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# 1 About the study

## 1.1 Origins of this study

In February 2006, the Council of Australian Governments (COAG) agreed that all governments would aim to adopt a common framework for benchmarking, measuring and reporting the regulatory burden on business (COAG 2006). Since then, the Commission has produced three reports on these matters (box 1.1).

On 24 October 2008, COAG's Business Regulation and Competition Working Group agreed that the Commission should study the regulatory burden of food safety and occupational health and safety (OHS), for the next phase of the benchmarking program and complete these reports by December 2009.<sup>1</sup> The Terms of Reference for this study were received in a letter from the Assistant Treasurer on 23 December 2008. In benchmarking the regulatory burdens, the Commission has been asked to take account of 'the objectives of Commonwealth, state and territory and local government regulatory systems'.

This report considers the burdens placed on business by food safety regulation. A separate companion report considers the burdens created by OHS regulation.

## 1.2 Harmonisation of food regulation

Historically, food regulations have been developed and enacted by states and territory governments, as the Australian Government has no explicit constitutional power to regulate domestic food supply. In the past, there were stark differences in food regulations among the jurisdictions. Over the last three decades, there has been a series of reforms aimed at unifying the food regulatory system. Much of that reform momentum has been in the last 10 years. Reform in this area is on-going.

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<sup>1</sup> The OHS report has been granted an extension to the end of March 2010.

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**Box 1.1 Performance Benchmarking of Australian Business Regulation — the Commission’s previous studies**

**The ‘feasibility’ study**

The Commission was asked to examine the feasibility of developing quantitative and qualitative indicators and reporting framework options. This feasibility study concluded that benchmarking was technically possible and could yield benefits (PC 2007b).

**The ‘quantity and quality of regulation’ & ‘cost of business registrations’ reports**

In April 2007, COAG agreed to proceed to the second stage of the program of regulation benchmarking. In light of this, the Commission was requested to examine the quantity and quality of regulation and benchmark the administrative compliance costs of business registrations. In December 2008, the Commission released two companion reports addressing these areas.

*Performance Benchmarking of Australian Business Regulation: Quantity and Quality*

The ‘quantity and ‘quality’ report provides indicators of the stock and flow of regulation and regulatory activities, and quality indicators for a range of regulatory processes, across all levels of government (PC 2008d). The indicators provide some baseline information for each jurisdiction, against which trends in the quantity and quality of regulation might be assessed in the future. It is apparent that there are significant differences across jurisdictions, reflecting different regulatory approaches as well as the characteristics of the jurisdictions themselves.

*Performance Benchmarking of Australian Business Regulation: Cost of Business Registrations*

The ‘cost of business registrations’ report provides estimates of compliance costs for business in obtaining a range of registrations required by the Australian, state, territory and selected local governments (PC 2008c). The registrations include generic requirements for incorporation, taxation and business name registrations. In addition, the Commission benchmarked specific registration costs incurred for five types of business (a café, builder, long-day child care, real estate agent and winery). It emerged that the estimated time costs of business registrations were generally relatively low, with most costs and differences in costs across jurisdictions relating to fees and charges.

A first step was taken in 1991, when a central Australian authority for food was created by drawing together food policy areas from the Department of Health and food standards areas from the Attorney-General’s Department (Federal Bureau of Consumer Affairs). This body was the National Food Authority (NFA).

In 1994, a comprehensive review of the Australian food code commenced, taking almost six years to complete. The outcome of this work was to change the old code from one that prescriptively defined the nature and composition of the individual

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foods to a code that more broadly defined classes of foods (FSANZ 2009a). For example, under the old code, the broad standard for cream had over 40 types of cream as prescribed names — each with its own standard. The current food code — Australia New Zealand Food Standards Code (ANZFS Code) — has one standard for cream.

At the same time as Australia was reviewing its code, work also progressed on developing a joint ANZFS Code. A Treaty was signed in December 1995 to establish such a joint code and to form the Australia New Zealand Food Authority (FSANZ 2009a).

In 1996, initiatives by the Commonwealth Government to reduce the regulatory burden on industry led to the decision to review the food regulatory system (Blair Review 1998). The Blair Review of the national food regulatory system found that approximately 150 Acts and secondary instruments controlled food in Australia, and concluded that the regulatory framework for food was ‘complicated, fragmented, inconsistent and wasteful’. The review recommended an integrated and coordinated national food regulatory system with nationally uniform laws. It proposed a co-regulatory approach, whereby governments set performance-based standards through consultation, and businesses have greater flexibility in how they meet the standards but with no less responsibility (Blair Review 1998). Following this review, the Australian, state and territory governments agreed to move towards a national system of food regulation.

In January 2007, the Australian Government announced an independent review (Bethwaite Review) to examine ways to streamline Australia’s food regulations and make them more nationally consistent. This review was prompted by a recommendation of the Regulation Taskforce report (2006) *Rethinking Regulation*. The Bethwaite Review was asked to report on three broad areas highlighted by the Regulation Taskforce:

- implementation of the outstanding recommendations from the Blair Review on the consistent application of food laws
- alignment of the levels of enforcement across jurisdictions
- role of the Australian Government in the food regulatory system, including whether it could play a greater role in enforcing the standards.

Unfortunately, the Bethwaite Review was never completed. Instead, the review and the submissions were referred to the COAG Business Regulation and Competition Working Group in September 2008.

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The New Zealand Food Safety Authority (NZFSA) has recently completed a review of the regulation of New Zealand's food sector. A new system to regulate the domestic food industry has been designed but the new food laws are yet to be passed. Despite this, some parts of the proposed reforms are being trialled under the current Food Act (NZFSA 2008g).

### **1.3 Purpose and scope of the study**

The purpose of this study is to benchmark indicators of regulatory burden associated with food safety regulatory regimes across the jurisdictions (including New Zealand). For this study, 'regulatory regime' is broadly defined to include the regulatory requirements placed on business by governments as well as the strategies adopted by regulators to achieve compliance with these requirements, including education and enforcement.

The inclusion of New Zealand in the study broadens the regulatory functions which can 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).

While this study will not make recommendations regarding food safety regulation, the results of this study should inform COAG and the New Zealand Government about those areas of food safety regulation where there are differences in the compliance burdens between jurisdictions. In doing so, this study can highlight areas where there may be benefits from further reform or progressing reform already underway.

#### **What regulations are in scope?**

Regulation includes statutes and formal delegated legislative instruments, as well as quasi-regulation such as some codes of conduct (or codes of practice) and guidance materials that are not strictly mandatory.

Food-related regulation has a number of objectives, including: the protection of public health and safety; ensuring export market access and protecting the international reputation of food products; providing consumers with information to enable informed choices; and preventing misleading and deceptive conduct.

This study is concerned with regulation directed at *food safety*, that is, those regulations concerned with reducing the *direct* risk of an adverse effect from eating food (box 1.2). This includes food safety regulations aimed at:

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- preventing food borne illnesses
  - preventing foreign objects and contaminants entering food
  - minimising the risk of physical harm from chemicals in food.

### **Box 1.2 Food safety hazards**

Food hazards can result from a broad range of microbiological, chemical and physical factors. Microbiological hazards including infectious and toxin-producing bacteria, parasitic worms, viruses and moulds. The most common food borne illnesses are caused by bacteria such as *Campylobacter* and *Salmonella*. Nevertheless, more serious illness can be caused by *E-coli* and *Listeria*. A more recent biological risk factor is a protein infectious agent (a prion) most notably associated with bovine spongiform encephalopathy in cattle and variant Creutzfeldt-Jakob disease in humans.

There are many chemical risk factors associated with foods including:

- agricultural and veterinary chemicals
- naturally occurring toxins in certain foods
- chemicals used in food production, such as food additives and processing aids
- chemicals which may contaminate foods such as environmental chemicals (such as mercury) or chemicals from packaging materials
- allergens.

Physical hazards are wide ranging, including any object that should not be found in food such as metal, glass, or bone fragments.

*Source:* FSANZ (2009b).

Food safety regulations include requirements around the health and hygiene of food workers, and food storage and transport requirements (including having a temperature controlled environment for potentially hazardous food). For businesses operating in Australia, these requirements are generally set out in the ANZFS Code (in chapter 3 ‘Food Safety Standards’ and in chapter 4 ‘Primary Production Standards’). Other food safety regulations in scope include those establishing safe limits for the presence of certain chemicals and labelling of ingredients to indicate the presence of certain chemicals (such as preservatives, food colourings and foods that are likely to cause allergies).

As well as the food safety regulations which enact the ANZFS Code, there is a range of other regulations which include food safety as an objective (albeit, often one of several objectives) — such as those dealing with farm and veterinary chemicals and controls on the import and export of food. These regulations are also covered in this study.

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The Acts covered in this study are outlined in table 1.1.

**Table 1.1 Acts covered in the study**

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Australia	Imported Food Control Act 1992 Export Control Act 1982
New Zealand	Food Act 1981 Animal Products Act 1999
NSW	Food Act 2003
Vic	Food Act 1984 Meat Industry Act 1993 Seafood Safety Act 2003 Dairy Act 2000
Qld	Food Act 2006 Food Production (Safety) Act 2000
SA	Food Act 2001 Primary Produce (Food Safety Schemes) Act 2004
WA	Health Act 1911 Food Act 2008 <sup>a</sup>
Tas	Food Act 2003 Meat Hygiene Act 1985 Egg Industry Act 2002 Dairy Industry Act 1994
NT	Food Act 2004 Meat Industries Act 1996 Fisheries Act 1988
ACT	Food Act 2001

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<sup>a</sup> The *Food Act 2008* (WA) commenced on 23 October 2009.

### *Regulation not within the scope of the study*

Another aim of food regulations, which is closely related and often overlapping with food safety objectives, is the promotion of public health outcomes such as reducing obesity, heart disease and diabetes. Food regulation has the potential to influence these desired health outcomes by controlling the quality and composition of food and the way food is labelled and marketed to consumers. Food regulations aimed at these public health outcomes are concerned with reducing and minimising *indirect* risks of harm or adverse impacts from eating food.

Unlike the direct risk factors discussed above, these types of adverse impacts are *indirect* as other factors including genetic background and personal choices (such as the level of physical exercise undertaken) influence the overall risk of these adverse effects actually occurring. Related to the multidimensional nature of the problem, food regulations are only one element of a wider policy strategy to address these health issues.

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Regulations primarily aimed at preventing these indirect adverse health outcomes do not fall within the scope of this study. These include regulations relating to nutritional information labelling requirements (nutritional panels and nutritional claims). The Commission acknowledges many food regulations have multiple objectives and the boundaries between food safety objectives and other objectives are not always clear.

The exclusion of these regulations from the scope of this study does not mean that the indirect adverse health outcomes that can be associated with eating certain types of food are not a significant public policy issue. These broader health issues are important and are being examined in other forums, including the Australian and New Zealand Food Regulation Ministerial Council's proposed review of food labelling law and policy and the Australian Government's Preventative Health Taskforce.

### **Which regulators?**

A regulator, in the context of this study, refers to a body that administers and enforces regulation or upon whose interpretation the application and enforcement of regulation is based. Not only are there such regulatory bodies in the national, state and territory governments, but local government authorities also have extensive responsibilities for food safety. Regulators in all three levels of government in Australia are within scope of this study. This covers Australian, state and territory government bodies as well as the 548 local councils. In New Zealand, the study includes national bodies and territorial authorities. The Australian, New Zealand, state and territory government regulators covered in this study are outlined in table 1.2.

**Table 1.2 Australia, New Zealand and state and territory government regulators**

Australia	Australian Quarantine and Inspection Service
New Zealand	New Zealand Food Safe Authority
NSW	NSW Food Authority
Vic	Department of Health <sup>a</sup> PrimeSafe Dairy Food Safety Victoria
Qld	Queensland Health Safe Food Production Queensland
SA	Department of Health Primary Industries and Resources South Australia Dairy Authority of South Australia
WA	Department of Health
Tas	Department of Health and Human Services Department of Primary Industries, Parks, Water and Environment Tasmanian Dairy Industry Authority
NT	Department of Health and Families Department of Regional Development, Primary Industry, Fisheries and Resources
ACT	ACT Health

<sup>a</sup> Responsibility for food safety regulation passed to the newly created Department of Health from the Department of Human Services (Food Safety Unit) in August 2009.

### **Which regulatory burdens on business?**

For this study, regulatory burdens relate to the costs imposed by regulation that, in their absence, would otherwise not arise for businesses. However, for regulation to achieve its objectives, it is usually a necessary consequence that some burden is placed on business. That said, where regulations are poorly designed, or their enforcement and administration is not implemented well, they may impose greater burdens than necessary on business to achieve their objectives. In this study, it is those regulatory burdens that are unnecessary that are of primary interest (box 1.3).

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### **Box 1.3 Example of unnecessary burdens**

Unnecessary burdens might arise from:

- excessive coverage of the regulations, including ‘regulatory creep’ — that is, regulations that encompass more activity than was intended or required to achieve their objective
- subject-specific regulations that cover much the same ground as other generic regulation
- unduly prescriptive regulation that limits the ways in which businesses may meet the underlying objectives of regulation
- unwieldy licence application and approval processes
- excessive time delays in obtaining responses and decisions from regulators
- rules or enforcement approaches that inadvertently provide incentives to operate in less efficient ways
- unnecessarily invasive regulator behaviour, such as overly frequent inspections or information requests
- an overlap or conflict in the activities of different regulators.

Sometimes regulation does not impose any additional burden. This occurs when a business behaves in an identical manner regardless of whether a certain regulation is in operation. There are a number of circumstances where aspects of food safety regulation may not result in an additional burden on business when compared to ‘business as usual’ practices. For example, where industries and organisations establish standards or codes of practice that embrace more stringent food safety requirements than those contained in regulations.

## **1.4 Conduct of the study**

In December 2008, on receipt of the terms of reference, the Commission issued a circular announcing the study to interested parties. In January 2009, the Commission advertised the study in *The Australian Financial Review* and *The Australian*.

In conducting its study, the Commission has been assisted by an Advisory Panel comprised of representatives from each government. In February 2009, the study’s Advisory Panel met to discuss the scope, coverage and methodology. It also agreed that the benchmarking study on food safety regulations would benefit from New Zealand’s participation. New Zealand accepted an invitation to participate in the food safety regulation benchmarking study on 6 March 2009.

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The Commission held informal discussions in all Australian capital cities and in New Zealand with various interested parties, including representatives from companies with food-related activities, industry associations, government departments and regulatory agencies, as well as some community organisations.

In April 2009, the Commission released an issues paper and invited interested parties to make a submission to the study. The Commission acknowledged that some interested parties had already invested significant resources in drafting submissions to other reviews of food safety regulation and made clear it would accept material from other reviews, such as the Bethwaite Review, as a submission to this study.

The Commission gathered information for this study from published sources, in particular annual reports published by regulators. To fill some of the gaps in information, the Commission surveyed Australian state and territory regulators, AQIS, the New Zealand Food Safety Authority, local governments in Australia, and territorial authorities in New Zealand. For certain technical matters, the Commission also sought information directly from regulators at all levels of government. To gain an understanding of the introduction of food safety plans for delivered meals organisations, Meals on Wheels in each state and territory were also surveyed. The Commission engaged a consultant, Baldwins-FoodLegal, to identify the key areas of difference and similarity in the food safety regulation applying to primary production and processing activities.

The Advisory Panel met again on 1 October 2009 in Canberra, with a number of jurisdictions participating by teleconference, to discuss a working draft of the report. The Panel members also provided comments from their jurisdictions to be included in the report.

The Commission released its Draft Research Report in November 2009. Interested parties had the opportunity to comment on the analysis in the report through written submissions.

The Commission received 21 formal submissions by 15 December 2009.

The terms of reference, study particulars, survey questionnaires and submissions are also listed on the Commission's website at [www.pc.gov.au/projects/study/regulation\\_benchmarking/food-safety](http://www.pc.gov.au/projects/study/regulation_benchmarking/food-safety). Further details of the conduct of the study are provided in appendix A.

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## 1.5 Outline of the report

Chapter 2 provides an overview of the objectives and framework of the food regulatory regime. Chapter 3 examines food safety outcomes in Australia and New Zealand. The approach to benchmarking regulatory burdens and the criteria used for selecting specific aspects of food safety regulation are described in chapter 4. The benchmarking of specific aspects of food safety regulation is covered in chapters 5 to 14:

- chapter 5 — Consumer food safety regulation
- chapter 6 — Influencing the culture of compliance
- chapter 7 — Consumer food safety: enforcement and accountability
- chapter 8 — Regulators of primary production and processing: enforcement and accountability
- chapter 9 — Food safety in meat production and processing
- chapter 10 — Food safety in egg production and processing
- chapter 11 — Food safety in dairy production and processing
- chapter 12 — Food safety in seafood production and processing
- chapter 13 — Maximum residue limits
- chapter 14 — Compliance with food import and export regulations

Chapter 15 contains responses from governments to the report.

Appendix A provides details of the conduct of the study by providing the Terms of Reference, submission and visit lists as well as the details of those parties that responded to the surveys. Appendix B outlines the various data collection methods used to obtain data for this benchmarking study. Appendix C describes the framework in place in Australia and New Zealand to regulate food imports and exports.