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## 2 The regulatory objectives and framework

### Key points

- The Inter-Governmental Agreement on Food Regulation and the Joint Food Standards Setting Treaty underpin the food regulatory system within Australia and between Australia and New Zealand.
- A number of key bodies develop and set policies and standards for food regulation in Australia and/or New Zealand, such as the Australia and New Zealand Food Regulation Ministerial Council, Food Regulation Standing Committee, Implementation Sub Committee, Food Standards Australia New Zealand and the New Zealand Food Safety Authority (NZFSA).
- Within the jurisdictional regulatory system, most jurisdictions have two streams of food safety regulation: food and primary production.
  - The Food Acts of each state and territory government in Australia and New Zealand define ‘food’ within the scope of the Food acts and regulations. The Food Acts detail offences relating to food and provide for the administration and enforcement of the respective acts, regulations and standards.
  - The legislative basis for primary production regulation differs markedly across jurisdictions. In some jurisdictions, primary industries regulation is consolidated into a single act (Queensland and South Australia). Victoria uses separate legislation and objectives for its meat, dairy and seafood activities while New South Wales relies on its Food Act to regulate all food operations in that state.
- Different structures are used to regulate food safety:
  - New Zealand, New South Wales, Western Australia and the ACT each have a single regulatory body that governs primary production and processing along with all other food regulation
  - Queensland and the Northern Territory each have two bodies regulating food safety
  - while Victoria, South Australia and Tasmania each have three bodies regulating food safety, with one of them focusing solely on dairy food safety.
- In Australia, local councils largely have the primary responsibility for auditing and inspecting food businesses to ensure compliance with the Food Acts. In New Zealand, the enforcement and administration is shared by NZFSA, Public Health Units and territorial authorities.
- In addition to the food and primary production Acts, there are other regulations that have a food safety objective, including import and export arrangements; chemical residues and livestock identification; and fair trading.

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## 2.1 The broad regulatory and institutional framework

The Australian Government has no explicit constitutional power to regulate food produced or sold in Australia. The regulation of food is the responsibility of the states and territories. The Australian Government relies on the Inter-Governmental Agreement on Food Regulation (the Food Agreement) with the states and territories to coordinate a national approach along with other constitutional powers to regulate areas such as imported and exported food (VCEC 2007).

Australian and New Zealand governments have also worked together on food regulation for some time in a bid to achieve a more integrated approach. The two countries first harmonised some of their food standards in 1983 as part of the Australia New Zealand Closer Economic Relations Trade Agreement. This cooperation extended further in 1995, when both countries signed the Joint Food Standards Setting Treaty. This Treaty established a framework to harmonise food standards between the two countries.<sup>1</sup>

The Food Agreement and the Joint Food Standards Setting Treaty, therefore, underpin the current food regulatory framework. Stemming from these agreements, the following bodies make-up the over-arching institutional framework of food regulation:

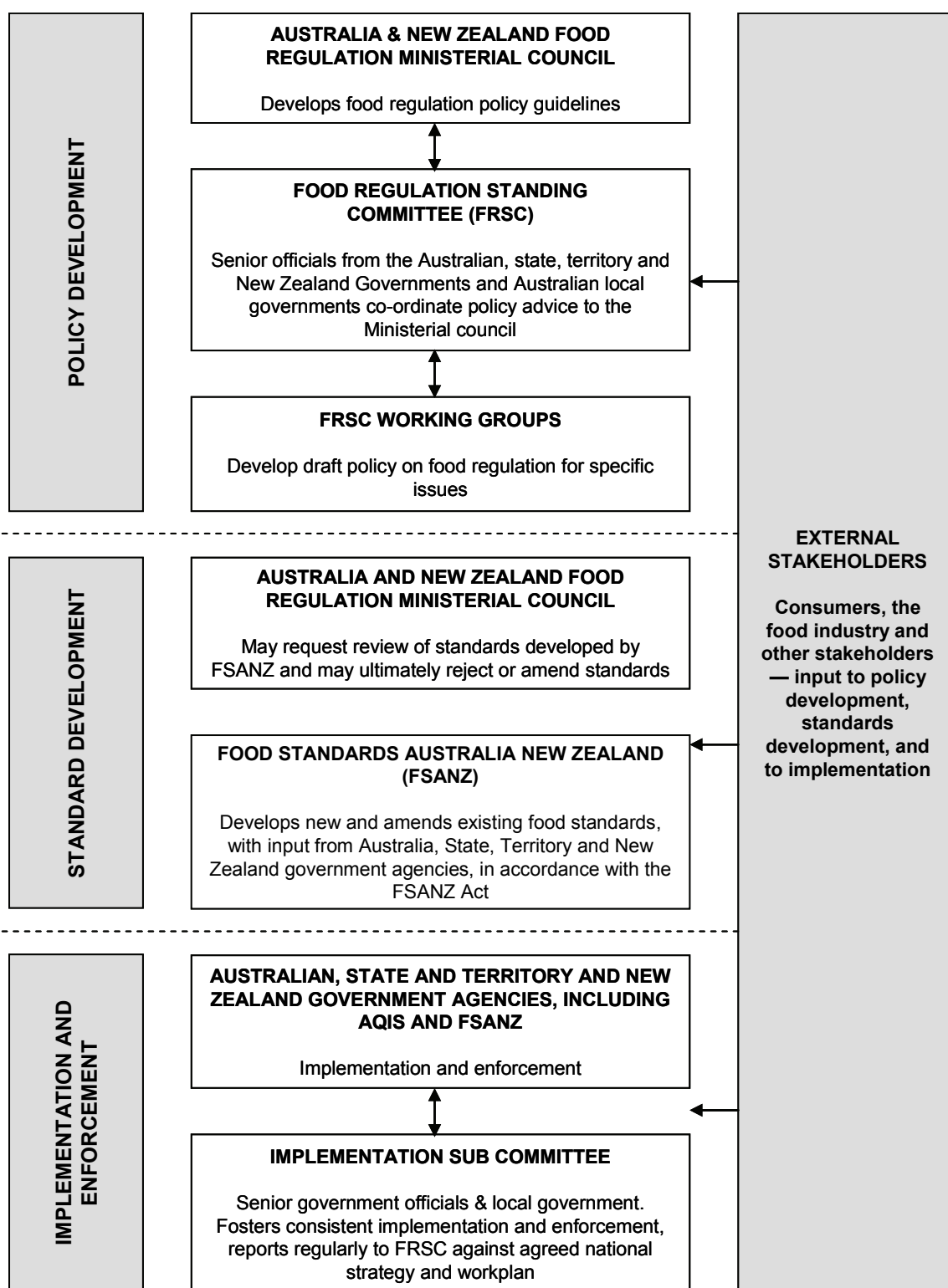
- Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC)
- Food Regulation Standing Committee (FRSC) and the Implementation Sub Committee (ISC) of FRSC
- Food Standards Australia New Zealand (FSANZ)
- New Zealand Food Safety Authority (NZFSA).

Figure 2.1 provides an overview of the institutional arrangements in the food regulation system.

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<sup>1</sup> Joint Food Standards Setting Treaty is currently under review.

Figure 2.1 Institutional arrangements governing food regulation



Source: FRS (2008).

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## The Food Agreement

In November 2000, the Council of Australian Governments (COAG) signed the Food Agreement committing to a new food regulatory system that seeks to ‘... implement a co-operative national system of food regulation...’ (COAG 2002). The Australian state and territory governments are all signatories to the Food Agreement.

While including the protection of public health and safety, the Food Agreement’s objectives also include harmonisation of standards, increasing consistency in enforcement, reducing regulatory burdens and recognising responsibility for food safety at all levels of government and in a variety of portfolios. Importantly, the objectives of the Food Agreement seek to balance the interests of consumers and food businesses through explicit recognition of the regulatory and compliance burden the latter face in the pursuit of public health and safety goals.

Under the Food Agreement, Australian states and territories agreed that the Model Food Act would serve as the basis for their respective Food Acts. The Model Food Act contains:

- Annex A — the essential ‘core provisions’ that every state and territory was obligated to implement ‘in the same terms’.<sup>2</sup> These include provisions relating to definitions, offences and emergency powers
- Annex B — the ‘non core provisions’ relating to administration and enforcement matters that could be removed or amended at the discretion of each jurisdiction in light of their differing administration or enforcement arrangements.

The objectives contained in the Model Food Act have been replicated (in large part) in each of the state and territory Food Acts. They are:

- to ensure food for sale is both safe and suitable for human consumption
- to prevent misleading conduct in connection with the sale of food
- to provide for the application of the Australian New Zealand Food Standards Code (ANZFS Code — see below).

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<sup>2</sup> In the Food Agreement, ‘in the same terms’ means that the same words must be used in the jurisdiction’s Food Act as are used in Annex A (subject to the Parliamentary conventions of the jurisdiction).

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## **Joint Food Standards Setting Treaty**

The Joint Food Standards Setting Treaty between Australia and New Zealand creates a food regulatory framework that is trans-Tasman. This treaty is broadly aimed at protecting public health and reducing barriers to trade and it provides the vehicle for harmonising food standards between both countries (NZFSA 2008g). The scope of the Food Treaty covers composition and labelling requirements and contains provisions which allow New Zealand to opt out of a joint standard for exceptional reasons relating to health, safety, environmental concerns, trade or cultural issues.

Some areas of food regulation are outside the scope of the Treaty, such as maximum residue limits, food hygiene and export standards. New Zealand issues its own standards on these areas of food safety.

## **Australia and New Zealand Food Regulation Ministerial Council**

The Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC), established by the Food Agreement, is responsible for the development of food regulatory policy and the development of policy guidelines for setting domestic food standards. These policies are developed with the aim of providing a ‘whole of government’ and ‘whole of food chain’ (paddock to plate) approach to a national system. ANZFRMC also has the capacity to adopt, amend or reject the food standards developed by FSANZ (see below) and to request that these standards be reviewed. The Council comprises one member from each Australian jurisdiction and one from New Zealand and from the Commonwealth as follows:

- the Australian Minister for Health and the New Zealand Minister for Food Safety
- the health ministers from all Australian states and territories
  - other ministers from related portfolios (such as primary industries, consumer affairs) of Australia and New Zealand — if nominated by that jurisdiction (in place of the health portfolio (for example, New South Wales has nominated the Minister of Primary Industries to be its member).

In December 2009, COAG agreed to reform voting arrangements for the Australia and New Zealand Food Regulation Ministerial Council — subject to agreement with New Zealand — and agreed to the development of a new intergovernmental agreement on streamlining food regulation advice, which will be considered by COAG in mid 2010. COAG considers that these reforms will speed up decisions and create more certainty for business, without compromising food safety.

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## **The Food Regulation Standing Committee**

Food Regulation Standing Committee (FRSC) is a high level officials group which provides advice to ANZFRMC on policy development and food standards, as well as providing advice on the best ways to involve stakeholders in policy development. To fulfil its role, FRSC often forms working groups to consider policy issues including the:

- Strategic Planning Working Group
- Food Safety Management Working Group
- Front of Pack Working Group (food labelling)
- Primary Production and Processing Working Group
- Principles and Protocols Working Group
- Infant Formula (Standard 2.9.1) Working Group.

### *The Food Standards Implementation Sub Committee*

The Food Standards Implementation Sub Committee (ISC) is a subcommittee of FRSC. ISC is a group of senior government officials and local government representatives, which facilitates consistent implementation, compliance and enforcement of policy, regulation and standards. ISC develops guidelines on consistent enforcement of food regulations and standards. ISC also forms working groups to address specific issues (box 2.1). It aims to minimise costs to industry and meet the objective of minimum effective regulation. The Food Regulation Secretariat in the Department of Health and Ageing provides administrative support.

New Zealand's participation in the ISC provides the opportunity for broader cooperation with New Zealand in areas outside the scope of the Treaty. Although New Zealand's involvement in ISC was originally limited to areas directly related to food labelling and composition, New Zealand has continued to expand its participation in addressing issues related to consistent implementation and between 2006 and 2008 undertook the role of ISC Chair (sub. 12).

Over the last eight years, ISC (and its predecessor) has made progress in achieving the aim of ensuring a nationally consistent approach to the implementation and enforcement of food standards. One example, is the development of a national framework for food safety auditor accreditation and management.

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### **Box 2.1 ISC food regulation working groups as at June 2009**

The following working groups and committees reported to the ISC:

- Consistent Implementation Working Group - Survey Group
- Surveillance Working Group
- Food Medicine Interface Working Group
- Consistent Interpretation Working Group
- Date marking of frozen foods — Nationally consistent guidelines
- Australian Implementation Working Group
- Consistent Implementation Sub Group — Incident Response Plan
- Chemical Response Plan
- Intentional Interference Working Group
- Nationally Consistent Principles for the Environmental Investigation associated with Foodborne Illness Working Group
- Environmental Health Officers Workforce Shortage Working Group
- Health Claims Watchdog Working Group
- National Enforcement Policy Working Group
- Sprouts Working Group
- Food Industry Support and Education Working Group
- Government Food Communicators Group
- Stakeholder Consultation Forum Steering Committee
- Performance Measurement Framework Working Group
- Food Operational, Regulatory and Technical Electronic Web Forum

*Source:* Department of Health and Ageing (Commonwealth), pers. comm., 9 June 2009.

FRSC established seven priorities for ISC in 2008-09 to improve consistent implementation. These were:

1. piloting of an integrated model for standards development and consistent implementation using the development of the egg primary production and processing standard
2. piloting the national audit policy implementation plan
3. implementation of the draft enforcement policy for Australia, including local government

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4. consistent interpretation of standards, including the operation of an interim process for industry to report interpretation issues and development of options to ensure consistent interpretation of standards
  5. completion of the Food Surveillance System Linkages Project
  6. development of a program framework for evaluation of the ISC Strategic Plan implementation
  7. stakeholder Consultation Forums in 2009 and 2011.

## **Food Standards Australia New Zealand**

FSANZ is a bi-national agency responsible for researching, developing and submitting proposals for food standards to ANZFRMC that will apply in both Australia and New Zealand or Australia only. Once proposals are adopted by ANZFRMC, they become part of the ANZFS Code. FSANZ also undertakes a range of other functions in Australia, such as national coordination of food surveillance and food recall systems, providing food handling advice to consumers, conducting research and supporting the Australian Quarantine and Inspection Service (AQIS) in the control of imported foods (FSANZ 2009a).

FSANZ's objective is to ensure a high standard of public health protection throughout Australia and New Zealand via:

- a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand
- an effective, transparent and accountable regulatory framework within which the food industry can work efficiently
- the provision of adequate information relating to food to enable consumers to make informed choices
- the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection (*Food Standards Australia New Zealand Act 1991*).

### ***Australia and New Zealand Food Standard Code***

The Food Agreement provides for the ANZFS Code to promote national consistency in Australia's food laws. It prescribes in detail the legally enforceable obligations relating to the composition, production, handling and labelling of food across the food supply chain (box 2.2).

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## Box 2.2 The Australia New Zealand Food Standards Code

The ANZFS Code has four chapters:

- chapter 1 — standards applying to all foods in regard to labelling, substances added to food, contaminants and chemical residues, foods requiring pre-market clearance and 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 — food hygiene (including requirements for food premises and equipment, as well as safety programs)
- chapter 4 — standards dealing with primary production and processing.

The follow standards within these chapters of the ANZFS Code do not apply in New Zealand:

- maximum residue limits (Standard 1.4.2)
- country of origin labelling (Standard 1.2.11)
- processing requirements for milk, cheese, eggs, dried meat, eviscerated poultry, crocodile meat, game and fermented comminuted processed meat (Standard 1.6.2)
- fortification of wheat flour for making bread with folic acid (Standard 2.1.1)
- requirements relating bovine meat and meat products being derived from animals free from bovine spongiform encephalopathy (Standard 2.2.1 (clause 11))
- food hygiene standards (chapter 3)
- primary production and processing standards (chapter 4).

Source: ANZFS Code.

The ANZFS Code contains some 71 food standards. Of these, 60 standards are in Chapters 1 and 2 which cover matters largely within the scope of the Treaty. Most standards in Chapters 1 and 2 generally apply in both New Zealand and Australia with the exception of:

- four standards which are ‘Australia only’ standards (country of origin labelling, maximum residue limits, mandatory fortification of bread with folic acid, processing requirements for foods such as milk, cheese, eggs, poultry, and processed meat)<sup>3</sup>
- one standard is a ‘New Zealand only’ standard: Standard 1.1A.6 — Transitional Standard for Special Purpose Foods (including Amino Acid Modified Foods).

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<sup>3</sup> Clause 11 of standard 2.2.1 Meat and Meat Products: requirements relating to bovine meat and meat products do not apply in New Zealand.

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The remaining standards cover food hygiene provisions, including specific hygiene requirements for primary production, are Australia only standards. They do not apply in New Zealand (as they are not within the scope of the Treaty).

The ANZFS Code is incorporated (subject to amendment) into the Food Acts of each of the states and territories and New Zealand. In addition to protecting public health and safety, the ANZFS Code requires the:

- provision of adequate information to consumers relating to food to enable consumers to make informed choices (primarily via labelling standards)
- prevention of misleading and deceptive conduct (such as in relation to health claims).

### *International standards*

In addition to adhering to the ANZFS Code, some food businesses, mainly exporting businesses, also comply with the standards of foreign countries. Often, these foreign standards incorporate the Codex Alimentarius (Codex) or are informed by the Codex. The Codex is an international food standards code developed by the Codex Alimentarius Commission (CAC). The CAC is an international food standards agency that was established jointly by the Food and Agriculture Organization of the United Nations and the World Health Organization in 1963. The CAC develops standards for use by all member nations. Codex standards are designed to protect the health of consumers and promote fair practices in food trade.

### **New Zealand Food Safety Authority**

NZFSA is New Zealand's core food agency. NZFSA undertakes a number of diverse roles. Its responsibilities include:

- the development and implementation of food hygiene principles for all New Zealand businesses including primary production and processing, and establishing maximum residue levels for agricultural and veterinary chemicals
- bringing the applicable elements of the ANZFS Code into law and providing interpretative guides
- setting food standards for New Zealand in those areas in which it deviates from the ANZFS Code
- implementing and enforcing all food regulations for domestically produced, imported and exported food

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- issuing export certification for all food exported requiring such documentation
  - administering and enforcing the *Food Act 1981*, *Animal Products Act 1999*, *Wine Act 2003* and *Agricultural Compounds and Veterinary Medicines Act 1997*.

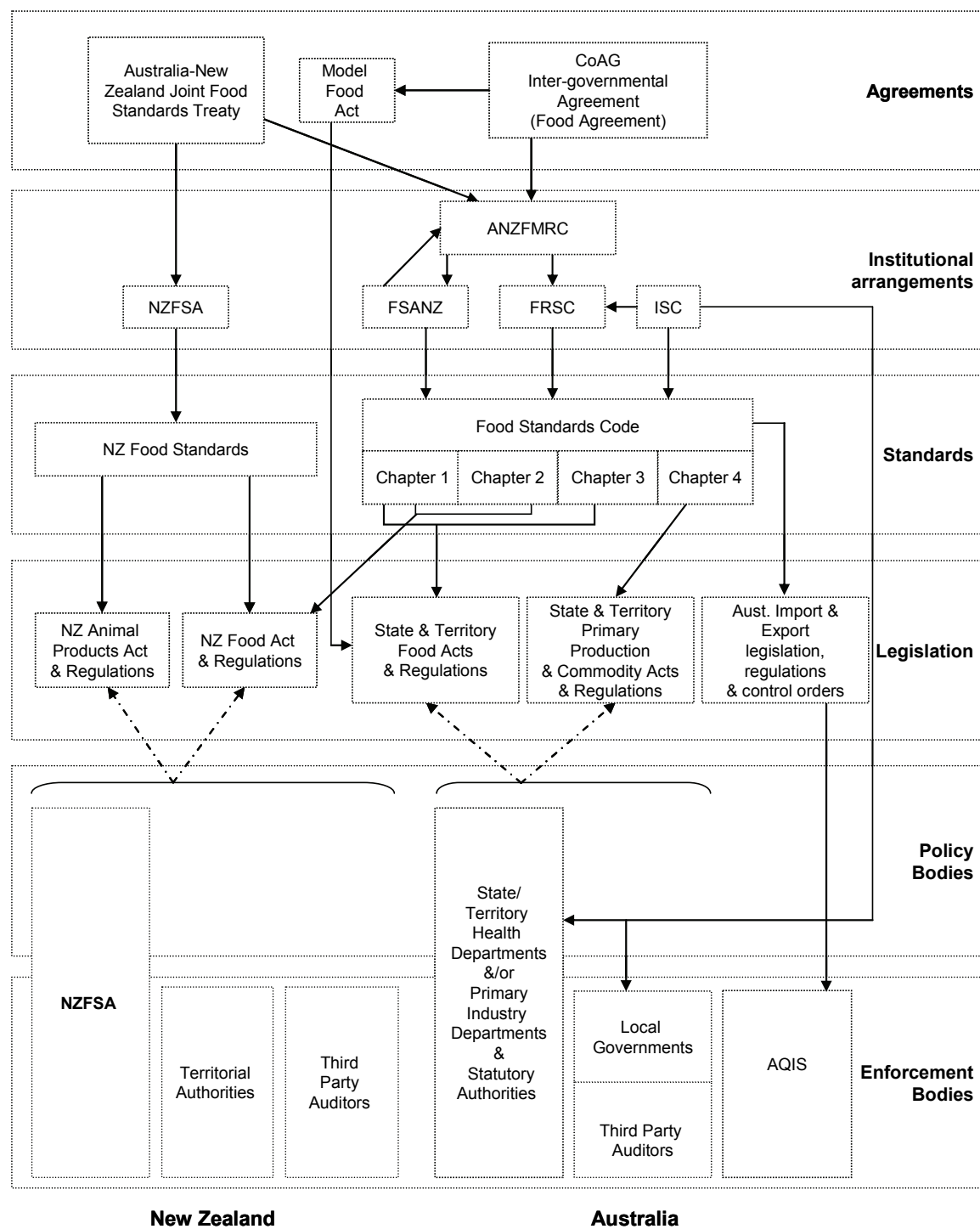
In addition to the agreement established under the Joint Food Standards Setting Treaty, NZFSA and the NSW Food Authority (NSWFA) signed a Memorandum of Understanding in September 2006, to increase cooperation on a range of food safety and regulatory issues. These include policy development, standards and systems, incident response, science, communications, local government operations, and compliance and enforcement (NZFSA, sub. 2). This agreement was renewed in September 2009.

## **2.2 The jurisdiction-based food regulatory system**

The ANZFS Code, provisions of the model food Act and other regulations are implemented and enforced (with variation) by individual jurisdictions. Therefore, there are nine sets of legislation and supporting regulations dealing with food standards and hygiene requirements in addition to Australian and New Zealand government legislation dealing with other food related activities.

Most jurisdictions have two principal streams of food safety regulation. The first stream applies to the manufacture, transport and handling of food that is for sale and the manner in which food is sold. The second stream applies to production, manufacture, transport and wholesale of primary products such as meat, poultry, seafood, eggs and dairy products regulated through primary production and commodity legislation. An overview of the food safety regulation system in Australia and New Zealand is provided in figure 2.2.

**Figure 2.2 Australia-New Zealand food safety regulatory system**



## Consumer food regulation

The Food Acts of each state and territory government in Australia and the Act in New Zealand define ‘food’ falling within the scope of the respective Acts and their associated regulations. They detail offences relating to food and provide for the administration and enforcement of the respective Acts, regulations and standards. The Food Acts and, in some instances, their supporting regulations also provide the means by which the ANZFS Code comes into law in each jurisdiction (table 2.1).

**Table 2.1 Food Acts and supporting regulations**

	<i>Act(s)</i>	<i>Regulations(s)</i>
NZ	Food Act 1981	Food Hygiene Regulations 1974 Food (Safety) Regulations 2002 New Zealand (ANZFS Code) Food Standards 2002 Dietary Supplements Regulations 1985 Food (Fees and Charges) Regulations 2007
NSW	Food Act 2003	Food Regulations 2004
Vic	Food Act 1984	Food (Competency Standards Body) Regulations 2001 Food (Forms and Registration Details) Regulations 2005
Qld	Food Act 2006	Food Regulations 2006
SA	Food Act 2001	Food Regulations 2002
WA <sup>a</sup>	Health Act 1911 Food Act 2008	Health (Food Standards) (Administration) Regulations 1986 Health (Food Hygiene) Regulations 1993 Health (ANZ Food Standards Code Adoption) Regulations 2001
Tas	Food Act 2003	Food Regulations 2003
NT	Food Act 2004	
ACT	Food Act 2001	Food Regulations 2002

<sup>a</sup> The food safety provisions of the *Health Act 1911* (WA) were repealed when the *Food Act 2008* (WA) commenced on 23 October 2009. The related regulations (Health (Food Standards) (Administration) Regulations 1986, Health (Food Hygiene) Regulations 1993, Health (ANZ Food Standards Code Adoption) Regulations 2001) were also repealed.

Similar to the Food Acts of the Australian states and territories, New Zealand’s *Food Act 1981* deals with definitions and offences, as well as matters of enforcement and administration. As with the Australian states and territories, there are a number of regulations that have been issued under the Act.

The *New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002* regulation gives effect to the relevant parts of chapters 1 and 2 of the ANZFS Code in New Zealand. New Zealand also has ‘New Zealand Food Standards’ (table 2.2) — some of these standards relate to the regulation of primary production matters and ‘other food regulation’ (see below). In addition to the food safety regulations set in New Zealand at the national level, many of New Zealand’s territorial authorities have implemented local by-laws related to food safety matters.

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## Table 2.2 New Zealand Food Standards

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### *Regulation implementing New Zealand standards*

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Food (Tutin in Honey) Standard 2008  
New Zealand (Mandatory Fortification of Bread with Folic Acid) Food Standard 2007  
Food (Prescribed Foods) Standard 2007  
New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008  
Food (Milk and Milk Products Processing) Standard 2007  
New Zealand (Bee Product Warning Statements - Dietary Supplements) Food Standards 2002  
Food (Uncooked Comminuted Fermented Meat) Standard 2008  
Food (Importer Listing) Standard 2008  
Food (Importer General Requirements) Standard 2008

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Source: NZFSA (2009j).

## Primary production and processing regulations

In addition to the Food Acts, most jurisdictions regulate the primary production, manufacture and transport of meat, poultry, seafood and dairy products through specific primary industries legislation (table 2.3). However, the legislative basis for such regulation differs markedly across jurisdictions. In Queensland, South Australia and New Zealand all primary industries regulation is consolidated into a single Act. Victoria, on the other hand, uses separate legislation and objectives for its meat, dairy and seafood activities. In contrast to these models, New South Wales and Western Australia rely on their *Food Act* and *Health Act*, respectively, to regulate all food operations.<sup>4</sup> The remaining Australian states and territories have included additional food safety requirements in industry-specific legislation. In most cases, in addition to a main act that covers general food safety for primary production, there is a raft of regulations to deal with industry-specific issues.

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<sup>4</sup> Since 23 October 2009, Western Australia operates under the *Food Act 2008*.

**Table 2.3 Food safety legislation — Primary production and processing**

	<i>Act(s)</i>	<i>Regulations(s)</i>
NZ	Animal Products Act 1999	Animal Products Regulations 2000 Animal Products (Fees, Charges, and Levies) Regulations 2007 Animal Products (Dairy) Regulations 2005 Animal Products (Dairy Industry Fees and Charges) Regulations 2007 Animal Products (Regulated Control Scheme-Dairy Export Quota Products) Regulations 2008 Animal Products (Regulated Control Scheme Bivalve Molluscan Shellfish) Regulations 2006 Animal Products (Regulated Control Scheme — Contaminant Monitoring and Surveillance) Regulations 2004 Animal Products (Regulated Control Scheme — Limited Processing Fishing Vessels) Regulations 2001 Dairy Industry (National Residue Monitoring Programme) Regulations 2002
NSW	Food Act 2003	Food Regulations 2004
Vic	Meat Industry Act 1993 Seafood Safety Act 2003 Dairy Act 2000	Meat Industry Regulations 2005
Qld	Food Production (Safety) Act 2000	Food Production (Safety) Regulation 2002
SA	Primary Produce (Food Safety Schemes) Act 2004	Primary Produce (Food Safety Schemes) (Meat Industry) Regulations 2006 Primary Produce (Food Safety Schemes) (Seafood) Regulations 2006 Primary Produce (Food Safety Schemes) (Dairy Industry) Regulations 2005 Primary Produce (Food Safety Schemes) (Citrus Industry) Regulations 2006
WA <sup>a</sup>	Health Act 1911	Health (Meat Hygiene) Regulations 2001 Health (Food Hygiene) Regulations 1993 Health (ANZ Food Standards Code Adoption) Regulations 2001
Tas	Meat Hygiene Act 1985 Egg Industry Act 2002 Dairy Industry Act 1994 Living Marine Resources Management Act 1995	Meat Hygiene Regulations 2003 Egg Industry Regulations 2004 Dairy Industry Regulations 2004
NT	Food Act 2004 Meat Industries Act 1996 Fisheries Act 1988	Meat Industries Regulations 1997 Fisheries Regulations 1993
ACT	Food Act 2001	Food Regulations 2002

<sup>a</sup> The food safety provision of the *Health Act 1911* (WA) were repealed along with the associated regulations when the *Food Act 2008* (WA) commenced on 23 October 2009.

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## Regulators

### *Food Act regulators*

At the broad level, state/territory regulators are generally responsible for investigating and managing outbreaks of food-borne illness, and any food recalls that require coordination from the state level (table 2.4).<sup>5</sup> One exception is New South Wales where the NSWFA has similar responsibilities to the Departments of Health in the other jurisdictions, but it also takes on some broader ‘front line’ enforcement responsibilities in conjunction with the local councils of New South Wales. Given that it also covers primary producers of food, the regulatory coverage of the NSWFA is the most extensive of the food regulators across Australia.

**Table 2.4 State and territory regulators — the ‘Food Acts’**

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NSW	NSW Food Authority
Vic	Department of Health <sup>a</sup>
Qld	Queensland Health
SA	Department of Health
WA	Department of Health
Tas	Department of Health and Human Services
NT	Department of Health and Families
ACT	ACT Health

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<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.

The state regulators also provide support to the 548 local councils with responsibility for food safety through the development of guidance material and by providing professional development training. Most of the local councils with regulatory responsibilities employ environmental health officers whose duties include auditing and inspecting food businesses to ensure compliance with the Food Acts.<sup>6</sup> The Department of Health and Families (in the Northern Territory) and ACT Health (in the ACT) are responsible for the administration and enforcement of their respective Food Acts in their entirety — effectively fulfilling the roles performed by the state level regulators and local councils of the other jurisdictions.

In New Zealand, the enforcement and administration of the *Food Act 1981*, and its associated regulations, is spread across:

- the national body of NZFSA

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<sup>5</sup> In some jurisdictions, as part of this process, the state regulators also provide assistance to local councils in dealing with outbreaks of foodborne illness.

<sup>6</sup> In South Australia and Western Australia, the respective Departments of Health are responsible for enforcing their respective Food Acts with respect to those food businesses that do not lie within a designated local government area.

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- regionally through 10 Public Health Units in District Health Boards (box 2.3)
  - locally through 73 territorial authorities which are akin to Australia's local councils.

### **Box 2.3 Public Health Units**

There are 10 Public Health Units located across New Zealand. The Public Health Units provide environmental health, disease/illness investigation and control, and food regulatory functions to the areas administered by the 21 District Health Boards. The District Health Boards operate under the *Public Health and Disability Act 2000* and are the funders, planners and providers of certain health and disability services for their respective regions.

Public Health Unit programmes cover a range of areas including food safety, nutrition, communicable disease, environmental health and bio-security. Public Health Units also play a pivotal role in the investigation of food-borne illness.

Public Health Units employ Health Protection Officers, Food Act Officers, Food Sampling Officers and Medical Officers of Health, all of whom have powers under the *Food Act 1981*. For example, the responsibilities of Health Protection Officers include the oversight of labelling and composition requirements while Food Sampling Officers and Food Act Officers attend to the inspection, sampling and testing of foods.

*Source:* NZFSA (2004).

### *Primary production and processing regulators*

With the different approaches to regulation of food safety in primary production, the number of organisations with a regulatory role and the scope of each organisation's authority differs between jurisdictions (table 2.5):

- The NZFSA is the sole authority in New Zealand for regulating primary processing of all animal products and providing official assurances related to their export. The NZFSA also develops standards, investigates and verifies compliance, and undertakes monitoring programs across a range of food producers, including primary producers
- New South Wales, Western Australia and the ACT each have a single regulatory body that governs food safety across all aspects of food production, including primary production and processing
- The remaining Australian states and territory all have at least one regulator of primary production and processing. In South Australia, Tasmania and Northern Territory, the state/territory department of primary industries (or equivalent) has a role in regulating the food safety of primary produce. In Queensland and Victoria, this role has been devolved to statutory authorities.

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**Table 2.5 Food safety regulators — Primary production and processing**

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

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## 2.3 Other food safety regulation

As well as the regulations discussed above, there are other regulations that also have a food safety focus or objective. Such regulations are considered below under the broad categories of: import and export regulations; chemical residues and livestock identification; and fair trading regulations.

### Import regulations

The *Imported Food Control Act 1992* (Cwlth) provides for control of food safety at Australia's national border. It is administered and enforced by AQIS. AQIS uses a risk-based approach to border inspection, with priority given to those foods that FSANZ considers to pose a medium to high risk to public health.<sup>7</sup> Once AQIS allows imported food into Australia, the subsequent regulatory responsibility for food safety outcomes falls to the state or territory into which the food has been imported.

All food imported into New Zealand for sale must comply with the *Food Act 1981*, delegated legislation under that Act, relevant sections of the ANZFS Code and New Zealand's Food Standards.

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<sup>7</sup> Food coming into Australia is also subject to the provisions of the *Quarantine Act 1908* (Cwlth).

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In recent years (following a review of New Zealand's imported food regulation in 2004), New Zealand's approach to imported food regulation has shifted focus. There is now less dependence on inspection at the border and a greater reliance on factors such as the food safety processes of importers (including listing, record keeping, food storage and transport requirements for importers) and the categorisation of imported foods by level of regulatory interest, with differential risk management based on that categorisation. Those foods which New Zealand considers present a greater risk to public health than others are termed 'prescribed foods'. New Zealand's imported food inspection program focuses on these prescribed foods and other foods that are suspected of non-compliance. Most foods are considered 'low risk' and are imported without restriction.

## **Export regulations**

The *Export Control Act 1982* provides conditions and restrictions on the export of goods from Australia (including food). The Act defines a number of goods as 'prescribed', including (but not limited to): dairy foods; egg and egg products; fresh fruit and vegetables; and meat and meat products. In general, AQIS only becomes involved in the export of food if it is a prescribed food, or if 'government to government certification' of a product is required for export.

One way that AQIS ensures adherence by Australia's exporters to domestic and overseas requirements is by an inspection and audit program. In the case of red meat processing (the most intensive of these compliance programs), AQIS places its inspection and verification staff at every export facility and requires these facilities to undergo multi level verification audits to ensure compliance.

The NZFSA provides the primary regulatory oversight for food to be exported from New Zealand. Part of its regulatory brief is to ensure the 'safety and suitability' of New Zealand's exports. Over 80 per cent of food produced in New Zealand is exported and much of the regulation of food exports focuses on the primary production sector (NZFSA 2009g).

The *Animal Products Act 1999* (NZ) covers the provision of official assurances related to the export of products such as meat, game, seafood and honey. The official assurances confirm to the importing countries' governments that the particular food export complies with both New Zealand's and the importing country's standards.

While New Zealand does not have specific legislation covering production or export of plant or organic products (with the exception of wine), NZFSA does provide health assurances for the export of plant products.

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## Trans–Tasman Mutual Recognition Arrangement

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) is an arrangement between the Australian, state and territory governments, and the New Zealand government. It allows goods, including certain foods, to be traded freely between New Zealand and Australia. In the context of food safety regulation, the TTMRA allows many food products to be sold in Australia provided they are made in New Zealand in compliance with New Zealand’s food safety regulation (and vice versa). These foods are generally not subject to inspection at the border, nor require certification, when being traded between Australia and New Zealand. A small number of food products are, however, exempted from the TTMRA, including ‘high-risk foods’ (such as beef, fish, dried coconut, peanuts, pistachios and seaweed) and so are inspected at the border when traded between Australia and New Zealand.

### Chemical residues

Limits for the residues of agricultural and veterinary chemicals that can be found in food are contained in the ANZFS Code (Standard 1.4.2) for Australia and the *New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008* for New Zealand. These limits are more commonly referred to as Maximum Residue Limits (MRLs). In addition to the MRL requirements, there are other regulations affecting the approval and use of agricultural and veterinary chemicals in both Australia and New Zealand.

In Australia, the Australian Pesticides and Veterinary Medicines Authority (APVMA) administers the National Registration Scheme for these chemicals. Any such chemicals must be registered under the scheme before they can be used. As part of this registration process, the APVMA sets an MRL(s) for the chemical — the MRLs set by the APVMA are separate to those contained in the ANZFS Code.

Once a chemical is registered under the National Registration Scheme, the use of the chemical is regulated by Australian states and territories — typically through the Department of Primary Industries or equivalent. Depending on the state or territory, these regulations can include matters such as withholding periods, the training and licensing of chemical users, residue monitoring and chemical application practices (for example, to address spray drift). Depending upon the nature of a primary producer’s operation and produce, these ‘chemical control-of-use’ regulations may be complementary to, or in addition to, anything that a producer will need to do to ensure compliance with the MRLs stated in the ANZFS Code.

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In New Zealand, the *Agricultural Compounds and Veterinary Medicines Act 1997* (ACVM Act) regulates the import, sale and use of agricultural and veterinary chemicals. The Agricultural Compounds and Veterinary Medicines Group of the NZFSA administers and enforces the ACVM Act to both promote food safety outcomes and to meet export market requirements.

### **Control of livestock**

The National Livestock Identification System (NLIS) is Australia's scheme for the identification and tracing of livestock. It takes effect from state and territory legislation and is administered and enforced by state and territory regulators (typically through the Department of Primary Industries or equivalent). As the NLIS allows stock to be traced throughout their lives, it enhances Australia's ability to respond to a food safety issue arising from animals subject to the scheme.

### **'Fair Trading' Acts**

The 'Fair Trading' Acts of the Australian states and territories, *Trade Practices Act 1974* (Cwlth) and *Fair Trading Act 1986* (NZ), impose certain obligations on those selling goods to the public, including provisions relating to product safety and information. In the absence of any food-specific safety regulations, businesses in Australia and New Zealand would still have certain obligations to consumers regarding the safety of their product and the information they disclosed to consumers about their product.