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## 15 Comments from jurisdictions

In conducting this study, the Commission was assisted by an Advisory Panel comprised of representatives from each of the Australian, New Zealand and Australian state and territory governments, and from the Australian Local Government Association. In addition to providing advice to the Commission and coordinating the provision of data, government representatives examined the report prior to publication and provided detailed comments and suggestions to address factual matters and improve the analysis and presentation of the data.

The Commission also invited each jurisdiction, through its panel members, to provide a general commentary for inclusion in the report. These commentaries are included in this chapter, and presented in the same order as the data in the report.

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## New Zealand

“ New Zealand appreciates the breadth of the Benchmarking Report prepared by the Australian Productivity Commission and the opportunity to have contributed.

The benchmarking exercise will be useful to New Zealand in many respects, particularly given the New Zealand Government’s policy for reducing regulatory burdens.

There are many similarities in the systems between Australia and New Zealand, while they are the same in relation to most of Parts 1 and 2 of the Australia New Zealand Food Standards Code (relating mainly to labelling and composition). The Code is the product of the Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Food Treaty). Both are important components in the continuing development of the trans-Tasman single economic market. They both sit within a broader trade relationship underpinned by the New Zealand Australia Closer Economic Relations trade agreement, and they both operate in parallel with the Trans Tasman Mutual Recognition Agreement.

There are, however, some key differences between Australian and New Zealand food systems that affect comparability. For example, New Zealand operates an integrated regulatory system: ‘from the farm to the fork’ and New Zealand’s economic reliance on food commodity exports, with over 80 percent of food produced being exported, ensures economic impact of actions is a key focus.

Given New Zealand’s export driven agricultural industry, in reality very little primary product in terms of volume and value, is processed exclusively for the domestic market. Maintenance of international market access is vital for the vast majority of New Zealand’s primary producers and compliance with requirements to assure continued access paramount. Different standards apply for export and domestic product but businesses make a commercial choice about the predominant market for their products and, for market flexibility, process to the relevant standard. With food, this is more often the applicable export standard. This in turn positively assists NZFSA’s market-access negotiation strategy.

NZFSA invests in educating businesses on their legal requirements and options for meeting requirements. Some of the comments in this Report from New Zealand producers and processors, reflecting their concerns, indicate there is more to do. We have duly noted these responses and will be reviewing ways to improve the level of stakeholder understanding.

The Report suggests a number of deficiencies in the New Zealand food safety environment by way of comparison with other jurisdictions. A number of these deficiencies have been similarly identified in the course of New Zealand’s conduct of a Domestic Food Review over the past five years. These include: overly prescriptive food hygiene standards; a higher compliance burden (in

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terms of the number of inspections) on low and medium risk food businesses; a lack of enforcement powers for local councils; and inconsistent training requirements imposed by local councils.

These issues are to be addressed by the New Zealand Government in the development of new food legislation. A Food Bill is being drafted that will:

- mandate risk based tools (both regulatory and educative) and shift the onus of responsibility from the Government to the food business operator;
- replace the outdated Food Hygiene Regulations 1974 with regulations that are outcome based and enabling;
- ensure that inspection ('verification') frequencies for low and medium risk food businesses (largely performed by Territorial Authorities) are based on both risk and performance - aiming to reduce compliance burdens over time;
- improve penalty provisions and provide a better range of compliance tools such as penalty infringement notices and improvement notices;
- regulate for any food industry training requirements at the national level, removing the need for Territorial Authority by-laws that create inconsistencies; and
- allow for the introduction of a national grading scheme for restaurants.

The new Food Bill is planned to be enacted in 2010 and to be implemented over a subsequent five-year transition period.

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## New South Wales



The NSW Government supports the Productivity Commission’s report on benchmarking food safety regulation across Australian jurisdictions. By comparing different approaches, jurisdictions can gain further insight into the mechanisms that deliver good practice and good regulatory outcomes. NSW is also committed to improving food safety regulation through involvement in the Council of Australian Government’s initiatives to achieve a Seamless National Economy.

As NSW has previously stated, one of the main benefits of the benchmarking study is the ability to compare over time whether improvements are being made. The NSW Government supports the ongoing review of this area of business regulation.

### *NSW Food Authority*

The NSW Food Authority is the only “through-chain” regulatory agency in Australia. This approach allows for a consistent, integrated approach to all aspects of implementation and enforcement of the Food Standards Code (not limited to food safety). It is also beneficial for businesses because it provides a single interface for all stakeholders, including consistent management of key stakeholder relationships.

### *Food regulation initiatives in NSW*

The NSW Government’s ongoing commitment to reducing regulatory burden has led to the development of a number of measures that will be incorporated into the remake of the Food Regulation in 2010. These include:

- a consistent licence and audit fee regime across all regulated industry sectors, on a revenue-neutral basis;
- rationalisation of licence categories and associated fees within the meat industry;
- consolidation of numerous food safety scheme manuals into a single, consistent document across all schemes; and
- simplification of administrative processes in relation to licence fee waivers.

The NSW Food Authority is working on several initiatives that will reduce food borne illness and improved consumer access to information across the food chain. These include:

- refining the operation of the Name & Shame website, including scoping of complementary measures such as rating systems;
- implementing mandatory food handler training for high-risk retail and food service sectors; and

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- developing standardised inspection templates to be utilised across all enforcement agencies (including the Authority and local government partners).

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## Victoria



The efficient regulation of the food industry in Victoria is a key objective for the Victorian Government. Over the past decade, Victoria has implemented initiatives to improve food safety outcomes and lower the burden of regulation in order to enhance outcomes for food consumers and businesses alike. Moreover, significant reforms are currently being implemented by the Government that will come into operation from 2010.

The Victorian reforms implement best practice and are informed by a detailed review of the pre-existing framework. In September 2006, the then Victorian Treasurer, John Brumby MP, sent terms of reference to the Victorian Competition and Efficiency Commission (VCEC) to identify opportunities for reducing and streamlining food regulation (including harmonisation of national and state regulations). This inquiry was the first of its kind by a state or territory government in Australia.

The year-long VCEC inquiry resulted in 37 recommendations designed to reduce regulatory burden and enhance the effectiveness of the regulatory framework. The Government supported 35 of these recommendations in full, part or principle. Progress in the reforms emerging from this inquiry are set out in the Progress Report: Victorian Government Response to VCEC's Final Report, released in August 2009. Central to these reforms is the Food Amendment (Regulatory Reform) Act 2009 which received Royal Assent on 5 August 2009, with phase one reforms commencing operation from 1 July 2010.

The reforms reduce the regulatory burden on food businesses by, among other things, amending the requirements on businesses and not-for-profit organisations to prepare a Food Safety Program and to have a Food Safety Supervisor. Obligations on businesses will be imposed in a more graduated manner based on the degree of risk associated with the food-handling activities undertaken. The amendments also increase the consistency by which the Act is applied across the State.

Due to the timing of the Productivity Commission's report into Performance Benchmarking, in that it looks at the food regulatory environment as at 30 June 2008, the Commission's analysis does not reflect the impact these reforms will have on Victorian businesses when they come into operation over 2010 and 2011.

The Victorian Government recognises the importance of the Productivity Commission's inquiries into regulatory performance benchmarking as a catalyst for reform and continuous improvement. While the Commission's benchmarking exercise on food regulation does not reflect quantitatively the significance of the reforms currently underway in Victoria, future benchmarking studies in this area should enable the gains from the current reforms to be identified and measured.

Across the broader regulatory environment, the Victorian Government has made a commitment to reduce the administrative burden of regulation through the Reducing the Regulatory Burden initiative introduced in 2006. Based on initiatives that have been completed or are underway, the estimated reduction in

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the administrative burden of regulation was estimated to be \$246 million at 1 July 2009. In September 2009, the Government announced an increased target of a \$500 million reduction by July 2012, which includes reductions to substantive compliance and delay costs.

In addition to the inquiry into food regulation, the Government has commissioned the VCEC to identify ways to improve the regulatory environment and to reduce the burden of regulation in areas such as environmental regulation, the development of regional Victoria and the housing construction industry. The Government has also recently directed VCEC to undertake inquiries into the financial services sector and local government regulation, with a view of identifying ways in which government can better regulate these sectors.

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## Queensland



The Queensland Government is committed to promoting opportunities for economic development by lifting productivity and competitiveness through implementing state and national reform agendas focused at reducing unnecessary regulatory burdens on business, community and government.

Regulation is necessary to protect the community and environment, and is an essential part of running a well-functioning economy and society. However, the Queensland Government agrees that it is important to find an appropriate balance between the benefits and costs of regulation to deliver the best possible outcomes for business, community and government.

Queensland supports this initiative by the Commission to inform the Council of Australian Governments of differences in the compliance burden between jurisdictions in food safety regulation and highlight areas which may benefit from further reform. Queensland notes that the Commission acknowledged it was unable to establish if higher regulatory burdens are linked to better food safety outcomes. However, in the context of identifying possible future reform directions, these regulatory differences must be evaluated in terms of their effectiveness in delivering food safety outcomes.

Queensland contends that in several cases jurisdictional differences are the result of innovative approaches to achieving food safety outcomes that reduce the regulatory burden, simplify the regulatory environment or formalise existing commercial best practice. For example, the early involvement of Queensland Health in cases of suspected intentional contamination of food, minimises the costs to business by preventing unnecessary product recalls and delivers best public safety outcomes by facilitating prompt investigation by authorities which is coordinated by Queensland Health, not the affected business.

Queensland is pleased that the Commission has recognised the innovative work undertaken by Safe Food Production Queensland (SFPQ) to minimise the regulatory and compliance burden on business and industry. Since its establishment in 2002, SFPQ has continued to partner with industry, peak bodies and individual businesses to achieve the minimum effective regulation within Queensland's primary production and processing sectors. As noted by the Commission, this co-regulatory approach has seen the development of alternative compliance arrangements such as the Dairy Monitoring Scheme and preferred supplier arrangements for egg producers. These arrangements build upon and formalise existing commercial best practice. These outcome-focused approaches ensure targeted compliance, thereby preventing unnecessary monitoring at inappropriate stages in the food production process.

Queensland has taken a proactive approach to the early implementation of reforms to high risk areas identified by the Australian and New Zealand Food Regulation Ministerial Council in 2002. Queensland's requirements for caterers

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to have a Food Safety Program (FSP) is consistent with the principles of the Ministerial Policy Guidelines on Food Safety Management in Australia: Food Safety Programs. Queensland's requirements for FSPs in the catering sector affect fewer food businesses than what is currently proposed by Food Standards Australia New Zealand. The advance work undertaken by Queensland is positively influencing the national Standard setting process and will help ensure that the desired food safety outcomes are developed in an efficient and cost effective way that minimises the regulatory burden on industry.

With the exception of the requirements relating to caterers and suspected contamination of food, the Food Act 2006 does not impose additional regulatory requirements, despite the Commission's findings that the Act contains nearly twice as many provisions as the Model Act. Queensland regulation has a distinctive plain English style which incorporates the generous use of white space, footnotes and separation of provisions to support improved interpretation and understanding and ensure clarity of intent.

The report indicated that Queensland had the greatest variation in fees and charges imposed by Local Government. The Local Government Act 1993 provides local government with the ability to autonomously establish cost-recovery fees for regulatory activity. As indicated by the Commission, the degree of variation is likely to reflect differing policy decisions regarding the extent to which costs are recovered. The debate regarding the appropriate division of costs associated with food safety regulatory activity between industry and government is beyond the scope of the report.

The Queensland Government has a long standing commitment to improve Queensland's regulatory environment. The Government is strengthening this reform agenda by taking action on two fronts to put in place a regulatory environment that delivers better economic, social and environmental outcomes.

At the national level, this Government is working with other Australian jurisdictions to deliver a seamless national economy by implementing regulatory and competition reforms in 36 key areas to improve the efficiency and inter-jurisdictional harmonisation of the regulatory environment. At the state level, the Queensland Government is implementing the Smart Regulation Reform Agenda to reduce and prevent unnecessary regulatory burden on business, community and government by tackling the quantity of existing regulatory stock and the quality of future regulation simultaneously.

Key actions under the Smart Regulation Reform Agenda include:

1. The Queensland Regulatory Simplification Plan 2009-13 which targets an initial reduction of \$150 million per annum in the compliance burden to business and the administrative burden to government by 30 June 2013; and
2. An enhanced regulatory development system which will introduce a streamlined, more rigorous and harmonised regulatory development and review system that will be fully implemented as early as possible in 2010.

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## South Australia

“ The South Australian Government remains committed to meeting its public health objective of ensuring food is safe for the community whilst using minimum effective regulation.

The Food Industry in Australia is diverse in nature, size and risk profile. Different sectors require different regulatory approaches.

The South Australian food industry is predominately made up of small to medium sized enterprises (SMEs). For this reason South Australia supports a regulatory framework that provides greater certainty and information for food businesses. It is recognised that outcome based standards provide flexibility and innovation for large industry but can create uncertainty for SMEs. “Deemed to comply” guidelines or codes of practice can co exist with outcome based standards to provide greater guidance and support for business in meeting their food safety requirements.

The South Australian Government recognises the need to coordinate regulatory resources and has MOUs in place between key agencies. SA Health has recently revised its Memorandum of Understanding (MOU) with Local Government in relation to activities under the SA Food Act. The MOU clarifies responsibilities and commits the two levels of governments to work together to improve food safety and the application of the Food Act. A work program is being established under an agreed model which recognises the need for accountability, consistency and transparency for food regulators. Key areas of work identified for the program include:

- Improving consistency in the application of the legislation,
- Implementation of a risk based approach to inspections,
- Professional development and support to food inspectors, and
- Improving data collection and management to enable targets to be set for resources and consistency.

The activities of the program aim to provide food businesses with greater clarity and consistency from food regulators. South Australia welcomes the Productivity Commission report in identifying any further areas that may be included in the work program.

South Australia also welcomes the report’s recognition of good governance practices by the Department of Primary Industry and Resources South Australia (PIRSA) leading to lower business compliance burdens for primary industry businesses.

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## Western Australia

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The Western Australian Government is committed to improving the quality of food safety regulation in Western Australia. The Government has passed the new Food Act 2008 in July 2008 as part of its commitment to implement the agreed regulatory changes. It is anticipated that the Food Act 2008 will be proclaimed by the end of October 2009.

It is noted that Western Australia has separate hygiene regulations which are in addition to those contained in the ANZFS Code. With the introduction of the Western Australian Food Act 2008, the food hygiene regulations will be repealed and most of the food safety provisions will be contained within the Act and reflect ANZFS Code.

The new food law will be consistent with best practice principles of regulation as endorsed by the Council of Australian Governments (COAG) and an important milestone for Western Australia in meeting its COAG commitments for regulation reform.

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## **Northern Territory**

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The Northern Territory supports the Productivity Commission's report on benchmarking of food safety regulation across Australian jurisdictions. The Northern Territory, through COAG, is committed to reducing the regulatory burden on business whilst protecting public health and safety. The Northern Territory particularly values the cooperative efforts of states and territories in promoting consistent interpretation and enforcement of the Australia New Zealand Food Standards Code. These cooperative efforts provide the Northern Territory with the framework for effective food regulation. The information contained within the Productivity Commission report will provide a further insight into the systems that deliver good regulatory practices and outcomes.

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## ACT

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The ACT Government welcomes and supports the Productivity Commission’s efforts in gathering and analysing the substantial amount of information provided in the Report. The Government recognises the significant contribution food businesses provide to the economy and the community.

The ACT is committed to undertaking further reform in the area of food regulation, through COAG, to reduce the regulatory costs on the food industry. The ACT notes the importance of working cooperatively with the other states and territories, especially given its relative size.

Finally, the ACT notes the quality of the data in the Report which is crucial to the development of sound policy.

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