
8 Regulators of primary production and processing: enforcement and accountability

Key points

- One central agency in New Zealand and 11 agencies in Australia are responsible for regulating the different aspects of food safety affected by: the primary production; processing; manufacturing; transport; storage; wholesale; retail and international trade of food. Australian jurisdictions vary as to whether they regulate the food safety aspects of primary production and processing (PPP) within their core agencies or it is devolved to one or two separate agencies.
- The Commission investigated the extent and nature of enforcement differences across jurisdictions through a detailed questionnaire sent to all primary production regulatory agencies.
- Regulators of primary production commonly use a cooperative, graduated approach to ensuring food safety compliance, use harsh enforcement instruments sparingly and set broadly similar priorities. Within this context, the NSW Food Authority in particular, resorts to punitive instruments more often than its regulatory counterparts in other jurisdictions.
- A number of enforcement differences are evident from the survey results of primary production regulators which could impact significantly on business compliance burdens. They include:
 - the proportion of the costs of regulatory oversight which are recovered from food businesses rather than being funded from general government revenue
 - the level and nature of fees and charges including the use of risk-based fees
 - the inconsistent application of risk classifications to food businesses conducting broadly similar activities
 - the frequency and duration of audits and inspections
 - the availability and type of appeal mechanisms and the extent of transparency
 - dramatic differences in penalties for non-compliance across products and jurisdictions.

8.1 Institutional structure

The institutional model used to regulate primary production, food processing, manufacturing and other food-related activities such as transport, storage and food imports and exports varies across jurisdictions. Twelve agencies have various enforcement responsibilities in the jurisdiction in which each operates (table 8.1). Local governments have little (if any) role in the primary production sphere.¹ The institutional structures range from fully integrated to devolved.

Table 8.1 Australian, New Zealand and state and territory food safety regulators of primary production and processing

<i>Regulators</i>	
Cwth	Australian Quarantine and Inspection Service (AQIS)
NZ	New Zealand Food Safety Authority (NZFSA)
NSW	NSW Food Authority (NSWFA)
Vic	PrimeSafe Dairy Food Safety Victoria (DFSV)
Qld	Safe Food Production Queensland (SFPQ)
SA	Primary Industries and Resources South Australia (PIRSA) Dairy Authority of South Australia(DASA)
WA	Department of Health (Western Australian Health) ^a
Tas	Department of Primary Industries, Parks, Water and Environment (DPIPWE ^b) Tasmanian Dairy Industry Authority (TDIA)
NT	Department of Regional Development, Primary Industry, Fisheries and Resources (DRDPIFR ^c)

^a Western Australia Health is responsible for all primary production regulation in Western Australia.

^b Referred to as 'Tas DPI' in tables. ^c Referred to as 'NT Meat' and 'NT Fisheries' in tables.

New Zealand, with a unitary government, has a single agency (the NZFSA) which regulates all aspects of food safety (including internationally traded food) except for those activities regulated by local government (prescribed in the Food Act 1981), which it monitors and coordinates.

Australia, a federation, places the minimum necessary regulation and enforcement responsibilities in the hands of the national government — one Australian national agency to regulate internationally traded food. Jurisdictions vary as to whether they allocate dairy and all other primary food production to one or two agencies.

¹ One exception is Western Australia where on-site abattoir inspectors are employed by local council but are remunerated by the abattoir operator.

The different institutional models described above provide a relevant backdrop against which to compare regulatory activities. Indeed, the recent moves to integrate food regulatory functions in New Zealand, New South Wales and Queensland were motivated by a specific desire to deliver better, and more consistent, regulation. For example, in announcing the creation of the NZFSA, its agency head noted:

More consumer protection and less bureaucracy will be just two of the major benefits of the establishment of the New Zealand Food Safety Authority. Te Pou Oranga kai Aotearoa, from July 1 [2002] ... Bringing these functions together under one agency will enable New Zealand to provide consistency in the management of food safety from the beginning of the food chain to the end ... (NZFSA 2002)

Similarly, the consolidation of food safety functions from a number of agencies into a single food safety authority in New South Wales in 2004 was predicated on the grounds that:

The establishment of the NSW Food Authority will create a more streamlined, consistent and efficient approach to food regulation in NSW and a single point of contact for both the industry and public. The Authority will work with local government to better define and support their continuing role in food regulation. (NSWFA 2009f)

In other jurisdictions the continuing division of responsibilities for primary production regulation (particularly dairy in Victoria, South Australia and Tasmania) reflects the size of those industries and views about the benefits of regulatory specialisation.

The regulation of imported and exported foods is the responsibility of the AQIS (though some functions related to exports, particularly inspections and audits are delegated to certain jurisdictional regulators) and the New Zealand Food Safety Verification Authority Agency (now part of the NZFSA). The arrangements relating to internationally traded food are discussed in chapter 14.

8.2 Methodology

In addition to the food safety information collected from local government and jurisdictional health departments (chapter 7), the Commission sent detailed questionnaires to the primary production food safety regulators. (See appendix B — table B.2 — for a copy of the questionnaire.) All these regulators provided a response. The questionnaire covered the following broad areas:

- the level of *human* and *financial resources* devoted to food safety regulation and the training and experience of the officers charged with enforcing jurisdictional food safety laws

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- the *approach to enforcement* in terms of priorities across different food activities and regulations, the hierarchy of measures used to achieve compliance with food laws and how often each is used, processes used to ensure uniform application of those laws by food safety staff and whether or not enforcement was risk-based
 - the *enforcement activities* of regulators which directly impact on business costs including audits and inspections (frequency, duration and basis) and fees and charges levied on food businesses
 - *transparency, accessibility* and *accountability* with respect to the publication of enforcement strategies and activities, availability of appeal mechanisms for food businesses in breach of food regulations.

Specific survey questions on enforcement characteristics

With regard to the questionnaire, some judgements about the extent to which combative, responsive or cooperative approaches differ across regulators can be inferred from:

- amount collected from fines (Q.7)
- the proportion of enterprises fined (Q.8)
- time spent by staff on inspection versus the provisions of education and training services to food businesses, etc (Q.18)
- which enforcement activities are prioritised – including education (a cooperative measure) versus sampling (which is outcomes focused) etc (Q.19c)
- range of enforcement tools available and actual use made of each (Q.22)
- how much use is made of activities to improve compliance (Q.23a)
- use of prosecution (Q.32c).

Judgements about the capacity of staff both to apply a responsive regulatory approach and to judge whether outcomes and alternative methods of compliance meet regulatory requirements should be reflected in:

- minimum qualifications of inspectors (Q.11)
- level of experience of inspectors (Q.15)
- provision of professional development (Q.16).

Judgements about the use of a risk based approach can be indicated by:

- priorities (in terms of Australia New Zealand Food Standards Code (ANZFS Code) standards — Q.19e, alternative assessment methods involving inspections, audits and accreditation — Q.20)

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- classifying different businesses according to risk and using those classifications to determine fees and the frequency of inspections and audits (Q.28a, Q.28b, Q.28c)
 - use of compliance history to determine inspection and audit frequency (Q.28d)
 - basis on which fees are set (Q.31a).

More directly, the Commission also asked about methods regulators had either already put in place (Q.26) or considered would be effective in reducing compliance burdens (Q.35) while they would still be able to achieve effective regulation.

The remainder of this chapter draws out the key differences across jurisdictions that were evident from the survey responses.

8.3 Resources of primary production and processing food safety regulators

The level of financial and human resources available to food safety regulators is a key influence on enforcement activities and the uniformity of food safety regulation. With fewer resources, regulators are constrained in ensuring consistent enforcement, in providing training and written information to businesses and regulatory officers may have to resort to more combative deterrence strategies rather than work methodically through a structured set of responses to non compliance, moving from helpful to increasingly punitive. Also, the move from prescriptive regulation to more flexible outcome and performance-based regulation requires more highly skilled inspectors and auditors who are able to judge a range of alternative methods used by businesses to satisfy regulatory requirements.

Importantly, differences in the scope of regulatory responsibilities need to be kept in mind in comparing resourcing indicators across jurisdictions. In particular, the role of the NZFSA (which includes responsibility for significant internationally traded food activities) is much broader than those of food safety regulators in Australia. Similarly, the NSWFA is unique in devoting considerable resources to coordinating and analysing the role of local councils in food safety regulation in that jurisdiction. In addition, differences in the extent to which third parties are used to undertake regulatory surveillance (audits) (see table 8.18) will influence the interpretation of resourcing indicators, comparisons of the costs imposed by central agency regulators on food businesses (where, for example, auditors charge businesses directly for their services) and conclusions regarding the extent of cost recovery.

Against that cautionary background, resourcing indicators reveal a degree of uniformity across many (though not all) agencies in 2008-09 (table 8.2). In terms of staffing ratios, a cluster of regulators exhibited a similar regulatory intensity of around 200 food businesses to each full time equivalent food safety officer. Prominent outliers include: the NZFSA (26 businesses per employee), Western Australian Health (36 businesses per employee); PIRSA (75 businesses per employee); and, DFSV (446 businesses per employee).

Table 8.2 Resourcing indicators
2008-09

Agency	Food safety staff (FTE)	Food safety budget	Fee income	Businesses regulated	Food safety budget per FTE staff	Businesses to food safety staff ratio	Food safety budget per business	Average fee income per business
	Number	A\$' 000	A\$' 000	Number	A\$' 000	Number	A\$	A\$
Cwllth AQIS	583	86 172	47 097 ^a	1 589	148	na ^b	na ^b	na ^b
NZ NZFSA ^c	256.8	30 212	30 212	6 669 ^d	118	26 ^d	4 530 ^d	4 530 ^d
NSW NSWFA	61	15 002	6 450	13 934	246	228	1 077	463
Vic PrimeSafe	10	1 777	1 727	2 109	178	211	842	819
DFSV	13	2 472	3 803	5 800	190	446	426	655
Qld SFPQ	38	6 133	3 782	7 622	161	200	804	496
SA PIRSA	13.7	1 590	1 047	1 031	116	75	1 542	1 016
DASA	2.9	516	461	581 ^e	178	200	888	793
WA WA Health	11.8	1 075	13	430	91	36	2 500	30
Tas Tas DPI ^f	8	676	38	960	85	120	704	40
TDIA	3	368	437	544	123	181	676	803
NT NT Meat	1.2	105	5	36	88	30	2 916	139
NT Fisheries	0.5	18	18	424	36	848	42	42

na not applicable. nr no response. ^a Fee income has been adjusted to reflect the 40 per cent inspection fee rebate for export certification and inspection in 2008-09 (see chapter 14 and appendix C). ^b AQIS noted that its core business is export certification of which food safety is one integral component. For that reason, the figures in the last three columns have not been presented. ^c NZ dollars converted to \$A using an exchange rate of 1.23 New Zealand dollars per Australian dollar. ^d NZFSA noted the potential for some double counting in the number of businesses regulated. ^e DASA commented that from 1 July 2009, responsibility for regulating dairy distributors (of which there were 147 in 2008-09) was moved to local government. ^f Tas DPI commented that fee income is directed to consolidated revenue. The 960 regulated businesses shown include 800 low and medium risk seafood harvesting businesses that do not require a licence or a food safety plan and are not regularly inspected or audited.

Sources: Productivity Commission survey of food safety regulators (2009, unpublished); RBA (2009); DASA Annual Report 2008-09; AQIS (personal communication, 27 November 2009).

A similar (though not identical) picture emerges with respect to budget allocations relative to regulated business numbers with the NZFSA again (and to a lesser extent Western Australian Health, PIRSA and the NSWFA) standing out as being much

‘better’ resourced per regulated business than their counterparts in other jurisdictions. However, the NZFSA is responsible for covering a wider range of aspects of food safety than any other regulator. Within Australia, PrimeSafe, SFPQ and DASA were similarly resourced while DFSV and the TDIA, in particular, had the lowest level of financial resources available per food business.

While many regulators considered resourcing levels did not prevent them from fully enforcing the regulations they were responsible for, some cited budget and staffing levels as high level constraints on their enforcement ability. This has potential implications for their enforcement approach and associated business compliance burdens (table 8.3).

Table 8.3 Enforcement constraints
2008-09, level of constraint on enforcement ability

	Agency	Able to fully enforce regulations	Budget	Staff	Policy interpretation	Regulatory responsibility	Enforcement powers	Other
CwIth	AQIS	Yes	High	Med	Low	Low	Low	nr
NZ	NZFSA	No	Med	Med	Low	Low	Low	nr
NSW	NSWFA	No	High	Low	Low	Low	Low	nr
Vic	PrimeSafe	Yes	Med	Med	Med	Med	Med	nr
	DFSV	Yes	Med	Med	Med	Med	Low	nr
Qld	SFPQ	Yes	Med	Low	Low	Low	Low	nr
SA	PIRSA	Yes	Low	Low	Low	Low	Low	nr
	DASA	Yes	Low	Med	Low	Low	Low	nr
WA	WA Health	Yes	High	Med	Low	Low	Low	nr
Tas	Tas DPI	No	High	High	Med	Low	Med	Med ^a
	TDIA	Yes	Low	Low	Med	Low	High	nr
NT	NT Meat	Yes	Med	Low	Low	Low	Low	nr
	NT Fisheries	No	High	High	nr	High	nr	High ^b

Med Medium. **na** not applicable. **nr** no response. ^a Tas DPI noted that the state’s low third party auditor capacity was a medium level constraint on its enforcement capacity. ^b NT Fisheries nominated risk analysis as a high level enforcement constraint

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

The NSWFA, Western Australian Health, the Tasmanian DPIPWE and the Northern Territory DRDPIFR (Fisheries), all nominated budgetary issues as high level constraints. Staffing constraints were viewed with the same level of importance by the Tasmanian DPIPWE and the Northern Territory DRDPIFR (Fisheries). Some agencies also indicated low levels of private capacities, for example, the Tasmanian DPIPWE noted the state’s low third party auditor capacity constrained its ability to fully enforce food safety regulations (see below).

Table 8.4 Food safety income components

2008-09, per cent of total food safety income

Agency	Licence fees	Registration fees	Administration fees	Inspection fees	Audit fees	Accreditation fees	Fines	Other income	Appropriation ^a	Total food safety income
Cwth AQIS ^b	0.7	1.8	0.0	45.7	3.5	0.0	0.0	5.5 ^c	42.8	100.0
NZ NZFSA	0.7	2.4	0.0	na	93.1	0.2	0.0	3.5 ^c	0.0	100.0
NSW NSWFA	22.5	0.0	0.0	0.0	4.7	0.0	1.2	4.0	67.5	100.0
Vic PrimeSafe	92.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	7.2	100.0
DFSV	93.5	0.0	0.0	0.0	6.5	0.0	0.0	0.0	0.0	100.0
Qld SFPQ	na	na	0.0	na	20.6	41.8	0.4	37.2 ^d	0.0	100.0
SA PIRSA	0.0	0.0	0.0	0.0	13.3	52.5	0.0	6.9	27.3 ^e	100.0
DASA	0.0	55.4	0.0	0.0	32.1	0.0	0.0	0.0	12.5	100.0
WA WA Health	0.3	0.1	0.7	0.0	0.0	0.0	0.0	0.2 ^f	98.8	100.0
Tas Tas DPI ^g	2.3	0.0	0.0	0.0	3.5	0.0	0.0	0.0	94.2	100.0
TDIA	99.2	0.0	0.8	0.0	0.0	0.0	0.0	0.0	0.0	100.0
NT NT Meat	5.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	94.9	100.0
NT Fisheries	82.1	0.0	0.0	0.0	0.0	0.0	17.9	0.0	0.0	100.0

na not applicable. nr no response. ^a Appropriation income was estimated as the difference between total food safety fee income and total food safety income. ^b The Australian Government provided a 40 per cent inspection fee rebate to businesses for export certification and inspection in 2008-09 (see chapter 14 and appendix C). That rebate is reflected in the appropriation figures shown for AQIS. ^c Other income for AQIS and the NZFSA was related to certification activities. ^d Other income for SFPQ included a grant of \$1.9 million. ^e Other income for PIRSA was related to fee for service activities. ^f Other income for WA Health included brand hire. ^g Tas DPI commented that fee income is directed to consolidated revenue.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

The means of raising the funds needed to administer and enforce regulation also impacts on the burdens borne by business. The more the cost of regulatory oversight is recovered through fees and charges on food businesses the greater is the comparative financial burden placed on those businesses. As shown in table 8.4, primary production activities generally in New Zealand, Victoria and Queensland and dairy businesses in Victoria, South Australia and Tasmania contributed a much higher share (in some cases 100 per cent) of the cost of their regulation than elsewhere. Assuming a consistent level of regulatory effectiveness, this suggests the compliance burden on food businesses in those jurisdictions was higher (and taxpayer funding lower) than in Western Australia, Tasmania (for food activities other than dairy), Northern Territory (meat businesses), New South Wales and those businesses regulated by AQIS. The issue of when businesses or taxpayers should cover the cost of regulation is complex and has been analysed by the Commission in its report on *Cost Recovery by Government Agencies* (PC 2001).

8.4 Enforcement approaches and practices

The different approaches adopted by agencies to achieve regulatory compliance can impact differentially on business costs. Where bodies regulate well, businesses benefit from: having regulators focused on high risk areas; inspectors who can assess alternative ways to meet performance and outcome based regulation; and advice on how to comply. Indicators of good administration and enforcement by regulators include:

- consistent and clear interpretations of the same laws and legal definitions
- flexible regulatory styles (box 8.1)
- well trained and experienced inspectors and auditors able to enforce responsively and to assess alternative ways to achieve compliance (box 8.1)
- the provision of education, training and information to facilitate compliance (box 8.1)
- the application of regulatory resources based on risk analysis
- having and using a range of regulatory instruments, commensurate with the circumstance and risk to the public
- providing low cost and independent appeal mechanisms
- being transparent about policies and reporting on past practices and outcomes.

The more regulators adopt these best practice techniques, the less will businesses be subject to unnecessary regulatory burdens. Differences in: the level and types of fees and charges; the frequency and duration of audits and inspections; and the extent of regulatory duplication are also likely to reflect differences in the regulatory compliance burden placed on food businesses.

In examining differences in enforcement styles used by regulators, the survey sought information on the:

- prioritisation given to different enforcement activities
- types and hierarchy of measures used to achieve compliance with food laws
- steps used to promote a culture of compliance among food businesses
- developments aimed at reducing compliance burdens for business.

Box 8.1 **Alternative enforcement approaches**

Proactive v reactive

The *proactive-reactive* framework refers to whether a regulatory agency seeks to modify behaviour before or after a breach occurs. Proactive approaches encourage (via education/training/information), persuade and highlight ways to achieve (via inspection) or require (via licensing) compliance before a breach occurs. They are preventative. In contrast, reactive approaches involve following up complaints, adverse inspection results or adverse food safety outcomes. Of course, in some respects, reactive strategies can have proactive effects where action to rectify a breach has a broader educative or deterrent effect.

At a general level, proactive strategies have advantages for matters where: breaches are hard to identify; the costs of a breach are very high; and initial mistakes are difficult to subsequently rectify.

Combative v cooperative v responsive

The *combative-cooperative* continuum refers to whether regulatory agencies adopt a threatening or friendly posture in dealing with those regulated. Combative approaches often involve the threat of severe penalties (fines, prosecution or closure) as the incentive for compliance. This has been described as regulating with 'a big stick'. Combative approaches may alternatively involve a frequently used 'little stick'. The central idea behind a combative approach is deterrence, which may manifest itself in a number of ways, often making it uneconomical for business not to comply with the regulations. In contrast, cooperative approaches focus on education, advice, working together, appealing to self-interest and mutual interdependence.

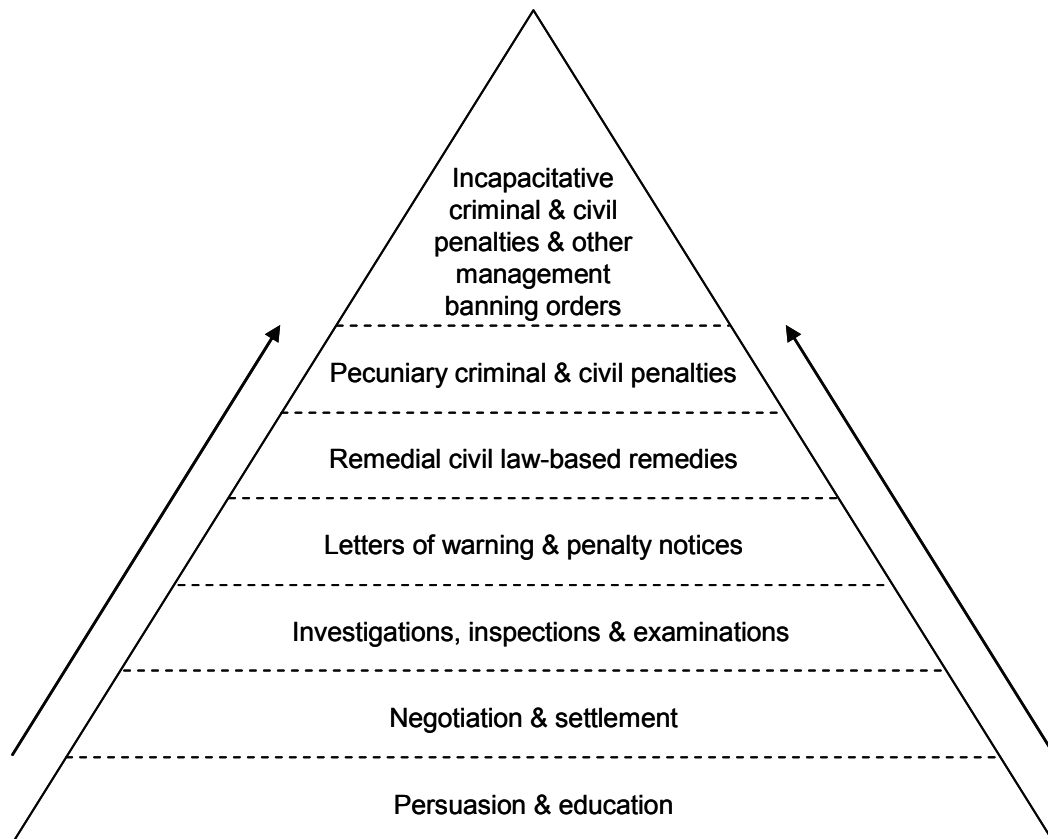
The most sophisticated regulators use combative and cooperative responses dependent on the nature of the noncompliance, as typified in the Braithwaitean enforcement pyramid (figure 8.1). This approach has been described as 'speaking softly but carrying a big stick'. The nature of the response that is appropriate in any particular situation will depend on factors like: variations in the cost of compliance for different businesses; the cooperativeness of business; the type of regulation being enforced; agency resource levels; available penalties; visibility of violations; the rate of firm turnover; and aspects of the legal system.

Prescriptive v discretionary

The *prescriptive-discretionary* framework refers to the flexibility agencies show in interpreting regulations. While heavily influenced by the type of regulation (prescriptive, outcome or principle-based) being enforced, legalistic/prescriptive approaches entail strict enforcement and letter-of-the-law interpretation, whereas a discretionary approach is more tempered and able to assess alternative means of compliance.

Source: Office of Regulation Review (1995).

Figure 8.1 Example of an enforcement pyramid



Source: Gilligan, Bird and Ramsay (1999).

As well as information from the questionnaire detailed below, the Commission held a wide range of visits, including with the regulators. Regulators demonstrated a high level of knowledge and capacities at these meetings. In contrast to the old-fashioned image of public servants treating inspection with a ‘tick and flick’ mentality and using combative techniques to achieve compliance, administrators consistently demonstrated they were not only interested in achieving the social objectives set to them but also in doing this at low cost to business. They demonstrated knowledge of and capacities in: providing assistance to businesses to comply with the law; focusing regulatory efforts on products with the highest inherent risks and on those businesses most likely to offend (so that demonstrated compliers receive the minimum of inspections, etc); assessing alternative ways to achieving regulatory outcomes and applying enforcement responses which are flexible to the nature of the breach and the motivation of the business to comply.

Priorities

Resourcing constraints require agencies to prioritise their enforcement activities (table 8.5). Survey responses highlighted the emphasis regulators place on proactively monitoring health risks through auditing and inspecting food businesses and, to a lesser extent, licensing, registration and accreditation functions. Although education and advice (another preventative measure) featured less prominently in the allocation of resources to specific activities, to some extent this reflects the dual role played by onsite surveillance. As the NSWFA commented:

During audits, auditors do not just check compliance with legislative requirements. A lot of time is spent educating licence holders and explaining requirements. Therefore, about 50% of the time spent auditing should be read as time also spent educating.

Table 8.5 Enforcement priorities
2008-09, level of priority given to enforcement activity

Agency	Licensing	Registration	Accreditation	Audits	Inspections	Education/ advice	Sampling/ testing	Recalls	Complaint	Investigations	Labelling	Other	
Cwth AQIS	Low	High	Med	High	High	Med	High	Low	Low	High	Med	nr	
NZ NZFSA	Med	Med	Low	Med	Med	Med	Med	High	Med	High	Low	nr	
NSW NSWFA	Med	na	na	High ^a	High	Low	Med	High	Med/ High	High	Med	nr	
Vic Prime Safe DFSV	High	na	na	na	High	High	High	nr	High	High	High	nr	
	High	na	High	High	Med	Med	Med	High	High	High	High	Med	nr
Qld SFPQ	na	na	High	High	Low	High	High	Low	nr	nr	Low	High ^b	
SA PIRSA	na	na	High	High	High	Med	Med	High	High	High	High	Med	nr
	DASA	na	Med	na	High	Low	Med	High	High	High	High	Low	nr
WA WA Health	Med	Med	na	High	Low	Med	Med	High	Med	High	High	Low	nr
Tas Tas DPI	High	na	High	High	High	Med	Med	nr	Low	na	Low	Med ^c	
	TDIA	High	na	na	High	na	Low	High	High	Med	High	High	nr
NT NT Meat	Med	nr	Med	High	High	Med	Med	High	High	High	High	High	nr
	NT Fisheries	High	nr	nr	nr	nr	High	nr	nr	nr	nr	nr	nr

Med Medium. **na** not applicable. **nr** no response. ^a NSWFA noted that about 50 per cent of the time spent on audits is used to educate the business on food safety compliance. Also, most complaints are assessed as either medium or high priority. ^b SFPQ nominated the development of cost effective compliance strategies as a high enforcement priority. ^c Tas DPI nominated the investigation of illegal activity as a medium level enforcement priority.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

But it also reflects resource limits with a number of agencies nominating food business education and research as areas they would target if they were allocated additional resources.

Complaints (a reactive measure) also rated highly in both subjective judgements regarding priority setting and in the allocation of resources to that activity. The NSWFA stood out among its peers by investigating every complaint received in 2008-09. Other reactive responses, such as the investigation of disease outbreaks associated with foodborne pathogens and food safety recalls, were consistently rated as a high priority by all agencies responsible for these activities.² Of course, if the preventative method works well, then reactive responses should not be required as often even though a high priority is placed on them when they are needed.

How regulatory agencies allocate their time across their different functions differs dramatically (table 8.6), reflecting differences in the:

- instruments available to each agency
- nature of activities and products being regulated and inherent risks they present
- philosophies and strategies of the agencies.

For example, the NZFSA focuses solely on auditing, and the NSWFA, which also operates an integrated model, also spends a large portion of its time on auditing. In terms of product-specific regulators, while two of the three bodies which specialise in regulating dairy food safety (South Australia and Tasmania) focus their efforts on auditing reinforced with some sampling, the other dairy specialist (Victoria) spreads its time fairly evenly across all the activities with more time being spent on sampling than any other administrative or enforcement activity. In contrast, PrimeSafe Victoria would appear to have both a different set of instruments at its disposal and a different enforcement strategy because it spends equal amounts of time on just five of 12 possible enforcement activities: licensing; inspections; providing information; complaints and investigations. Similarly, the regulatory role played by the Northern Territory DRDPIFR (Fisheries) solely concerns the licensing of fishers.

² Note that areas nominated as a low priority by some agencies (such as labelling) may simply reflect primary responsibility for that function being allocated to another agency.

Table 8.6 Resource allocation by activity
2008-09, per cent of time available

Agency	Licensing	Registration	Accreditation	Audit export	Audit other	Inspection	Education/ advice	Sample/ test	Recall	Complaint	Investigation	Labelling	Other
Cwth AQIS	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr	nr
NZ NZFSA	0	0	0	90	10	0	0	0	0	0	0	0	0
NSW NSWFA	2	0	0	0	60 ^a	20	0 ^a	2	1	13	2	0	0
Vic Prime Safe	20	0	0	0	0	20	20	0	0	20	20	0	0
DFSV	9	1	9	8	6	5	9	15	1	2	8	1	27 ^b
Qld SFPQ	na	na	15	na	35	5	5	5	0	10	5	0	20
SA PIRSA	0	0	2	0	80 ^a	5	0	1	nr	2.5	2.5	0 ^a	7 ^c
DASA	0	10	0	10	50	0	0	5	0	0	5	0	20 ^d
WA WA Health	0	0	0	2	18	8	12	14	3	6	5	5	29 ^e
Tas Tas DPI	10	0	5	0	50	15	5	5	0	5	5	0	0
TDIA	10	0	0	25	50	0	5	3	0	2	3	2	0
NT NT Meat	10	10	15	0	25	18	0	2	0	5	10	5	0
NT Fisheries	100	0	0	0	0	0	0	0	0	0	0	nr	0

na not applicable. nr no response. ^a NSWFA noted that about 50 per cent of the time involved in conducting audits should be treated as time also spent on education. PIRSA noted that education/advice and labelling activity would be included in audit activity. ^b DFSV noted that 26.6 per cent of resources involved inter agency activities, national policy and implementation input, importing country and regulatory reviews. ^c PIRSA noted that 7 per cent of resources shown in the other category were allocated to professional development. ^d DASA noted that 20 per cent of resources (shown in the other category) were allocated to administration. ^e WA Health noted that 29 per cent of resources (shown in the other category) were allocated to safety activities.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

While a high level of attention is consistently paid to food safety controls through audits and inspections of food safety programs, premises and equipment, outcome-based indicators of food safety, such as the taking and testing of food samples, appear to have received less attention with most agencies allocating less than 10 per cent of their resources to this activity.

On the other hand, for some agencies sampling appears to play a relatively small but essential role. For example, SFPQ uses accreditation of food safety programs and management systems as a means by which to educate and assist businesses to identify all the inherent risks, to assess their significance, devise ways to manage them and establish testable outcomes that demonstrate their risk management system is working. Sampling plays a crucial role in ensuring outcomes have been validated. In addition to sampling activities undertaken directly by SFPQ, the

agency also used testing and sampling results provided by industry (specifically dairy factories during the reference period) to validate food safety outcomes.

Importantly, most regulators (the exceptions being AQIS and Western Australian Health) classified businesses according to the risks posed to public health in 2008-09 (though the application of those classifications varied significantly).³ Where businesses were classified according to risk, this was also used as the basis for audit and inspection frequency in 2008-09 (table 8.7).

Table 8.7 Use of risk profiling
2008-09, risk based activities

Agency	To classify businesses	Fee setting	Audit/inspection frequency	Compliance history
Cwth AQIS	x	nr	nr	✓
NZ NZFSA	✓	✓	✓	✓
NSW NSWFA	✓	x ^a	✓	✓
Vic PrimeSafe	✓	x	✓	✓
DFSV	✓	x	✓	✓
Qld SFPQ	✓	x	✓	✓
SA PIRSA	✓	✓	✓	✓
DASA	✓	nr	✓	x
WA WA Health	x	x	x	x
Tas Tas DPI	✓	x	✓	✓
TDIA	✓	x	✓	✓
NT NT Meat	✓	nr	✓	✓
NT Fisheries	nr	x	✓ ^b	nr

nr no response. ^a NSWFA commented that currently fees are charged on the basis of sector and industry but a system based on activity type (or risk) and employee numbers will shortly be introduced. ^b NT Fisheries noted that enforcement of the Northern Territories Fisheries Act was undertaken by other agencies (NT Police and Fire and Emergency Services).

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

The compliance history of individual food businesses also featured prominently in audit and inspection programs with most regulators using this trait to target their enforcement activity. The exceptions were DASA and Western Australian Health.

In contrast, risk classifications were rarely used to determine the fees and charges for different businesses.⁴

³ The New Zealand Food Safety Authority noted that businesses were classified according to risk in 2008-09 but these classifications only had an indirect impact on determining fees or audit frequency in that year. In New Zealand, audit (verification) fees and frequency are more directly related to a business' type of risk management tool and their compliance.

⁴ The NSWFA commented that it would introduce a risk-based fee system shortly.

Compliance tools and strategies

As touched on earlier, the survey highlighted the importance of cooperative mechanisms such as education and advice as the key measures used to improve food safety awareness and address specific compliance breaches across all jurisdictions (table 8.8). Comments from respondents highlighted the onus placed on cooperation in achieving compliance with food safety laws. For example, SFPQ said:

The approach to the use of enforcement tools is to encourage industry to comply with the legislation and to use enforcement tools such as prosecution as a final resort.

Table 8.8 Use of enforcement tools
2008-09

Agency	Educate /advice	Verbal warning	Written warning	Improvement notice	Prohibition order	Licence cancellation	Penalty notice	Fine	Infringement notice	Enforceable undertaking	Prosecution	Adverse publicity	Other
CwthAQIS											1		
NZ NZFSA								^a					
NSW NSWFA	nr	nr	215	876	8	0	220 ^b		na	0	12	1215	na
Vic Prime Safe											2		
DFSV	150+	4	2	527	3	0				38	0		
Qld SFPQ	2351	92	33	32 ^c		2			0	32 ^c	3		
SA PIRSA	Many		Many		0	0			6		0		
DASA	Major	Used	Used			0		0			0		
WA WA Health													
Tas Tas DPI ^d		1	1	0	0	0	0	0	0	0	0	0	0
TDIA	350	25	8	0	2	4	0	0	0	4	0	0	0
NT Meat	9		2	1	6	0	1	0	0	0	0	0	0
NT NT Fisheries													

nr not recorded. **na** not applicable. ^a NZFSA noted that fines can only be imposed by a court. ^b NSWFA noted that it does not distinguish between penalty notices, fines and infringement notices (monetary fines are imposed via penalty notices). ^c SFPQ noted that it used compliance notices which perform a similar function to improvement notices and are enforceable undertakings. ^d Tas DPI noted that education and advice is used regularly (as shown in table 8.10) even though DPI does not record its use in a form that can be quantified. This comment is likely to be equally relevant to other jurisdictions that did not quantify their use of this instrument.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

With a similar suite of enforcement tools generally being available to regulators (the main exceptions being financial penalties, enforceable undertakings and adverse publicity orders) the less frequent use of combative tools mainly reflected the

graduated approach used to rectify compliance breaches (the adoption of an enforcement pyramid — figure 8.1).⁵

Most if not all agencies indicated the use of a formal or informal enforcement pyramid with the focus on using cooperative responses unless they prove ineffective with a particular business at which point a more combative approach becomes appropriate, using instruments higher up the pyramid.

An example of a more combative action is provided by the Tasmanian DPIPW's revocation of approval for an egg producer to operate on the grounds of substandard production and hygiene practices during 2007. That regulatory response led to corrective action being taken by the producer in order to regain approval to operate (Tasmanian DPIPW, pers. comm. 13 October 2009).

The NZFSA commented on its graduated enforcement approach in the following terms:

Where possible we operate an escalating response to non-compliances. This may mean that we inform the operator that what they are doing is wrong and how they can fix it. This may be through a visit, a letter or a warning notice. Continued noncompliance means that we may seize product and/or prosecute.

The NSWFA was more specific:

Enforcement officers use a graduated response for alleged breaches of food law that may increase in severity depending on the circumstances. Factors taken into consideration include, but are not limited to:

- whether a warning has previously been given
- whether the breaches pose a serious risk to public health or significantly mislead consumers, and
- the number of breaches or repeat offences.

Classically, this is reflected in the figures for a number of agencies — DFSV, SFPQ, and the TDIA — where education or advice is used far more than verbal warnings, and verbal warnings are used far more than written warnings. Interestingly, the NSWFA and DFSV use improvement notices much more than either written or verbal warnings.

Information supplied on the number of businesses fined, the value of fines collected, number of prosecutions initiated and the breadth and use of adverse publicity powers suggests that the regulatory stance adopted by the NSWFA, in

⁵ PrimeSafe and Tasmanian DPIPW nominated enforcement powers as a medium level constraint on their enforcement ability.

particular, is more combative than their regulatory counterparts (tables 8.8 and 8.14). As combative activity is still low relative to the number of regulated food businesses in that jurisdiction, it would appear that it is used more as a response of last resort and as a signalling device to other food businesses about the consequences of noncompliance and thus is part of the regulators' tool kit rather than their standard strategy.

Importantly, the penalties available through the various primary production (and, where relevant, sections of food and health) acts differ markedly both within (some) and across (*all*) jurisdictions. As a result, there is a range of penalties for what are essentially the same offences across Australia and New Zealand (table 8.9).

Within jurisdictions, a single piece of legislation (the respective food acts) in New South Wales, the Northern Territory and the ACT provide for a consistent set of penalties for all businesses across the food supply chain. In New Zealand and Queensland, uniform penalties are available for primary production activities (through a single legislative instrument) but these are different to those contained in their respective food acts which apply to non-primary production food businesses. Elsewhere, the existence of industry-specific primary production legislation means the severity of the potential penalty varies according to the nature of the activity.

Table 8.9 Penalties for selected offences — primary production
2008-09^a

	<i>Operating an unlicensed (or equivalent) food business</i>	<i>Providing unsafe food^b</i>	<i>Failure to comply with a directive/compliance order</i>
NZ ^c	All primary production: Indiv. \$16 260; Corp. \$81 300	Producers and processors: Indiv. \$81 300 & 5 yrs prison; Corp. \$406 504 Operator of RMP: Indiv. \$60 975 & 2 yrs prison; Corp. \$243 902	All primary production: Indiv. \$40 650 plus \$1 626/day for ongoing offence; Corp. \$243 902 plus \$1 626/day for ongoing offence
NSW	All food businesses: Indiv. \$55 000; Corp. \$275 000	All food businesses: Indiv. \$110 000 or 2 yrs prison; Corp. \$550 000	All food businesses: Indiv. \$55 000; Corp. \$275 000
Vic	Meat processor, abattoir, seafood: 1 st offence \$11 342; subs. offence \$56 710 or 2 yrs prison or both Meat transport vehicle: 1 st offence \$5 671; subs. offence \$11 342 or 2 yrs prison or both Dairy processor: \$13 610 Other primary production: See Food Act (table 7.8)	Butcher: 1st offence \$11 342; subs. offence \$56 710 or 2 yrs prison Seafood: Indiv. \$100 000 or 2 yrs prison; Corp. \$500 000 Other primary production: See Food Act (table 7.8)	Dairy: \$13 610 Seafood: \$6 805 Other primary production: See Food Act (table 7.8) ^{d,e}
Qld	All primary production: \$200 000 or 2 yrs prison	All primary production: \$300 000 or 2 yrs prison	All primary production: \$30 000
SA	Eggs: See Food Act (table 7.8) Primary production (except eggs): \$20 000	Meat businesses: \$5 000 Other primary production: See Food Act (table 7.8)	All primary production: See Food Act (table 7.8) ^d
WA ^f	Abattoir: Indiv. \$5 000; Corp. \$25 000 Fish processor: Indiv. \$20 000 plus \$750/day for ongoing offence; Corp. \$40 000 plus \$1 500/day for ongoing offence Other seafood businesses: 1 st offence \$100-\$1000; 2 nd offence \$200-\$1000; 3 rd and subs. offence \$500-\$1000. \$50-\$100 per day for ongoing offence Other primary prod. See Health Act (table 7.8)	See Health Act (table 7.8)	Seafood: Indiv. \$10 000; Corp. \$20 000 Other primary production: No equiv. penalty
Tas	Meat business: \$6000 plus \$60/day for an ongoing offence Dairy farmer, mfg, vendor: \$6 000 Milk processor: Indiv. \$6 000; Corp. \$12 000 Fish processor or handler: \$60 000 plus \$1200/day for an ongoing offence Egg producer: Indiv. \$2 400; Corp. \$6 000	Meat businesses: \$3 000 plus \$240/day for an ongoing offence Other primary production: Indiv. \$120 000 or 2 yrs prison or both; Corp. \$600 000	Meat, dairy businesses: \$6000 plus \$600/day for an ongoing offence Seafood: \$120 000 or 1 yr prison Egg producers: Indiv. \$1 200; Corp. \$3 000 Other primary production: See Food Act (table 7.8) ^d

(continued next page)

Table 8.9 (continued)

	<i>Operating an unlicensed (or equivalent) food business</i>	<i>Providing unsafe food^b</i>	<i>Failure to comply with a directive/compliance order</i>
NT	All food businesses: <i>Indiv. \$55 000; Corp. \$275 000</i>	All food businesses: <i>Indiv. \$110 000 or 2 yrs prison; Corp. \$500 000</i>	Meat businesses: \$500 Seafood: No equiv. penalty Other food businesses See Food Act (table 7.8) ^d
ACT	All food businesses: <i>Indiv. \$5 000 or 6 months prison or both; Corp. \$25 000</i>	All food businesses: <i>Indiv. \$110 000 or 2 yrs prison or both; Corp. \$500 000</i>	Meat businesses: <i>Indiv. \$10 000; Corp. \$50 000</i> Other food businesses: See Food Act (table 7.8) ^{d,g}

^a All fine amounts are maximums and in Australian dollars. ^b Fines for provision of unsafe food escalate in most jurisdictions for offences that are deliberate. ^c NZ fines converted to \$A using exchange rate of 1.23. ^d Provisions apply only so far as they relate to an investigation/prosecution of offences under the Food Act or in connection with the making or enforcement of emergency orders under the Food Act. ^e Provisions apply only to 'unclean food handlers' — handlers include manufacturers, producers, processors and transporters. ^f The food safety provisions within the *Health Act 1911* (WA) applied during the benchmarking period (2008-09), but were superseded by the *Food Act 2008* (WA) on 23 October 2009. ^g Provisions relate to failing to provide information and/or reasonable assistance when requested by an inspector.

Sources: Jurisdiction legislation; RBA (2009).

Across jurisdictions, the severity of repercussions for noncompliance (and the associated incentives to meet regulatory requirements) varies significantly. For example, operating an unlicensed (or unregistered/accredited food business) attracts maximum potential penalties that range from \$6000 in Tasmania (for a meat, dairy or egg business) to \$275 000 in New South Wales (for all businesses). Jurisdictions such as Victoria and Queensland even provide scope for the incarceration of licence offenders. Provision of unsafe food attracts much higher penalties than licence violations with maximum corporate fines ranging from about \$400 000 in New Zealand to \$600 000 in Tasmania. Prospective prison sentences are more uniform.

The form of a penalty can also be broader than the legislated arrangements. For example, one Melbourne seafood retailer reported that in an instance of fish not covered for display purposes, the regulator (Primesafe) made a public display of destroying the stock considered unsafe:

They tipped dye all over the fish in the bins, just like that, right in front of the customers ... people's stock was just ruined. (Savill 2005a)

Finally, failure to comply with a directive/order from an authorised officer can range from a maximum fine of \$3000 for an egg producer in Tasmania to a maximum fine of \$275 000 for any food business in New South Wales.

In terms of other compliance measures, as reflected in table 8.8, New South Wales also makes extensive use of adverse publicity that may sometimes result in costs to affected businesses far outweighing the size of the breach. It also uses fines (penalty

notices) where all other agencies never use them or use them rarely, sometimes reflecting either not having the remit to issue fines or needing to prosecute before a fine can be levied.

The NSWFA, DFSV and SFPQ are the only agencies which use improvement/compliance notices on a regular basis, and DFSV, SFPQ and the TDIA are the only agencies to have used enforceable undertakings at all during 2008-09.⁶

The limited use by all agencies of instruments at the top of the enforcement pyramid (prohibition notices, licence cancellation and prosecution) is also reflective of agencies which generally are applying a responsive enforcement strategy so only the most egregious non-compliances receive extreme penalties.

The importance of education/advice and, to a lesser extent, media strategies (including newsletters, pamphlets and web-based material) also carried over into responses on measures used to improve the culture of compliance among food businesses (table 8.10).

Although not widely used, other cooperative mechanisms such as incentives or awards featured in the responses from the NZFSA, NSWFA, SFPQ and PIRSA (where incentives took the form of reduced audit frequency or duration for good performance). New South Wales, Queensland and South Australia were the only jurisdictions regularly providing training services to food businesses (all of which did so without charge).

⁶ SFPQ noted that it used compliance notices which perform a similar function to improvement notices and are enforceable undertakings.

Table 8.10 Influencing the culture of compliance

2008-09, level of use

Agency	Education	Media strategies	Awards	Incentives	Training free	Training – fee based	Other
CwIth AQIS	Regularly	Regularly	Not used	Not used	Not used	Not used	Regularly ^a
NZ NZFSA	Regularly	Regularly	Rarely	Rarely	Not used	Rarely	nr
NSW NSWFA	Regularly	Regularly	Not used	Regularly ^b	Regularly	Not used	nr
Vic Prime Safe	Regularly	Not used	Not used	Not used	Not used	Not used	nr
DFSV	Regularly	Rarely	Not used	Rarely	Not used	Not used	Regularly ^c
Qld SFPQ	Regularly	Regularly	Regularly	Regularly	Regularly ^d	Not used	Not used
SA PIRSA	Rarely	Regularly	Not used	Regularly	Regularly	Not used	nr
DASA	Regularly	Rarely	Not used	Not used	Not used	Rarely	nr
WA WA Health	Regularly	Regularly	Rarely	Not used	Rarely	Not used	nr
Tas Tas DPI	Regularly	Regularly	Not used	Regularly	Not used	Not used	nr
TDIA	Regularly	Rarely	Not used	Rarely	Rarely	Not used	Regularly ^e
NT NT Meat	Regularly	Not used	Not used	Not used	Not used	Not used	Not used
NT Fisheries	Regularly	Regularly	nr	nr	nr	nr	nr

nr no response. ^a AQIS noted that other measures included AQIS/industry workshops, model food safety systems, guidelines, market access advice, industry advice notes and consultation through industry consultative committees. ^b NSWFA noted that incentives take the form of reduced audit frequency for good performance. ^c DFSV noted that other measures used to influence the culture of compliance included attendance at industry forums and sponsorship of industry events. ^d SFPQ noted that it offers regular free training for approved food safety auditors regarding legislative requirements and encourages businesses to adopt electronic record keeping systems which can be uploaded onto the SFPQ website. ^e TDIA noted that it referred food businesses to other organisations to assist them with compliance.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

Measures specifically aimed at reducing business compliance burdens

Given criticisms from food business interests surrounding issues of inconsistent interpretation, implementation and duplication of enforcement effort, the survey sought information on measures regulators employed to reduce or avoid such problems. Every respondent reported at least one initiative (and in most cases multiple approaches) aimed at facilitating the uniform interpretation of food regulations within their respective agency (table 8.11).

Supervisory oversight, structured training and, to a lesser extent, staff rotation were the main avenues by which better regulatory outcomes were pursued. The NZFSA, SFPQ and the NSWFA stood out as employing the widest range of measures to achieve uniformity. In a more specific context, the resources devoted to the training and professional development of food safety field staff showed PrimeSafe (100

hours per annum on average), the NSWFA (100 hours) and the NZFSA (80 hours) as the regulators doing the most in this area.

Table 8.11 Measures to facilitate uniform interpretation
2008-09

Agency	Supervisory oversight	Structured training	Staff rotation	Secondment	Peer review	Other
Cwth AQIS	✓	✓	✗	✗	✓	✗
NZ NZFSA	✓	✓	✓	✓	✓	✓ ^a
NSW NSWFA	✓	✓	✓	✓	✓	✗
Vic PrimeSafe	✓	✓	✗	✗	✗	✗
DFS	✓	✗	✗	✗	✓	✗
Qld SFPQ	✓	✓	✓	✓	✓	✓ ^b
SA PIRSA	✓	✓	✓	✗	✓	✗
DASA	✗	✓	✓	✗	✗	✓ ^c
WA WA Health	✓	✓	✓	✗	✓	✗
Tas Tas DPI	✓	✓	✓	✗	✓	✗
TDIA	✓	✓	✓	✗	✓	✓ ^d
NT NT Meat	✓	✓	✗	✗	✗	✗
NT Fisheries	✓	✗	✗	✗	✗	✗

^a Compliance systems audits. ^b Internal workshops and auditor training. ^c Verification audits with other states and AQIS. ^d Standardisation exercises.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

Differences in salary/experience/qualification levels of regulatory staff may also provide an indirect indication of the capacities of regulators to provide useful advice, assess alternatives means of compliance and successfully implement a responsive approach to enforcement (table 8.12).

Table 8.12 Human resources (inspectors and auditors)
2008-09

Agency	Min. qualifications			Average starting salary	Average salary all current staff	Staff turn over	Experience			
	Bach. Science	Other degree	Other				< 3 years (%)	3–10 years (%)	> 10 years (%)	
Cwllth	AQIS (inspector)	✓	✓	✓	60 778	85 434	nr	nr	nr	nr
	AQIS (auditor)	✓	✓	✓	75 681	118 709	nr	nr	nr	nr
NZ	NZFSA ^a	✓	✓	✓ ^c	60 000	85 000	2	13	50	34
NSW	NSWFA ^b	✓	✓	✗	69 800	85 071	8	2	5	93
Vic	PrimeSafe	✗	✓	✗	nr	nr	10	0	80	20
	DFSV ^a	✗	✓	✗	66 056	76 834	14	0	14	86
Qld	SFPQ (inspector)	✓	✗	✗	53 800 ^d	69 000	0	nr	nr	nr
	SFPQ (auditor)	✓	✗	✓ ^e	53 800	69 000	0	6	19	75
SA	PIRSA ^a	✗	✗	✓ ^f	54 000	63 000	0	0	20	80
	DASA ^a	✗	✓	✓ ^e	46 000	58 000	0	0	33	67
WA	WA Health ^b	✓	✗	✗	51 601	71 748	10	0	20	80
Tas	Tas DPI ^b	✗	✗	✓ ^g	59 500	63 500	0	0	0	100
	TDIA ^a	✓	✓	✓ ^h	52 276	71 000	0	0	67	33
NT	NT Meat ^b	✗	✗	✓ ⁱ	67 300	80 750	80	0	75	25
	NT Fisheries	nr	nr	nr	nr	nr	nr	nr	nr	nr

nr no response. ^a Responses relate to auditors. ^b Responses relate to inspectors and auditors. ^c Police training/industry training. ^d 2007-08. ^e Graduate Diploma. ^f Competencies and training as per national regulatory audit policy. ^g Certificate or Statement of Attainment of relevant Food Safety Auditor Units of Competency plus Certificate IV in Meat. ^h Ongoing professional development. ⁱ Graduate Diploma (Meat Safety).

Sources: Productivity Commission survey of food safety regulators (2009, unpublished); RBA (2009).

There was considerable variation in these indicators across jurisdictions. AQIS stood out in terms of providing the highest average salaries for auditors (and for inspectors along with the NZFSA and NSWFA). Food safety officers in DASA and PIRSA received the lowest starting and (among the lowest) average salaries (where qualification requirements also appeared to be less specialised). Interestingly, inspectors and auditors in those two agencies also had more experience, on average, than many field staff in higher paid jurisdictions.

The issue of consistency was also a common topic of discussion with other food safety regulators and local governments (to facilitate greater enforcement consistency across councils in the same jurisdiction). Policy interpretation and

regulatory gaps and overlaps were nominated by almost every agency as areas in which a dialogue with other regulators was conducted (table 8.13).

Table 8.13 Issues discussed with other regulatory agencies
2008-09

	Agency	Regulatory overlap	Regulatory gaps	Enforcement consistency	Policy interpretation	Food recalls	Other
Cwth	AQIS	✓	✓	✓	✓	✓	✗
NZ	NZFSA	✗	✗	✓	✓	✓	✗
NSW	NSWFA	✓	✓	✓	✓	✓	✗
Vic	PrimeSafe	✓	✓	✓	✓	✗	✗
	DFSV	✓	✓	✗	✓	✗	✗
Qld	SFPQ	✓	✓	✓	✓	✓	✓ ^a
SA	PIRSA	✓	✗	✗	✓	✓	✗
	DASA	✓	✓	✓	✓	✓	✗
WA	WA Health	✓	✓	✓	✓	✓	✗
Tas	Tas DPI	✓	✓	✓	✓	✓	✗
	TDIA	✓	✓	✗	✗	✓	✗
NT	NT Meat	✓	✓	✓	✓	✗	✗
	NT Fisheries	✓	✓	✗	✓	✗	✓ ^b

^a Issues discussed covered foodborne illness outbreaks and standards development.

^b Legislation development.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

Regulators were also specifically asked whether there were any regulatory compliance burdens on food businesses that could be reduced without affecting food safety outcomes (the concept of minimum effective regulation). Use of third party auditing to reduce audit costs was highlighted by the NSWFA (which is moving toward such arrangements) and the Tasmanian DPIPWE as examples of the scope for improvements in this area.

While the survey responses revealed that most regulators did use third party auditors in 2008-09, there were a few exceptions (table 8.19). In a related context, very few agencies recognised the private audit systems employed by industry to ensure the quality and safety of food products from their suppliers. The only exceptions were SFPQ, PIRSA and the Tasmanian DPIPWE. The duplication and associated burden involved in separate auditing requirements was a common complaint from business during the course of this study. The Tasmanian DPIPWE suggested a possible solution would involve:

... third party auditors extending their audit scope and providing both proprietary and regulatory reports from a single audit.

Other initiatives suggested to lower compliance burdens included: recognition of jurisdictional food safety systems by national agencies such as AQIS (PrimeSafe), provision of food safety plan templates (NZFSA) and clarifying the roles and responsibilities involved in administering and complying with primary production legislation (Northern Territory DRDPIFR — Fisheries).

SFPQ provided a detailed response arguing that the Model Food Act legislation adopted by most jurisdictions limited the ability to tailor compliance measures to the circumstances of different food businesses and food sectors. It also suggested alternative surveillance means to those currently employed in other jurisdictions:

Providing a flexible, proactive approach to monitoring compliance reduces the regulatory burden on food businesses. While the Model Food Bill supports a one-size-fits-all approach to monitoring compliance this limits the ability to use a range of monitoring arrangements that can be adapted for each business or each food sector. This in turn places greater emphasis on prosecutions which are costly and resource intensive for all parties concerned and can result in negative consumer attitudes towards a whole food sector.

The Food Production (Safety) Regulation 2002 enables SFPQ to use a wide range of monitoring arrangements to verify compliance with food safety schemes, including auditing, investigating or verification and sampling. SFPQ are currently implementing monitoring arrangements under the Seafood Food Safety Scheme which will enable businesses to upload electronic data relating to critical control measures undertaken by the business, such as time/temperature data or results of independent food sampling results. This approach not only reduces the need to audit or inspect businesses but will provide SFPQ with value data to enable SFPQ to more effectively direct resources to areas in the supply chain that are of concern.

In addition, industry-specific examples of innovative practices were provided by SFPQ. They said:

An example of this [innovative] approach is the Egg and Egg Products Food Safety Scheme where the ‘preferred supplier arrangement’ was developed to ensure adequate food safety management while also reflecting the commercial arrangements within the egg industry – a ‘win win’ situation for industry and the community. SFPQ considers that similar approaches will need to be developed for other industry sectors.

... SFPQ has entered into an alternative compliance arrangement with Parmalat and Dairy Farmers Group where the food safety arrangements for approximately 650 dairy producers are managed through the respective company’s food safety arrangements. This approach has substantially reduced the audit costs for these producers while still ensuring that food safety is adequately managed. In addition, it has resulted in SFPQ receiving timely, quantitative data on food safety hazards and allows trends to be established for prioritising food safety risks.

8.5 Direct burdens on business

While the enforcement strategies discussed above reflect how well agencies manage and target their resources to ensure food safety while minimising unnecessary burdens on business, differences in the characteristics of audits and inspections and of fees and charges imposed on most businesses reflect the direct and regular costs imposed on business.

Audit and inspection frequency, duration and basis

Business compliance burdens will be directly affected by the frequency of food safety audit and inspections (table 8.14). The most intense scrutiny of primary production businesses is conducted by AQIS (2.1 visits per exporting business in 2008-09), Primesafe (around 2 audits per regulated business), Northern Territory DRDPIFR (around 1.9 visits per meat business), PIRSA (around 1.7 visits per regulated business) and the Tasmanian DPIPWE (around 1.5 audits per mainly shellfish harvester business). Businesses regulated by most other agencies were clustered around an annual inspection frequency.

Interestingly, overall audit and inspection frequency did not appear to be correlated with differences in the detection of compliance breaches serious enough to warrant an onsite follow-up (the share of total audits/inspections accounted for by reaudits/inspections). For example, the NSWFA, SFPQ and PIRSA shared very similar follow-up rates despite total audit/inspection frequencies varying from 0.75 per business to 1.7 per (non-dairy) business in 2008-09.

Audit and inspection duration (and the associated compliance burden) appears to vary considerably across activities. AQIS and the NZFSA (whose activities are dominated by internationally traded food products) conduct longer maximum site visits across a range of activities reported on, but there is otherwise no consistent duration pattern evident across jurisdictional regulators (see chapters 9 and 14). Given audit and inspection activities will combine other compliance initiatives (such as education and advice) and depend on business size and process complexity, the results need to be kept in perspective.⁷

⁷ The NSWFA commented that 50 per cent of the time spent during audits was devoted to education and advice.

Table 8.14 Activity indicators

2008-09, number

Agency	Total inspections	Total audits	Reinspections and reaudits	Complaint initiated inspections/inspections per regulated business	Businesses fined	Prosecutions initiated	Recalls – state/territory	Recalls national		
Cwth AQIS ^a	0	3 278	31	0	2.06	0	1	0		
NZ NZFSA ^b	0	5 201	10	6	0.78	0	7	na	17	
NSW NSWFA	4 433	5 975	1 256	1 185	0.75	128	14	18	59	
Vic	PrimeSafe	0	4 156 ^c	nr	unknown	1.97	na	2	0	0
	DFSV	127	2 006 ^d	11	19	0.37	na	0	3	0
Qld	SFPQ	317	8 998 ^e	1502	150	1.22	3	3	0	0
SA	PIRSA	26	1 675 ^f	204	32	1.65	6	0	2	0
	DASA	0	647	nr	0	1.11	0	0	0	0
WA	WA Health	32	467	3	2	1.16	0	0	0	30
Tas	Tas DPI ^g	0	236	nr	0	1.48	na	0	0	0
	TDIA	0	550	60	5	1.01	na	0	1	1
NT	NT Meat	40	30	nr	1	1.94	0	0	0	0
	NT Fisheries	nr	nr	nr	nr	na	2	nr	nr	nr

na not applicable. **nr** no response. **a** AQIS noted that audit figures relate to seafood and meat audits only. Reaudits relate to meat only. Total audit figure includes 300 audits conducted by a third party (AUSMEAT) and financed through industry levies. **b** Total audit figure includes 3070 audits conducted by the NZFSA's Verification Agency under the Animal Products Act (but not the 'numerous' audits conducted by AsureQuality under that Act), an estimated 1878 audits (covering 1878 businesses which are audited once a year on average with some businesses audited every 2 years or every six months) conducted by verification agencies under the Food Act, an estimated 131 audits conducted by verification agencies under the Wine Act's wine standards management plan programme (which commenced on 1 December 2008 with all 262 registered management plans expected to be verified annually) and 122 audits performed by NZFSA as part of its overall systems audit (for national calibration etc). NZFSA noted that verification (audit) figures are complicated as many plants have a permanent onsite presence which could result in 365 inspections per plant per year plus monthly and 3 monthly audits. NZFSA also noted that excluding storage facilities, the frequency of audits (verifications) for New Zealand primary production businesses range from 1 to 8 per year. Prosecution activity refers to completions rather than initiations. Fines can only be imposed by a court following a conviction. **c** All Primesafe audits conducted by third party auditors which set their own fees and charge businesses directly. **d** Total audit figure shown includes 98 audits of dairy manufacturers by 3rd party auditors with fees set and collected by DFSV (which then pays service provider) and 1630 audits of dairy farms by 3rd party auditors with no fees collected or paid by DFSV. Total audit figure does not include food safety audits conducted as a component of farm Quality Assurance (QA) programs contracted by manufacturing companies. The food safety component of these QA programs is approved by DFSV for each company. Company staff or audit providers who audit these programs must be approved by DFSV. Number of audits conducted under these arrangements not tracked by DFSV. **e** Total audit figure includes audits of low and medium risk food businesses by 3rd party auditors (SFPQ audits high risk businesses and conducts verification audits). SFPQ charges food businesses directly for all audits and then pays service provider. **f** Total audit figure shown includes 135 audits conducted by 3rd party auditors which set own fees and charge food businesses directly. **g** Tas DPI noted the figure for audits per regulated business overestimates the average ongoing frequency of audits due to implementation process associated with the Seafood Primary Production Standard. Audits during the establishment phase of the new management system have been higher than will be the case in the future. This is also the case for meat processors. The total audit figure shown includes 67 audits (mainly shellfish harvesters) conducted by a third party with fees set by the auditor and charged directly to businesses.

Sources: Productivity Commission survey of food safety regulators (2009, unpublished); personal communications.

In terms of the basis on which audits and inspections are conducted (table 8.7), risk profiling was used by every primary production regulator except AQIS and Western Australian Health. Compliance histories also featured prominently except in South Australian dairy businesses and those regulated by Western Australian Health (table 8.7).

Types, level and basis of fees and charges imposed

As discussed above, reliance on fee and non-fee income and the types of fees charged varied considerably from one jurisdiction to the next (table 8.4). Appropriation income dominated the budgets of the NSWFA, the Tasmanian DPIPWE, Northern Territory DRDPIFR (Meat) and Western Australian Health. Food businesses regulated by those agencies are likely to have faced a lower compliance cost burden in 2008-09 than those regulated elsewhere.

For those regulators relying on non-appropriation income, there was also considerable variation in the types of fees charged. PrimeSafe, Dairy Food Safety Victoria, the TDIA and Northern Territory DRDPIFR (Fisheries), relied almost exclusively on licence fees. As discussed in chapter 7, licensing/registration/accreditation requirements can impose a higher compliance burden on food businesses in terms of the time taken to satisfy approval processes and the conditions placed on food business operations. Indeed, a number of regulators nominated licensing requirements as the main issue on which food businesses inquiries were based.

Agencies such as SFPQ and DASA, on the other hand, relied on a combination of registration/accreditation fees and audit fees for their funding while audit fees accounted for nearly all the income base for the NZFSA (table 8.15). AQIS was the only regulator that charged inspection fees (where they were the major income source). Inspection fees were not charged in other jurisdictions where inspections were a major surveillance activity such as New South Wales.

While business and activity type were the most common basis on which fees and charges were levied, there was not a consistent pattern to fee determination evident from the survey responses. Risk-based charges were only applied by AQIS, NZFSA and SFPQ (table 8.16) but even those agencies did not use risk as a basis for *audit* or *inspection* charges (table 8.17).

Table 8.15 Food safety income components

2008-09, A\$'000^a

Agency	Licence fees	Registration fees	Administration fees	Inspection fees	Audit fees	Accreditation fees	Fines	Other income	Appropriation ^b	Total food safety income
Cwlth AQIS	570.7	1 459	0.0	37 611	2 911.2	0.0	0.0	4 544.6	35 267 ^c	82 363.9
NZ NZFSA	210.0	752.0	0.0	na	28 123.1	64.9	0.0	1 062.6 ^d	0.0	30 212.6
NSW NSWFA	4 652.4	0.0	0.0	0.0	981.1	0.0	257.6	816.8	13 961.3	20 669.2
Vic Prime Safe	1 727.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	133.1	1 860.2
DFSV	3 557.0	0.0	0.0	0.0	245.9	0.0	0.0	0.0	0.0	4 470.6
Qld SFPQ	na	na	0.0	na	1 247.8	2 534.7	27.0	2 249.2 ^e	0.0	6 058.8
SA PIRSA	0.0	0.0	0.0	0.0	212.0	835.0	0.0	106.0 ^f	437.0	1 590.0
DASA	0.0	292.1	0.0	0.0	169.2	0.0	0.0	0.0	65.7	527.0
WA WA Health	3	1	8.0	0.0	0.0	na	0.0	1.7 ^g	1 075.5	1 089.1
Tas Tas DPI	15.5	0.0	0.0	0.0	22.8	0.0	0.0	0.0	621.6	659.9
TDIA	433.3	0.0	3.7	0.0	0.0	0.0	0.0	0.0	0.0	436.9
NT NT Meat	5.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0	99.6	105.0
NT Fisheries	18.4	0.0	0.0	0.0	0.0	0.0	4.0	0.0	0.0	22.4

na not applicable. nr no response. ^a NZ dollars converted to \$A using an exchange rate of 1.23 New Zealand dollars per Australian dollar. ^b Appropriation income was estimated as the difference between total food safety fee income and total food safety income. ^c The Australian Government provided a 40 per cent inspection fee rebate to businesses for export certification and inspection in 2008-09 (see chapter 14 and appendix C). That rebate is reflected in the appropriation figures shown for AQIS. ^d Other income for the NZFSA was associated with certification. ^e Other income for SFPQ included a grant of \$1.9 million. ^f Other income for PIRSA was related to fee for service activities. ^g Other income for Western Australian Health involved revenue from brand hire.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

Table 8.16 Fee basis
2008-09

<i>Agency</i>	<i>Type of business</i>	<i>Type of activity</i>	<i>Business turnover</i>	<i>Risk category</i>	<i>Employee numbers</i>	<i>Other</i>
Cw/with AQIS	✓	✓	x	x ^a	x	x
NZ NZFSA	✓	✓	x	✓	x	x
NSW NSWFA	x	x	x	x	x	✓ ^b
Vic PrimeSafe	c	c	c	c	c	c
DFSV	✓	x	✓	x	x	x
Qld SFPQ	x	✓	x	✓	x	x
SA PIRSA	✓	✓	x	x	✓	x
DASA	x	✓	✓	x	x	x
WA WA Health	x	x	x	x	x	x
Tas Tas DPI	x	x	x	x	x	✓ ^d
TDIA	✓	✓	x	x	x	✓ ^e
NT NT Meat	x ^f	x ^f	x ^f	x ^f	x ^f	x ^f
NT Fisheries	x ^f	x ^f	x ^f	x ^f	x ^f	x ^f

^a AQIS noted that fees are dependant on commodity but do not vary in respect to risk. Fees are time based and higher risk products usually involve a longer inspection/audit time. ^b NSWFA commented that fees are currently charged on the basis of sector and industry but a system based on activity type (or risk) and employee numbers will shortly be introduced. ^c PrimeSafe noted that 3rd parties performed all audits and charged businesses directly for these services. ^d Tas DPI noted that fee setting was based on agency pricing policy formula (hourly rate) or Prescribed Fee (that applies to meat audits only). ^e TDIA noted that milk litre intake was another basis on which fees were levied. ^f NT Meat and Fisheries do not charge for audits/inspections.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

Table 8.17 Audit/inspection fee by business risk category

2008-09, \$Australian per hour^a

	Agency	Low risk business	Medium risk business	High risk business
Cwlth	AQIS ^b	63	63	63
NZ	NZFSA	112	112	112
NSW	NSWFA	185 ^c	185 ^c	185 ^c
Vic	PrimeSafe	d	d	d
	DFSV	0	0	215–322 ^e
Qld	SFPQ	225 ^f	225 ^f	225 ^f
SA	PIRSA	167	167	167
	DASA	g	g	g
WA	WA Health	0	0	0
Tas	Tas DPI	not audited	224–234 ^g	224 ^h
	TDIA	i	i	i
NT	NT Meat	nr	nr	nr
	NT Fisheries	0	0	0

nr no response. ^a NZ dollars converted to \$A using an exchange rate of 1.23 NZ dollars per \$A. ^b AQIS noted that audit fees for fish exporters were \$172 per hour, dairy exporters \$268 per hour and meat exporters \$182 per hour. While these rates are not risk based, higher risk products usually involve a higher inspection/audit duration. ^c NSWFA noted fees included a flat \$38 travel component. ^d PrimeSafe noted that third parties performed all audits. ^e DFSV noted that the standard audit fee in 2008-09 was \$214.65 plus GST and the compliance audit fee was \$321.98 plus GST. ^f SFPQ noted that GST was payable on this audit fee. In addition to the audit fee an application fee of \$116.60 and an accreditation fee ranging from \$198.25 to \$5835.15 depending on the activity was also payable in 2008-09. ^g DASA noted fees were varied and complex (see chapter 11, table 11.5). ^h Tas DPI noted that \$224 is the pricing policy fee that currently applies to eggs and high risk seafood (bivalve molluscs). The other fees are prescribed under the Meat Hygiene legislation (see chapter 9). ⁱ TDIA noted that audit fees were included in the licence fee.

Source: Productivity Commission survey of food safety regulators (2009, unpublished), RBA (2009).

8.6 Transparency, accountability and coordination

Complementing efforts to reduce food business compliance burdens, measures aimed at making regulatory processes transparent, providing tailored assistance to specific business groups, procedural fairness (appeal avenues) and client feedback mechanisms featured prominently in responses from many core regulatory agencies (table 8.18).

Information on enforcement strategies and outcomes were commonly provided by regulators with broader primary production responsibilities. These can be proactive tools as they relay the consequences of ongoing or serious compliance breaches and the likelihood of combative measures being applied. In terms of specific assistance to target groups, there was considerable variability in the availability of such measures across jurisdictions with assistance more likely to be based on business size than location or English language differences.

Table 8.18 Transparency, accessibility and accountability

2008-09, access to, and availability of, good governance practices

Agency	Publish enforcement strategy	Publish enforcement outcomes	Appeal available	Small business assistance	English language assistance	Nonmetropolitan assistance	Client feedback mechanisms	Private or 3rd party audits recognised	Industry based food safety systems recognised
CwIth AQIS	✓	x	✓ ^a	x	x	x	✓	✓	x
NZ NZFSA	✓	✓	✓ ^b	✓	✓	x	✓	✓	x
NSW NSWFA	✓	✓	✓ ^a	✓	✓	✓ ^c	✓	x ^d	x
Vic Prime Safe DFSV	✓	✓	✓ ^b	x	x	x	x	✓	x
Qld SFPQ ^e	✓	✓	✓ ^b	✓	x	✓	✓	✓	✓
SA PIRSA	✓	✓	✓ ^a	✓	✓	✓	✓	✓ ^f	✓
DASA	x	x	nr	✓	x	x	x	✓	x
WA WA Health	✓	✓	✓ ^a	✓	x	✓	✓	x	x
Tas Tas DPI	✓	x	✓ ^a	✓	x	x	x	✓	✓ ^g
TDIA	x	x	✓ ^b	x	x	x	✓	x	x
NT NT Meat	x	x	na	x	x	x	✓	x	x
NT Fisheries	x	x	✓ ^b	✓	✓	✓	✓ ^h	na	nr

na not applicable. nr no response. ^a Both internal and external appeal mechanisms were available for actions by AQIS, NSWFA, PIRSA, WA Health and Tas DPI. ^b External appeals only (courts or tribunals) were available for actions by NZFSA, PrimeSafe, DFSV, SFPQ, TDIA and NT Fisheries. ^c NSWFA noted that it provided fee relief for drought affected areas as a means of nonmetropolitan assistance. ^d NSWFA noted in its submission that work on a new regulation that would allow certain food businesses to use a third party auditor for their compliance audit was well underway. ^e SFPQ noted that regional butchers and dairy activities have alternative compliance strategies via in house training with no audits. ^f PIRSA noted the audit fee charged for businesses located outside the metropolitan area did not include a travel component and was the same fee as that charged metropolitan businesses. ^g Tas DPI noted the Egg Corp Assured program as a recognised private food safety system. ^h NT Fisheries noted that feedback was obtained through client complaints.

Source: Productivity Commission survey of food safety regulators (2009, unpublished).

While a lack of appeal mechanisms does not regularly impact on the costs faced by business, they are an important recourse when regulators make mistakes, and cost effective appeal mechanisms can ameliorate costs for businesses. Importantly, appeal mechanisms were available in nearly all jurisdictions with internal review (likely to be less costly and time-consuming but also less independent than external alternatives which include administrative tribunals and courts) a feature in New South Wales, Western Australia, South Australia, Tasmania and for businesses dealing with AQIS. Client feedback mechanisms (typically through regular stakeholder surveys and forums) were used by about half of respondents to inform their regulatory functions.

Overall, the regulators with the broadest suite of what could be described as good governance practices leading to the lowest business compliance burdens were the NZFSA, NSWFA, SFPQ and PIRSA. In terms of structures to deliver good governance outcomes, SFPQ, pointed to the role played by legislation in this area:

The Food Production (Safety) Act 2000 establishes the SFPQ Board and Food Safety Advisory Committee (FSAC) both of which include external nongovernment representatives to ensure transparency, focus and accountability. This also facilitates a greater degree of public participation in government activity and better access to government decision-making that would not be possible in a departmental body.

Coordination

While regulatory responsibilities are usually clearly defined, at least in concept, vagueness sometimes occurs over demarcation in practice. As noted in chapter 7, there was considerable variability among councils within and across most jurisdictions in terms of the range of what they understood to be the scope of their enforcement role (table 8.19).

Table 8.19 Councils' understanding of regulatory coverage

2008-09, per cent of survey responses

<i>Activities not regulated by council</i>	<i>NZ</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>Total</i>
Butchers	19 ^a	92	86	100	96	19	0	64
Smallgoods	24	83	73	65	78	67	22	63
Poultry processors	76	83	82	88	87	76	78	82
Shellfish processors	76	83	77	71	48	52	78	69
Other food processors	na	79	18	18	9	24	22	26
Abattoirs	71	88	91	100	83	71	89	83
Farms	71	88	91	88	74	43	78	76
Dairy	na	83	82	100	83	62	89	69

^a According to the NZFSA, dual operator butchers (those processing unregulated meat and regulated meat that is inspected) are the responsibility of NZFSA. Traditional butchers are council responsibility.

Source: Productivity Commission survey of local councils (2009, unpublished).

New South Wales was the most consistent jurisdiction in terms of the proportion of councils which understood the *range* of functions that fell within the remit of the NSWFA. Elsewhere, *all* Queensland councils nominated butchers, abattoirs and dairy (and *most* nominated poultry processors and farms) as activities for which regulation was the sole responsibility of the central agency in that state (SFPQ). Within other jurisdictions, however, there were greater differences across councils. In South Australia, for instance, 48 per cent of councils responding to the survey

viewed shellfish processors as PIRSA's responsibility while 52 per cent (by default) considered that responsibility to be their own.

Information provided by the central agencies is more definitive about the respective roles of local government and nonlocal government agencies (figure 9.2, chapter 9). In New South Wales, for example, while council officers are authorised under the Food Act 2003 (NSW) for all types of food businesses, councils are primarily responsible for retail and service food businesses.⁸ In New Zealand, traditional butchers are the sole responsibility of local councils while butchers that also process meat and abattoirs fall within the NZSFA's regulatory remit.⁹

⁸ This does not include butchers, bakeries, dairy factories, meat and seafood processors which fall within the remit of the NSWFA (NSWFA 2008d).

⁹ NZFSA regulates dual operator butchers (retail butchers that also provide a homekill and recreational catch service at the same premises or place).