded by Government:

- Policy and Standard Setting;
- Enforcement; and
- Consumer Information and Education.

Recommendation 5

The following Overhead activities of SafeFood should be funded by Government:

- Government Requirements;
- Emergency Management Plan;
- Strategic Planning and Change Management; and
- Corporate Communications.

Recommendation 6

Industry should not be required to pay for SafeFood activities where equivalent food regulatory activities undertaken by other Government agencies are funded by Government.

Recommendation 7

The following core activities of SafeFood should be funded by industry:

- Certification;
- Environmental Monitoring (routine operational only);
- System Testing;
- Licensing; and
- Industry Advice and Training.

Recommendation 8

The following Overhead activities of SafeFood should be jointly funded by Government and industry:

- General Management;
- Corporate Services; and
- Staff Training (both Professional Development and Operational Training and Accreditation).

Recommendation 9

Businesses regulated by SafeFood should pay licence fees set on a sliding scale based on:

- total cost of activities to be funded by industry;
- risk classification of the business having regard to type of food handled, business activity, and size of business; and
- Food Safety Scheme compliance assessed by audit and inspection outcomes.

Recommendation 10

The appropriate funding mechanism for the following activities should be determined as part of the review required by section 73 of the Food Production (Safety) Act 1998:

- Compliance Audit
- Inspection; and
- Stakeholder Consultation.

Recommendation 11

The Government should provide transitional funding equivalent to 30% of SafeFood's budget (approximately \$3.5 million per annum), consistent with the shared funding option presented in the Issues and Options Paper, until completion of the review required by section 73 of the Food Production (Safety) Act 1998.

Recommendation 12

During the transitional period, negotiation should proceed between SafeFood and the industries it regulates to ensure that the cost recovery regime is efficient, equitable and transparent. The "combined industries" framework which evolved during the present review should be utilised to the extent possible to maximise consistency and transparency.

Recommendation 13

SafeFood and Treasury should review the transitional costs associated with incorporation of the former Meat Industry Authority into SafeFood and identify the supplementation required to address that component of the Meat Branch deficit. The transitional funding should be linked to, and facilitate, arrangements to divest SafeFood of responsibility for the NLRs.

Recommendation 14

The Government should provide additional funding for a special Enforcement Unit comprising two to three senior “authorised officers”, pending assessment of the continuing need for the unit as part of the section 73 Review.

Recommendation 15

SafeFood should remain the food safety auditing body for the purposes of its current charter at least and until the organisation can build on its existing level of expertise and be able to comprehensively assess the risks and hazards across all industries under its charge.

Recommendation 16

SafeFood’s audit charges should be benchmarked against those of commercial service providers, having regard to all relevant cost factors including those associated with rural and regional service delivery.

Recommendation 17

SafeFood should establish a working group with representatives from the industry sectors audited by SafeFood to develop an agreed benchmarking methodology.

Terms of Reference and Background

When Safe Food Production NSW (SafeFood) was established in late 1998, the Government intended that it would become fully funded by industry through licence fees, audit fees and levies. However, implementation of full cost recovery proved controversial, coming to a head with the introduction in late 2000 of new licence and audit fees for the dairy industry following its deregulation from 1 July that year.

In January 2001, the Premier approved a proposal for a review to be conducted by me in accordance with the following terms of reference:

The Review shall identify:

- *the key activities which SafeFood should undertake to carry out its statutory functions, the service delivery options, and the resources required;*
- *the principles which may apply to the funding of those activities; and*
- *options, consistent with those principles, which will provide a secure and stable revenue base for SafeFood.*

Without limiting its scope, the Review shall consider:

- *the efficiency and effectiveness of SafeFood's current expenditure;*
- *whether additional funding is required to enable adequate enforcement of food safety requirements in the industry sectors currently regulated by SafeFood;*
- *approaches to the funding of food safety or comparable regulation in other jurisdictions within Australia and overseas; and*
- *any transitional service delivery and funding issues.*

The Review will provide a report with its recommendations by a date to be agreed with the Reviewer.

The Premier also required that:

- expert consultants be engaged to provide technical assistance and prepare an Issues and Options Paper covering the ambit of the review;
- an Agency Steering Committee, comprising senior officers from The Cabinet Office, NSW Treasury and SafeFood, be appointed to provide guidance throughout the review; and
- the review be conducted in consultation with a Stakeholder Reference Group comprising:
 - one representative each from the dairy, meat and seafood industries;
 - two members from the SafeFood Production Advisory Committee reflecting both expertise in consumer issues and high-level food science expertise; and
 - a nominee of the Australian Consumers' Association.

With the agreement of the Steering Committee, consultants Hassall & Associates were appointed in February. The Hassall team prepared a comprehensive Issues and Options Paper in close consultation with the Steering Committee, the Reference Group and myself.

Appendix 3 lists the members of the Steering Committee, the Reference Group, the Hassall team, and the dates and attendees of formal and informal meetings and workshops.

Three formal submissions were provided to the Review by NSW Treasury, the Industry Stakeholders, and the Australian Consumers' Association. These submissions, together with the Issues and Options Paper, form Part 2 of this report.

1 SafeFood: Origins and Overview

In 1997, the NSW Government established a Food Safety Taskforce “to review the current arrangements for food safety in NSW and advise on the feasibility of streamlining responsibility for all food safety regulation under a single authority”. I chaired that Taskforce, which included representatives of relevant government agencies and also Dr Gavin Frost as expert adviser on public health issues.

It was apparent that the Government was concerned that the existing fragmented system for food safety regulation (a feature common to other States and also the national framework) might prove inadequate in the face of increasing risks and rates of foodborne illness. Global trends and a number of serious domestic food safety incidents would have helped to confirm the Government’s concern.

The Taskforce recommended, in October 1997, that a NSW Food Safety Authority be established in stages over 6 years. In essence, the Government accepted the recommendation and in December 1998 established Safe Food Production NSW (SafeFood) as a major step toward that goal.

A detailed description of SafeFood’s functions, coverage, and key activities is provided in Chapter 3. The Minister in his Second Reading Speech on the Food Production (Safety) Bill 1998 provided a useful overview of the Government’s intention in establishing SafeFood. He said in part:

With the introduction of these bills, New South Wales takes a major step towards paddock-to-plate implementation of industry-based preventative programs to minimise food safety risks. The Australia New Zealand Food Authority recently estimated the annual cost of foodborne illness to government, industry, and consumers to be \$2.1 billion...

[SafeFood’s programs] will be based on scientific assessment of food safety risks and will be tailored to minimise those risks and comply with the requirements of national standards...

The Government and food industries recognise that consumer confidence in the SafeFood body will require proper separation of industry and government responsibilities. The major role of SafeFood will be to ensure that industry establishes the preventative programs required by national standards, and that these are properly audited so that they continue to provide the highest level of consumer protection...

The Minister also foreshadowed the Government’s intention that the NSW Dairy Corporation, the NSW Meat Industry Authority, and the NSW Shellfish Quality Assurance Program would be wound up as separate entities and become part of SafeFood. Risk-based food safety regimes, to be called Food Safety Schemes, would be developed for “gap areas”, including the seafood and horticulture industries.

The key milestones to date in implementation of this agenda have been:

July 1999	SafeFood's regulatory powers and functions commence Dairy Corporation staff, assets and functions transferred to SafeFood Dairy Food Safety Scheme introduced
August 1999	NSW Shellfish Quality Assurance Program transferred to SafeFood
August 2000	Meat Industry Authority staff, assets and functions transferred to SafeFood Meat Food Safety Scheme introduced
September 2000	SafeFood and former MIA corporate services integrated and all Sydney staff co-located
November 2000	Plant Products Risk Assessment completed
June 2001	Draft Seafood Safety Scheme and RIS released for public consultation Plant Products Food Safety Scheme development begins

In summary, SafeFood implementation is complete or well underway in each of the four commodity areas it was intended to cover: Dairy, Meat, Seafood, and Plant Products. The focus is beginning to shift to the next stage in the Government's agenda. In his 1998 speech the Minister concluded by stating:

The Government also commits to the long-term goal of establishing a comprehensive Food Safety Authority as recommended by Kerin and by the [Commonwealth] Blair Review. For this reason, clause 72 of the Bill [now section 73 of the Act] requires a ministerial review of the initiative after three years. The report of this review is to be tabled in Parliament within 12 months and must consider whether and how New South Wales should at that stage move to a single food safety authority.

The section 73 review must commence as soon as possible after 18 December this year, with its report to be tabled no later than 18 December 2002.

2 The Changing Face of Food Safety

The food safety environment in which SafeFood operates is changing rapidly. This chapter provides background to some of the key issues for SafeFood and the Government generally in seeking to develop an effective regulatory approach.

Changing Nature of the Food Chain

Globalisation and technological advances have increased 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.

To keep pace with these changes, food safety regulators have been forced to move from a reactive, disease-triggered approach to a preventative, 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 has been recognised.

SafeFood was established for this very reason. At federal level, COAG's November 2000 decision to establish a new food regulatory framework for Australia is a similar move towards an integrated policy approach. All State, Territory and Federal Ministers responsible for food are represented on the new Australia New Zealand Food Regulation Ministerial Council and this broad representation is mirrored on the Food Regulation Standing Committee and subordinate bodies.

Food safety has also become a high-profile public health issue accompanied by community expectations that Governments will act effectively. Mishandling of the BSE issue led to the resignation of the German Health and Agriculture Ministers in January this year and led the UK Government to establish a new Food Standards Agency directly accountable to Parliament. In June 1999, the Belgian Health and Agriculture Ministers resigned over their handling of dioxin contamination of chicken meat and eggs.

The line between perception and reality blurs as scientific knowledge increases, food production methods change, and consumers try to keep up. Food safety is a moving feast. As more becomes known, 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 Policy and Practice Based on Sound Science

Food safety practice has evolved from inspection (end-products and premises) to become a science-based exercise focussed on targeting and managing risk.

The Codex Alimentarius Commission of the United Nations encourages and promotes the two key tools of Risk Analysis and Hazard Analysis Critical Control Point (HACCP). As explained in more detail in the next chapter, Risk Analysis involves three inter-related processes known as Risk Assessment, Risk Management, and Risk Communication. It is a powerful tool which enables regulators and industry to assess food safety risks comprehensively and develop effective and practical 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 QA 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 system is audited and reviewed 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 systems¹.

Government involvement in Risk Analysis and development of the HACCP framework is a classic case of addressing market failure. For example, the Productivity Commission's Draft Report on Cost Recovery² recognises the need for governments to resource information collection when market failure would lead to insufficient information (usually highly technical) being available for business, investors, or consumers to make informed decisions.

Move to a Co-Regulatory Approach

The use of Risk Analysis and HACCP systems has resulted in a re-allocation of responsibility for food safety. Individual food businesses can now take operational responsibility for food safety through HACCP-based food safety programs, supported

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

² Productivity Commission, 2001 Draft Report on Cost Recovery Cwth of Australia:

by Good Manufacturing Practice (GMP), Good Handling Practice (GHP), and end-product testing where appropriate.

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.³

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 their submission to the Review.

Food Safety Audit

Under the HACCP system, the primary mechanism for Governments to ensure that individual operators are complying with regulation is by audit. Audits can either be carried out by the Government regulator (second-party), or by private sector auditors (third-party) as in the financial sector. The public health function served by food safety audit must be factored into any consideration of these alternatives. Third-party systems may be highly risky where potential conflicts of interest arise from the commercial relationship between auditor and auditee and there may be pressure to drop standards to the lowest common denominator.

³ 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 approach to food safety audit varies around the world. The USA, European Union and Canada primarily use second-party audit by Government. New Zealand and some States in Australia (e.g. Victoria) have adopted third-party approaches and are now considering measures to ensure and verify the effectiveness of the system. Interestingly, both the New Zealand and Victorian Governments have recently increased government involvement in the audit role, with the latter amending its Food Act for that purpose.

It should be borne in mind that governments and the relevant Ministers are ultimately held responsible for food safety, as illustrated by the UK, German and Belgian examples cited earlier. Therefore it is essential that governments have faith in, and control of, food safety audit arrangements. The USFDA paper cited earlier observed that:

The public is demanding a continuing strong government presence to verify that all the requirements related to food safety and other consumer protections are met. The question is not about whether a government presence is needed, but about the nature of that presence. Any changes must be vetted with the public to maintain confidence that we are carrying out our regulatory responsibility. Any new system must maintain and strengthen that confidence. Continuing strong government presence is important not only domestically, but also internationally. Consumers world wide must have confidence that the products they eat are produced under a domestic or foreign system with integrity. A strong government presence ensures that integrity.

3 SafeFood: Functions, Key Activities and Resources

It is clear from SafeFood's legislation, and the Minister's Second Reading Speech when introducing the Bill to Parliament, that SafeFood's **paramount purpose** is to protect the public from foodborne disease by minimising food safety risks. SafeFood has developed a Mission Statement which reflects both this purpose and its approach to the task:

Protecting consumers by developing scientifically robust food safety systems and ensuring their effective adoption by the NSW food industry

This Chapter outlines SafeFood's statutory functions, provides a descriptive model of its activities, outlines its current structure, and shows how its budget is spent.

Statutory Functions and Coverage

Under the Food Production (Safety) Act 1998, SafeFood's main functions are:

- a) to keep under review the construction, hygiene and operating procedures of premises, vehicles and equipment used for the handling of primary produce and seafood,
- b) to provide advice or recommendations to the Minister on the establishment, development or alteration of food safety schemes,
- c) to regulate the handling of primary produce and seafood the subject of food safety schemes to ensure that it is safe for human consumption,
- d) to encourage businesses engaged in the handling of primary produce or seafood to minimise food safety risks,
- e) to carry out such research as is necessary in order to perform the functions referred to in paragraphs (a)-(d).

SafeFood's coverage extends from production, harvest or catch to the back door of the retail shop. SafeFood also covers retail businesses where raw meat is further processed, such as butcher shops and supermarket meat departments.

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 risk analysis and tailored to a specific industry or industries. SafeFood has already implemented Food Safety Schemes in the dairy and meat industries. SafeFood also administers the NSW Shellfish Quality Assurance Program pending its integration into the Seafood Safety Scheme. The draft regulation and RIS were released for public consultation in June 2001.

A Food Safety Scheme is also being developed for the sheep and goat milk industries, with implementation expected during 2002.

A risk assessment covering "Plant Products" (fruit and vegetables, cereals and pulses, nuts and sprouts etc) has been completed. The study identified products and/or processes which should be a priority for inclusion in a Food Safety Scheme for plant products. Scheme development work will shortly commence.

SafeFood is also responsible for several non food safety functions, principally those undertaken by the former Meat Industry Authority under the Meat Industry Act 1978. These are:

- the National Livestock Reporting Service (NLRS);
- licensing of saleyards; and
- lamb branding.

Saleyard licensing and lamb branding responsibilities will terminate on 1 August 2003. The question of long term responsibility for the NLRS will presumably be referred to the statutory review of the SafeFood initiative scheduled to commence in December 2001.

Functional Model of SafeFood's Activities

The consultants developed a functional model to describe SafeFood's activities and assist consideration of the principles and issues relevant to funding.

SafeFood's food safety activities were divided into three functional categories:

- Policy and Standard Setting
- Scheme Implementation and Compliance
- Enforcement

To oversight and support the delivery of these functions, there is a fourth category of activities, such as general and strategic management, corporate services, and servicing government requirements, which may be appropriately described as "Overheads".

The model is summarised in table 3.1 overleaf. A summary of the detailed description in the Issues and Options Paper of each activity follows:

Table 3.1 Functional Model of SafeFood’s Activities

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

Policy and Standard Setting

Risk Analysis

Risk Analysis is the methodology used by SafeFood for developing and reviewing Food Safety Schemes, including industry-specific food safety requirements. SafeFood applies the methodology in accordance with the standards set by the Codex Alimentarius Commission - the international intergovernmental body that develops food safety and commodity standards to facilitate trade and promote consumer safety.

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. This helps ensure the best targeting of the food safety dollar. Risk Communication is about ensuring maximum awareness, understanding, and interaction among all the food safety “players”.

While each component is undertaken separately, the process is iterative rather than strictly sequential.

To date SafeFood has only undertaken comprehensive Risk Analysis of seafood production and sale to the back door of retail outlets. The scientific risk assessment was undertaken by independent scientists from the University of Tasmania, whose work was “peer reviewed” by Food Science Australia (FSA).

The Risk Management phase was undertaken with the involvement of five industry based sector working groups which were formed with the specific objective of recommending methods for mitigating food safety hazards. The detailed risk management report which provided the basis to develop the Seafood Safety Scheme and the supporting Seafood Safety Manual was also reviewed by FSA.

The entire process was supervised by a specially convened Seafood Reference Group, the membership of which was drawn from SafeFood, NSW Fisheries, NSW Health, Australia New Zealand Food Authority (ANZFA), AQIS and representatives of the industry and consumers. Risk Communication was secured via the Reference Group, the sector working groups, and publications such as SafeFood's newsletter SafeFoodNews.

The Dairy and Meat Food Safety Schemes are substantially the same as the food safety regimes enforced by the predecessor organisations - the NSW Dairy Corporation and the NSW Meat Industry Authority (MIA). During the previous five years, both of these agencies completed 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 only assumed responsibility for meat safety on 4 August 2000. For both industries there is a virtually continuous shift in emphasis and deployment of resources as risks are reviewed and assessed to change. However the changes and revisions since incorporation into SafeFood have been largely operational rather than strategic. Management acknowledges that a back-to-basics Risk Analysis should be undertaken for both meat and dairy products, and funds were earmarked for the Dairy Risk Analysis to commence in May 2001.

In addition, Risk Analysis is underway for Goat and Sheep Milk and for Plant Products.

Formulation and Review of Standards

Both Commonwealth and State Governments regulate Australian food production and sale.

Following decisions at the November 2000 meeting of the Council of Australian Governments (COAG), all national food standards will be set by ANZFA, soon to be renamed FSANZ - Food Standards Australia and New Zealand, subject to approval by the Commonwealth Parliament. A new Food Regulation Ministerial Council includes all Ministers with a role in food safety. NSW is represented by both the Health and Agriculture Ministers and SafeFood, NSW Health and NSW Agriculture are each represented on the Food Regulation Standing Committee.

National standards set the frameworks under which foods are prepared and offered for sale. State governments are responsible for the detailed implementation of, and compliance with, standards. For the sectors covered by SafeFood, these standards are or will be set out in the Food Safety Schemes. The tasks undertaken by SafeFood within this category include all work required to prepare and enact (or amend) Food Safety Scheme regulations, codes of practice and relevant legislation.

Both national and State standards are subject to continuous monitoring and review. This is necessary because the food industry and the environment in which foods are produced are dynamic. Change is constant. Surveillance and monitoring facilitates measurement of the impact of the changes and the standards and regulations are refined as appropriate.

Formulation and Review of Policy

Policy is the analysis and judgments on all the issues relevant to the introduction and ongoing operation of food safety schemes. These include:

- design of licensing systems, cost recovery regimes, structures for stakeholder consultation, and operational policy including procedure manuals;
- SafeFood's participation in policy development under the new national framework established by COAG; and
- SafeFood's input into NSW policy processes relevant to SafeFood's functions including proposals before NSW Cabinet and drafting of the NSW Food Act;
- benchmarking studies of activities of like organisations in other States and countries.

Inter-Agency Co-ordination/Harmonisation

Responsibility for the delivery of safe and hygienic food to consumers is shared among a number of agencies. In NSW, the principal agencies other than SafeFood are the Departments of Health, Agriculture, Fisheries and Local Government, and the Environment Protection Authority as well as local government councils. Nationally, the principal agencies include ANZFA, Agriculture Fisheries and Forestry Australia – AFFA (including the Australian Quarantine and Inspection Service – AQIS).

Considerable management and staff time is devoted to ensuring workable boundaries with these agencies, clear understanding of respective roles and responsibilities, and consistent approaches. Examples include the development of Memoranda of Understanding (MOUs) among SafeFood, NSW Health and local government councils.

Surveillance and Research

Surveillance activities cover both routine and targeted monitoring of food safety risks and emerging issues. These include:

- sampling and testing activities beyond those built into specific food safety programs and undertaken by individual enterprises and plants. An example of such testing would be the work currently being undertaken on fermented small goods; and
- scanning Australian and international sources for information (including research summaries) on food safety trends and emerging issues.

Surveillance may lead to the initiation of research (including Risk Analysis review) to confirm or rule out particular inferences. Such research may be undertaken or commissioned by SafeFood.

Consultation on Policy and Standards

The Food Production (Safety) Act 1998 specifically requires SafeFood to consult with the relevant industries while developing or amending food safety schemes. In practice SafeFood consults with relevant industries and consumer representatives on most matters related to policy and standards.

SafeFood Production Advisory Committee

The Act requires the establishment of this Committee to provide expert advice to SafeFood and the Minister "on any matter relating to the food safety functions of SafeFood". This involves management in a detailed consultation process with the Committee on virtually all aspects of SafeFood's programs and on policy issues.

Scheme Implementation and Compliance

Certification

Food Safety Schemes generally require most enterprises covered by the Scheme to implement an individual food safety program based on HACCP principles. The initial activity is for each enterprise to secure certification (ie approval) of its food safety program. This involves the following work by SafeFood:

- explanation of the Scheme requirements to the relevant enterprises;
- assessing applications for registration (licensing) and certification of the food safety programs;
- certification of each enterprise's program, involving a desk audit and the first field audit, and subsequent follow up if required.

The aim of the certification process is to ensure that all hazards in an operation have been identified and that suitable controls are in place.

Compliance Audit

This is the ongoing program of audits to confirm that each enterprise is managing its operations in accord with its approved food safety program. Such audits may be pre-arranged or unannounced. The frequency of audit varies across different Food Safety Schemes and across different sectors within a Scheme. The general principle is that audit

frequency should relate to risk, taking into account factors including inherent product risk and enterprise performance.

The Dairy and Meat Food Safety Schemes cover around 10,000 enterprises or sites and the Seafood Safety Scheme will cover an additional 3000.

Environmental Monitoring

An integral element of the NSW Shellfish Quality Assurance Program (NSW SQAP) 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.

System Testing

The adequacy and appropriateness of the food safety programs in individual enterprises require ongoing monitoring. This is undertaken through:

- additional audits and inspections outside the usual compliance audit schedule;
- review of individual programs by a senior auditor to determine adequacy and appropriateness in the current circumstances of the enterprise; and
- laboratory analysis of samples of products and ingredients routinely collected as part of the compliance audits.

The NSW SQAP also assesses environmental data over time to identify trends and amend environmental sampling protocols as required.

Inspection of Vehicles, Vessels, Premises, and Product

HACCP-based food safety programs are not always necessary for vehicles, vessels, and some premises (primarily storage only). In these cases, inspection arrangements are prescribed and implemented to determine whether standards are being met. These activities include remediation requirements and follow up inspections.

Licensing

This includes all administrative action and decision making connected with licensing of enterprises, other than the audit, inspection, and incident response activities.

Industry Advice and Training

Just as food safety schemes require considerable advanced thought and planning so also does their application. In particular there is an emerging need for education and training. Activities under this heading therefore include:

- training provided to industry sectors as part of food safety scheme implementation for specific food safety issues;
- guidelines, manuals and other materials to assist industry and to set specific food safety requirements; and

- on site advisory work or trouble shooting.

Operational Training and Accreditation

SafeFood staff need to be technically competent and able to debate and lead industry participants. This requires regular training and skill development. SafeFood has commenced a program to have all SafeFood auditors accredited by the Quality Society of Australasia (QSA) and also operates a trainee program.

Consultation on Implementation

The Act requires SafeFood to consult with the relevant industries on the operation of Food Safety Schemes. This includes the maintenance of forums such as the Dairy Industry Conference, the Meat Industry Consultative Council, the Shellfish Quality Assurance Committee and the proposed Seafood Industry Conference. This consultation is fundamental to securing industry acceptance of and participation in food safety schemes.

Consumer Information/Education

While not specifically mandated by the Act as a SafeFood function, an important factor in SafeFood's success is its ability to communicate to the general public the risk inherent in unsafe foods at all times, and risks in the consumption of specific foods which may occur from time to time. Specific activities include:

- providing general advice or information in response to consumer inquiries;
- risk communication, especially where consumer knowledge is the only way to control a risk; e.g. Ciguatera poisoning, mercury poisoning; and
- food safety education which targets consumers.

Enforcement

Incident Response

These activities include the response to complaints, information, or food safety incidents. Activities may include investigations, plant inspections, supervision of remediation or pathogen clearance programs, and follow up.

Product Recall

Routine inspections or responses to complaints can lead to the imposition of product recall by a specific enterprise. This may be routine under SafeFood's own food safety scheme requirements or a category-wide recall initiated by NSW Health through the ANZFA protocol.

Prosecutions

This activity covers the additional administrative, investigative and/or other work required once the decision to prosecute is made. It also covers the cost of engaging legal counsel.

Consultation on Enforcement

This activity covers consultation with industry and other stakeholders on enforcement policy, processes and requirements.

Overheads

As the name implies, the activities under this heading include all the tasks that have to be performed in order to ensure SafeFood is able to fulfil its purpose and functions.

General management

All aspects of SafeFood's central management and high level management of individual branches. includes:

- CEO's activities;
- operation of Executive (all staff reporting directly to CEO);
- Executive Directors – Operational Branches; and
- Director Corporate Services.

Strategic Planning and Change Management

Includes all activities to:

- develop and manage strategic planning process;
- develop strategic projects;
- forward plan;
- develop systems to implement strategic and government objectives; and
- manage change (both internal and industry issues)

Corporate Services

As defined by the Council on the Cost and Quality of Government, this activity includes the following services provided to all branches and staff of SafeFood:

- human resource management;
- financial management;
- general administration;
- property management; and
- IT and telecommunications.

Corporate Communications

Includes all communication activities which build or support SafeFood's role and function among its stakeholders. For example, publications in scientific journals, conference presentations, general SafeFood publications, such as SafeFoodNews, responding to media enquires and liaising with media.

Professional Development

This activity includes all staff training and professional development expenditure not already covered by Operational Training and Accreditation (under Scheme Implementation and Compliance above).

Government Requirements

Activities specifically required because of SafeFood's status as a government agency; i.e. activities that would not be required in the private sector. For example:

- Ministerial and Parliamentary questions, briefings;
- Reporting on government indicators, equal employment opportunity, energy management plans;
- Freedom of Information; and
- Annual report.

Emergency Management Plan

Includes all activities involved in developing and maintaining SafeFood's Emergency Management Plan, such as:

- preparing the plan;
- gaining stakeholder (industry, other government agencies) input to and understanding of plan;
- drills;
- review and update of the plan;
- training of staff and spokespersons; and
- public relations component of the plan - press releases, etc.

SafeFood's Branch Structure and Staffing

At present there are three operational Branches within SafeFood – Dairy, Meat and Seafood, each of which is responsible for food safety operations in the relevant industries. The Meat Branch also operates the National Livestock Reporting Service (NLRS). These Branches are also required to fund their activities, and contribute to the cost of “shared services”, through licence fees, audit fees and/or levies.

“Shared services” are provided by the Licensing Branch, Corporate Services Branch, and Strategy Branch. The Strategy Branch oversees SafeFood's strategic planning process, risk analysis projects, and addresses cross-industry policy and development issues.

Table 3.2 overleaf shows Equivalent Full Time staff by Branch as at 1 June 2001.

Table 3.2 EFT Staff by Safe Food Branch

BRANCH	EFT STAFF
Dairy	18
Meat	(Food Safety) 18 (NLRS) 13.75
Seafood	6.6
Licensing	4
Corporate Services	14.6
CEO and Strategy	4
TOTAL	78.95

Allocation of SafeFood's Budget by Function

To put both the functional categories and each activity into perspective, a detailed table setting out the cost of each activity in total and for each of the SafeFood Branches for 2000/01 was prepared.

The Steering Committee and Stakeholder Reference Group agreed that NLRS costs should be excluded from the analysis because they are unrelated to SafeFood's core food safety functions and the NLRS is not expected to remain SafeFood's responsibility over the longer term.

The table on the next page shows SafeFood's Budget for 2000/01 by Branch and by each activity in the functional model. The forecast NLRS costs for 2000/01 of \$1.367 million are excluded. The table was prepared by SafeFood and the consultants.

Table 3.3 SafeFood Budget 2000/01 Allocated By Function

Function	Total\$	Total%	Dairy	Meat	Seafood	Licensing	Corp Services	Strategy
Policy and Standard Setting								
Risk Analysis	\$290,951	3.1%	\$33,567	\$0	\$50,758	\$0	\$0	\$206,626
Formulation and Review of Standards	\$448,755	4.7%	\$79,144	\$20,531	\$276,308	\$0	\$0	\$72,772
Formulation and Review of Policy	\$336,645	3.6%	\$115,219	\$7,517	\$84,810	\$0	\$0	\$129,098
Interagency Coordination and Harmonisation	\$93,464	1.0%	\$25,462	\$20,531	\$6,443	\$0	\$0	\$41,028
Surveillance/Research	\$120,570	1.3%	\$59,049	\$32,935	\$23,524	\$0	\$0	\$5,061
Consultation	\$152,230	1.6%	\$26,011	\$32,596	\$54,091	\$0	\$0	\$39,532
SafeFood Production Advisory Committee	\$47,768	0.5%	\$2,124	\$2,603	\$1,933	\$0	\$0	\$41,108
Subtotal	\$1,490,383	15.7%	\$340,577	\$116,715	\$497,867	\$0	\$0	\$535,225
Scheme Implementation and Compliance								
Certification	\$593,694	6.3%	\$338,030	\$255,664	\$0	\$0	\$0	\$0
Compliance Audit	\$1,683,451	17.8%	\$848,091	\$807,700	\$27,660	\$0	\$0	\$0
Environmental Monitoring	\$245,155	2.6%	\$0	\$0	\$245,155	\$0	\$0	\$0
System Testing	\$294,350	3.1%	\$121,221	\$132,539	\$40,589	\$0	\$0	\$0
Inspection of Vehicle/Vessel/Premises/Product	\$337,708	3.6%	\$149,660	\$188,048	\$0	\$0	\$0	\$0
Licensing	\$410,995	4.3%	\$16,565	\$46,033	\$10,402	\$337,995	\$0	\$0
Industry Advice and Training	\$225,415	2.4%	\$30,829	\$118,559	\$74,002	\$0	\$0	\$2,024
Operational Training and Accreditation	\$400,957	4.2%	\$316,340	\$71,261	\$12,344	\$0	\$0	\$1,012
Consultation	\$213,547	2.3%	\$48,326	\$102,141	\$27,116	\$0	\$0	\$35,963
Consumer Information/Education	\$57,425	0.6%	\$1,589	\$30,304	\$21,248	\$0	\$0	\$4,283
Subtotal	\$4,462,697	47%	\$1,870,653	\$1,752,250	\$458,517	\$337,995	\$0	\$43,283
Enforcement								
Incident Response	\$366,862	3.9%	\$60,480	\$252,351	\$50,994	\$0	\$0	\$3,037
Recall	\$31,579	0.3%	\$11,157	\$11,809	\$8,612	\$0	\$0	\$0
Prosecutions	\$91,832	1.0%	\$43,077	\$48,755	\$0	\$0	\$0	\$0
Consultation	\$115,584	1.2%	\$30,074	\$47,896	\$21,777	\$0	\$0	\$15,837
Subtotal	\$605,857	6.4%	\$144,789	\$360,812	\$81,383	\$0	\$0	\$18,874
Overheads								
General Management	\$379,938	4.0%	\$78,030	\$95,722	\$73,738	\$0	\$59,622	\$72,826
Strategic Planning and Change Management	\$400,072	4.2%	\$71,673	\$75,191	\$24,309	\$0	\$71,546	\$157,354
Corporate Services	\$1,263,483	13.3%	\$41,014	\$38,144	\$30,656	\$0	\$1,147,410	\$6,260
Corporate Communications	\$157,434	1.7%	\$36,821	\$28,632	\$17,227	\$0	\$0	\$74,753
Professional Development	\$128,028	1.4%	\$44,488	\$42,810	\$2,381	\$0	\$27,095	\$11,253
Government Requirements	\$368,736	3.9%	\$67,929	\$22,326	\$26,145	\$0	\$194,501	\$57,835
Emergency Management Plan	\$209,400	2.2%	\$34,344	\$7,569	\$10,104	\$0	\$0	\$157,382
Subtotal	\$2,907,091	30.7%	\$374,299	\$310,394	\$184,560	\$0	\$1,500,174	\$537,663
TOTAL FOOD SAFETY FUNCTIONS	\$9,466,029	100%	\$2,730,318	\$2,540,170	\$1,222,327	\$337,995	\$1,500,174	\$1,135,045

4 Efficiency and Effectiveness

SafeFood was established in December 1998. Since then, SafeFood has incorporated the NSW Dairy Corporation and NSW Meat Industry Authority (MIA), which became its Dairy and Meat Branches. Early in its life, SafeFood took administrative responsibility for the industry-funded NSW Shellfish Quality Assurance Program (NSW SQAP) from NSW Fisheries.

SafeFood recently completed development of the Seafood Safety Scheme – a comprehensive project beginning 18 months ago with a Seafood Industry Risk Analysis. Scheme development involved extensive consultation with industry, scientists, and consumers. The draft Seafood Safety Scheme regulation has now been released for public consultation.

Risk assessments are complete for Plant Products and for Goat and Sheep Milk, and Scheme development is underway. Each process is proceeding with extensive stakeholder consultation.

On 1 July 2000, the dairy industry was deregulated and the Dairy Branch restructure for its sole focus on food safety was complete. In September 2000, SafeFood integrated its corporate service staff with those of the former MIA and co-located all Sydney staff in its CBD office.

SafeFood has merged three separate programs, Dairy, Meat and Shellfish, and begun work in industries with no history of preventative food safety regulation – Plant Products and Seafood. During its short life, SafeFood has seen constant change, restructure, downsizing, regulatory harmonisation and physical relocation. While SafeFood has achieved a lot, it recognises that considerable work lies ahead to develop a uniform approach, “break down the silos” and reduce costs. SafeFood needs to ensure that these necessary changes do not imperil its policy objectives or scientific integrity.

The HACCP-based approaches of the former NSW Dairy Corporation and Meat Industry Authority are recognised “best practice”. In collaboration with the NSW dairy industry, SafeFood achieved a 100% adoption of HACCP based food safety programs by all NSW dairy industry registrants in June 2000. Through-chain HACCP adoption by an entire industry was a world first, and generated much interstate and overseas interest.

The recognised Dairy and Meat programs provide a solid foundation for Scheme development in the “new” industries. The adoption of Risk Analysis methodology has further enhanced the Scheme development process. SafeFood’s use of Risk Analysis to develop whole-of-industry food safety regulation is also a world first.

To maintain best practice in the dairy and meat industries, SafeFood intends to apply the Risk Analysis approach first developed for the seafood work to these industries. This work has commenced in the dairy industry. Subject to availability of funds, a full Risk Analysis is planned for the meat industry to ensure that Meat Branch resources are allocated commensurately with risk.

The above background is given to explain that, at this stage of SafeFood's development, it is difficult to make an accurate assessment of its efficiency and effectiveness. That said, there is a strong element of corporate knowledge in the Dairy and Meat Branches of SafeFood and food safety has always been a major focus of the former agencies. SafeFood's approach based on Risk Analysis and HACCP is consistent with international standards and SafeFood is in the forefront of their application in Australia. On the efficiency front, the integration of the Dairy Corporation and the MIA into SafeFood has led to substantial downsizing and the opportunity to multi-skill staff across all industry sectors.

Measuring efficiency and effectiveness in a newly established body and in an area such as food safety is problematic. It is akin to Qantas having an excellent record with respect to passenger fatalities – until an accident occurs. One breakdown in a food safety program can cause multiple disabilities and illnesses, if not deaths. SafeFood knows of and acts in situations which have the potential, if not the actual capacity, to cause illness.

This is why food safety can legitimately be classified as preventative medicine. Given the predilection of the media to focus on sensation, conflict and “bad” news, SafeFood needs to use careful judgement when considering publicly naming offending firms. The extent to which SafeFood sits on a time bomb at any time is difficult to judge. This theme is further developed in Chapter 7 when discussing the need to enhance SafeFood's enforcement capacity.

To re-emphasise, one breakdown in food safety can have massive effects. Our multicultural society encourages and promotes an extraordinary range of foods, and much processing and manufacturing takes place according to traditional practices, not always soundly based or correctly followed. One irresponsible or incompetent manufacturer can cause serious illness and devastate an industry, as the Garibaldi case illustrates.

Level of Activity

Chapter 3 describes the range of operational activities carried out by SafeFood. The Dairy and Meat Food Safety Schemes cover approximately 10,000 enterprises and the draft Seafood Scheme will cover an additional 3000, including the 500 shellfish farmers currently covered by the NSW SQAP. The table at Appendix 4 provides a breakdown of these enterprises, the operational activities undertaken, and the number of operational staff in each Branch.

Dairy

Dairy businesses are widely distributed throughout NSW and include 90 factories, 1450 farms, 20 milk tanker collectors, 1012 vendors and 260 milk and dairy produce storage facilities. Each business is audited once or more per year and there are many food safety checkpoints per business. Dairy operational staff number 15 plus one trainee.

As a result of audits and inspections during 2000/01, licences were suspended on 40 occasions, 10 recalls/retrievals/release prohibitions were carried out, and 247 Direction Notices or Improvement Notices were issued to businesses. These activities are resource and time intensive. For example, the 247 Notices required at least one, and usually more, additional visit to the premises to ensure the Notice had been complied with. Recalls, retrievals, and release prohibitions require substantial microbiological testing to establish whether the food is fit or unfit for human consumption, and troubleshooting to determine the source of the problem.

The Dairy cost recovery regime was designed to minimise the financial impact of deregulation on dairy farmers. It was prepared in accordance with senior legal advice because of the constitutional prohibition on State levies or licence fees which are legally held to be an "excise". Licence fees range from \$100 p.a. per farm (regardless of farm size) to \$252,000 p.a. for the largest milk factories, with few steps in between. The resultant anomalies are most graphically illustrated by the progression from \$50,000 p.a. (dairy factory with up to 70 employees) to \$252,000 p.a. (71 employees or more). These anomalies are inequitable and unsustainable⁴. The "shared funding" arrangements recommended in Chapters 6 and 7 would provide the basis to develop a fairer and more sustainable cost recovery regime.

Meat

The Meat Branch of SafeFood is responsible for 2009 retail premises, 482 meat processing plants, 101 abattoirs, 4544 meat vans and 69 game meat plants. During 2000/01, the 16 operational staff carried out 3404 audits and conducted inspections of 11,193 premises and meat vans. Every licensed premise is audited or inspected at a frequency ranging from monthly to bi-annually, set on the basis of assessed risk and performance. Audit of retail premises only commenced in mid 2000 as these businesses implemented food safety programs. These audits will progressively replace the previous inspection regime.

In addition to these activities, over 170 complaints from consumers were investigated during the year, many related to unlicensed operators. The cost of these investigations is substantial and cannot be recouped. Eleven Prohibition Orders were issued, there were 3 prosecutions, and 8128 kg of unfit product was seized. As with Dairy, the follow-up and investigative work for these orders, seizures, and prosecutions is time and resource intensive.

⁴ The potential for legal challenge recently became a reality when SafeFood was served with a Supreme Court summons from an industry plaintiff seeking refund of its \$50,000 licence fee on grounds of invalidity.

The Meat cost recovery regime, inherited from the MIA, includes a levy on producers (from \$5 to \$120 per producer), the major portion of which funds the National Livestock Reporting Service. All other industry participants pay a licence fee which ranges from \$150 p.a. for a meat van to \$2000 p.a. for a meat enterprise with more than 50 employees. These participants also pay audit or inspection fees which are being phased in to a maximum of \$120. While the MIA charging regime was largely accepted by the meat industry, there is serious industry discontent over the prospect of increased charges for the next financial year.

Seafood

The Seafood Safety Scheme has yet to be implemented, but the NSW SQAP (to be renamed the NSW Shellfish Program as part of the new Scheme) administers a harvest management regime and the universal depuration requirement covering around 500 shellfish farmers. It is estimated that the Scheme will cover an additional 2500 seafood industry participants. The Seafood Branch currently employs seven people, three of whom are operational staff responsible for the Shellfish Program.

The NSW SQAP operates in 30 estuaries and one oceanic bay, divided into 137 separate harvest areas by application of internationally accepted monitoring criteria. Each harvest area is subject to a range of environmental and food safety criteria which determine whether the area should be open for harvest. Closures occur when harvest areas are subjected to rainfall, or actual or potential pollution events, during algal blooms or when bacterial standards are not met. Since 1 July 2000, there have been 493 individual closures and 489 individual re-openings of harvest areas. The average closure duration was 27 days.

Shellfish farmers, some of whom act as local coordinators, are responsible for sample collection, although full compliance with national and international practices will require a system of independent sample collection. The Shellfish Program Manager, a SafeFood employee, is responsible for closures and reopenings, and ensuring that samples are collected as and when required.

During 2000/01, there were also 416 inspections or audits of shellfish premises and 39 recalls or product seizures. Two prosecutions for breaches of harvest conditions are pending.

The 30 growing estuaries are spread along the entire NSW coast and the number, spread and complexity of the 137 harvest areas largely determine the resources required to manage the system. By comparison, the Tasmanian oyster industry is about one third the size of the NSW industry and operates in only 30 harvest areas. The equivalent program has a staff of three. If the same staffing levels were applied, the NSW program would require a staff of at least 9 to 15.

The typical cost of around \$1245 per commercial shellfish farmer represents about 2% of the total farmgate value of production. The percentage of production value can be significantly higher for small producers and the cost can render their business financially non-viable.

Significant risks also exist elsewhere in the seafood supply chain. As in the rest of Australia, the NSW seafood industries are fragmented with little history of food safety regulation. In June 2001, SafeFood's draft Seafood Safety Scheme and RIS were released for public consultation. When implemented, this will be the first set of comprehensive regulations for a seafood industry in Australia. Most industry sectors were involved in the Scheme development process and support the Scheme's provisions. However, seafood industry representatives have already described the fees and levies required to meet the 100% cost recovery requirement as unfair and unaffordable.

In each industry covered by SafeFood, there is a changing picture of exits and entrants with new registrants or new businesses constantly being identified. In these early days for the Seafood Safety Scheme – and the future Plant Products Scheme – the extent of the non-English speaking background of industry participants has not yet been fully assessed and the additional needs identified.

The workload of the three operational branches of SafeFood tends to indicate that there is a high level of effectiveness, particularly when one considers the increase in activity required due to increased non-compliance evident in the dairy industry following deregulation, and increased responsibilities in several areas, including meat processing, meat retail, and shellfish depuration.

Consultants' View of SafeFood's Efficiency and Effectiveness

In assessing the efficiency and effectiveness of SafeFood's operations, the consultants also came to the conclusion that, at this stage of SafeFood's development, conventional measures of operational efficiency are of limited applicability.

The consultants compiled detailed information on food safety arrangements internationally, and in Victoria and Queensland, as set out in chapters 4 and 5 of the Issues and Options Paper. The intention, in part, was to provide the basis to benchmark operational efficiency.

The consultants concluded (p31) that:

Conventional measures of operational efficiency are of very limited applicability. Benchmarking with similar organizations has no value because a "snap-shot" of current operations will have little relevance, even in the near future, as SafeFood further evolves. If benchmarks were to be applied, they would require such qualification through lack of comparable agencies (either internationally or in Australia) that they would remain highly contentious.

*Any evaluation of operational efficiency will require a “first principles” approach with each operating unit being examined for opportunities to improve performance. It would be hard to give such an examination much priority at this time given the current limited scale of SafeFood operations and **a lack of any indications of significant inefficiencies** [emphasis added].*

Integration and rationalisation of functions has already began and will continue. The consultants agreed with SafeFood’s diagnosis that further efficiencies could be achieved by dismantling operational “silos”, and support SafeFood’s strategy for initiatives such as multi-skilling of audit staff. However, the Review notes that the combination of 100% cost recovery and the cross-subsidy prohibitions may unfortunately slow the process of enhancing efficiency through dismantling the “silos” and moving to a structure based on functional activity.

The consultants observed that the level of expenditure on overhead activities appears high but is consistent with an organisation engineering and bedding down structural change. The Review agrees with their conclusion that expenditure on Overhead activities should be closely scrutinised to identify savings which can be made without compromising operations. SafeFood has taken action to reduce costs wherever it has been able to identify opportunities for significant savings. Nonetheless, an external assessment could identify further opportunities and would be useful from the perspective of SafeFood’s industry stakeholders.

Recommendation 1

A credible external review of SafeFood’s Overhead activities and associated business practices, for example a Program Review by the Council on the Cost and Quality of Government, should be conducted to identify opportunities to limit or reduce the cost of these activities.

The consultants also considered audit contestability as a means of increasing efficiency. They note the “orthodoxy” that the efficient cost of the audit function can only be determined unambiguously by competition provided by third-party auditors. The consultants also note the counter argument that dismantling existing second party arrangements may compromise standards and could result in higher long-term audit costs to industry through losses in economies of scale. This issue is further considered in Chapter 7.

Summary: Efficiency and effectiveness are hard to measure definitively due to SafeFood’s short life, new challenges and industries, and the nature of food safety assurance. Any evaluation on a “first principles” approach for each operating unit lacks priority given the current limited scale of SafeFood operations and a lack of any indications of significant inefficiencies.

5 Principles for Funding Food Safety

The terms of reference require the Review *“identify...the principles which may apply to the funding of [SafeFood’s] activities”*.

The Government’s policy is that, once established, SafeFood should be completely funded by industry through licence fees, fees for service and/or levies. “Industry” is not defined, but it could be food businesses at the point of primary production or at any step in the food chain.

It is not known on what basis the Government took this decision, or which principle or principles were invoked. The decision may have been a practical one taken on the basis of the pre-existing industry funding systems for a range of activities in the dairy, meat and shellfish industries, which included aspects of food safety. In the dairy industry, regulation of milk pricing enabled the State to extract the cost of food safety when setting the selling price of milk. Primary producers of meat made substantial contribution to the cost of food safety activities, none of which were carried out on-farm. In the case of farmed shellfish, several disease outbreaks culminating in the Wallis Lakes incident provided the impetus for a harvest management program largely managed by industry and funded by levies on farmers.

If this was the basis for the Government’s decision, accelerated dairy industry deregulation has since taken place, the Meat Industry Authority has been disbanded, and a better knowledge has been gained of the challenges and complexities of fisheries and most importantly of the state and requirements of water quality in NSW estuaries. The previous rationale for dairy and meat industry financial contribution (including, in the case of Meat, a measure of control via Board membership of the Authority) is not now as appropriate since the emphasis has changed from a regulated marketing and organisational structure to the new focus and requirement for regulated food safety. Further, it is now clear that there are legal impediments to the imposition of levies by State Governments, other than on a clear “fee-for-service” basis.

The decision may have been on the basis of the Government’s philosophical or ideological approach to policy and decision making in general. In the case of the current government in NSW, this would or may have been one leaning more to consumers than producers (assuming that eventually consumers will pay) with more emphasis on public expenditure on social, welfare and infrastructure measures such as health, education, child welfare and transport. Added to this, in assessing priorities, would have been the requirement for budgetary discipline and necessary pruning in the formulation of the annual allocation of funds against revenue estimates. This is part of the democratic process. Governments are elected to take decisions which may be in keeping with the governing political party’s policy platform and philosophical leaning, or with the weight of technical or objective evidence.

Overriding these possible practical, pragmatic and philosophical/political reasons, could be conjoint, process-driven decisions of policy makers such as Ministers, advisers and officials in keeping with the current wisdoms of our economy and society in general.

In this setting, there are many principles which **may** apply to the funding of food safety. Arguments can be proposed which justify from nil to 100% funding of food safety measures by one or more of primary producers, processors, other manufacturers down the food chain, or governments acting on behalf of the general public – all of whom eat and drink.

Increasingly, the economic paradigm is seen as the most appropriate group of principles to guide the actions and policies of governments. The allocative principles and analyses of microeconomics (neo-classical market economics) are seen to provide a fairer way for governments to make choices in revenue collection and expenditure than by balancing competing electoral demands on the basis of judgment, political party policies and perceptions. As this Review is about funding for a regulatory agency, it is essential to discuss economic principles.

There are still some people in civil society who can respectably argue that there are principles for decision-making which are not entirely economically based. And it is also possible to observe that all economists do not necessarily agree with one another. Economics is a social science; it is a way of thinking, it does not equate to universal, incontrovertible scientific truth, regardless of what the financial and business media currently believe. Thus Blair, in his 1998 report of the Food Regulation Review, identified public health protection as the fundamental purpose of food safety regulation. He points out that any changes to the food regulatory system (funding or structural) in Australia must not lead to a reduction in the protection of public health or lessening of consumer protection⁵.

In its submissions to the 1997 Food Safety Taskforce and to this Review, NSW Treasury set out its rationale for recovery of regulatory costs in terms of four propositions:

- **Firstly**, *cost recovery mechanisms in regulatory areas can provide incentives to reduce socially costly behaviour (the “polluter pays” principle).*
- **Secondly**, *cost recovery mechanisms can improve organisational performance by providing cost information to cost-bearing users by instilling cost consciousness in the regulatory agency.*
- **Thirdly**, *cost recovery reduces the financial burden on the broader community by targeting those who actually benefit from the regulation. It also recognises the opportunity and deadweight costs of government funding.*

⁵ Blair, W 1998 Food: A Growth Industry AusInfo: 26

- *Fourthly, cost recovery can be used to achieve equity goals. Costs are not imposed on non-beneficiaries and funds raised from a particular industry can be earmarked for funding regulation of that industry, avoiding inequitable cross-subsidisation.*⁶

The economic principles underlying these four propositions are directed to cost efficiency and reside in the principle of “polluter pays” (i.e. where a commercial activity or use of a resource imposes costs on others). No case is made that primary producers and processors are polluters in the accepted sense of the term, although with respect to food safety they can be considered causative agents (e.g. chemical contamination in vegetables). Yet the farmers who grow oysters in estuarine waters polluted by the community would be hard-pressed to understand why this principle justifies the levies they pay for the consequential regulatory controls.

These propositions also encompass principles of overall economic efficiency, the achievement of equity through no cross-subsidy (a welfare proposition involving a value judgement), and the “beneficiary pays” principle i.e. those who enjoy the benefit of an activity, resource use or service should pay.

It is not certain or agreed that only economic principles should apply with respect to every activity by humankind. For example, in carrying out research, it is not efficient to continually cut costs. While there may be agreement with the rigour of the principles articulated in the abstract, there are also economic and practical or real-world arguments to take into consideration regarding the four propositions above. These arguments reside in the question of selectivity and social purpose, to what extent these and other principles can be reconciled (regardless of who pays), and defining who is the beneficiary of food safety activities. All safety regulations are designed to promote the public good. Can it really be argued that consumers are not the ultimate beneficiaries of safety regulations?

Economics and Social Purpose

The use of cost recovery to provide an incentive to reduce socially costly behaviour, needs to be tempered by asking over what time period, particularly when dealing with today’s need for the provision of safe food. We can say that cost recovery should apply to industry with respect to global warming but it doesn’t mean much will happen, immediately.

“Cost-consciousness” may not be as important as “effectiveness-consciousness” when proposing an infrastructure to regulate and manage food safety measures. On the issue of cross-subsidisation, there is cause to agree with John Donne and hold that in today’s capitalist society “no man is an island”.

Further, the chain of activities from the point of production to the final act of consumption is more comprehensive than SafeFood’s area of responsibility. Thus the causes and disciplines involved in SafeFood’s efforts to prevent food-borne illness imply selectivity, knowledge and principles beyond or additional to allocative and cost efficiency concepts as these may be applied to SafeFood.

⁶ NSW Treasury, February 2001: 12

As pointed out by Stretton⁷, an economy's production of goods and services involves a near endless complexity of causal interrelations. Economists and others may select different links in the chain of causation for analysis. The principles of selection used by economists are varied and this is the reason for the fundamental disagreements in economics. For example, most microeconomic analysts work from the basis of "perfect competition" and adhere to downward sloping demand curves as being representative for both an individual and a whole economy or industry. Also, monetarists believe that the money supply determines the level of economic activity. In turn, others dispute both of these "accepted" propositions.

Economic theory and analysis are necessarily selective and the selections are guided by their social purposes. Different social purposes shape disputed theories, principles and analyses. The relation between social purposes and scientific or "value-free" selection is at the centre of any understanding of economics. Rigorous mathematical or technical knowledge at one level or within one discipline can often lead to legal or ethical disagreement about the principle involved.

And so it is with food safety.

Food safety is a public health issue. As with other aspects of public health, it can never be principally considered on economic grounds. Often what appears to be the most economically efficient option will not adequately protect public health. The Canadian Government was faced with this conflict between economics and public need when applying Treasury Board Guidelines to food safety funding. On a general level, Canada is moving towards a user-pays system for regulation and the Treasury Board Guidelines strongly encourage the use of cost recovery principles for the funding of most government activities. They do however make an allowance for food safety, which they fund under "public health principles":

*The Canadian Food Inspection Agency (CFIA) follows Treasury Board guidelines in determining cost recovery fees but the level of fee charged, relative to the cost of providing a service, depends on the type of service provided. If the service has important implications for health and safety, fees are assessed considerably below the costs of providing the service. For services not concerned with health and safety, cost recovery fees are charged at a higher level relative to the cost of providing the service. Effectively this means that a large part of the cost of food safety or animal and plant health services are paid for by taxpayers while other types of services are largely financed by the beneficiaries."*⁸

Responsibilities for food safety are shared between Health Canada under the Minister for Health, the CFIA under the Minister of Agriculture and Agri-Food, and provincial, territorial and municipal authorities. Health Canada is entirely government funded. CFIA

⁷ Stretton, H 1999 Economics A New Introduction UNSW Press: 10-11

⁸ Agriculture and Agrifood Canada, 2001 Impact of Selected Federal Cost Recovery Initiatives on the Agri-Food Sector www.agr.ca: 1

is funded through appropriations from tax revenues and user fees assessed as set out above. In 2000, user fees provided 13% (\$54 million) of total expenditure of \$416 million.

A similar rationale to the Canadian approach was applied to funding of the Food Safety Authority of Ireland (FSAI). As set out in the Issues and Options Paper (p55):

Although, the FSAI has the power to fully recover costs, the full cost of agency services is not recovered through these charges. The national policy does not provide for full cost recovery and it is considered in the public interest that enforcement of food safety legislation be funded centrally.

The Bad Meat Pie

Again by referring to Stretton⁹, take the example of a meat pie causing a food-borne illness. A sequence of causal relations can be established, but there are different kinds of causal relations understood by different methods. A doctor will take the view that salmonella caused the illness. A lawyer will take the view that the unhygienic butcher and the careless cook caused the illness. A local government health inspector may take the view that slack auditing and a lack of inspections caused the problem. All speak the truth and no one disagrees with the facts – it all depends on which facts are being selected. Now economists, in standing back and being concerned with a different set of principles and theories on equity and who should and should not pay and how to prevent or try to prevent the problem by way of efficient facilitation, also have a problem in selectivity.

The issue or principle selected could be “vertical equity” (poor people spend a greater proportion of their income on food than the rich – why should they pay proportionally more for food safety?) or “net social benefit” (benefits outweigh the costs) or “market failure”.

Primary Producers, Equity, and Cross-Subsidisation

Competition in the Australian food processing and marketing chain is a particular concern for primary producers. Retail prices have increased more rapidly than farm prices and the farmer’s share has declined. However, economic theory does not give us one “blueprint” to explain the presence and extent of market power. Very few empirical economic studies have been carried out on the Australian food marketing chain. The 80% dominance by Woolworths and Coles in the grocery market was seen by the Joint Select Committee on the Retailing Sector, to benefit consumers. The ACCC claims that the oligopolistic structure of the grocery industry imposes backward pressure on the agricultural manufacturing sector, which causes profits to be squeezed at the producer level¹⁰.

It is in the nature of a developed economy such as Australia’s that there is a range of market structures. There are still natural monopolies, there are public and private monopolies and there are, commonly, duopolies with immense market power as well as

⁹ Stretton, H op cit: 6-7, 15

¹⁰ For a discussion of these issues see G Griffith “Competition in the Food Marketing Chain” Australian Journal of Agricultural and Resource Economics”, 44:3, pp 333-367

both atomistic and variously restricted competition. There is and will continue to be cross-subsidisation within and between groupings of people in their activities.

The younger employed tend to support the retired and the unemployed regardless of self-funded retirement and “work for the dole”. It is economically rational not to have children but even so children occur and education is cross-subsidised by childless people who pay taxes. The private (sic) health insurance companies and hospitals are subsidised by government from consolidated revenue. Soldiers don't pay for their ammunition.

While it may be assumed that all human activities should be privatised or subject to rigorous market disciplines, many economic principles will not be applied due to the social purpose of the activity in question. Many people see food safety as being part of preventative medicine and thereby fully as a **public good**.

Economists may argue that vegetarians should not pay for meat food safety measures on cross subsidisation grounds. However, most people do eat meat, vegetarians may live in meat eating households and supporting parents may eat meat while their vegetarian children do not. Therefore, this view would be regarded as an extreme justification for primary producers to pay for all food safety production measures, in the normal course of events (reductio ad absurdum).

Full cost recovery is seen as a more justifiable economic principle where the direct benefits can be captured by the payer. This is more likely to apply in a competitive industry where a handful of, say, manufactured food producers are selling branded products. It is not so easy to see this applying to restaurants and fast food outlets even though they have a closer connection to the consumer and thereby greater responsibility for food safety.

Both the above situations are comprehensively different to that faced by a cattle producer who has no way of finding out or controlling what happens to his beast once it's loaded onto a truck. In the chain from the point of production to the point of consumption it is near impossible to separate all costs out – assuming cost reduction is the prime economic principle being adopted rather than the overriding principle of trying to guarantee food safety. In general, the benefits from full cost recovery are more likely to be captured if fewer firms are involved.

In agriculture, competition is atomistic and primary producers face a range of equity considerations if strict regard is had to cross-subsidisation. Many aspects of the costs of specific food safety activities (eg. policy and standard setting) are not always relevant to the specific enterprise. If producers are levied on a property or production unit basis, inequities can arise in terms of the activities engaged in. An incompetent entrant, if undetected, can effectively impose costs on those who comply with all requirements.

While it may be valid that requiring primary producers to pay for all food safety enhancing procedures will theoretically produce incentives to reduce socially costly behaviour and instil cost consciousness, for some producers no activity is likely to pose

risk or hazard and therefore no procedures are likely to have any effect other than causing dissidence. Further, if a farmer does succeed in eliminating all possible risks or hazards, he will not necessarily be rewarded. To be workable and accepted, regulations must operate fairly across and within the relevant industries.

This leads to the less theoretical, more practical, real world problems of administration, implementation and politics posed by full or near full cost recovery which cannot be ignored.

Public Health, Risk and the Real World

While ever there are regulatory authorities and responsible Ministers (i.e. before “markets” render governments no longer necessary and the Public Service outsourced?) any outbreak of food-borne disease will be seen as a failure by government. Ministerial accountability and responsibility loom large in the public mind. Public accountability by Ministers and regulators is a strong principle and from it follows the question of legal liability if it can be shown all reasonable steps have not been taken. The Garibaldi case showed two governments blaming each other and a spillover effect that shut down other salami producers in South Australia. This latter aspect is an inequity arising when the private sector fails in only one firm.

There is a large public benefit by way of potential public and private savings if there are less instances of food-borne illness. This year the Economic Research Service of the USDA estimated the cost of food-borne illness in the US from five common pathogens alone to be \$US6.9 billion p.a.¹¹ The costs to Australia of all food-borne illness were last estimated by ANZFA¹² to be \$2.6 billion p.a. On a per capita basis, the cost to NSW would be around \$880 million p.a. Even a small percentage reduction in food-borne illness would generate substantial savings.

An indicative example of the community benefits from SafeFood’s current activities is provided by the NSW SQAP. SafeFood used data from its Seafood Industries Risk Analysis and the damages awarded in the Wallis Lakes case to generate a conservative estimate, after substantial discounting for contingencies, of \$14.4 million p.a. for this program alone (see Appendix 5).

If one focuses on the overriding objective of SafeFood, it can be seen that the agency operates in a rapidly changing scientific, medical and technical environment at all points in the food chain. All risks and hazards (let alone techniques for avoidance) are not known or available to the public at any point in time. For example, the risk posed by BSE in cattle for humans is only now being elucidated and the issue of zoonoses¹³ is still a contentious issue subject to investigation.

¹¹ Murphy, D 12 June 2001 www.meatingplace.com (report via FoodSafetyNet)

¹² ANZFA, 1999 [Food Safety Standards: Costs and Benefits](#) Cwth of Aust: 35

¹³ animal diseases capable of being transmitted to humans

Consumer Issues

Food safety goes beyond food-borne illness and includes aspects such as the chronic effects of nutrient imbalance, linkages to fatty food intake, exercise and heart disease. If full cost recovery results in “he who pays the piper calls the tune”, then standards will be guided more by commercial imperatives or grower control of activities and, in the case of food manufacturers and caterers, may result in massive advertising and inadequate specification delivering not-so-nutritional "fast" foods.

Consumers are generally poorly placed to evaluate the safety characteristics of the food they consume – there is market failure in the education and communication fields. While not having a specific charter to perform this role, SafeFood has an important, if subtle, position to influence better education of the public. Some foods pose high risks and others severe hazards and there is a need for an infrastructure to inform the public, which will have a cost beyond an exclusive concentration on the assignation of costs in a least-cost model.

If SafeFood can be regarded as a service-providing firm, then one way of analysing it from an economic perspective is via the “theory of the firm” which assumes firms only exist in a static state and that time is held constant. SafeFood is in a rapidly changing situation and expecting expansion as new products are encompassed, i.e. a dynamic state. It can be argued that it must have some excess capacity because if it devotes all attention to maximising profit (cutting costs) it will have no capacity to devote to new product development (new scientific systems, additional industries).

The Export Scene

Australia exports 65% of its agricultural production with some products exceeding 90%. Australia’s reputation in the global food market depends on a “clean and green” image. Producers are aware of what this implies and pay for most of the costs of export inspection. However, it is hard to convince producers that they should also be levied or licensed to pay for the food safety of international customers when they have no control on the product’s handling overseas (e.g. the cutting up of frozen beef with an axe on a dirt floor in the Seoul wholesale market tends to indicate some lack of concern by our customers). Similarly, primary producers of products that are exclusively sent interstate will be hard to convince that they should pay when their interstate colleagues don’t face the same cost regime.

In the case of export production, Australian producers are increasingly subject to international and customer standards of food inspection. The practical reality for efficient and equitable food regulation is recognised at national level (where minimisation of direct outlays from the budget is an art form) by having ANZFA and its policy activities paid for by government, the activities of BioSecurity also paid for from consolidated revenue, and inspection fees by AQIS paid for by “industry” – a co-regulatory approach. In 1999-2000 AQIS cost recovered only 76.4% of its income from industry – with the balance paid for by government.

Agricultural Reality

Consideration of “capture of benefits” and the principle of “beneficiary pays” in the dairy industry must take into account the aftermath of deregulation. The first round effect of dairy deregulation was a striving for market share by dairy cooperatives and private milk processing firms in a market dominated by two large supermarket chains (who also require a measure of inspection within milk factories). Over 80% of milk is handled by only two firms. The reality of this market situation is that no dairy farmer has a capacity to pay with on-farm revenue being slashed by 22% per litre.

For “beneficiary pays” to work at primary producer level, the cost must be able to be passed on and extracted from the market. Just as in the New Zealand cattle industry, where a tax is proposed on flatulence, there is no capacity for dairy farmers to pay. So that the price of milk in Australia can be determined by economic market principles, governments, consumers and industry (in adapting) have spent or will spend up to \$2.5 billion¹⁴.

The effect of this market restructuring and price determination on NSW producers and factories has not yet worked through. It is not clear how many producers and factories will go broke and to what extent, if any, actual milk production will fall. It will be at least another 12-18 months before this is known. Taxes on producers can be direct or by way of pass-back depending on the point of collection. In the latter case, determination of the incidence of cost is dependent on a rising or falling market. The market price of milk is not currently rising in NSW.

Capacity to pay is also an issue in the shellfish industry with a real possibility that current and proposed levies (not all related to food safety) will eliminate many producers. With production levels down after exits, as with the dairy industry, there will be effects on regional economies. The complexity in the overall seafood industry makes analysis of capacity to pay, and pass-back and pass-forward mechanisms, near impossible to ascertain.

SafeFood does not have a clear idea of all the risks and hazards in fruit and vegetable production, let alone what may be the practical point for licensing or fees for service. If a farmer produces a “risky” vegetable one year (e.g. high potential for chemical contamination) and a “non-risky” one the next, should licence fees vary year to year so that there is no cross-subsidisation? Entries and exits with respect to plant production will be near impossible to keep track of.

¹⁴ The interaction between the acceptance of “sound” economic advice at one point, and the political process at a later point, often results in “penny-wise, pound foolish” outcomes in the medium term. For example, as a result of a succession of national governments accepting the advice of the Department of Finance in the Expenditure Review Committee, funds and resources available to AQIS and Customs have been limited. AQIS lost over 30% of its staff (with the loss of technical, corporate knowledge) and Customs has engaged in expensive outsourcing. Now, suddenly, because of the outbreak of foot and mouth disease in the UK and Europe, the Commonwealth Government has allocated \$600 million as a response to provide disease preparedness and greater border protection. This is being done with little analysis and with a loss of expertise. It is inevitable that millions of dollars will be wasted. Perhaps it may have been wiser and less costly if both organisations hadn’t been reduced in their capacity all along?

If the economic principle is insisted to be “beneficiary pays”, then one needs to discuss who is the beneficiary. Primary producers are clearly a beneficiary in as much as they all suffer if there is an outbreak of a food-borne illness which can be attributed to a producer or producers. However, there are other beneficiaries in the food chain, as shown in the diagram on the following page.

The Ultimate Beneficiaries

The ultimate beneficiaries are consumers who need to be assured that the government and its regulatory authorities are protecting them and providing them with the necessary information to allow choice. Further, they need to be assured that the regulatory authorities have the necessary capacity, flexibility and freedom to effectively deal with risks, threats and hazards – and are clothed with the necessary scientific expertise to ensure credibility. Organised consumer groups regard food safety as a public good to be provided by government.

Organised producer and processor groups have clear ideas as to equity, fairness, responsibility and capacity to pay. They are reluctant to pay for a downgraded regulatory regime while also (in their view) subsidising those activities down the food chain which are beyond their capacity to control or influence. They know that scientifically, technically and statistically the causes of food-borne illness derive from practices beyond the back door of wholesale or retail premises. This is accentuated in the case of shellfish farmers who have no effective control over the quality of the growing medium and are required to practice depuration as a precautionary measure. Crop and animal producers also face contamination from sources beyond their own property.

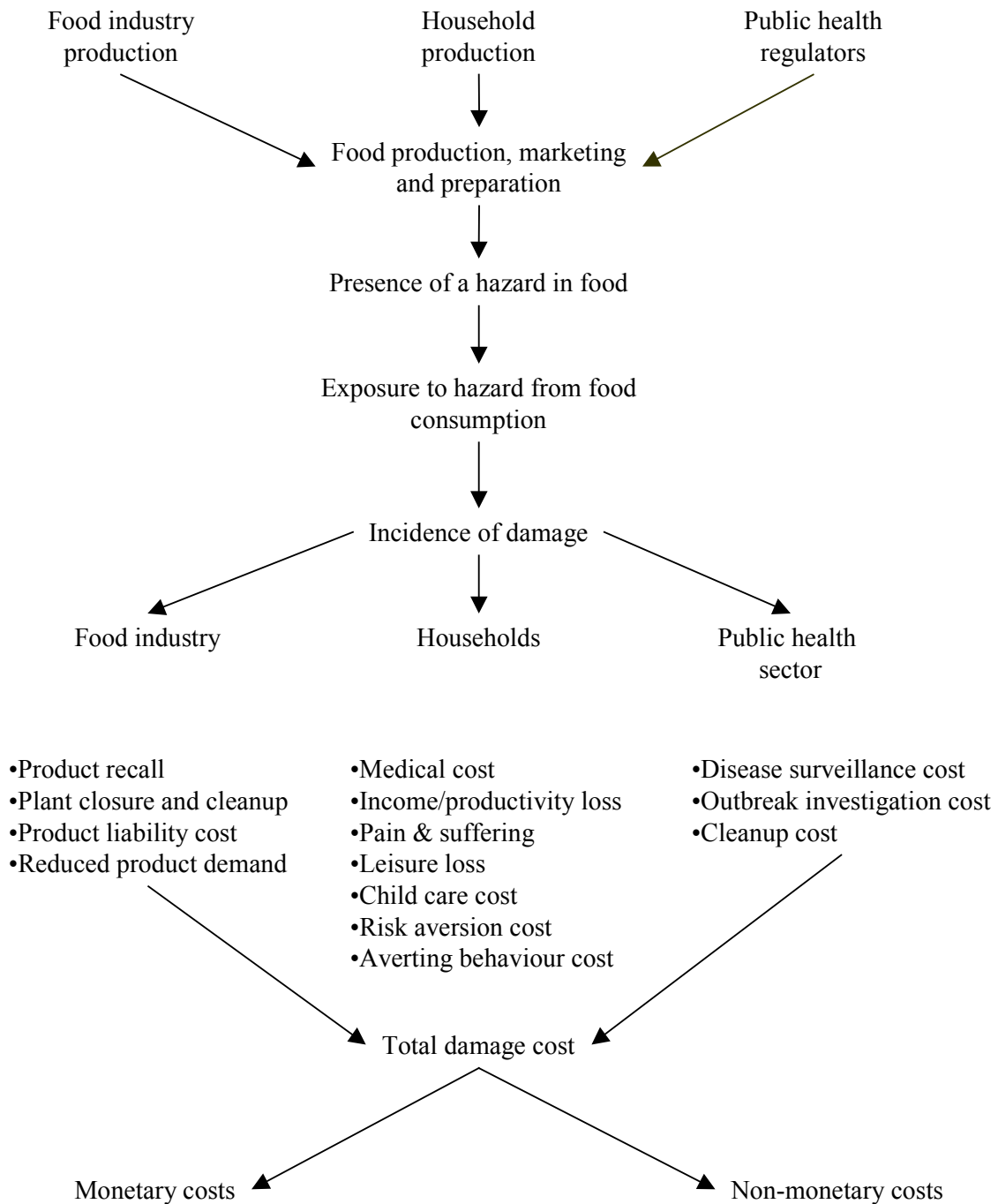
If a seamless system of food safety measures were in place, it would seem that, as the general public is a clear (if not only) beneficiary, a consumer tax could be an appropriate cost recovery mechanism. Yet an equitable consumer tax at State Government level would almost certainly be an excise and therefore invalid. Consequently, many would argue that consolidated revenue should bear the cost of food safety because it is a public good by way of a public service.

US Approach

The US has applied precisely this “beneficiary pays” rationale in determining its funding arrangements for food safety. Food safety regulatory activities are largely funded by tax dollars. In 1999, \$218 million was provided for the Food and Drug Administration (FDA) and \$714 million for the Food Safety Inspection Service (FSIS)¹⁵. Industry is charged for additional services including holiday and overtime inspections in meat, poultry and egg processing plants and for voluntary inspection requests (13.4% of FSIS funds). State and local regulatory agencies receive matching funds (50%) for implementing inspection services and HACCP and for industry education.

¹⁵ Issues and Options Paper: 48

Food Borne Disease in the Production Process



In its proposed 2002 budget, the Bush Administration provides funding for no fewer than 7,600 meat and poultry inspectors, without imposing user fees of any kind. The total funding proposed for the Food Safety Inspection Service is \$716 million.¹⁶ Interestingly, the FSIS has frequently requested expanded authority to charge user fees for more of its operations. Congress has consistently rejected these requests and has placed important restrictions on fees for the following reason outlined by the Economic Research Service of the US Department of Agriculture:

Most of the costs incurred for inspecting meat, poultry, and egg products are financed through Federal taxes, although a portion of it comes through user fees assessed against plants based on their annual volume of production. Economic analysis suggests that user fees may be inappropriate for financing inspection of meat, poultry, and egg products, since any benefits are in the form of improved health of consumers rather than enhanced profits to the firms paying the fees.¹⁷

Specialised Economic Reviews of Food Safety and Cost Recovery

The Issues and Options Paper considers in some detail various reports by public economic policy bodies and specific enquiries on who should pay for regulatory services and charging for food safety (pp19-25). The consultants' examination included Regulation & Review: 1994/95 by the former Industry Commission, the 1998 report of the Blair Food Regulation Review, the 1997 report by Codd titled ANZFA: Possibilities for Revenue Raising, and the April 2001 draft Report on Cost Recovery by the Productivity Commission.

The findings in these enquiries and reports were unanimous in two areas: the situation is far from clear on who should pay and, as there are many beneficiaries, costs need to be shared.

The Review consultants systematically examined key issues including:

- spillover benefits;
- conflict of interest in industry funding;
- if a co-regulatory/co-funded approach, who should pay for which functions;
- the feasibility and equity of charging mechanisms;
- capacity to pay;
- competitive disadvantage;
- contestability for service provision; and
- consumer education.

Arguments pro and con these issues were outlined with no clear recommendation being made. However, the discussion confirms the complexity of the issue of cost recovery.

¹⁶ Ann M. Veneman, US Secretary of Agriculture, Speech at Food Safety Summit, 20/4/01.

¹⁷ Economic Research Service, 2001 User-Fee Financing of USDA Meat and Poultry Inspection www.ers.usda.gov: 4

The reports also stressed that, depending on the economic principle selected and the structure of the industry, different answers will be reached. For example, the Industry Commission report stated that *“if a business can pass on its costs it will be an efficient way to gain the benefits of food safety regulation for the beneficiary, i.e. consumers”*. For this to work in NSW, all Australia would need to have the same policy and the point of collection would have to be at the primary processing point i.e. the milk factory, the abattoirs, the oyster packing co-operative/shed, the packing shed etc. However, the way most market structures distribute financial power to primary producers means that generally all costs are passed back, not passed on.

The Productivity Commission (draft) report states that *“cost recovery arrangements which are not justified on grounds of economic efficiency should not be undertaken merely to raise revenue for government activities”* and observes that *“cost recovery has been implemented with little consideration of the impacts on business, consumers or the agencies themselves”*.

It is a growing practice in government for economic principles to be submerged by accountancy practices or on dubious economic grounds such as *“infinite capacity for productivity gain”* or the simple lust for revenue.

In general, the Productivity Commission would agree with the economic principles articulated by NSW Treasury. Many of the Commission’s draft recommendations were directed to the multiplicity of Commonwealth agencies examined. In this context, recommendations were directed to processes to improve administrative arrangements, improve parliamentary oversight, and enhance transparency to the general public. With respect to recommended economic guidelines (in addition to the above two general findings), the ones most relevant to SafeFood were:

- 6.2 *As a general principle, cost recovery arrangements should apply to specific activities, not to the agency which provides them.*
- 6.3 *The practice of setting targets that require agencies to recover a specific proportion of their total costs should be discontinued.*
- 6.4 *Cost recovery arrangements should not include the cost of activities undertaken for Government, such as policy development, ministerial or parliamentary services and international obligations.*
- 6.8 *Where the objective of regulation is to provide benefits to the users of regulated products, a “beneficiary pays” approach should be adopted. Under this approach regulated firms would be charged for the costs of regulation only where:*
 - *it is not feasible to charge beneficiaries directly;*
 - *costs can be passed on the beneficiaries;*
 - *it is cost effective; and*
 - *it is not inconsistent with policy objectives.*

6.9 *Where the objective of regulation is to minimise the detrimental effects of external spillovers, a “regulated pays” approach should be adopted. Under this approach, regulated firms should be charged for the costs of regulation only where:*

- *those businesses are the source of the negative spillovers;*
- *it is cost effective; and*
- *it is not inconsistent with policy objectives.”*

A shorthand version of these draft recommendations is that costs should be transparent, that not all costs should ever be payable by industry, and that where “beneficiary pays” or “regulated pays” applies care should be taken particularly where policy objectives are put at risk.

With respect to food safety in NSW, it is simply **not** feasible for SafeFood to charge “beneficiaries” directly (eg by way of a tax at consumer level), nor are the “regulated” the source of all negative spillovers.

The Productivity Commission’s draft report on Cost Recovery reinforces the view that cost recovery and funding principles are of multiple dimensions (not clear-cut) and that a sharing of costs is justifiable on both theoretical and practical grounds.

Recommendation 2

Principles that may apply to the funding of SafeFood should range beyond the strictly economic and take into account equity, practicality and an assessment of the structure of the industries being regulated. Above all else, no principle of funding should imperil the policy objectives or scientific integrity of SafeFood.

Summary:

Economic principles are not the only principles to take into account with respect to food safety. Further, those applied depend on which ones are selected. Economic principles may be valid in the abstract. However, for many reasons outlined above – particularly in terms of equity, complexity and practicalities – a secure revenue base for SafeFood Production NSW will require a combined industry and consolidated revenue income stream if it is to be workable. This will be required on a continuing basis beyond transitional funding requirements. Efficiency in the ongoing activities of SafeFood will require attention to issues such as incentives, costs, equity and cross-subsidisation taking into account economic principles.

6 Funding Options

The terms of reference require the Review to “*identify...[funding] options consistent with [the principles identified] which will provide a secure and stable revenue base for SafeFood*”.

The previous chapter explains why economic principles alone should not determine SafeFood’s funding arrangements. It concludes that some form of cost sharing is justified on both theoretical and practical grounds.

The chapter also establishes that application of the “beneficiary pays” principle does not provide a simple answer to “who should pay?”. Nonetheless, closer examination of the beneficiary issue may help identify appropriate cost sharing options.

Beneficiaries of Food Safety

Effective food safety regulation provides direct benefits to the food industry at all points in the supply chain, to consumers of food, and to governments. Because of the many positive externalities and spillovers, identifying “the beneficiary” can become a matter of perspective. The various submissions to the Review provide a number of perspectives:

NSW Treasury

Consumers benefit by avoiding physical and financial costs associated with food contamination. Industry is protected from loss of consumer confidence and related loss of sales. (p12)

Australian Consumers’ Association

The ACA believes that while consumers are not the only significant beneficiaries of safe food, they are the most important consideration of regulating SafeFood. That does not imply the simplistic argument that consumers should thus pay directly for food safety activities...(p5)

Industry Stakeholders

‘Industry’ recognises the need to make a partial funding contribution to SafeFood but are clear in their view that the contribution should only apply to that part of the SafeFood expense that is not related to ‘public good’ and which ‘adds value’ to ‘Industry’...

Consumers are significant beneficiaries of food safety programs. These programs should result in reduced death arising from food borne bacteria, reduced illness and the resultant reduction in costs associated with hospitals and other medical related expense estimated in Australia at over \$2 billion each year. Further ‘public’ interest and benefit is derived by Government funding a safe food activity that helps ensure Australian and NSW food is ‘incident free’ and seen that way on the ‘world stage’. When product of NSW/Australian

origin is more desirable it contributes significantly to favourable Balance of Payments outcomes and helps strengthen the economy. (pp3-4)

In the Issues and Options Paper, the consultants put it this way:

The comments provided by the Stakeholders Reference Group to the Kerin Review of SafeFood support the view that the benefits of SafeFood regulation are partly shared by the wider community through maintaining overall confidence in the safety of food supplies generally. Another expression of this view is that the community in general expects governments to take responsibility for such functions as the setting of food safety standards, anticipating threats, and coordinating food safety regulation with national and other state agencies...Some SafeFood regulation activities also provide identifiable benefits to other agencies and local communities. (p24)

The Argument for Full Cost Recovery

In the previous chapter, the rationale for cost recovery put forward by NSW Treasury was considered in a general discussion of relevant principle, economic and non-economic. The Treasury position is that there is a strong case for **full** cost recovery of food safety regulatory activities.

Given the Review's conclusion that sharing of costs is justified, it may be useful to revisit the four propositions advanced by NSW Treasury to identify whether partial cost recovery may also generate the intended outcomes.

Firstly, cost recovery mechanisms in regulatory areas can provide incentives to reduce socially costly behaviour (the "polluter pays" principle)

This proposition was also affirmed by the Productivity Commission, which noted that "*(t)he efficiency of the economy also can be improved by making industries and individuals more aware of the costs they impose on society and government. Going by many names including 'user pays', beneficiary pays' or polluter pays' for example, such fees may be important in providing appropriate incentives to users by highlighting the social costs and benefits of private actions*"¹⁸. However, it does not necessarily follow that **all** the costs of a regulatory agency should be recovered. The best approach might be to link cost recovery to the socially costly behaviour. For example, the Productivity Commission recommended that "*regulated firms should be charged for the cost of the regulation only where...those businesses are the source of the negative spillovers*" (Recommendation 6.9).

This approach could very well be applied to an activity such as audit. Audit frequency is set with reference to both risk and performance. Good performers are audited less frequently than those with a bad food safety track record. Cost recovery for audit services provides an incentive for food businesses to improve performance, thus using and paying less for this regulatory service.

¹⁸ Productivity Commission, 2000 [Cost Recovery Issues Paper](#) Commonwealth of Australia: p15

In general, the Review considers that this proposition supports cost recovery only where there is a direct correlation between a “polluting” activity and the charges for SafeFood’s actions in response. Otherwise, the purpose of providing a disincentive is lost when both “good” and “bad” operators share the cost of those activities.

Secondly, cost recovery mechanisms can improve organisational performance by providing cost information to cost-bearing users and instilling cost consciousness in the regulatory agency.

Public sector economics has for a long time argued that organisational performance can be enhanced by client accountability and transparency. The principle is a sound one and a strong theme throughout the Productivity Commission report.

Nonetheless, it does not necessarily support **full** cost recovery. Should industry be expected to fully fund a regulatory agency simply to ensure that the agency functions efficiently?

Cost consciousness can be instilled by several means. Where fees are charged for services, those fees should be benchmarked against those of comparable private sector providers (as SafeFood currently does with audit fees; see also Recommendations 16 and 17 in Chapter 7). Periodic external review is another useful means of improving cost-effectiveness (see Recommendation 1 in Chapter 4).

Thirdly, cost recovery mechanisms can reduce the financial burden on the broader community by targeting those who actually benefit from the regulation. It also recognises the opportunity and deadweight costs of government funding.

This returns us to the “who is the beneficiary” issue considered earlier. There are many beneficiaries of food safety regulation, including all who consume food. The Issues and Options Paper identifies many circumstances in which SafeFood’s activities yield benefits which accrue to the community generally as public goods or positive externalities rather than specifically to the regulated food businesses. Indiscriminately charging food businesses for all of SafeFood’s activities, even those which directly benefit government, appears inequitable.

On behalf of consumers, the ACA view is:

The consuming public as the New South Wales taxpayer has already contributed funds for provision of basic services for which Government is responsible. Safe food is a basic need and key contributor to health, as such, ensuring quality and consistent supply of this basic need must be budgeted for from Government revenue. (p6)

The Review acknowledges the opportunity and deadweight costs of government funding. It is important to note that due to changes in consumer and producer surpluses, levies on the food industry result in their own deadweight losses.

Fourthly, cost recovery mechanisms achieve equity goals by not imposing costs on non-beneficiaries and ensuring that funds raised from a particular industry can be earmarked for funding regulation of that industry, avoiding inequitable cross-subsidisation.

The previous chapter identified the ultimate fallacy in the “vegetarians should not pay for meat safety” argument. In any event, SafeFood’s current commodity-based structure and funding arrangements become less tenable the further one moves up the supply chain, as products become mixed and value-added e.g. the frozen pizza.

The more extensive the supply chain coverage, the more it becomes a practical impossibility, and increasingly inefficient, to organise and deliver all regulatory activities – and recover their cost – in a compartmentalised fashion. Yet from a whole-of-chain perspective it appears inequitable to require “industry” to fully fund SafeFood when the beneficiaries of its activities include the community as a whole and Government.

That said, equity goals can be achieved by targeting cost recovery to direct service provision and/or the “negative spillover” circumstances discussed above.

The Productivity Commission’s Principles for Cost Sharing

The previous chapter concluded with a discussion of those recommendations in the Productivity Commission’s draft report most relevant to the present Review.

These recommendations provide a basis to develop a framework for shared costs by considering the nature of SafeFood’s activities, their purpose, and the flow of benefits.

In the Issues and Options Paper, the consultants identified three options for the funding of SafeFood over the next two years and beyond (p79). The first was to maintain full cost recovery and increase all industry charges as required. The second was for Government simply to fund SafeFood’s deficits while maintaining current industry charges. The third option was described as follows:

Government and industry to agree on a set of principles for sharing the funding of SafeFood activities.

The principles could be based on the broad categorisation of SafeFood functions as identified in this paper and the recent Productivity Commission Draft Report. This approach involves certain cost categories being funded by government, other costs fully funded by industry, and overhead costs being shared.

For the reasons discussed in Chapter 5 and above, the Review does not recommend maintaining the policy of full cost recovery. Nor does it consider open-ended funding of deficits to be appropriate. The Review recommends a shared funding approach

determined with reference to SafeFood's activities. The rest of this chapter seeks to develop that approach in terms of the model put forward by the consultants.

Recommendation 3

SafeFood should be funded on a shared basis by Government and industry, and the contribution by each should be determined with reference to the specific activities which require funding.

A Shared Funding Approach

Chapter 3 sets out the functional model of SafeFood's activities developed by the consultants. SafeFood's activities were divided among four categories:

- Policy and Standard Setting
- Scheme Implementation and Compliance
- Enforcement
- Overheads

The consultants considered each activity in the light of relevant principle, including the Productivity Commission recommendations, and developed the shared funding model set out at page 42 of the Issue and Options Paper.

The Review agrees broadly with the consultants' model, but has further considered the rationale together with the submissions subsequently received from the Industry Stakeholders and the ACA.

Funding by Government

The Review considers that government funding may be appropriate where one or more of the following circumstances apply:

1. The activities are undertaken for government;
2. Independence of the regulator is a paramount concern;
3. The activity is necessary to prevent information failure; and/or
4. Positive externalities or public goods are evident and the benefits extend to the wider community.

The Review considers that the following core SafeFood activities should be funded by Government.

Policy and Standard Setting

The Productivity Commission's draft report recommends that policy development and other activities undertaken for government be funded by government:

- 6.4 *Cost recovery arrangements should not include the cost of activities undertaken for government, such as policy development, ministerial or parliamentary services and international obligations.*

The consultants provided the following view on Policy and Standard Setting activities:

The community in general expects governments to take responsibility for such functions as the setting of food safety standards, anticipating threats, and coordinating food safety regulation with national and other state agencies. (p24)

The ACA made this important point in its submission:

It is reasonable to expect that if industry is funding certain functions of SafeFood that they have input into the manner in which their funds are used. Such input is not appropriate for the consideration of standards and policies for SafeFood. The ACA believes that this function should be funded by Government to ensure independence and policy and standards based on the protection of consumers. (p8)

SafeFood's Policy and Standard Setting work provides the framework for the regulatory regime. While consultation with industry and other stakeholders is important, SafeFood must remain at "arms length" from industry – and be perceived as independent – as it undertakes these activities.

The Review agrees with this summation of the issue by the consultants:

Government has a responsibility to bear the costs of those SafeFood activities yielding benefits that accrue to the community generally and not specifically the food producers being regulated. They include the undertaking of assessments/analysis of the risks to consumers of food borne illnesses across broad areas of food production. Also in this category of activities is the ongoing surveillance of threats and monitoring of developments in food safety management. Collaboration with other state and federal agencies in identifying responsibilities and agreeing to standards and approaches is in the same category. So too is the drafting of legislation and regulations setting standards for food producing sectors.(p25-26)

Enforcement

As set out in Chapter 3, Enforcement refers to activities beyond routine compliance work such as audit, and includes incident response, recall action and prosecutions.

The consultants note that the broad benefit to industry of effective enforcement could be the basis for an argument that industry should meet the cost, but note also:

*A counter argument is that charging industry for enforcement activities fails the test of fairness to enterprises operating in accordance with food safety schemes and provides no incentive for them to avoid this socially costly behaviour...and
...charging for product recalls can also inhibit firms from providing early disclosure of possible safety failures. (p27)*

The “polluter pays” principle discussed earlier would support recovery of costs from offending enterprises, but the only mechanism to do so is via fines and court costs in the relatively small number of matters where prosecution action is both appropriate and successful. Further, fines are paid to Consolidated Revenue subject to a discretion for the magistrate to order payment of up to 50% of the fine to the prosecuting agency.

The costs of enforcement action in individual cases can be considerable (and greatly exceed the fines imposed), as shown by a case study of a successful prosecution by SafeFood in January this year. A dairy processor was prosecuted after a consumer found foreign objects in a carton of buttermilk. The company was fined \$2500 with court costs of \$56. The magistrate ordered that 50% of the fine be paid to SafeFood.

SafeFood’s costs included 39 hours of investigation by a food safety officer, a further 5 hours spent preparing briefs and reports for SafeFood’s solicitors, and the solicitors’ bill of \$2114.75. With the costed staff time, SafeFood’s total costs were \$3872.50, or \$2622.50 net after the fine revenue.

Both the ACA and Industry Stakeholders argue that enforcement is a “policing” function which should be government funded to ensure the reality and perception of independence:

ACA maintains that it is imperative that enforcement is Government funded for appropriate independent industry policing and for public perceptions of independence.....Enforcement cannot be compromised by industry involvement or inadequate funding. It must be timely and ensure consumers health and safety. (ACA, p12)

...it is critical those who administer the program are seen to be and are, independent and not relying upon funding from those they are to ‘police’. The integrity of the regulator must be protected such that the consumer perceives they are free of potential bias. (Industry Stakeholders, p5)

The Review considers that the weight of argument supports Government funding of Enforcement. Further, funding decisions on the level of enforcement should be made by government, and not subject to the inevitable pressures from industry under transparent funding arrangements.

Consumer Information and Education

SafeFood’s statutory functions do not include a consumer education role and its regulatory activities, with the exception of meat, stop at the “back door” of retail. Nevertheless, SafeFood participates in the Food Safety Information Council and provides information to consumers who contact its operational branches.

Most, if not all, members of the Stakeholder Reference Group considered that SafeFood should devote more resources to this area, noting that the efforts of food businesses may be negated by poor consumer handling. Further, if SafeFood’s remit is extended to cover

retail and food service, consumer education could well become a core function, shared with NSW Health.

The consultants suggested that Consumer Information and Education be jointly funded by government and industry (p42). However, the ACA strongly opposes industry funding of consumer education:

Reliance on 'Industry' funding increases the likelihood that any information produced would be promotional rather than educational, and potentially unbalanced in its emphasis. It is likely that such influence would increase if 'Industry' is required to pay for SafeFood activities that are not considered a direct service to industry, as the reliance on industry funds would provide impetus for the regulator to demonstrate direct industry benefits in providing information and educational activities....Also, information is of little benefit to the public unless it is from a reputable source and represents best practice viewpoints on an issue or topic. Put simply, consumers will not generally trust information presented as 'education' from industry. Even if it is balanced and from a reputable source, the perception of bias could render the material ineffectual for safe food buying and handling behaviour if this activity is funded by industry.(p11)

Similarly, the US Secretary of Agriculture recently said in relation to the USDA's government funded food safety education:

We must continue to educate the public about all aspects of food safety...A well educated public is better prepared to assess the validity of claims they may hear in the media and to reject false or misleading information.¹⁹

The Irish Government recently established a Food Safety Promotions Board with a government funded budget of £4.8 million.²⁰

The Review recommends that Consumer Information and Education activities, as distinct from industry or product promotion, should be government funded (see also Recommendation 6). Government should determine what is required, which agency should undertake the work, and fund it accordingly.

Recommendation 4

The following core activities of SafeFood should be funded by Government:

- **Policy and Standard Setting;**
- **Enforcement; and**
- **Consumer Information and Education.**

The Review considers that the following SafeFood Overhead activities should be funded by Government.

¹⁹ USDA (2001) Speech by Secretary of Agriculture Ann.M.Veneman at Food Safety Summit, Apr 20 2001.

²⁰ Food Safety Authority of Ireland News, January 2001, www.fsai.ie/newsletter

Government Requirements

Government requirements include activities such as Ministerial and Parliamentary briefings, and reporting on government indicators. The Review supports the Productivity Commission's recommendation that these functions be funded by government.

As these activities are not directly related to the agencies' regulatory activities, nor to the beneficiaries of regulation, their costs should not be recovered from regulated firm. (Draft Report, p115)

Emergency Management Plan

Government is responsible for public protection in times of crisis. SafeFood's Emergency Management Plan needs to be independent from industry and should not be subject to industry scrutiny. A quick and effective response to a food safety event can prevent an "issue" from developing into a "crisis". The cost of Emergency Management Plan development and maintenance, as well as a contingency fund, should be funded by government.

Strategic Planning and Change Management

Most of SafeFood's efforts in this area are directed to the implementation of government policy. For example, the incorporation of the MIA into SafeFood was a government decision, not supported by the meat industry.

Further, the changing federal food safety scene requires the implementation of national government strategies by SafeFood. This work should be government funded, particularly when equivalent functions in other States are government funded. For example, Food Safety Victoria, the body established by Victoria to oversight implementation of national food reforms in that State, is completely government funded.

The ACA submission noted:

The tasks that have to be fulfilled to ensure SafeFood meets its purpose and function should be met by Government as should the costs of strategic planning and change management which result from implementation of Government policy. (p13)

Corporate Communications

The primary function of Corporate Communications is to develop an appropriate profile for SafeFood, increase community awareness of its role and functions, and highlight its activities. It is largely about Government being seen to be "on the job" and Government should pay for it.

Recommendation 5

The following Overhead activities of SafeFood should be funded by Government:

- **Government Requirements;**
- **Emergency Management Plan;**
- **Strategic Planning and Change Management; and**
- **Corporate Communications.**

Funding by Industry

Within NSW, funding arrangements for equivalent food safety activities differ depending upon the portfolio and agency involved. For example, SafeFood currently regulates dairy manufacturers, such as ice cream factories, under cost recovery arrangements. NSW Health currently regulates “secondary” manufacturers, such as confectionary factories, with the cost of its activities funded by government.

For many years before 1999, NSW Health administered the shellfish depuration requirement without cost recovery. In July 1999, responsibility was transferred to SafeFood, which is expected to recover all costs of the activity.

The inconsistency was noted in the Industry Submission:

Within Australia, historically, health departments and local council health inspectors have been funded by Governments who have a history of successfully contributing to the well being of the community through the assurance of food safety. This funding is seen as Government meeting its community service obligations. (p5)

The Review considers that cost recovery principles should be applied to food safety regulation in a consistent way across government, particularly where different agencies undertake equivalent activities. This view was supported by the Productivity Commission which recommended:

6.2 *As a general principle, cost recovery arrangements should apply to specific activities, not to the agency which provides them.*

Recommendation 6

Industry should not be required to pay for SafeFood activities where equivalent food regulatory activities undertaken by other Government agencies are funded by Government.

The consultants provided the following rationale for industry funding of SafeFood’s activities:

Industry has an obligation to meet the cost of the implementation and compliance activities of SafeFood relating to the operation of food safety schemes.

They include, in general terms, all those activities undertaken by SafeFood (and industry) to ensure that the food producers being regulated comply with the standards set by SafeFood. These include certification of producer food safety plans, compliance auditing of

such plans, the testing of the plans to ensure that they continue to deliver standards, the provision of advice and training, and consultation with industry about scheme implementation and operation.

- *These activities are directly related to, and are generally seen by industry to be the responsibility of, the regulated food producers.*
- *The recovery of the costs of providing these regulatory “services” is an incentive for individual producers to improve their performance in meeting standards and consequently to reduce their use of the regulatory “services”.*
- *This argument is that charging industry, if charges are well structured, will improve economic efficiency. (p26)*

In effect, the consultants considered that all activities in the Scheme Implementation and Compliance category (except Consumer Information and Education which sits rather uneasily in that category) should be funded by industry.

The Industry Submission supported a partial industry funding contribution to SafeFood as follows:

Industry recognises the need to make a partial funding contribution to SafeFood but are clear in the view that contribution should only apply to that part of the SafeFood expense that is not related to public good and which adds value to industry and does not duplicate existing contractual arrangements. (p3)

The Review agrees with the rationale provided by the consultants. However, for reasons set out below, it considers that funding arrangements for Compliance Audit, Inspection and Stakeholder Consultation should be determined as part of the section 73 review (see Recommendation 10 below).

Recommendation 7

The following core activities of SafeFood should be funded by industry:

- **Certification;**
- **Environmental Monitoring (routine operational only);**
- **System Testing;**
- **Licensing; and**
- **Industry Advice and Training.**

Joint Funding by Government and Industry

The following Overhead activities remain to be considered: General Management, Corporate Services, and Staff Training (including both Professional Development and Operational Training and Accreditation).

The consultants suggested that the first two activities should be jointly funded, but considered that industry should fund Operational Training and Accreditation (p42). However, the ACA argued:

*The technical competency and cross-skilling of SafeFood staff for liaison with **all** stakeholders is essential for the effective operation of the agency. This is not and should not be, in the ACA's view, for the direct benefit of industry over other stakeholders. Instead technical competency and cross-skilling of SafeFood staff is the most important resource of the agency to ensure safe food for consumers.*

The ACA believes that this function is the ultimate responsibility of Government and therefore should be funded through consolidated revenue. (p10)

The Review agrees with the ACA's broader view of the beneficiaries of this activity and also considers it somewhat artificial to separate the two components of staff training for funding purposes. However, it considers that joint funding, rather than 100% government funding, better reflects the flow of benefits.

For similar reasons, the Review disagrees with the ACA position that the other general overheads should be 100% government funded. Overhead activities are essential supports to SafeFood's core activities. In the absence of special considerations such as those which led to Recommendation 5, the Review considers that their cost should be jointly shared in proportion to the funding of the core activities.

Recommendation 8

The following Overhead activities of SafeFood should be jointly funded by Government and industry:

- **General Management;**
- **Corporate Services; and**
- **Staff Training (both Professional Development and Operational Training and Accreditation).**

Charging Mechanisms for Cost Recovery

The consultants considered the equity and feasibility of SafeFood's current charging mechanisms and concluded:

Overall, the structure of fees and levies used by SafeFood to recover its costs from industry lack consistency between industries and reflect both pragmatism and inherited funding structures. The structure can also be criticised for deficiencies in relation to equity and efficiency. (p29)

The Industry Submission raised these points regarding charging mechanisms:

The contribution should be for specific services and be undertaken in such a way that there is true visibility.

The current skewed cost levied against processors in the dairy industry is unacceptable and inequitable. Costs should be spread across the supply chain in accordance with the real cost of service provision to the various participants in that supply chain. (p3)

The ACA is concerned that direct industry funding of key regulatory activities can compromise independence, but also recognises the benefit of “cost signals” for non-compliant enterprises:

Direct ‘Industry’ funding of second-party auditing activities requires a relationship between the auditing regulator and enterprise which compromises the independence of the regulator and diminishes the preventative power that such activities must hold over industry for compliance. (p9)

ACA sees that compliance auditing should be the responsibility of Government but that increased licensing fees for uncooperative enterprises could be a potential funding option that could supplement general revenue funding. We believe such an arrangement could provide a potential deterrent to non-compliant enterprises and is sufficiently arms-length from auditing activities as not to overly compromise the regulator. (p9)

In practice, the charging mechanism cannot be considered in isolation from the quantum of funds to be raised. The Industry Submission states that industry will accept commercially benchmarked charges for services such as audit plus a “sensible” licence fee (p6). The difficulty for SafeFood is that (assuming service fees meet the costs of those services) its licence fees (or levies) must meet the cost of all other activities it is required to fund by that means.

Recommendations 7 and 8, if implemented, would require industry to meet around 27% of SafeFood’s budget, or around \$2.6 million per annum based on table 3.3. Given that SafeFood currently licences around 10,000 entities, it would seem feasible that a “sensible” licence fee structure could generate sufficient revenue. Of course it must be borne in mind that Recommendation 10 below leaves a further 26.5% unresolved, most of which relates to audit and inspection services which might be funded by additional fees-for-service.

In any event, licence fees should be scaled to take account of both business risk and business performance.

Recommendation 9

Businesses regulated by SafeFood should pay licence fees set on a sliding scale based on:

- **total cost of activities to be funded by industry;**
- **risk classification of the business having regard to type of food handled, business activity, and size of business; and**
- **Food Safety Scheme compliance assessed by audit and inspection outcomes.**

The Section 73 Review

The statutory review of the SafeFood initiative (“the section 73 review”) must begin shortly after 18 December 2001 and be completed no later than 18 December 2002. Among other issues, that review must consider whether food safety operations undertaken by different agencies (principally SafeFood, NSW Health and local government) should be undertaken by a single agency, and if so, the means of achieving that objective.

A possible outcome of the review is that SafeFood’s regulatory coverage would be extended to include the retail and food service sectors now covered by NSW Health. Local government’s current (variable) food safety role in these sectors might remain the same or be reconfigured in some way.

Both the ACA and Industry Submissions express great concern that the present review – and the Government’s decisions in response to its recommendations – should not preempt the section 73 review.

Australian Consumers’ Association

ACA is very concerned that the recommendations of the Kerin Funding Review could frame the deliberations of the Frost and Section 73 Reviews and shape the scope of those considerations.

It is imperative that the Frost and Section 73 review must consider future forms of a New South Wales food safety agency in the terms of how best to protect and inform consumers and ensure public health and safety not in terms of predetermined funding arrangements based on SafeFood’s current activities and budgets.

Furthermore, the outcomes of the Frost and Section 73 review may effect substantial changes to the operation of SafeFood, or require the establishment of a new food safety agency, rendering any preceding resolution of appropriate funding options obsolete. (p4)

Industry Stakeholders

‘Industry’ is also concerned that the planned ‘Frost Review’ of SafeFood and the ‘Section 73’ review scheduled to commence on December 18, 2001 may bring about significant changes to SafeFood that will render any conclusions at this point, obsolete. ‘Industry’ believes there is a need for a ‘Transitional or Interim’ arrangement on funding until these reviews are concluded. Government needs to substantially fund the operation of SafeFood at least up until the various scheduled reviews of effectiveness are concluded and quite probably, well beyond that time. (p6)

The Review considers these concerns to be particularly relevant for funding of the Compliance Audit, Inspection, and Stakeholder Consultation activities.

Compliance Audit and Inspection

Compliance audits and inspections are government's primary compliance activities. Together they account for 21% of SafeFood's current budget, even without including a proportion of the cost of Overhead activities.

Retail and food service sectors in NSW consist of approximately 30,000 businesses. If SafeFood's remit were extended to cover retail and food service sectors, audit and inspection arrangements will be a major consideration. This will relate both to funding and to options for service delivery (including the third-party audit option and several options for local government involvement). The service delivery issue is discussed in detail in the next chapter.

The ACA submission strongly supports second-party audit arrangements, but links this to government funding of the activity to ensure independence. The Industry Submission is not unhappy with current second-party arrangements (provided fees are commercially benchmarked), but appears to support mixed arrangements in "new" industries. The views of the retail and food service industries are unknown.

Given the above, the Review considers that the current funding via fees-for-service should continue pending the section 73 review and refrains from recommending how those activities might be funded under a future SafeFood

Stakeholder Consultation

The consultants' model split Stakeholder Consultation among the three core function categories, so its funding source would vary depending on the purpose. This raise two difficulties for the Review.

Firstly, consultation in relation to Scheme Implementation and Compliance would be completely industry funded. The ACA considered that this may restrict the opportunities for consumer consultation:

ACA believes that consultation on policy implementation, compliance and enforcement, must be Government funded to ensure that all stakeholders, not just complying enterprises, are involved and have their interests reflected in such matters. (p11)

The second difficulty is that, in practice, consultation with industry takes place through the same commodity-specific forum in relation to all matters. Consumers are represented on some, but not all, of these bodies.

As noted earlier, SafeFood's commodity-based structure is likely to change, particularly if its remit is extended to cover retail and food service. Industry and consumer consultation arrangements will need to be fundamentally reconsidered. For this reason, the Review considers that the funding of Stakeholder Consultation should be considered in the course of the section 73 review.

Recommendation 10

The appropriate funding mechanism for the following activities should be determined as part of the review required by section 73 of the Food Production (Safety) Act 1998:

- Compliance Audit;
- Inspection; and
- Stakeholder Consultation.

Transitional funding recommendations are presented in Chapter 7.

7 Transitional and Service Delivery Issues

The optimum funding regime for SafeFood cannot be determined until the statutory review of the SafeFood initiative (the section 73 review) has been undertaken and the Government has decided on its response. The key reasons, considered in the previous chapter, are:

- if SafeFood's remit is extended to cover the retail and food service sectors, its current commodity-based structure and approach will become inappropriate;
- any allocation to SafeFood of agency responsibilities currently funded by Government, for example relating to fair trading or compliance with stock foods legislation, will raise additional funding issues (see Recommendation 6); and
- future Government decisions on food safety audit arrangements for the retail and food service sectors are likely to be closely linked to funding issues.

Transitional funding is clearly needed. The budget projections and funding options presented in the Issues and Options Paper (see pp79-85) show that without additional funding **either**:

- dairy and meat charges must increase by between 45% and 70% over the next two years, and the charges in the draft Seafood Safety Scheme must be fully implemented; **or**
- SafeFood's recurrent expenditure must be cut by around 35% (\$3-4 million per annum).

Expenditure cuts of this magnitude cannot be made without seriously compromising SafeFood's capacity to protect public health and safety in the sectors it covers. The Review's conclusion in this regard is reinforced by the finding of the expert consultants to the Review that there were "[no] indications of significant inefficiencies".

Budget information provided to the Review show that staff salaries and salary on-costs make up nearly 60% of expenditure. Substantial retrenchment of staff would be needed to save 35% of budget. The loss of expertise, experience and corporate knowledge would have serious long-term consequences for SafeFood, in addition to the immediate increase in food safety risks²¹. The Government's substantial investment in the SafeFood initiative could well be wasted (see also Footnote 14 on page 33).

The Review considers that the shared funding option based on principles set out in the Productivity Commission's Draft Report on Cost Recovery and presented in the Issues and Options Paper (see summary at pp42 and 77-79) provides an appropriate basis for

²¹ Such a step should not be taken lightly, as illustrated by recent Canadian experience. The Ontario Government cut its Environment Ministry's funding by 50% over 3 years despite substantial material – some of which went to Cabinet – outlining the potential dangers. In May 2000, 7 people died and 2000 fell ill in Walkerton Ontario from *E coli* in the drinking water. The current Walkerton Inquiry is now focussing on the Government's awareness of the risks posed by the drastic downsizing and the steps it took to inform itself (*I WASN'T WARNED OF HEALTH RISK, PREMIER HARRIS TESTIFIES*, *Canadian press report 29 June 2001, via FoodSafetyNet*)

funding during the transitional period. With Recommendations 13 and 14, it would enable continued implementation of SafeFood’s programs without increasing existing charges and with some alleviation or phasing of the proposed seafood charges. If cost savings can be achieved during the transitional period, this will provide some flexibility to address inequities in the charging systems and/or to respond to changed circumstances without necessarily increasing charges.

Recommendation 11

The Government should provide transitional funding equivalent to 30% of SafeFood’s budget (approximately \$3.5 million per annum), consistent with the shared funding option presented in the Issues and Options Paper, until completion of the review required by section 73 of the Food Production (Safety) Act 1998.

If transitional funding is provided as recommended, the budget projections in the Issues and Options Paper show that SafeFood will need to raise \$6.4 million from industry in 2001/02 as shown in Table 7.1 below. This reflects the cost of all activities in Scheme Implementation and Compliance and a proportion of the cost of the Overhead activities.

Table 7.1 Industry and Government Share for 2001/02

INDUSTRY	INDUSTRY SHARE	GOVT SHARE
Dairy	2,292,553	883,539
Meat	2,923,458 ²²	1,241,712
Seafood	1,191,780	794,230 ²³
TOTAL	\$6,407,791	\$2,919,481

Allocation of these costs within the respective supply chains will raise issues of fairness, efficiency, market power, affordability and interstate competitiveness, many of which were discussed in Chapter 5. The position put forward by the combined industries in their Industry Submission (p3) was simply put:

Costs should be spread across the supply chain in accordance with the real cost of service provision to the various participants in that supply chain.

SafeFood faces a major challenge in implementing the cost recovery regime because of its history. It inherited a cost recovery regime from the former Meat Industry Authority (MIA) based on licence fees, audit fees (which are still being phased in to commercial levels), and a producer levy. After dairy deregulation from 1 July 2000, SafeFood implemented licence and audit fees heavily weighted to the processing sector in recognition of the impact of deregulation on the other sectors. SafeFood also inherited a levy on shellfish farmers which pays most (but not all) of the costs of its shellfish program. The draft Seafood Safety Scheme regulation released in June provides for a one-off licence application fee, audit fees, and a sliding scale levy.

²² Not including the subsidy required to support the National Livestock Reporting Service (NLRS), provided from Meat Industry Levy revenue

²³ In addition to \$399,000 already to be provided as Seafood development costs.

It will take time to develop a cost recovery framework which is consistent across industries and reflects the appropriate principles. In developing this framework, SafeFood will need to consult **across** industries as well as through the industry-specific consultation bodies. The “combined industries” group which evolved during the Review could be a useful forum to begin “whole-of-industry” discussion of these issues.

Industry-specific negotiation will of course continue to be necessary, for example (and urgently) in relation to dairy charges for 2001/02.

Recommendation 12

During the transitional period, negotiation should proceed between SafeFood and the industries it regulates to ensure that the cost recovery regime is efficient, equitable and transparent. The “combined industries” framework which evolved during the present review should be utilised to the extent possible to maximise consistency and transparency.

The second transitional funding issue relates to SafeFood’s Meat Branch, created when the former MIA became part of SafeFood in August 2000. The budget projections in the Issues and Options Paper anticipate a Meat Branch deficit of \$1.6 million for 2001/02, reduced to \$391,000 if transitional funding is provided as recommended. In addition, the Review was advised that the deficit for the year to 30 June 2001 is likely to be between \$500,000 and \$700,000.

It was beyond the scope of the Review to consider this issue in detail. However, a number of reasons were advanced by SafeFood to explain why the Meat Branch budget is in deficit. These include:

1. Meat Branch’s pro rata share of SafeFood’s Corporate Services and Licensing costs is very high because it has both food safety and NLRS staff, while Dairy Branch was radically downsized due to deregulation [from 64 staff to 29]. Although merger of the respective Dairy and Meat infrastructures should generate savings in the medium to long term, these costs remain high due to the need to support three sets of business practices (including the inherited shellfish program) and run dual financial and licensing systems while common systems and practices are developed.
2. Meat Branch also must pay a pro rata share of the high and escalating rent at SafeFood’s Elizabeth Street premises (inherited from the former Dairy Corporation). SafeFood is seeking cheaper accommodation to occupy when its lease expires in February 2002.
3. The proportion of the producer levy required to subsidise the NLRS has increased from 50% under the former MIA to a projected 74% in 2001/02, reducing by \$365,000 the funds available to support food safety operations. The extra subsidy is needed primarily because of the higher costs outlined in (1) and (2).

4. The management of the former MIA (now departed) reviewed all MIA positions and upgraded them shortly before the incorporation into SafeFood.

Meat Branch costs have been and will be further increased by new responsibilities in relation to uncooked fermented products and a Risk Analysis review budgeted for 2001/02.

The former Dairy Corporation provided the “base” from which SafeFood was established. Until August 2000, the Dairy Branch provided support services to the rest of SafeFood under internal funding and service arrangements. Dairy costs associated with the transition to SafeFood were in effect merged with those associated with dairy deregulation (including the radical downsizing noted above), for which substantial funding was provided from superannuation reserves.

Apart from \$400,000 for relocation of the MIA, no provision was made in the 1998 establishment funding for the Meat transition to SafeFood, although a further amount of \$200,000 was provided in July 2000 to offset some “shared services” costs.

It is apparent to the Review that transition of the former MIA into SafeFood has been a difficult process, dating from passage of the SafeFood legislation in late 1998. Cost issues have loomed large in SafeFood’s relations with the meat industry throughout this period and continue to dominate the relationship, to the detriment of the constructive partnership needed to tackle existing and emerging food safety issues.

There appears to be a strong case to reconsider the funding provided for transition of the former MIA to SafeFood. Government funding of transition costs reasonably linked to the Government’s initiative to integrate NSW food safety arrangements would help repair SafeFood’s difficult relations with the meat industry and improve the food safety focus.

The Meat transition to SafeFood has been complicated by the historical legacy of the former MIA’s non food safety functions. Two of these – lamb branding and saleyard licensing – absorb minimal Meat Branch resources and will be legislatively repealed in August 2003.

However, the NLRS poses particular difficulties for SafeFood. Provision of market information is not a food safety function and there is no real synergy between the NLRS operation and the rest of Meat Branch. On the other hand, meat producers value the service. Most see it as the main justification for the producer levy, even though 50% of the proceeds have for some years supported meat food safety activities (none of which are undertaken on-farm, at present).

Relocation of the NLRS will require financial adjustment by SafeFood and, assuming that the levy is retained, is likely to generate political controversy for the Government.

The transitional funding issue provides an opportunity for the Government to divest SafeFood of responsibility for the NLRS under orderly arrangements which will not threaten the viability of SafeFood's core business.

Recommendation 13

SafeFood and Treasury should review the transitional costs associated with incorporation of the former Meat Industry Authority into SafeFood and identify the supplementation required to address that component of the Meat Branch deficit. The transitional funding should be linked to, and also facilitate, arrangements to divest SafeFood of responsibility for the NLRS.

The final transitional issue was the subject of a specific term of reference for the Review:

...whether additional funding is required to enable adequate enforcement of food safety requirements in the industry sectors currently regulated by SafeFood.

This raises three questions for the Review: Does more need to be done on enforcement? If so, what is needed? Is additional funding required?

As outlined in the previous chapter, SafeFood's primary tool for ensuring food safety is the HACCP-based food safety program, implemented by individual food businesses and approved and audited by SafeFood. This preventative approach, pioneered in the dairy and meat industries in most parts of Australia, contrasts with the traditional reactive "enforcement" approach by Health-based agencies which focusses on detecting breaches of regulations and undertaking prosecutions.

In truth, both prevention and enforcement are needed to adequately protect the community from food-borne illness.

In Chapter 3, the main enforcement activities of SafeFood were identified as Incident Response, Recall, and Prosecution. Table 3.3 shows that a relatively small percentage of SafeFood's budget (8.7%, including a proportional share of Overhead costs) was devoted to these activities in 2000/01. SafeFood's preventative programs (the activities in Scheme Implementation and Compliance), on the other hand, absorbed 64% of SafeFood's budget for the same year.

SafeFood's assessment of the food safety risks and trends in the sectors regulated by the agency should not be second-guessed. Structured meetings with SafeFood's operational managers and senior staff, and additional briefings and documentary material provided to me as an inaugural member of the SafeFood Production Advisory Committee established by the Minister under the SafeFood legislation, provided detailed insights into SafeFood's day-to-day operations.

It is clear that there are both worrying trends and "hotspot" areas in each of the three industries currently regulated by SafeFood. An indicative summary follows.

Dairy

The Dairy audit program over the past year has highlighted a number of significant deficiencies in industry management of food safety issues. Following dairy deregulation, there is worrying evidence of slippage in industry practices, possibly induced by commercial pressure to “cut corners”.

A good example is where SafeFood recently ordered a major milk processor to close a processing line due to serious contamination with *Listeria* due to poor plant hygiene. This case mirrored a recent problem experienced by Japan’s largest dairy company which resulted in over 14,500 cases of illness from milk powder contaminated with *Staphylococcus aureus* toxins. There have been similar recent incidents around the State associated with serious breaches of food safety requirements.

Meat

The most serious enforcement issue relates to uncooked fermented products such as the mettwurst responsible for the 1995 Garibaldi outbreak.

When the former MIA became part of SafeFood in August 2000, it was agreed that the new Meat Branch should take over responsibility from NSW Health for enforcement of the national microbiological standard applying to these products. The standard sets maximum levels for any kind of *E coli*. Levels in excess of the standard indicate that the fermentation “kill step” has been inadequately carried out, so that the product may contain dangerous *E coli* strains such as those which caused a child’s death and lifelong illness of 22 other children in the Garibaldi incident.

The new Meat Branch undertook a preliminary microbiological survey which indicated that non-compliance for *E coli* may be as high as 20%. Follow-up investigation revealed that two of the premises in the sample were manufacturing product without the use of starter cultures and with inadequate control over fermentation. One firm was releasing product as soon as the next day, meaning little or no fermentation would have taken place.

This significant risk is being addressed by industry training, spot inspections, and further survey work. However, additional resources are needed for a systematic and comprehensive approach, including vigorous follow-up where spot checks confirm that problems are continuing.

Shellfish

The NSW Shellfish Quality Assurance Program was established in 1997 as a harvest management regime, funded and largely run by industry through local committees of oyster farmers in each of the State’s 30 oyster-producing estuaries. Although the three full-time staff are Government employees, and the Program Coordinator has expert

qualifications and statutory powers to open and close harvest areas as required by environmental conditions, the Program has no staff or resources to “police” the closures.

On transfer of the Program to SafeFood’s Seafood Branch in mid 1999, SafeFood also took over responsibility for the depuration requirement from NSW Health. However, the enforcement resources (one full-time food inspector) stayed with NSW Health.

The Seafood Branch has integrated the depuration requirement into the Program, including annual audit of 244 depuration plants, and enhanced the shellfish safety regime in a number of ways. However, the Branch has no dedicated resources for enforcement.

Illegal harvest is particularly likely during periods of heavy rain, when prolonged estuary closures put economic pressure on oyster farmers. These are also the periods of highest risk of sewage contamination. For similar reasons, the costly and time-consuming depuration process is more likely to be circumvented.

The Program regularly receives information suggesting non-compliance, but is generally unable to investigate the accuracy of reports and/or take timely action. A “vicious circle” can result whereby the law-abiding majority become frustrated at the lack of action against breaches, and themselves begin to breach the requirements. Industry leaders acknowledge the problem, as evidenced by a September 2000 resolution of the advisory industry-based Shellfish Quality Assurance Committee calling for additional resources to be provided to the Program for depuration enforcement.

There is an urgent need for SafeFood to devote additional resources to enforcement activities across the dairy, meat, and shellfish industries. Ideally, there should be a flexible enforcement capacity able to target hotspots and respond rapidly to information, thus ensuring maximum “bang for the buck”. In December 2000, the SafeFood Production Advisory Committee unanimously carried a detailed resolution for consideration by the Minister confirming its view that there are serious health concerns apparent in these sectors which should be addressed by an appropriate enforcement program (copy of resolution at Appendix 6).

SafeFood has developed a proposal for an Enforcement Unit which it considers can most efficiently and effectively address problem areas such as those outlined above. A SafeFood briefing paper on the proposal states that the purpose of the Unit would be to:

complement [the] HACCP based food safety programs and provide objective evidence to supplement the documentation and performance of these systems.

The paper states that the Unit is necessary to:

1. *Enable SafeFood to determine the state of operation/production in industries for which it is responsible, outside of the normal audit program. This provides valuable information to enable SafeFood to determine actual risk and appropriately deploy resources;*

2. *Enable SafeFood to determine the effect of commercial pressure on its industries and therefore the amount of “cost cutting” measures taken by individual companies to improve profits at the expense of food safety.*
3. *Provide adequate resources to enable appropriate prosecution to be effected.*

The Unit’s role would include:

- immediate and rapid response to food safety incidents or potential threats;
- effective response to information suggesting unlicensed premises;
- a range of surveillance and spot check or inspection activities; and
- preparation of potential prosecution cases.

The proposed Unit would initially comprise two senior “authorised officers” who would work as an independent group reporting through one of SafeFood’s operational Branch heads. A third member would be added at some point during implementation of the Seafood Safety Scheme. The budget estimate is \$250,000-\$300,000 per annum including both salary and operational costs.

A Unit along these lines could be funded in one of three ways:

- diverting resources, including the two senior officers, from SafeFood’s Scheme Implementation and Compliance activities;
- raising additional revenue from industry by increased charges; or
- Government funding in accordance with the approach in Recommendation 4

The first option could be appropriate if there were evidence either that some existing Scheme Implementation and Compliance activities are unnecessary or excessive, or of significant inefficiency. Neither is evident, as outlined in previous chapters.

Increasing fees or levies to pay for the Unit would be inconsistent with the Review’s general recommendations on funding principles (see Recommendations 3, 4 and 6). Until July 1999, the Government funded enforcement by NSW Health of the shellfish depuration requirement alone at a cost equivalent to around 50% of that required by SafeFood for the proposed Enforcement Unit.

Further, in 1999 the Queensland Government funded the establishment of a Meat Safety Enforcement Unit with 5 staff and a budget of around \$600,000 within the self-funding Queensland Meat and Livestock Authority (QLMA). The 1999 Annual Report of the QLMA states that the Unit was established to:

investigate and resolve illegal processing activities so as to maintain a level playing field for the majority in the meat industry who operate in an honest and ethical manner, as well as to minimise risks to product wholesomeness.

The Review understands that this funding has now been transferred to the new agency Safe Food Production Queensland.

In recommending that the Government fund the Unit in addition to the transitional funding recommended at Recommendation 11, it is noted that total Government funding will exceed that modelled by the consultants in their allocation of SafeFood's budget to its activities. Accordingly, it would be appropriate to review the need for the Unit as part of the section 73 review of the SafeFood initiative.

Recommendation 14

The Government should provide additional funding for an Enforcement Unit comprising two to three senior "authorised officers", pending assessment of the continuing need for the unit as part of the section 73 review.

Service Delivery

The terms of reference require the Review to identify service delivery options and consider any transitional service delivery issues. The Review interpreted this as restricted to services provided in connection with SafeFood's regulatory role, thus not including the NLRs.

The Review restricted its consideration of service delivery options to food safety audit because this is the only regulatory service which could be undertaken by the private sector ("third-party audit") rather than by SafeFood ("second-party audit").

Audit of individual food safety programs is SafeFood's primary compliance activity, absorbing nearly a quarter of its budget when a proportional share of Overheads is included (see Table 3.3). The principal issue for the Review is whether SafeFood's audit role should be opened up to the private sector, that is, whether it should become "contestable".

The main arguments for and against contestability are canvassed in the Issues and Options Paper (at pp31-32). The arguments boil down to two key issues: regulatory effectiveness and economic efficiency. Supporters of a third-party contestable audit regime argue that only through competition can the service be delivered at its efficient cost. Supporters of second-party audit argue that the risk of compromised food safety standards is too great unless Government carries out the audits.

The major concerns of industry relate to cost and duplication. The Industry Submission suggests that (pp3-4):

Some 'Industry' participants already have contractual arrangements in place for food safety auditing and retention of a proportion of third party audit would not be out of place and would have the additional benefit of providing ongoing assurance of the maintenance of commercially competitive rates for the service provided by Government.

It later states (p6) that, under second-party audit arrangements, industry would accept:

competitive, commercial audit fees that do not duplicate current contracted audit arrangements.

The Australian Consumers' Association strongly supports second-party audit by Government although, as noted in the previous chapter, it also believes that industry should not pay directly for food safety audits. The submission states that:

ACA believes that SafeFood must have the power and resources to conduct second-party audits pre-arranged and unannounced for effective compliance with schemes and consumer assurance of food safety. We believe that SafeFood must have significant independence from industry to conduct such activities effectively.

Direct 'Industry' funding of second-party auditing activities requires a relationship between the auditing regulator and enterprise which compromises the independence of the regulator and diminishes the preventative power that such activities must hold over industry for compliance.

Government has a responsibility to ensure that enterprises comply with the food safety regulatory system that it has established and that it protects public health and safety.

This position is opposed by the argument that third-party systems can effectively deliver food safety assurance. For example, it has been a long held view in the export meat processing industry that third-party auditing delivers sufficient food safety assurance and this view is common in the domestic meat processing industry.

Others will argue that a second-party system can operate at a lower **overall** cost, when the need for Government supervision ("auditing the auditors") is taken into account. If cost recovery applies to the supervisory activities, then industry will pay twice. There also may be doubt whether third-party audit costs to businesses in rural and regional areas will be lower than those of second-party audit delivered through SafeFood's regional office network.

The paramount consideration in any move away from the current second-party arrangements must be the Government's ultimate accountability to ensure the safety of food produced, handled, and sold by industry. This means at the very least that the supervisory arrangements for third-party audit need to be carefully thought through, and resourced. For example, SafeFood's Dairy Branch has decided to conduct a proportion of its routine compliance audits on an "unannounced" basis in response to the apparent slippage of standards following deregulation. Under a third-party system, any program of unannounced audits or inspections would have to be carried out by Government auditors **in addition** to the third-party compliance audits.

The Review also considers that effective supervision of a third-party system will require SafeFood to have a detailed and practical knowledge of the risks and hazards in the relevant industry. For example, SafeFood is only now coming to grips with these issues in the Seafood and Plant Products industries and needs both to develop its own expertise and educate, consult, and communicate with industry as to food safety requirements. If Government's principal food safety role is to be supervision by

SafeFood of a third-party audit system, then it is **essential** for SafeFood to gain enough experience to be able to set the benchmarks and relevant standards for the various industries.

In general, the Review takes the position that there is no demonstrated intrinsic virtue in either second or third party auditing – it all depends on the industry, the firm, and the supervisory arrangements at a particular time. The recent regulatory failures involving HHH and Ansett demonstrate failures of both second and third party auditing. Second-party auditing fails when it lacks close knowledge of activities in an industry or business and third-party auditing fails when auditors are “captured” by their client and for commercial reason not prepared to take action. If, as has been suggested in other areas of the economy, it is essential to legislate for third-party auditors to report breaches to government, one may as well stay with second-party auditing where there is both independence and teeth.

Recommendation 15

SafeFood should remain the food safety auditing body for the purposes of its current charter at least and until the organisation can build on its existing level of expertise and be able to comprehensively assess the risks and hazards across all industries under its charge.

Nonetheless, industry concerns in relation to cost should be addressed on an ongoing basis.

SafeFood maintains that if it does not have to carry costs not borne by its notional private sector competitors (for example, the activities carried out for Government which this Review recommends Government should fund), it can deliver audit services at comparable cost to those competitors. It is prepared to benchmark its audit charges provided that all relevant cost factors are taken into account. These factors may include, for example, the cost of delivery to rural and regional areas.

The benchmarking process should be transparent and industry should be involved in developing an appropriate methodology.

Recommendation 16

SafeFood’s audit charges should be benchmarked against those of commercial service providers, having regard to all relevant cost factors including those associated with rural and regional service delivery.

Recommendation 17

SafeFood should establish a working group with representatives from the industry sectors audited by SafeFood to develop an agreed benchmarking methodology.

Appendix 1

Abbreviations and Acronyms

ACA	Australian Consumers' Association
ACCC	Australian Competition and Consumer Commission
AFFA	Agriculture Fisheries and Forestry Australia
ANZFA	Australia New Zealand Food Authority (soon to be reconstituted as Food Standards Australia New Zealand)
AQIS	Australian Quarantine and Inspection Service
BSE	Bovine Spongiform Encephalopathy
COAG	Council of Australian Governments
FSA	Food Science Australia
FSIS	Food Safety Inspection Service (US)
HACCP	Hazard Analysis Critical Control Point
NLRS	National Livestock Reporting Service
PC	Productivity Commission
SQAP	Shellfish Quality Assurance Program
QSA	Quality Society of Australasia
USDA	United States Department of Agriculture
USFDA	United States Food and Drug Administration

Appendix 2

Glossary²⁴

Appropriation	An authorisation from Parliament to withdraw funds from the Consolidated Revenue Fund
Beneficiary pays	The idea that those who benefit from the provision of a particular good or service should pay for it
Benefit principle	A principle which suggests that economic efficiency would be improved by requiring people to contribute (through taxation) according to the value they place on the publicly provided goods and services they consume.
Charge	The price or cost imposed. In this report it is used as a generic term to cover all cost recovery imposts, including both fees for service and taxes.
Community Service Obligation	A situation where the government requires a government business enterprise to engage in a non-commercial activity in order to meet a social objective.
Compliance costs	The costs associated with abiding by a regulation or with paying a tax.
Core	That part of an agency's output which is essential to meeting its charter or policy directives.
Cost recovery	A system of fees and specific purpose taxes used by government agencies to recoup some or all of the costs of particular government activities.
Cross subsidy	A situation where revenue from one activity is used to decrease the price of another activity.
Deadweight cost	The cost to society of distortions of production and consumption decisions.

²⁴ This glossary uses the same definitions as these in the Productivity Commission's Draft Report on Cost Recovery (April 2001).

Direct costs	Costs that can directly and unequivocally be attributed to an activity (for example, labour and materials).
Externality	A situation when a decision to produce or consume has positive or negative welfare consequences for those not party to the decision.
Fee for service	A direct charge for the provision of a good or service. As a general principle, a fee should bear a direct relationship with the cost of providing the good or service, or could be open to legal challenge as amounting to a tax.
Governance	Refers to the processes that direct, control and hold to account agencies.
Incidence	The ultimate distribution of a tax between producers and consumers.
Indirect costs	Costs that are not directly attributable to an activity and are often referred to as overheads (for example, corporate services).
Levy	A form of tax. It is often used to refer a tax that is imposed on a specific industry or class of persons, rather than a tax of general application.
Market failure	A situation where the characteristics of a market are such that its unfettered operation will not lead to the most efficient outcome possible.
Moral hazard	A situation where the application of regulation creates incentives to act in a way contrary to the objectives of the regulation.
Natural monopoly	A situation where it is more efficient for one firm to supply all of a market's needs than it would be for two or more firms to do so.
Private good	A good for which it is physically and economically feasible to identify and charge users (or beneficiaries) and to exclude non-purchasers. Therefore, if it is profitable to provide the good or service, the market will normally do so.
Public good	A good or service where provision for one person means the good or service is available to all people at no additional cost. Public goods are unlikely to be provided to a sufficient extent by the private market.

Polluter pays	Firms or sectors have an obligation to pay for any “pollution” damage that they impose on others.
Regulated pays	The idea that those who, through their actions, create a risk that requires regulation, should pay for the cost of that regulation.
Spillover	See “Externality”
User charge	A charge for the provision of a specific good or service to an individual user, related to the quantity consumed.

Appendix 3

ASC and SRG Membership and Meetings

Agency Steering Committee (ASC)

Hon. John Kerin, Chair
Jim Booth, The Cabinet Office (to mid June)
Zoe de Saram, The Cabinet Office (from mid-June)
Frank Jordan, NSW Treasury
Nita Cowan, NSW Treasury (alternate)
George Davey, SafeFood NSW

Stakeholder Reference Group (SRG)

Hon. John Kerin, Chair
Ron Della Vedova, Dairy Industry
Brian James, Meat Industry
Grahame Turk, Seafood Industry
Rebecca Smith, Australian Consumers' Association
Dr Heather Yeatman, SafeFood Advisory Committee
Professor Ken Buckle, SafeFood Advisory Committee
Arthur Aroney, Dairy alternate (to early May)
Jonathan Moss, Dairy alternate (from early May)
John Roach, Seafood alternate

Consultants to the Review (Hassall & Associates Pty Ltd)

Peter Frawley
Dr Bruce Standen
Dimity Podger

Meetings

Participants	Date	Comments
ASC	12/07/01	Final meeting, discussion of draft Final Report
ASC, SRG and Consultants	23/05/01	Discussion of Issues and Options Paper prepared by Consultants
Kerin and Dairy, Meat, Seafood industry representatives	16/05/01	Kerin met with each representative to discuss draft Issues and Options paper
ASC and Consultants	14/05/01	Discussion of draft Issues and Options paper
ASC and Consultants	03/04/01	Workshop on issues
SRG and Consultants	02/04/01	Workshop on issues
Consultants and SRG	Early March	Individual meetings to identify key issues and perspectives
ASC and Consultants	15 February	Planning meeting
ASC	24 January	Planning meeting

Compliance and Enforcement Action 2000/01

	DAIRY				MEAT				SEAFOOD (SQAP)	
	Farms	Milk Processing Factories	Dairy Manufacturers	Vendors	Abattoirs	Processors	Retail	Meat Vans	Farmers (Class A Aquaculture Permit Holders)	Depuration Plants
Operational staff										325
Licensees	1450	9	81	1012	101	482	2009	4544	470 registered by SafeFood under NSW SQAP	254 registered by SafeFood under Fisheries regulation
Food Safety Programs:										
• % HACCP certified	100%	100%	100%	99%	100%	100%	95%	not applicable	not applicable	not applicable
• % implementation underway	new applicants only	new applicants only	new applicants only	1%	new applicants only	new applicants only	5%	not applicable	new applicants only	new applicants only
Audits/inspections	1453 audits	387 audits 22 non-routine unannounced audits	417 audits	245 audits 268 inspections	1029 audits 1245 inspections	2130 audits 3928 inspections	5752 inspections	No routine compliance audits of farmers. Monthly audit of Product Record Returns Surveillance and monitoring program, including 162 non-routine audits/follow up	254 audits	
Suspension/Downgrades of Food Safety System	18 suspensions	2 suspensions 6 major downgrades 103 minor downgrades	20 suspensions	Information not available	Information not available	Information not available	Information not available	Information not available	Information not available	Not applicable
Recalls/retrievals		6	0							37 product retrievals. Total of 206.3 bags (20, 630 dozen) of oysters retrieved and returned to water due to failure of end product testing

²⁵ The Program's three staff are also responsible for the management and administration of the Program

	DAIRY	MEAT	SEAFOOD (SQAP)
s24: Seizures of product (unfit for human consumption)		12, involving 8128kg of product	2
s26: Product release prohibitions (unfit for human consumption)	4, batches of various sizes	(included in 79 below)	
s26: other Direction Notices	247 total under ss26 and 49	79	2, involving 17 Bags (1700 dozen) oysters
s49: Improvement Notice	as above	433	100
s50: Prohibition Order	0	11	Nil, but 7 temporary suspensions of depuration permits
Shellfish Harvest Area Closures	not applicable	not applicable	490 harvest closures; average duration 27 days
Consumer complaints	8 (4 foreign matter, 1 loose caps, 1 pin hole, 2 high temperature)	170 resulting in investigations into breaches of legislation	3 consumer complaints 14 complaints lodged by industry members and processors (relating to product)
Prosecutions	3, 4 more pending	3	2 pending

Appendix 5

NSW SQAP: ESTIMATED COMMUNITY BENEFIT

SQAP Operations

The NSW SQAP controls food safety aspects relating to the harvest of farmed shellfish in NSW, with the aim of determining those times during which product for harvest may present a high risk of containing micro-organisms, particularly human viruses, or other substances capable of causing illness in consumers.

Excluding the management of marine biotoxins or other chemical contaminants, the primary means of achieving this is to close harvest areas when sewage or other terrestrial contamination has occurred, or when there is a risk that such contamination may occur or may already have occurred.

The key determinants of risk are:

- notified sewage discharge,
- exceeding of parameters which previous data indicates may have resulted in a discharge,
- predetermined rainfall limits being exceeded,
- harvest area salinity falling below a predetermined limit,
- microbiological standards of oyster tissue and/or water being exceeded.

Additionally, product of individuals may be withdrawn from sale if end product testing standards are exceeded.

Cost to Industry

Industry contributes approximately \$520,000 per annum towards this system of harvest management. These costs are broken down as follows:

1. NSW SQAP State Levy - \$250,000
2. Local levy payments - \$200,000
3. End product testing - \$70,000

These costs are met by around 510 aquaculture permit holders (farm businesses). The median cost per farm business is \$1,020, excluding the cost of farmer labour to collect samples.

Cost to Government

During the past 12 months, the NSW Government has provided significant support to the SQAP valued at around \$186,000. This sum was provided as follows:

Nature of Contribution	Sum	Source
Labour	\$50,000	Safe Food
Depuration transfer - training, data base development & administration	\$90,000	NSW Health ²⁶
Computer software development	\$25,000	Safe Food
Hardware (printer etc)	\$6,000	Safe Food
Rent/parking	\$10,000	Safe Food
Travel subsidy	\$5,000	Safe Food

This sum does not include the cost of two Program Reviews (\approx \$50,000) funded by Safe Food, nor \$50,000 advanced by NSW Fisheries to compensate for delays in implementing an increase in the NSW SQAP levy in 1999. The latter sum may require repayment.

²⁶ This was a one off payment intended to fund the transfer of depuration administration from NSW Health to the NSW SQAP. There is no allowance in the NSW SQAP budget to fund future depuration administration.

The Real Cost of the NSW SQAP

Whilst the NSW SQAP is largely funded by industry and local administration is dominated by farmers, the integrity, development and effectiveness of the program stems from control being exercised by skilled professionals employed by the NSW Government. The state levy funds this part of the program but is inadequate to provide sufficient resources to conduct sanitary surveys of all harvest areas, their routine update and demands made by depuration administration, compliance, and other costs associated with managing areas which have been “classified” according to internationally accepted principles. It is unlikely that the state levy could be sufficiently increased at this time, to fully fund the shortfall.

NSW SQAP - Savings to the Community

The operation of the NSW SQAP effectively minimises the likelihood, frequency and extent of shellfish associated food poisoning. The current methodology, whilst effective, costs some sectors of industry more than may be absolutely necessary, by requiring mandatory depuration for all product even if the harvest area meets accepted standards which in other states and countries would normally allow direct harvest. Industry feels that this cost makes them uncompetitive. From Government’s perspective, there could be some residual liability, until the sanitary surveys which would formally determine the status of each harvest area are completed, regardless of the current demonstrated effectiveness of the program.

The real value of the program to the community is to prevent consumers becoming ill from contaminated product. To determine this value is difficult, given the paucity of reliable data on the incidence of food borne illness and the difficulty of detecting and assessing the potential infectiveness of viral contamination of shellfish in Australia. An attempt to quantify the savings to government and the community can be made by reference to the Risk Assessment Project recently completed for Safe Food²⁷, and by reference to harvest area closure data from the NSW SQAP.

Available Data

Data from the risk assessment indicates that in NSW there are:

- 14 million 1/2 dozen servings of oysters available per year, which are
- consumed by 1.4 million consumers, and that
- the “attack rate” for HAV and viruses such as Norwalk agent is 2.0 and 1.5 per 1,000 dozen oysters (10 bags) respectively.

Data from the NSW SQAP for the period 1 July 1999 to 30 June 2000, indicate the number and duration of closures for each harvest area in each estuary in NSW. Data for the top 4 production estuaries were used (60% of production) and applied to all production.

Wallis Lake

<i>Production</i>	20,000 bags
<i>Days Closed</i>	110 (30%)
<i>“At Risk” Bags</i>	6,000
<i>HAV At Risk serves</i>	1,200
<i>Norwalk At Risk serves</i>	900
<u><i>Total At Risk Serves</i></u>	<u>2,100</u>

²⁷ Risk Assessment of Priority Hazards of Seafood in New South Wales; Tom Ross and Kevin Sanderson, University Of Tasmania, July 2000.

Hawkesbury River

<i>Production</i>	10,000 bags
<i>Days Closed</i>	69 (18%)
<i>“At Risk Bags”</i>	1,800
<i>HAV At Risk serves</i>	336
<i>Norwalk At Risk serves</i>	270
<u><i>Total At Risk Serves</i></u>	<u>630</u>

Port Stephens

<i>Production</i>	9,600 bags
<i>Days Closed</i>	65 (17%)
<i>“At Risk” Bags</i>	1,630
<i>HAV At Risk serves</i>	336
<i>Norwalk At Risk serves</i>	244
<u><i>Total At Risk Serves</i></u>	<u>580</u>

Brisbane Water

<i>Production</i>	8,000 bags
<i>Days Closed</i>	71 (19%)
<i>“At Risk” Bags</i>	1,520
<i>HAV At Risk serves</i>	304
<i>Norwalk At Risk serves</i>	228
<u><i>Total At Risk Serves</i></u>	<u>532</u>

Total Top 4 Production Areas

<i>Production</i>	47,600 bags
<i>“At Risk” Bags</i>	10,950
<i>HAV At Risk serves</i>	2,200
<i>Norwalk At Risk serves</i>	1,642
<u><i>Total At Risk Serves</i></u>	<u>3,842</u>

Total for NSW Production

<i>Production</i>	80,000 bags
<i>“At Risk” Bags</i>	18,250
<i>HAV At Risk serves</i>	3,660
<i>Norwalk At Risk serves</i>	2,744
<u><i>Total At Risk Serves</i></u>	<u>6,404</u>

Mitigating Factors

1. Not all SQAP closures are the result of sewage discharge, either notified or suspected. Accordingly, not all closures represent “at risk” periods. Data from the NSW SQAP suggest that allowing 50% of closures to be indicative of sewage contamination is a reasonable assessment. This could then be used to reduce the potential “at risk” serves by 50%.
2. The data used in the Risk Assessment is essentially derived from the USA and conditions in NSW are not necessarily identical. Additionally, no allowance is made for the fact that

contamination levels in shellfish will vary depending on environmental conditions, and that not all viruses will be present in all sewage (and consequently in shellfish) at all times. Consequently, an allowance is required for this.

Applying a reduction of 50% for precautionary SQAP closures gives levels of “at risk” serves for HAV of 1,830 and for Norwalk virus of 1,372.

This can be further reduced by applying an allowance for the incidence of either virus in the community and therefore in sewage. In the lack of precise data but acknowledging that Norwalk virus is more ubiquitous in the community, the HAV “at risk” serves is reduced by 75% and the Norwalk “at risk” serves by 25%. This gives final estimates of 457 “at risk” serves for HAV and 1,029 “at risk” serves for Norwalk virus.

This means that the effective operation of the NSW SQAP directly prevents the occurrence in NSW of 450+ cases of HAV infection and 1,000+ cases of Norwalk virus infection in consumers of NSW oysters each year.

The Avoided Cost of the Averted Infections

The sums awarded by the Federal Court to victims of the Wallis Lake HAV outbreak indicate a cost per victim of \$27,000. This sum does not include legal costs which are substantial and could be expected following an outbreak of food-borne hepatitis A. Norwalk virus infection is milder, of less duration, and less likely to require hospitalisation or extensive medical treatment. The costs per attack in medical expenses and time lost from work is estimated at \$2,000.

The total costs are therefore:

- HAV - 457 cases x \$27,000 per case = \$12.3 million pa. (excluding legal costs)
- Norwalk - 1,029 cases x \$2,000 per case = \$2.1 million pa.

These estimates are conservative and combined, represent a saving of \$14.4 million per annum to the community of NSW, by the operation of the NSW SQAP.

Safe Food
14.8.00

Appendix 6

SAFE FOOD PRODUCTION ADVISORY COMMITTEE

Resolution 00/02

Pursuant to its functions under section 16 of the Food Production (Safety) Act 1998, this Committee advises the Minister that there is an urgent need for funding to develop and implement a food safety and assessment program to supplement food safety plan audit programs and the shellfish harvest management controls in New South Wales.

Serious public health concerns are apparent in several sectors for which SafeFood NSW has food safety responsibility and immediate action is required. In particular, the Committee notes that:

- a spate of incidents in the dairy processing/manufacture sectors post-deregulation suggest a slippage of Good Manufacturing Practices and maintenance and cleanliness standards;
- the October 2000 sludge incident at a major dairy plant has close parallels with the recent Snowbrand incident in Japan, in which 14,500 people became ill after ingesting milk contaminated with toxins from *Staphylococcus aureus*;
- the fermented salami manufacture practices revealed by SafeFood's pilot *E. coli* survey have the potential to cause an outbreak similar to the 1995 Garibaldi mettwurst outbreak which led to the death of a four year old girl and lifelong illness of 22 other children; and
- recent breaches, which may be widespread, of harvest closures and depuration requirements during high-risk periods of heavy rainfall make it likely that product contaminated with pathogens from faecal material is reaching the market.

The Committee notes that these risks exist despite the industry-funded preventative programs administered by SafeFood. Possible reasons include:

- a developing "tick and flick" mentality within industry towards food safety plans;
- commercial pressure to "cut corners", most marked in the post-deregulation dairy industry and in the oyster farming sector; and
- increasing complacency by industries in an environment of limited enforcement resources.

The Committee recommends that an enforcement program be developed and implemented urgently to supplement food safety plan audit programs and the shellfish harvest management controls. This program should:

- conduct spot inspections and/or unannounced audits on both a random and targeted basis;
- respond to and/or investigate information indicating possible breaches of food safety requirements; and

- follow-up to ensure compliance with SafeFood directions

With regard to resources for this program, the Committee notes that:

- SafeFood advises that its Dairy and Meat budgets provide resources for the respective audit programs, follow-up audits, some "trouble shooting", with insufficient capacity to support the enforcement program; and
- the NSW Shellfish Quality Assurance Program budget has no provision for enforcement activity and it has also inherited from NSW Health the depuration function (requiring regular audit of 244 depuration plants) without any additional resources.

The Committee strongly recommends that the Minister urgently seek direct Government funding of the enforcement programs on grounds of public health protection. Avoidable delay will expose NSW consumers to unacceptable food safety risks and the Government to potential legal liability as in the recent Wallis Lakes class action.

Unanimous resolution of Safe Food Production Advisory Committee

Date **18th December 2000**

