
OVERVIEW

Key points

- Australian and New Zealand regulators generally use a cooperative, graduated approach to achieve compliance. They apply risk management and try to minimise adverse side effects on business.
- Consistent with the Joint Food Standards Setting Treaty, New Zealand only adopts a minority of the Australia New Zealand Food Standards. New Zealand has separate food hygiene standards for consumer food safety which are much more prescriptive.
- The Model Food Act and Australia New Zealand Food Standards Code in Australia help to achieve some level of harmonisation between states and territories in their consumer food safety requirements. The most significant difference occurs over requirements to employ a food safety supervisor and to prepare a food safety plan.
- Local councils play a key role in the administration and enforcement of consumer food safety regulation, except in the Australian territories. There are significant differences in councils' fees and charges, inspection rates, enforcement practices and transparency of their activities, which can lead to unnecessary burdens on business. The NSW Food Authority has achieved greater coordination and clarity by establishing a memorandum of understanding with local councils.
- There are significant differences among the core state/territory consumer food safety regulators in the level and nature of charges; taxpayer versus business funding; risk classifications; the rate and duration of audits/inspections; appeal mechanisms and transparency.
- Across the Australian states and territories, there is far less harmonisation in regulation at the primary production and processing (PPP) end of the food chain:
 - there is no model food safety legislation covering PPP
 - progress in developing national PPP standards has been slow
 - significant differences in the interpretation and implementation of PPP standards persist in jurisdictions.
- The processes for registering and specifying appropriate maximum residue limits of chemicals are more streamlined and timely in New Zealand than in Australia.
- Comparing how Australia and New Zealand regulate internationally traded food:
 - Australia's charges are generally higher, its fee structure is more complex, and there is jurisdictional diversity and agency duplication
 - in both countries, red meat exporters incur greater costs and more regulatory intervention than other primary product exporters
 - some products are subject to the strictest export requirements irrespective of destination, extending to domestically sold products in New Zealand's case
 - Australia's regulatory system for exports relies less on electronic processing to reduce business compliance costs and is less able to embrace shifts toward outcome-based standards in the domestic food safety system.

Overview

The regulatory stream of the National Reform Agenda of the Council of Australian Governments (COAG) focuses on reducing the regulatory burden imposed by the three levels of government. COAG agreed that effective regulation is essential to ensure markets operate efficiently and fairly, to protect consumers and the environment and to enforce corporate governance standards. However, the benefits from regulation must not be outweighed by the costs imposed and there should be no unnecessary compliance costs.

In February 2006, as part of the Agenda, COAG agreed to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government. COAG particularly wants to identify unnecessary compliance costs, enhance regulatory consistency across jurisdictions and reduce regulatory duplication and overlap. COAG's concern is not only with written regulation but also with the role and operation of regulatory bodies.

This report on the regulatory burdens imposed on business by food safety regulatory regimes is one of two studies undertaken this year. (A companion report benchmarks the regulatory burdens imposed by occupational health and safety regulation and regulators.)

Purpose and conduct of the study

The purpose of this study is to benchmark indicators of regulatory burdens associated with food safety regulatory regimes across the jurisdictions (including New Zealand). The inclusion of New Zealand in the study broadened the regulatory functions which could be benchmarked by providing a basis of comparison for activities where there would otherwise not be one (such as national regulation of international trade in food).

The process adopted for the review has been to invite submissions from, and consult widely with, interested parties, including: industry associations; national, state, territory and local governments; consumer groups and businesses, anywhere along the food chain from where food is grown to its delivery to the consumer. The Commission also used public submissions to other reviews, annual reports and studies estimating relevant costs, in order to reduce the cost of participation on interested parties. As well, the Commission surveyed regulators.

For such an extensive and varied regulatory regime as food safety, the Commission has:

- identified differences in regulation and regulator behaviour and highlighted those that are likely to impose higher costs on businesses
- estimated the costs of some regulatory requirements and/or provided information which is likely to reflect indirectly on the regulatory burden in different jurisdictions
- sought evidence as to whether or not identified higher regulatory costs might be associated with better outcomes in order to shed light on whether they are unnecessary.

While this study does not make recommendations regarding food safety regulation, it does inform governments about those areas of food safety regulation where there are differences in the compliance burdens between the jurisdictions and the areas where there may be benefits from further reform. These findings are covered in the report.

Australia's regulatory and institutional structure is complex

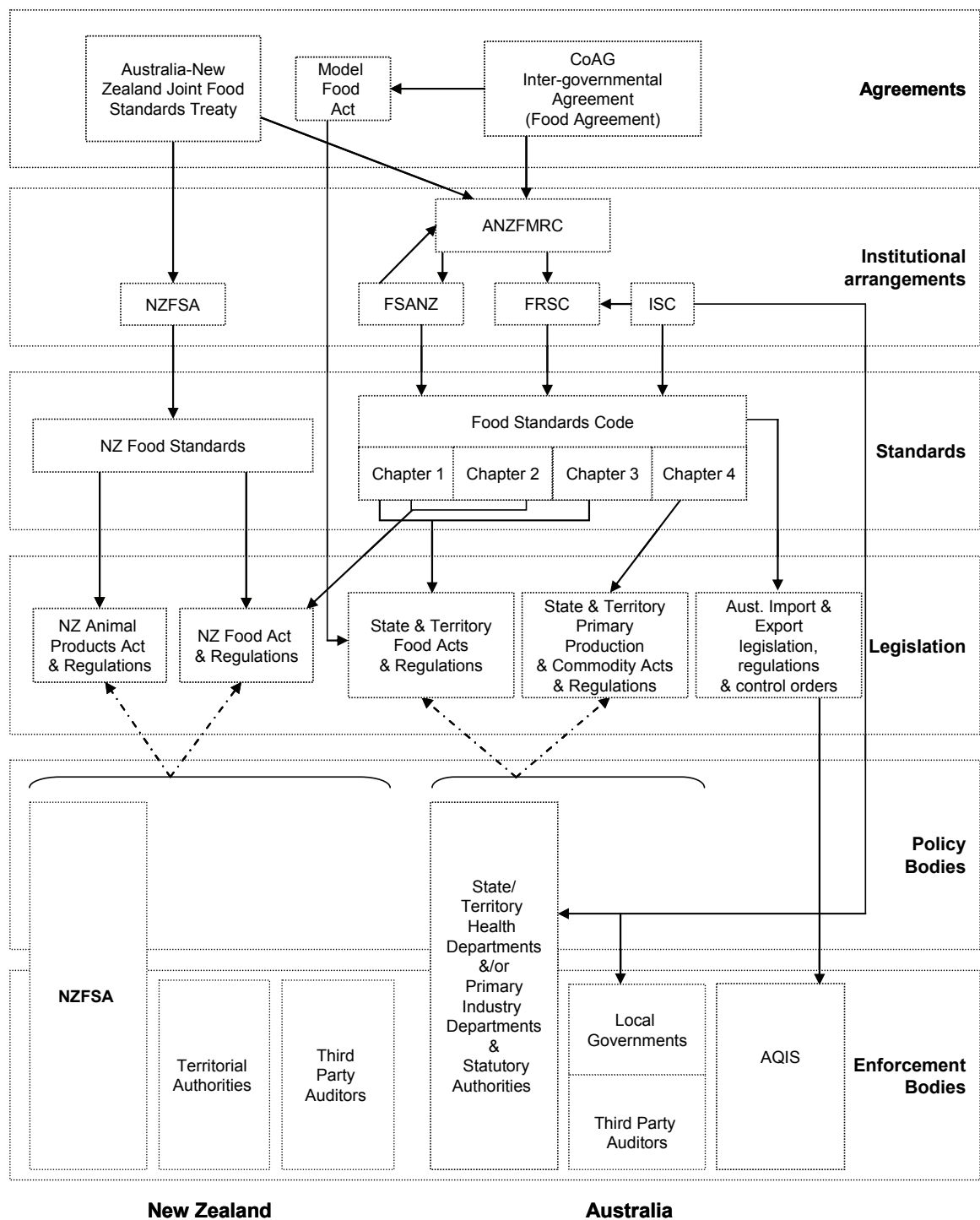
All the major elements of the food safety regulatory regimes under reference are depicted in figure 1.

New Zealand has a single agency which regulates all aspects of food safety except that regulated by local governments, which it monitors and coordinates. In all Australian states, the core food agency responsible for consumer food safety is also responsible for coordinating and monitoring the regulatory functions of local councils, though to differing degrees. In contrast, the core food agency in both Australian territories absorbs all the 'local council' functions. Jurisdictions vary as to whether they regulate the food safety of primary production and processing (PPP) within their core agencies or it is devolved to one or two separate agencies. Only Victoria, South Australia and Tasmania have two PPP regulators and in each case one of these deals only with dairy.

While it might be expected that devolved models provide greater scope for duplication and inconsistency, this was not reported by businesses (except in the regulation of internationally traded food).

Notable distinctions between Australia and New Zealand arise from Australia being a federation that has not granted its national government any constitutional powers over food, while New Zealand has no middle tier of government. Hence, while the New Zealand Food Safety Authority (NZFSA) combines the regulation of internationally traded food and of domestic food, Australian imported and exported foods are regulated by a separate national agency, the Australian Quarantine and Inspection

Figure 1 Australia-New Zealand food safety regulatory system



Service (AQIS). Also, while the NZFSA is the only agency in New Zealand which sets and applies minimum residue limits for food, in Australia both Food Standards Australia New Zealand (FSANZ) and the Australian Pesticides and Veterinary Medicines Authority (APVMA) are involved.

Food safety outcomes are variable

This study is concerned with regulation directed at *food safety* — that is, with reducing food-borne illness, preventing contamination of food and minimising the risk of physical harm from chemicals in food.

Unfortunately, it is usually impossible to link changes in outcomes with particular regulatory changes.

As a way of providing background only, existing data show:

- in Australia, in 2008, there were over 25 000 notifications of diseases that are commonly transmitted by food. Campylobacteriosis was the most frequently notified illness (15 500 cases)
- in Australia, in 2007, there were 149 food-borne outbreaks, 2300 people were affected, over 260 people were hospitalised and five people died as a result of these outbreaks
- in New Zealand, 89 food-borne outbreaks, affecting 1206 people were reported in 2008. New Zealand reported 6693 notifications of campylobacteriosis in 2008.

Regulatory requirements have shifted focus

Over the past 10 to 20 years, the focus in written food regulations has shifted from prescriptive regulation towards outcome and training requirements that increase the awareness and understanding of those in food enterprises who can improve outcomes. Such culture changing approaches should achieve greater self-regulation by businesses.

The Commission found that while the Australia New Zealand Food Standards Code (ANZFS Code) reflects this shift (box 1):

- many of the jurisdictions' PPP requirements are prescriptive, for example New South Wales has prescriptive provisions on the content of food safety plans and its manuals and codes contain specific requirements on dairy premises, equipment and processes that are additional to requirements in the ANZFS Code
- New Zealand's food hygiene standards for consumer food safety are very prescriptive while Australia's food hygiene standards are contained in the ANZFS Code and are outcome-based
- in contrast, New Zealand's food hygiene standards for PPP standards issued under the *Animal Products Act 1999* are outcome-based

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- FSANZ does not develop non-mandatory prescriptive codes (which would assist some businesses to comply) to accompany its outcomes-based standards, although it does produce guidelines in some cases.

Box 1 The Australia New Zealand Food Standards Code

The ANZFS Code contains around 70 food standards documented in four chapters:

- chapter 1 — labelling, food additives, contaminants and chemical residues, foods requiring pre-market clearance, microbiological and processing requirements
- chapter 2 — food product requirements applying to particular types of foods (for example, cereals, meat, eggs, fruit, vegetables, edible oils and alcoholic beverages)
- chapter 3 (Australia only) — food hygiene
- chapter 4 (Australia only) — primary production and processing: seafood and dairy.

Source: ANZFS Code.

Harmonisation is incomplete and progress is variable

With regard to food safety, possible gains from greater consistency include economies of scale from industry supplying to a national market, lower prices to consumers through greater competition and increased productivity, and decreased costs to industry.

One focus in this study has been the costs to business from inconsistencies among the jurisdictions' regulatory regimes. Within Australia, the Commission observed a number of regulatory differences which either result in variable burdens being imposed on businesses in different jurisdictions and/or increase the costs of doing business across jurisdictions. At a broad level these differences include:

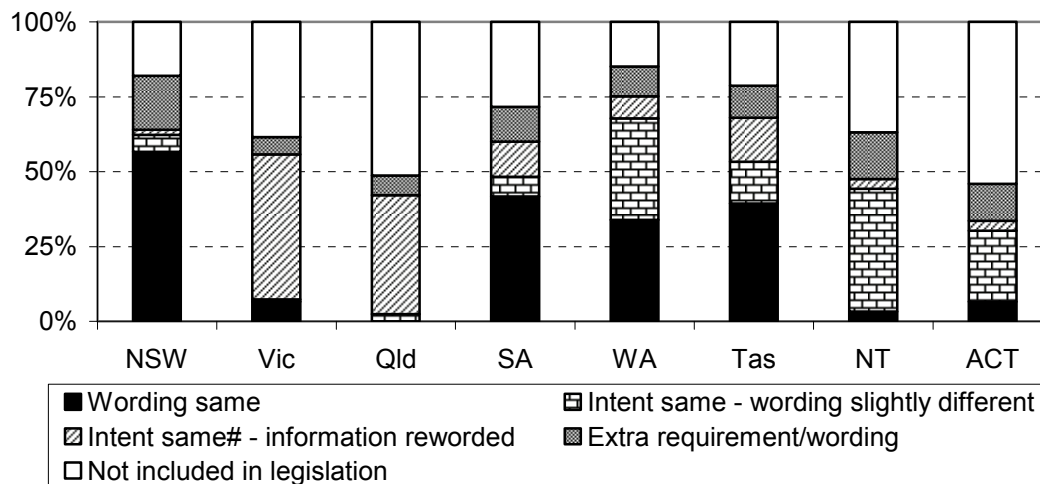
- varied rates of adoption (optional under the Australian Inter-governmental Agreement on Food Regulation) of Annex B of the Model Food Act, which contains provisions relating to administration and enforcement (figure 2)
- less than complete adoption of all nationally developed food standards (as contained in the ANZFS Code) — for example, in their adoption of these standards, New South Wales, Queensland, South Australia and Western Australia have made some modifications.

At a broad level, much more progress has been made in harmonising consumer food safety regulatory regimes than those for the PPP end of the food chain in Australia. In particular, there is no model food safety legislation covering PPP and there has been very slow progress in establishing, let alone adopting, the ANZFS Code PPP standards. While national seafood and dairy standards have been completed, ANZFS Code standards are still outstanding in much of red meat, poultry meat and eggs after many years of development:

- the safety of primary meat production in Australia is currently implemented through reference to non-government Australian Standards (rather than the ANZFS Code)
- the safety of eggs and egg products is mainly regulated by industry and by some state and territory governments.

Figure 2 Adoption of (optional) Annex B provisions in the Australian jurisdictions' Food Acts^a

As at 31 July 2007



^a Analysis for Western Australia relates to the *Food Act 2008* (WA). # intent same – information reworded and/or contained in more than one section/subsection.

Data source: Theobald (2007).

Comparing Australia and New Zealand, some divergence in regulations and adoption of food standards is likely to result in differences in compliance costs between the two countries:

- New Zealand has not adopted some standards from chapters 1 and 2 of the ANZFS Code, such as those relating to maximum residue limits; country of origin labelling; and fortification of bread with folic acid
- as agreed under the Joint Food Standards Setting Treaty, chapters 3 and 4 of the ANZFS Code do not apply in New Zealand.

Risk profiling and management are widely used

A significant shift in the approach taken by regulators has been to focus resources on those areas posing the biggest risk to consumers of food. By identifying the key risks to food safety, this shift potentially enables improved food safety outcomes and more efficient targeting of business expenditure on hazard reduction. To support this

approach, it is necessary for regulators to have significant flexibility in finding enforcement approaches most likely to reduce risks.

Risk profiling, including compliance histories and inherent risks posed by different types of businesses were used by most of the regulators, including both core state regulators and local councils.

However, with regard to PPP, some historical anomalies remain. Red meat processing, for example, receives far more regulatory attention than some other food products even though its risk profile does not always warrant such attention. Reforms to red meat regulation could both lower burdens on business and free up regulatory resources for other riskier areas of food production and processing.

Also, except for those primary products for which there is a ANZFS Code standard (bivalve molluscs and dairy), there is no consistent classification by the major regulators in respective jurisdictions of the riskiness of different products and processes. Consequently, there was considerable variability across jurisdictions in the proportion of PPP businesses classified as high, medium or low risk.

Councils in different jurisdictions also vary considerably in the proportion of businesses they classify as high risk. According to survey responses, at one extreme New South Wales councils classify nearly two thirds of food businesses as high risk while, at the other extreme, Victoria and South Australia accord just 22 and 13 per cent, respectively, of businesses that category.

Requirements to employ a food safety supervisor (FSS) and to prepare a food safety plan (FSP) are intended to increase awareness of risks and increase engagement in managing them.

However, there are significant differences in requirements across jurisdictions. Only Victoria and Queensland¹ require a food business to employ an FSS, with additional costs incurred for the FSS to attend training courses. The total costs can mount where there is high staff turnover and where 24-hour food businesses are required to have an FSS present at all times.

Requirements for FSPs also vary between jurisdictions. Victoria imposes a higher cost on food businesses by requiring most food businesses (not just high risk businesses) to prepare an FSP. This broader requirement has been estimated to impose an additional aggregate regulatory burden in the vicinity of \$30 million per annum, although some of this will decline with the recent reduction in the number of Victorian businesses

¹ New South Wales intends to introduce such a requirement for the hospitality industry in 2010.

required to prepare FSPs under the *Food Amendment (Regulation Reform) Act 2009* (Vic).

At the PPP end of the food chain, there is considerable variability in requirements for FSPs. Study participants raised concerns around the burden of the number of FSPs (both government and private sector) that they need to comply with and the different ways in which compliance must be demonstrated. Some businesses engaged consultants to prepare FSPs and assist them in compliance.

Enforcement has become more responsive

From its range of visits, the Commission observed that administrators of regulation have been steadily improving their capacities to deliver regulatory outcomes in ways that try to minimise adverse impacts on businesses, provide assistance in complying with the law and focus efforts on those least compliant or most likely to offend. The results of the Commission's regulator surveys also indicate this.²

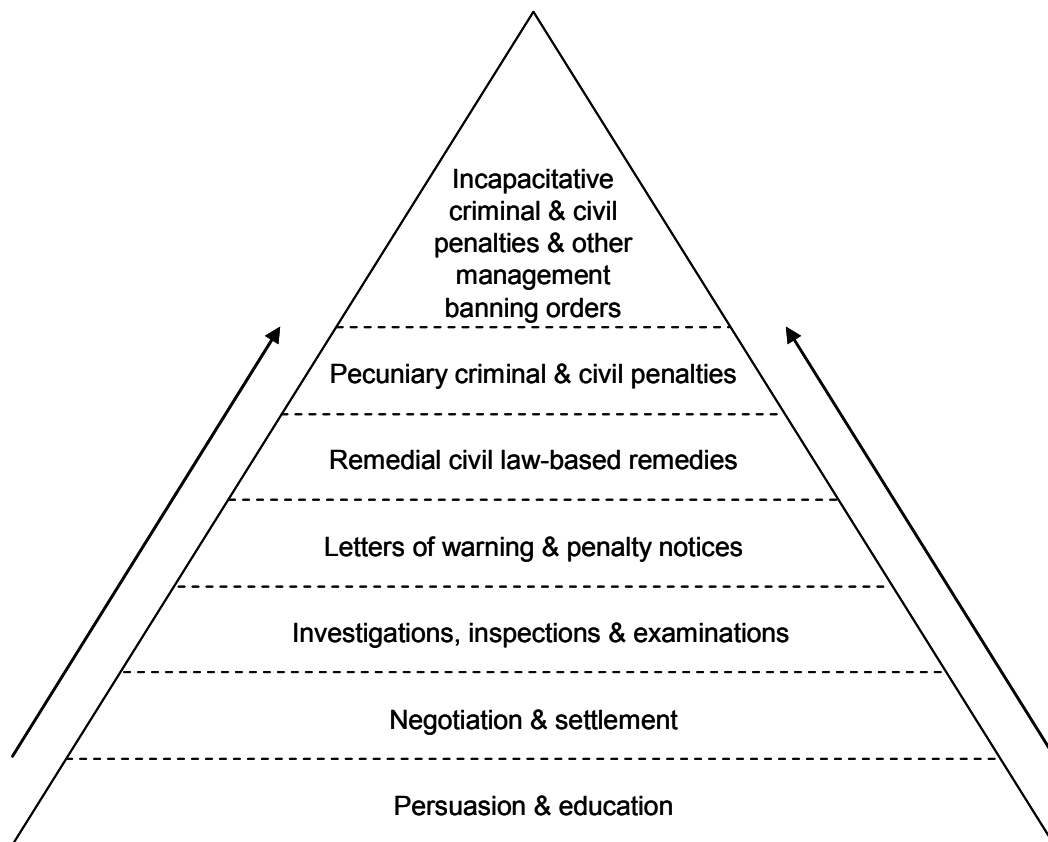
Regulators appear generally to accept that an effective enforcement strategy needs to comprise both 'deterrence' and 'advise and persuade' elements and that a regulator should have an enforcement policy that uses an escalation of sanctions. Figure 3 depicts a 'responsive regulation' enforcement pyramid.

Along with a shift from prescriptive regulation to changing cultures, regulators now generally spend more time on providing training or informal advice to businesses and less time on inspecting premises against a list of prescriptive requirements. For example, amongst the PPP regulators, there is now a focus on audits and compliance checks to test controls and outcomes, rather than the traditional on-site inspections.

All jurisdictions emphasise the use of education and warnings (which involve lower business compliance burdens compared to other enforcement tools) to improve food safety awareness and address specific compliance breaches. Data for the NSW Food Authority (NSWFA), Victorian Department of Health and Northern Territory Department of Health and Families show that education or advice is used far more than verbal warnings, and verbal warnings are used far more than written warnings. More punitive responses are rarely used as a first response.

² While the survey results provide insights into regulator behaviour, there are limitations to the survey approach, particularly selection bias due to optional participation and low response rates from councils in some jurisdictions. Hence, the results should be treated as impressionistic rather than as providing a definitive statistical snapshot of food safety enforcement.

Figure 3 **An enforcement pyramid**



Source: Gilligan, Bird and Ramsay (1999).

Differences in the use of enforcement instruments, observed across the jurisdictions include:

- Queensland and Tasmania were the main jurisdictions providing training services to food businesses (without charge)
- Western Australia and Victoria had the lowest proportion of councils reporting that they provided food handler training
- councils in Victoria and Western Australia have no access to on-the-spot-fines and improvement notices and were among the most likely to resort to litigation
- while three jurisdictions (New South Wales, Queensland and some councils in New Zealand)³ ‘name and shame’ businesses for breaching food safety regulations, the

³ Since 2008-09, some other jurisdictions have adopted other forms of ‘name and shame’. In Western Australia, reporting of all hygiene prosecutions became mandatory with the introduction of the *Food Act 2008*. On 1 July 2009, South Australia set up a Prosecutions Register to publish details of businesses or individuals found guilty by a Court of a breach of South Australia’s Food Act. Amendments to Victorian food legislation will provide scope for businesses convicted of a breach of the *Food Act 1984* to be entered on a public register.

impact is variable because of differences in the schemes. As New South Wales publishes all breaches and not just successful prosecutions the financial penalty borne by some businesses may not be at all related to the severity of the breach. In contrast, Queensland lists only those businesses which have been prosecuted

- while incentives such as licence fee reductions and positive advertising were rarely (if at all) used in Australian jurisdictions, they featured prominently in New Zealand.

Information supplied on the number of businesses fined, the value of fines collected, number of prosecutions and the use of adverse publicity powers suggests that the regulatory stance adopted by the NSWFA is more combative than those adopted by their regulatory counterparts. Even so, it would appear that the NSWFA stance is used more as a response of last resort than as a standard strategy.

Amongst the primary production and processing regulators, those with the broadest suite of what could be described as good governance practices likely to lead to the lowest business compliance burdens were the NZFSA, the NSWFA, Safe Food Production Queensland and Primary Industries and Resources South Australia.

Resourcing, intensity and accountability of regulators

Even where some harmonisation in written regulations has been achieved, such as with consumer food safety, differences in the level and types of fees and charges, the frequency and duration of audits and inspections, and transparency of the regulatory process are likely to lead to differences in the regulatory compliance burden placed on food businesses.

The level of financial and human resources available to food safety regulators has a key influence on enforcement. With fewer resources, regulators are less able to provide training and written information to businesses and may force regulatory officers to resort earlier to more combative deterrence strategies. Also, the move from prescriptive regulation to more flexible outcome and performance-based regulation requires more highly skilled inspectors who are able to judge a range of alternative methods used by businesses to satisfy regulatory requirements.

The Commission survey revealed that local councils appear generally to consider themselves under-resourced, with 74 per cent of all respondents nominating budget (and 68 per cent nominating staffing) issues as either high or medium level constraints on their ability to enforce food laws. An aspect of this is a growing number of non-food tasks that Environmental Health Officers (EHOs) must address, thus spending less time on food enforcement and potentially reducing their understanding of food safety regulation.

There was some similarity in resourcing among local governments across the larger jurisdictions. In contrast, surveillance workloads are much lower in the Northern Territory and ACT and, to a lesser extent, Tasmania and Western Australia (table 1).

Table 1 Indicators of food safety resourcing for local councils, 2008-09^a

Average of responses

| | NZ | NSW | Vic | Qld | SA | WA | Tas | NT | ACT |
|--|--------|--------|--------|--------|--------|--------------|--------|-------|--------|
| Premises/businesses per EHO ^b | 269 | 238 | 230 | 266 | 243 | 204 | 177 | 96 | 110 |
| Population per EHO ^b | 41 760 | 41 301 | 27 989 | 39 478 | 31 560 | 31 860 | 19 184 | 9 700 | 20 294 |
| Food safety budget per premise (\$) ^c | 605 | 329 | 513 | 491 | 355 | ^d | 366 | 1231 | 773 |

^a EHO related figures refer to full time equivalents adjusted for the proportion of time spent on food safety functions. The results may have been influenced by the way councils interpreted the resourcing questions. Some caution is therefore required. ^b Figure for NSW relates to all 152 NSW councils and was derived from information provided by NSWFA (personal communication, 18/11/2009). ^c Six Queensland councils, five New Zealand councils, four Queensland and South Australian councils, two Victorian and Western Australian councils and one NSW council did not provide a response to the food safety budget question. These figures should therefore be interpreted carefully. ^d Food safety budget estimates by Western Australian councils were so much higher than those of other jurisdictions, they have not been reported here.

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

Amongst the core state and territory regulators, the NSWFA, Western Australian Department of Health, Tasmanian Department of Primary Industries, Parks, Water and Environment (DPIPWE) and Northern Territory Department of Regional Development, Primary Industry, Fisheries and Resources (DRDPIFR) (Fisheries) all nominated budgetary issues as high level constraints, while Tasmanian DPIPWE and Northern Territory DRDPIFR (Fisheries) considered staffing issues imposed high level constraints.

In line with regulator resourcing conditions, the most intense scrutiny of food retail and service businesses by local councils appears to be in New Zealand, Victoria and New South Wales, with around 50 per cent more inspections per premise than most other jurisdictions. At the PPP end of the food chain, the most intense scrutiny is apparent in South Australia and Victoria (respectively averaging 2.5 and 1.7 audits/inspections/visits per non-dairy business in 2008-09) and the Northern Territory with around two visits per meat business in 2008-09. Most other jurisdictions inspect PPP businesses about once a year.

The Commission assessed that red meat (particularly that destined for export markets) is more intensely monitored than many other food activities that are often considered to be of a similar risk to public health and safety. New Zealand also has a very demanding standard to manage its comparatively high levels of campylobacter in poultry.

Variations in the types, level and basis of fees and charges imposed on food businesses by local councils were the source of greatest difference both within and across jurisdictions. Reasons for the variability include: councils having the discretion whether or not they charged for inspections and considerable variation in the factors taken into account in determining fees.

The Commission also found considerable variation in licensing and audit costs for the red meat, eggs, dairy and seafood industries.

Currently only the New South Wales core agency (NSWFA) can mandatorily obtain information related to the enforcement activities of local government.⁴ Such information allows better targeting of resources to public health risks and better coordination of enforcement (with associated implications for regulatory burdens).

All jurisdictions performed well in terms of councils having appeal mechanisms for enforcement decisions. Internal review mechanisms (which are less costly but also less independent than external appeal mechanisms) were most common in South Australia and Queensland. Nearly all core agencies provide external appeal mechanisms, with internal review a feature in New South Wales, South Australia, Tasmania and the ACT.

Differences in regulation of maximum residue limits

There are a number of differences between Australia and New Zealand in regulatory requirements for Maximum Residue Limits (MRLs) and their administration:

- in New Zealand the processes for registering new chemicals and specifying the appropriate MRLs are more streamlined and timely than in Australia. In Australia, these processes are the responsibility of the APVMA and FSANZ. This would be improved if COAG's decision that MRLs declared by the APVMA should be 'promptly' included in the ANZFS Code were implemented (this decision was to be implemented by December 2008)
- the Australian decision process has some features, absent in New Zealand, that could deliver better outcomes for business, including: a direct consideration of the compliance costs of business as part of the assessment and an appeals process
- while the administration and enforcement of MRLs in New Zealand is the responsibility of one body (the NZFSA), 22 state and territory departments/agencies have responsibility for some aspect of the administration and enforcement of MRLs in Australia.

⁴ Recent amendments to Victoria's *Food Act 1984* include similar requirements for councils to report data about administration to the Victorian Department of Health.

Differences in regulation of internationally traded food

In relation to imported food, the Commission found that:

- the fees for importing into Australia are higher than for New Zealand importers
- neither AQIS nor the NZFSA could provide information on the actual time taken to clear food imports for food safety
- inconsistent interpretation of food safety regulations across Australian jurisdictions increases the costs to businesses in ascertaining import requirements and managing imported product recalls.

It can be difficult to separate the costs to business associated with regulating the food safety of exports from costs incurred for other purposes (such as bio-security and long term market access). Nevertheless, the Commission found that:

- except for meat exports, regulatory charges faced by Australian exporters are generally higher than those of New Zealand exporters, even with the benefit of a 40 per cent Australian government rebate. The costs to business of AQIS services are higher than some comparable domestic services provided by other agencies
- duplication and inconsistency in export and domestic requirements places an undue compliance burden on some Australian primary product exporters, while businesses benefit from an integrated regulatory structure in New Zealand
- both Australian and New Zealand red meat exporters incur greater costs and more regulatory intervention than other businesses
- businesses in both Australia and New Zealand noted low skills or inadequate knowledge of regulator staff can result in unnecessary regulatory compliance costs
- compared with New Zealand, Australia's regulatory system for exports relies less on electronic processing to reduce business compliance costs and is less able to embrace shifts toward outcome based standards in the domestic food safety system.

Some Australian and many New Zealand primary food producers and processors meet the highest export standard — either by choice or requirement — and incur the associated auditing costs, whether or not they are exporting their product. While many producers like the simplicity of meeting just one set of requirements, others may find it cost effective to segment their production in order to apply market-specific requirements.