

AUSTRALIAN
FOOD AND GROCERY
COUNCIL

SUBMISSION

SUBMISSION TO

PRODUCTIVITY COMMISSION

IN RESPONSE TO

Annual Review of Regulatory Burdens on Business –
Manufacturing & Distributive Trades

20 March 2008

PREFACE

The Australian Food and Grocery Council is the peak national organisation representing Australia's packaged food, drink and grocery products industry.

The membership of the AFGC comprises more than 150 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the highly processed food, beverage and grocery products sectors. (A list of members is included as Appendix A.) The AFGC represents the nation's largest manufacturing sector. By any measure Australia's food, drink and grocery products industry is a substantial contributor to the economic and social welfare of all Australians. Effectively, the products of AFGC's member companies reach every Australian household.

The industry has annual sales and service income in excess of \$70 billion and employs more than 200 000 people – almost one in five of the nation's manufacturing workforce. Of all Australians working in the industry, half are based in rural and regional Australia, and the processed food sector sources more than 90 per cent of its ingredients from Australian agriculture.

The AFGC's agenda for business growth centres on public and industry policy for a socioeconomic environment conducive to international competitiveness, investment, innovation, employment growth and profitability.

The AFGC's mandate in representing member companies is to ensure a cohesive and credible voice for the industry, to advance policies and manage issues relevant to the industry and to promote the industry and the virtues of its products, enabling member companies to grow their businesses.

The Council advocates business matters, public policy and consumer-related issues on behalf of a dynamic and rapidly changing industry operating in an increasing globalised economy. As global economic and trade developments continue to test the competitiveness of Australian industry, transnational businesses are under increasing pressure to justify Australia as a strategic location for corporate production, irrespective of whether they are Australian or foreign owned. In an increasingly globalised economy, the ability of companies to internationalise their operations is as significant as their ability to trade globally.

Increased trade, rationalisation and consolidation of businesses, increased concentration of ownership among both manufacturers and retailers, intensified competition and dynamic, increasingly complex and demanding consumers are features of the industry across the globe. Moreover, the growing global middle class of consumers is more sophisticated and discerning, driving innovation and differentiation of products and services.

The AFGC is working with governments in taking a proactive, even tactical, approach to public policy to enable businesses to tackle the threats and grasp the dual opportunities of globalisation and changing consumer demands.

1 EXECUTIVE SUMMARY

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to make a submission to the Productivity Commission in response to the *Annual Review of Regulatory Burdens on Business – Manufacturing and Distributive Trades* (“the Review”).

Australia’s food policy and regulatory system is large and complex involving 10 governments, around 20 departments developing policy and regulations and numerous agencies responsible for enforcement. Development of food policy and regulation is hampered by jurisdictions having different expectations and priorities and institutional arrangements and a lack of national uniformity in food regulations.

Food businesses in Australia therefore operate against a backdrop of uncertainty and lack of confidence in the food regulatory system to deliver outcomes which favour innovation in new products and processes whilst maintaining proportionate protection of public health and safety. This unsatisfactory situation imposes opportunity costs on the food industry from delays in decisions to launch new products due to uncertainty regarding the regulatory response.

Numerous reviews - *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (Banks report) and the Productivity Commission’s *Performance of Benchmarking of Australian Business Regulation Report* (2007), and the Victorian Competition and Efficiency Competition (VCEC) Final Report *Simplifying the Menu* (2008) – have highlighted short comings in Australia’s food policy and regulatory arrangements from governance issues through to the process of standard setting. The case for substantial regulatory reform has, therefore, been made.

The AFGC considers the problems with Australia’s food policy and regulatory system are so extensive and profound that only a complete overhaul of the regulatory system will provide the sufficient change, and relief of regulatory burden, for the food industry to ensuring its competitiveness into the future. Consequently, the AFGC identified a number of key areas for reform and has developed specific recommendations.

1.1 GOVERNANCE DOES NOT REFLECT AND IS NOT RESPONSIVE TO THE RESPECTIVE INTERESTS OF JURISDICTIONS

The Commonwealth, New Zealand and States and Territories each have a single vote on the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) when the economic impact of food standards varies greatly from jurisdiction to jurisdiction. Representation, and influence, on the Ministerial Council should reflect that some States (Vic, NSW & Qld) and New Zealand have larger populations and substantial food industries making important contributions to their economies.

Recommendation:

The AFGC recommends that votes are allocated to the Australia New Zealand Ministerial Council as follows: one vote to the Commonwealth, one vote to New Zealand and one vote collectively to the States and Territories.

1.2 RESOURCES FOR FOOD POLICY AND REGULATORY DEVELOPMENT IS INADEQUATE

Government departments and regulatory agencies responsible for assessing and determining Australia's food policy and regulatory needs are poorly resourced from both the public health and practical technology perspective which hinders their sensible assessment of the potential impact of regulation. Responsibility for food regulation should be transferred to lead government departments able and committed to devoting appropriate skills and expertise to their development.

Recommendation

The AFGC recommends that Industry portfolios take over primary responsibility for food policy and regulation with policy input from other departments such as Health.

1.3 LACK OF NATIONAL CONSISTENCY BETWEEN JURISDICTIONS

1.3.1 Model Food Bill

The Model Food Bill has not been enacted across the whole of Australia, and where it has regulatory differences and enforcement priorities vary greatly between jurisdictions imposing substantial, unnecessary costs on industry. Consistent regulations across Australia through uniform adoption of the Model Food Bill and coordinated enforcement of food regulations between jurisdictions are required.

Recommendation

The AFGC recommends immediate adoption of the Model Food Bill by all Australian jurisdictions and review and amendment of local food regulations to remove unnecessary variances.

1.3.2 Enforcement

Food composition and labelling requirements are applicable nationally – there are no unique regional requirements. Therefore, their provisions and enforcement should be uniform in all regions. Enforcement of food composition and labelling should therefore become a Commonwealth responsibility residing in the Government department with primary responsibility for food standards implementation. The department would require substantial technical capability to be effective.

Recommendation

The AFGC recommends centralisation of enforcement of labelling and compositional standards by a new national enforcement regulator.

1.4 POLICY VS. REGULATION

There is no overarching food regulatory policy which guides the development of all food standards in Australia. Many important areas are without policy coverage, and other areas prescriptively addressed in the manner of regulation. Clear and unambiguous policy overlay to all areas of the Australia New Zealand Food Standards Code (FSC) restricted to general

higher principles is required. Specificity and prescription should be restricted to regulation only, and then only following appropriate processes demonstrating need.

Recommendation

The AFGC recommends amendment of the Australia New Zealand Food Regulation Ministerial Council *Principles and Protocols for the Development of Food Regulation Policy Guidelines* detailing:

- features of effective food policy;
- required coverage of food policies to all food regulatory areas;
- disclosure requirements – full publication of policy assessments (i.e. policy impact statements); and
- publication of a work plan for the development of food policies.

1.5 OPERATING PRINCIPLES

Food standard development is not always based on clear evidence of a market failure and minimum effective regulation. Policy and regulatory interventions need to be based on the principles of demonstrate need, risk assessment, regulatory impact and proportionate response with each of these being appropriately informed by sound science, and evidence.

Recommendation

The AFGC recommends introduction of minimum hurdles in market failure and regulatory impact statements which must be met before regulation is introduced to ensure a substantial need for a regulatory measure exists.

1.6 REGULATORY SCOPE

There is pressure for food regulations to address issues not directly related to food composition and production and their impact on foods as consumed. The Food Standards Code should be restricted to matters directly relevant to foods as consumed with other matters of interest to consumers addressed by the market, or if necessary within other regulatory frameworks subject to COAG principles.

Recommendation

The AFGC recommends the scope of the Australia New Zealand Food Standards Code needs to be reaffirmed through amendment of the FSANZ Act and supporting policy statements.

1.7 LEGISLATIVE ENVIRONMENT

The FSC and other legislation intersect in some areas – such as food labelling – with occasional conflict in areas due to technical realities in product specific legislation not gelling with generic legislation of the Trades Practices Act. Greater coordination and cooperation between regulatory agencies is required to ensure that consumers and industry are not disadvantaged by ambiguity created by the requirements of different legislation.

Recommendation

The AFGC recommends that regulatory agencies make ruling statements to indicate which legislation takes priority in areas of ambiguity and that agencies agree on the provision of “safe harbours” when necessary and on an issue by issue basis.

1.8 BUSINESS ENVIRONMENT

Protection of public health and safety must remain paramount in food standards, but for other issues of less importance to consumers the interests of the industry should receive a greater consideration as ultimately, the whole community will benefit if food industry remains profitable and competitive.

Recommendation

The AFGC recommends amendment of the FSANZ Act to more appropriately reflect that for some regulatory issues greater benefits will flow to the consumer if the interests of business are given greater prominence.

1.9 SELF- AND CO- REGULATORY APPROACHES

There is a strong case for combined and complementary regulatory and self- and co-regulatory approaches in food safety, food composition, and food labelling. The industry has several examples of effective codes of practice and would welcome opportunities to explore their greater use, provided they are fully effective at meeting their objectives and high levels of compliance can be secured.

Recommendation

The AFGC recommends food policy provide guidance on the use of industry codes of practice to complement full regulation within the Australia New Zealand Food Standards Code.

The regulatory burden on the food industry and governments in Australia can be substantially reduced by reforming regulatory arrangements. Key steps include addressing the inherent inequities of the current Ministerial Council representation and practices, which can result in some jurisdictions imposing a regulatory comparative disadvantage on the food industries of other States. Institutional reforms are also required such as centralizing responsibilities for efficiency gains (e.g. composition and labelling) and maintaining decentralization of others (food safety) for effectiveness.

Reforms will require agreement of the States and Territories to a fundamental overhaul of the food regulatory system and will require coordination between the States and Territories and the Commonwealth and New Zealand to change legislation (Acts) which allocate enforcement responsibility to authorities. States and Territories would concentrate on food safety enforcement in their local industries, whilst the Commonwealth would focus on enforcement of food standards which apply equally to all business and protect all consumers equally across the nation.

The whole system would gain from a greater focus on the food industry and how to most effectively regulate it for optimum consumer protection and well-being appropriately balanced by the need to ensure food industry's competitiveness in domestic and overseas markets.

2 INTRODUCTION

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to make a submission to the Productivity Commission in response to the *Annual Review of Regulatory Burdens on Business – Manufacturing and Distributive Trades* (“ the Review ”).

This submission focuses on the impact of food regulation on the food manufacturing industry which the AFGC represents. It does not comment on regulation applicable to primary production, food service (restaurants, catering etc) or food retailing sectors.

3 GENERAL COMMENTS ON THE FOOD REGULATORY SYSTEM IN AUSTRALIA

Historically food regulations were the sole responsibility of the States. In the 1990s with formation of the National Food Authority States and Territories agreed to a formal centralised development of national uniform food standards. New Zealand joined the arrangement in 1996 (to promote trans-Tasman harmonisation) to form the Australian New Zealand Food Authority. Following the Review of Food Regulation (Blair Review) of 1998 arrangements were changed in 2002 to the current system comprising:

- the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) of Commonwealth, State and Territories and New Zealand governments with health and primary industry ministries of each jurisdiction represented;
- a policy developing Food Regulation Standing Committee (FRSC), reporting to ANZFRMC, responsible for developing policy to guide food standards development;
- a national food authority – Food Standards Australia New Zealand – developing the Australia New Zealand Food Standards Code (FSC);
- a Model Food Bill to act as a template for Food Acts in each jurisdiction to provide national consistency;
- Food Acts in each jurisdiction providing heads of power for food regulations to be enacted in each jurisdiction by adopting by reference the FSC; and
- jurisdictional enforcement of the FSC through local regulatory agencies, including local government.

The system is, therefore, large and complex involving ten governments, around twenty departments developing policy and regulations and numerous agencies responsible for enforcement. For such a complex system to work there has to be:

- a strong sense of common purpose and co-operation particularly in identifying priority issues;

- commitment and adherence to a set of ground rules (such as the COAG Principles for policy and regulation) for efficiency of process of regulatory development, and effectiveness of introduced regulations; and
- a preparedness to provide adequate resources for policy and regulatory development and enforcement to support the integrity and credibility of the whole system.

Unfortunately the reality is that jurisdictions:

- have different expectations and priorities for the food regulatory system and how it should operate;
- do not agree on priorities for food regulation resulting in different levels of agency resource allocation and technical competencies between jurisdictions including in enforcement;
- have differing institutional arrangements regarding the role of State & Territory departments and local government;
- have adopted the Model Food Bill to differing degrees resulting in a lack of national uniformity;
- have an established track record of adopting diametrically opposed views on many fundamental policy and regulatory issues; and
- force unnecessary delays in standard setting processes through requesting reviews of proposed standards.

Food businesses in Australia therefore operate against a backdrop of uncertainty and lack of confidence in the food regulatory system to deliver outcomes which favour innovation in new products and processes whilst maintaining proportionate protection of public health and safety. This unsatisfactory situation imposes opportunity costs on the food industry from delays in decisions to launch new products due to uncertainty regarding the regulatory response.

The system also imposes unnecessary direct costs and competitive disadvantages upon food companies operating across State and Territory borders due to:

- different food regulations – companies have to spend more time and resources determining the regulatory requirements of the markets they operate in, and may have to adapt products or processes to ensure compliance with all regulations in all markets;
- different approaches to enforcement – lack of consistent enforcement, particularly in areas where companies compete directly (such as in label claims) may lead to different interpretation of requirements and so different cost imposts on companies; and
- limited technical competencies – in areas of highly complex manufacturing processes the capability of analytical laboratories is compromised by the lack of proficiency in sampling and testing methodologies, particularly in jurisdictions with limited resources.

4 PERFORMANCE OF AUSTRALIA'S REGULATORY SYSTEM

4.1 FOOD POLICY DEVELOPMENT

An outcome of the Review of Food Regulation (Blair Review) 1998 was the recommendation that food policy should guide food standards development. The governance arrangements introduced in 2002 included convening the Food Regulation Standing Committee (FRSC) which had the task of developing and recommending food policy to ANZFRMC. Since then FRSC has only managed to agree on a small number of policiesⁱ viz

1. *National Food Safety Audit Policy The national regulatory policy for the approval and management of food safety auditors and food safety audits 2006*
2. *Policy Guideline on the Regulation of Residues of Agricultural and Veterinary Chemicals in Food.*
3. *Policy Guideline Fortification¹ of Food with Vitamins and Minerals*
4. *Policy guideline on nutrition, health and related claims*
5. *Ministerial Policy Guidelines on Food Safety management in Australia: Food Safety Programs*
6. *Policy Guidelines Country of Origin Labelling of Food*
7. *Ministerial council policy guidelines on novel foods*
8. *Ministerial Council Policy Guideline on the Addition of Caffeine to Foods*
9. *Overarching Policy Guideline on Primary Production and Processing Standards.*

There is also a further guideline document *Principles and Protocols for the Development of Food Regulation Policy Guidelines* which requires adherence to COAG principles for policy and regulatory development.

Its clear from the titles of the policy documents that there is no overarching food regulatory policy statement, and that the policy suite so far promulgated fails to address key areas for food regulation which are consistently causing difficulties viz – food regulatory scope, food labelling, food composition, new technologies, self regulation and so on. What policies that have been finalised are highly variable in their nature and detail with some more akin to regulation. It is extraordinary, for example, that a policy on caffeine addition to foods has been produced. This is an issue more appropriately dealt with by regulation guided by an overarching policy regarding the addition of substances to foods.

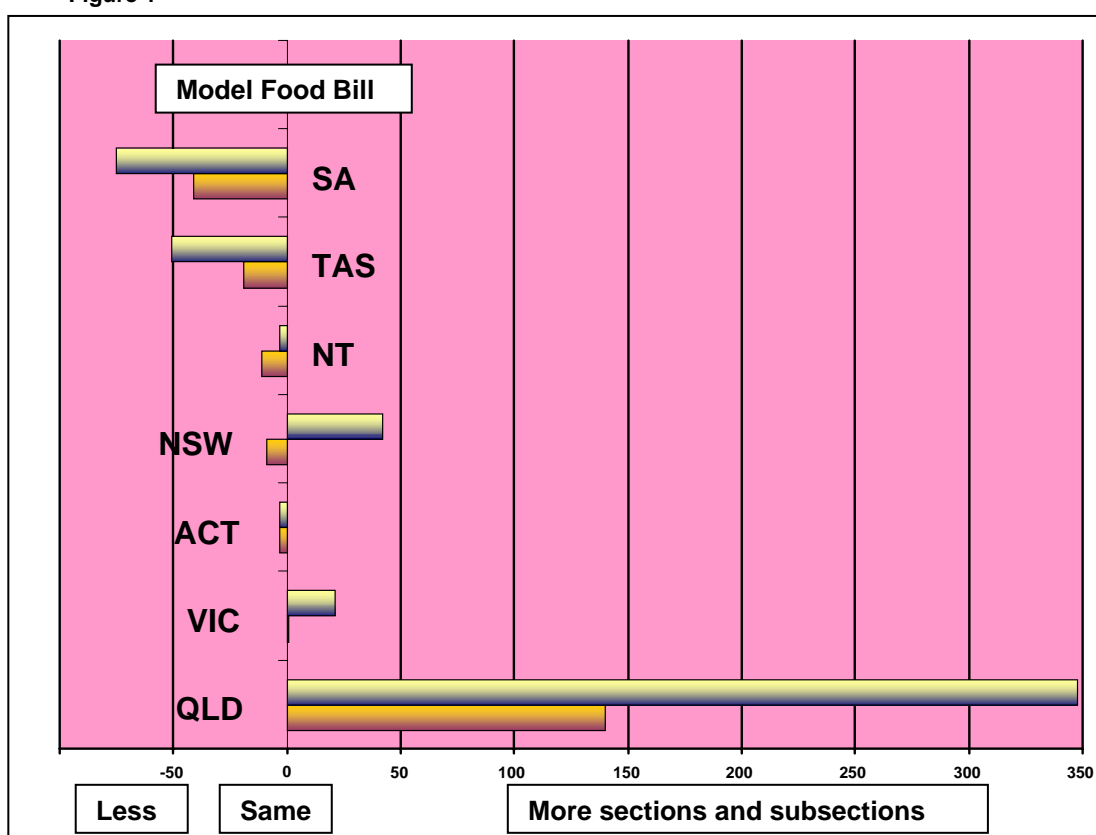
An issue of further contention is that there is variable and often limited public consultation on policy development by FRSC. It has been a frustration to the AFGC that whilst members of FRSC are approachable through their positions in Government bureaucracies FRSC, as a Committee, has been unwilling to consult openly with the food industry about food policy.

ⁱ As detailed on the [www.health.gov.au/food regulation secretariat](http://www.health.gov.au/food%20regulation%20secretariat)

4.2 THE MODEL FOOD BILL

The Model Food Bill is a blueprint document which State and Territories have agreed to use to bring national consistency to each of their jurisdictional Food Acts. In reality, however, the jurisdictions have failed to enact the necessary changes in their Food Acts to bring them into alignment – there has been some adoption of some aspects of the Model Food Bill but it varies considerably between jurisdictions. The net result is that food companies which operate across State Borders must be aware of the food regulatory requirements. In a studyⁱⁱ commissioned by the AFGC in 2007 the extent of the lack of uniformity was revealed (see Figure 1).

Figure 1



Source: Figure 1 - Variations in sections and subsections of Food Acts compared to the Model Food Bill. Data for Western Australia is not presented as they were still operating under the 1911 Health Act at time of collection of data (and has still not been adopted the legislation).

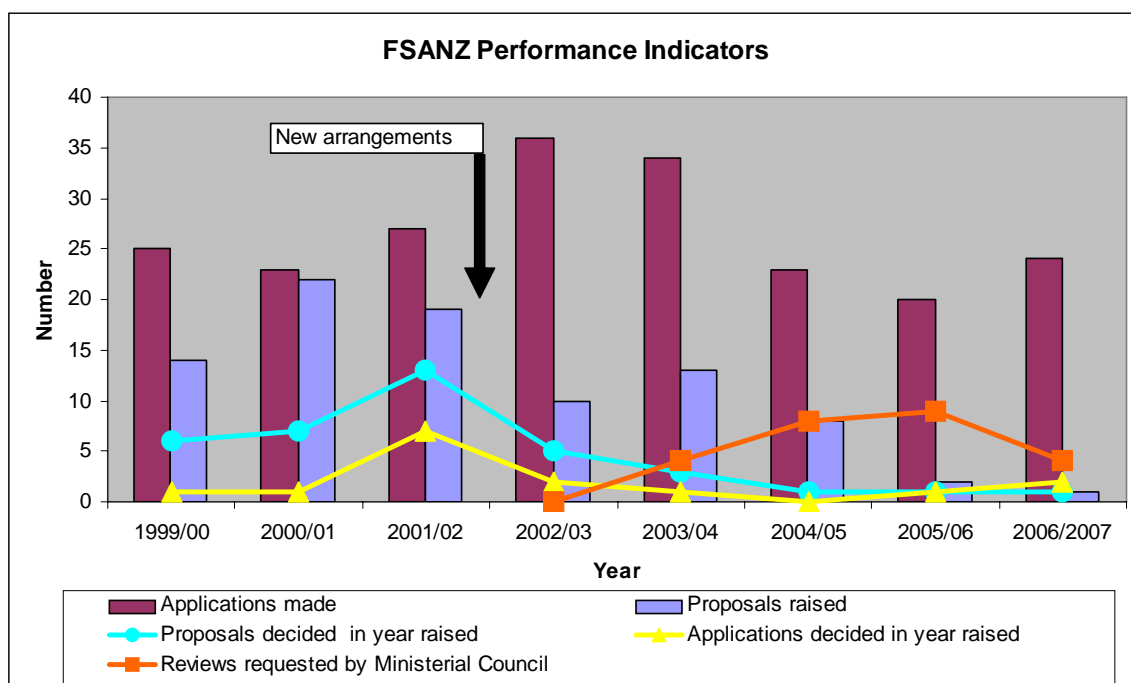
A full copy of the report is presented as an [Appendix](#) to this submission.

4.3 THE PERFORMANCE OF FSANZ

The primary purpose of FSANZ is to review, develop and amend the FSC. Its formal performance indicators as detailed in its Annual Reports include the number of

ⁱⁱ Comparison of Food Acts in Australia with the Model Food Bill. Australian Food and Grocery Council. Unpublished Data. 2007

applications and proposals raised and processed, and the number of standards gazetted. Recent resultsⁱⁱⁱ for the indicators are shown in Figure 2 below:



Source: Figure 2 - FSANZ performance indicators before and since the new institutional arrangements were introduced in 2002.

Figure 2 demonstrates that amendments to change the FSC from industry are very slow, with the great majority of applications from industry taking over 12 months before completion. It is also a concern to the AFGC that the Ministerial Council frequently requests FSANZ to conduct reviews of food standards. This indicates a lack confidence in jurisdictions regarding FSANZ capabilities to develop standards and/or tension regarding the priorities and direction of standards setting by FSANZ.

5 EXAMPLES OF REGULATORY IMPEDIMENTS

5.1 COUNTRY OF ORIGIN LABELLING – A FAILURE OF PROCESS

The net effect of 14 years work developing the country of origin labelling standard was an additional cost burden for Australian industry and a competitive advantage to New Zealand industry (see Box). This was not, however, the only cost. Buried in the detail of the standard was a specific requirement for the signage to use 9mm font in food stores. It became apparent after final assessment that stores with delicatessen counters and small trays of produce would have their signage obscuring the product, therefore reducing consumer utility. This necessitated a paid application by industry (A579) to FSANZ, including commissioned consumer research that demonstrated consumers could read 3mm

ⁱⁱⁱ Information taken from FSANZ Annual Reports (www.foodstandards.gov.au)

fonts. The standard, which came into force in July 2006, was amended in December 2006 to allow 5mm font size in display cabinets.

Country of origin labelling – a failure of process

FSANZ (then ANZFA) in 2001 abandoned a proposal (P90) on country of origin labelling that had been in process since 1992 and commenced work on a new proposal (P237) in May 2001 which was abandoned in March 2004 following Ministerial policy advice.

A further proposal (P292) was released in May 2004, which reached draft assessment in March 2005. Two cost benefit analyses commissioned by FSANZ showed costs outweighed benefits in terms of consumer utility, but FSANZ persisted with its approach to mandate country of origin labelling, sending their final assessment to Ministerial Council in October of that year.

The Council called for a review and further requested FSANZ consider additional labelling requirements. A response to the review request was submitted in December 2005 which led to a further proposal to modify the standard to include selected additional fruits and vegetables products.

A discussion paper was released in February 2006 with a further cost benefit analysis. The standard finally came into force in July 2006, 14 years after the initial proposal **but for Australia only**, as New Zealand recognising the trade implications of these measures exercised its sovereign right to opt out of the Standard.

5.2 FORTIFIED BEVERAGES – AN OPPORTUNITY LOST

The slow regulatory response considering the issue of fortified beverages resulted in a lost opportunity of \$350 million for Australian manufacturing. Australian consumers have shown that they appreciate the opportunity to purchase waters and juices with added vitamins to complement their lifestyle. This growing market has been available to New Zealand manufacturers for import into Australia for many years but until recently it was not permitted for Australian manufacturers. Changing the rules had the potential to increase Australian jobs and provide niche products opportunities for the smaller independent beverage manufacturers to compete, and expand, in domestic and overseas non-alcoholic beverage markets. It took four years (see Box) from 2002 to late 2006 for the Australian Beverages Council to steer an application through the regulatory system to level the playing field with New Zealand.

Fortified Beverages – a opportunity lost

Application A470 - Addition of vitamins and minerals to formulated beverages – Initial assessment – January 2003, Draft assessment - May 2005, Final assessment – December 2005, Ministerial review requested February 2006, FSANZ returned unchanged October 2006, gazetted December 2006, four years in process.

5.3 DELAYS IN DELIVERING A BENEFIT TO CONSUMERS

5.3.1 Calcium Fortification of Juices and Biscuits

Lack of calcium in the diet contributes to osteoporosis in old age. The application to FSANZ requesting permission to fortify juices and other products with calcium lodged in 2001 showed that increasing calcium intake through these foods had the potential for reducing osteoporosis in the elderly, a disease with a cost burden, according to Access Economics, of \$9 billion annually. It took four years for this simple request to become part of the FSC because of two review requests by Ministerial Council (see Box below).

5.3.2 Phytosterol ester addition to Foods

Permission to add this food ingredient to margarine was granted in 2000 following an assessment demonstrating its safety and efficacy in reducing blood cholesterol levels. In 2003 applications were made to increase the choice of foods fortified with this ingredient. Despite the opportunity for jurisdictions represented on the Ministerial Council to provide submissions to FSANZ during the consultation process, the applications were held up for four years by two review requests (see Box). Consumers were thereby deprived of a choice of foods from which to source their phytosterols and an innovation opportunity for the industry was delayed.

Delays to the detriment of the consumer

The application to allow fruit and vegetable juices and drinks, soups and savoury biscuits to be fortified with calcium showed that increasing calcium intake through these foods had the potential for strong positive outcomes.

The initial proposal was accepted by FSANZ in December 2001. The proposal took almost two years to pass each stage of FSANZ assessment and public consultation and was submitted to the Ministerial Council in September 2003. The Ministerial Council returned the proposal to FSANZ for re-assessment, citing numerous areas for review, many of which had been already covered and reviewed thoroughly in the first stages of assessment. FSANZ reviewed and returned the recommendation to the Ministerial Council in March 2005 and it was again returned (by a majority) to FSANZ in May that year. FSANZ once again reviewed and returned their recommendation for approval to Ministerial Council and the application was finally gazetted in November 2005.

It took four years for this proposal to become part of the Food Standards Code: an unacceptable delay that cost the industry market access and consumers the opportunity to benefit from an alternate source of calcium.

Three applications (A433, A434, A508) were made for permission to add a known cholesterol lowering food ingredient to foods other than margarine, to which permission had been granted some years previously.

The applications showed that increasing consumption of these phytosterols through such foods had the potential for strong positive outcomes by reducing the burden of heart disease.

FSANZ produced an Initial assessment in March 2003, which progressed to Draft assessment in May 2004 and Final assessment in October of that year. The Ministerial Council called for a review in December 2004 and an unchanged first review report was submitted in August 2005. A second Ministerial review was requested September 2005 and a second review report reaffirming original decision submitted October 2006. The amendments were finally gazetted in November 2006, four years after the applications were made.

5.4 COSTS TO INDUSTRY – ISINGLASS AND ALLERGEN LABELLING

Due to an inconsistency in the allergen labelling standard, the brewing industry has had to replace the processing aid clarifying agent isinglass, at a cost of many millions of dollars solely to avoid labelling beer and wine as “containing fish”.

Clause 4 of Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations, requires the mandatory declaration of certain substances and their products when present in food as an ingredient, an ingredient of a compound ingredient, a food additive or component of a food additive, or a processing aid or component of a processing aid. The term ‘and their products’ refers to all products derived from the substances listed in the Table to clause 4. As fish and fish products are included in the Table to clause 4, isinglass, which is a fish product, must also be declared when present in a food. The product in question has no known allergenicity and is essentially removed during processing.

The brewing industry put in an application (A490) to amend the allergen labelling provisions to take account of these facts in January 2003. FSANZ initially assessed the application in October 2005. No further work has occurred on this as FSANZ is awaiting outcomes of further research. The industry remains unable to use isinglass as a clarifying agent four years after making the application.

5.5 MANDATORY FOLIC ACID ADDITION TO THE FOOD SUPPLY – FAILURE OF PROCESS AND GOVERNANCE

The development of a standard mandating fortification of bread flour in Australia and bread in New Zealand became controversial for a number of reasons, not least of which was the breakdown in proper process viz:

- ANZFRMC overruled FSANZ in determining the most appropriate regulatory measure to resolve a public health matter; and
- FSANZ, in the face of its own scientific assessment showing that its proposed solution was ineffective, revised its proposal at the eleventh hour and failed to communicate this successfully to its stakeholders.

The addition of folic acid to the food supply - failure of process and governance

The proposal to address the public health issue of preventing folic acid sensitive Neural Tube Defect pregnancies was released in October 2004, with FSANZ following the policy guidance on the addition of vitamins and minerals to the food supply. The policy principles for

mandatory and voluntary addition of vitamins and minerals to the food supply were thoroughly consulted on during 2003 and agreed by ministers in May 2004.

Ministers amended the policy without consultation in May 2006 and FSANZ released a draft assessment in July 2006 recommending mandatory fortification. This was finalised in September 2006 and a final assessment report released, followed by a further final assessment report in October 2006 changing the proposed food vehicle.

The subsequent review, and reconsideration of the issue resulted in the New Zealand and Commonwealth Ministers and the two most populous States being outvoted by other jurisdictions. The standard was gazetted in September 2007 with a two year transition period. Since gazettal it has become clear that the standard as written will be impractical for the industry to comply with, and some adjustment of the standard is likely to be required. This may further delay implementation and extend costs for industry.

5.6 NEW LABELLING REQUIREMENTS – FAILURE TO ACT IN A TIMELY MANNER

As part of a large review of the nutritional needs of the Australian and New Zealand populations, the National Health and Medical Research Council (NHMRC) revised the recommended intakes of a range of nutrients and energy. These values are used by food businesses when making claims about the nutritional composition of their products and are referenced in the FSC.

FSANZ was a member of the working group developing the new values, which were released in September 2005. Before food businesses can use the new values, the old values must be removed from the FSC. This has still not occurred.

This causes uncertainty for industry when planning costly labelling changes or when revising the composition of foods. By law the label must reflect what is in the FSC, even if the NHMRC guidance suggests that micronutrients levels need to be changed to reflect recent science.

5.7 HEALTH CLAIMS – A TWENTY YEAR JOURNEY WITHOUT RESOLUTION

The nutrition committee of the NHMRC in 1988 ruled out the use of substantiated health claims on food labels because it might medicalise the food supply. In 2008 the food industry remains unable to tell its consumers the truth about the health benefits of the products they buy.

The result of the tortuous policy process and the numerous raised, and then abandoned, proposals on health claims has seen time and effort and resources wasted by industry, jurisdictions and FSANZ, so far without benefit to anyone, least of all consumers. The lost opportunity costs of this sort of delay are in the millions of dollars.

Health claims on labels – a 20 year unresolved saga

FSANZ (then ANZFA) raised an initial proposal (P153) in 1997 which proceeded to full assessment in August 2000. Following a consideration of options in June 2001, the proposal was abandoned in April 2002. Nutrition content claims were also considered (P234) in the

period from 2001 to 2004 at which point the proposal was abandoned and rolled into the health claims process. The most recent attempt to permit the use of health claims on foods began in December 2003 with the release of detailed policy advice from Ministerial Council on what could and could not be permitted to make a health claim. Further guidance was provided in May 2004.

FSANZ responded with a detailed Initial assessment report in August 2004 which reached draft assessment in November 2005. This assessment was accompanied by over 1000 pages of attachments and appendices. FSANZ has continued work on the proposed Standard which now runs to almost 50 pages. It is complex, prescriptive and highly impractical for industry and will most likely favour well resourced multi-national companies developing claims. The AFGC also considers it will be very difficult for agencies to enforce to the extent that FSANZ itself considers it likely that ANZFRMC will request a review.

5.8 DUPLICATION OF GOVERNMENT EFFORT- MORE COMMITTEES

Although the Blair Review recommended a whole-of-government approach be adopted in deciding food policy and regulations, this has not been implemented. While all relevant ministers from states and territories are part of the ANZFRMC, in practice, only one from each jurisdiction takes the lead. This has generally been the Health Minister and it has not been common for other portfolio ministers to attend the council meetings.

Primary industry ministers have a vital interest in the outcomes of the ANZFRMC, now that primary industry standards are part of the regulations set by FSANZ. This concern has led to the Primary Industry Standing Committee of the Primary Industry Ministerial Council establishing a food sub-committee to oversight the work of the ANZFRMC.

If a true whole-of-government(s) approach was being addressed by the jurisdictions represented at the FRMC, this food committee of the Primary Industry Ministerial Council would be unnecessary.

5.9 INCONSISTENT APPLICATION OF FOOD REGULATIONS BETWEEN STATES

Food safety is a given and the AFGC supports all regulations that permit the supply of safe food to consumers. It is the price of entry to the market place. However, the development of separate food hygiene regulations by individual states and territories has resulted in differing application of those rules. These cause efficiency losses in requiring differing policies and procedures and food safety training programs.

Labelling requirements are increasingly being “checked” at a local council level with the advice going to the local supermarket. Where this is a branded product, that advice is passed on to the manufacturer in the state of manufacture or head office.

Apart from the efficiency losses of this pass-the-parcel approach, it is sometimes the case that the state of manufacture may have pre-determined that such “non-safety related” labelling matters do not warrant action. Country of origin labelling requirements are an example where for resource reasons some jurisdictions have elected not to take enforcement action. This leaves the “diligent” manufacturer at a competitive disadvantage

to others who may not have put in place procedures to enable appropriate country of origin labelling.

Furthermore, under the current arrangements where jurisdictions can make differing interpretations of labelling requirements, FSANZ is reluctant to provide advice to manufacturers as to how these must be addressed, instead referring manufacturers to approach each of the jurisdictions in which their product is sold for advice.

There is in place, an implementation sub-committee (ISC) of the FRSC of the ANZFRMC, which has responsibility for the uniform implementation of food regulations. ISC has not, however, been successful in delivering uniform implementation.

5.10 INCONSISTENT APPLICATION OF FOOD REGULATION BETWEEN AUSTRALIA AND NEW ZEALAND

Examples of the inconsistent application of regulation between Australia and New Zealand have been referred to above, namely country of origin labelling, addition of vitamins and minerals to beverages, and the mandatory fortification of bread flour in Australia and bread in New Zealand.

The failure by New Zealand to repeal its dietary supplements regulation (1984) continues to provide commercial advantage to New Zealand businesses exporting to Australia. The equivalent legislation in Australia (complementary medicines) is managed under the Therapeutic Goods Administration, which has different criteria for approvals for non-food supplements.

Although policy development on food type dietary supplements was begun in 2003, no progress has been made in the face of New Zealand's failure to repeal their dietary supplements regulation. FSANZ has also made no progress on a standard to regulate the addition of substances other than vitamins and minerals to foods while it awaits policy advice.

This situation has led to lost opportunities for Australian industry in the absence of a level playing field between the two countries apparently regulated by a joint Food Standards Code.

6 EFFICIENCY LOSSES AND INNOVATION OPPORTUNITIES

Efficiency losses or lost opportunity costs are difficult to quantify in any framework. However, the examples indicated above provide a basis for identifying where such impediments may occur.

Establishing a new product requires there to be a market opportunity and a clear path to market. A new food product would typically take two years to reach the market. The decision to manufacture in Australia, rather than elsewhere, is influenced by the regulatory environment. Unnecessary regulatory impediments discourage that investment, especially if they delay access to the market. The opportunity is lost to an increasingly competitive global market.

7 THE CASE FOR REGULATORY REFORM

Since the Blair review there have been a number of government reviews which have highlighted continuing difficulties faced by food industry stemming from regulation and the processes of its development. They include the *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (Banks report) and the Productivity Commission's *Performance of Benchmarking of Australian Business Regulation Report* (2007), and the Victorian Competition and Efficiency Competition (VCEC) Final Report *Simplifying the Menu* (2008).

The Banks report, for example recommended *inter alia*:

The Australian Government should commission an independent public review to examine:

- *implementing outstanding recommendations from the Blair Review on the consistent application of food laws;*
- *aligning levels of enforcement (including penalties) across jurisdictions; and*
- *the role of the Australian Government in the food regulatory system, including whether it could play a greater role in enforcing standards.*

(note: a review (Bethwaite Review) has been commissioned as recommended, but is yet to report).

More recently the VCEC report recommended *inter alia*

- *...adherence to best practice regulatory principles, specifically those set out in the Council of Australian Governments' Principles and guidelines for national standard setting and regulatory action; and*
- *...national food standards to achieve public health objectives only when it can be clearly demonstrated that this is the most cost-effective means of achieving government objectives.*

Clearly with continuing reviews highlighting short comings in Australia's food policy and regulatory arrangements from governance issues through to the process of standard setting the case for substantial regulatory reform has been made.

8 FOOD REGULATORY REFORM – AREAS REQUIRING ACTION

The AFGC considers the problems with Australia's food policy and regulatory system are so extensive and profound that only a complete overhaul of the regulatory system will provide the sufficient change, and relief of regulatory burden, for the food industry to ensuring its competitiveness into the future. Consequently, the AFGC identified a number of key areas for reform and has developed specific recommendations as listed below.

8.1 GOVERNANCE DOES NOT REFLECT AND IS NOT RESPONSIVE TO THE RESPECTIVE INTERESTS OF JURISDICTIONS

The Commonwealth, New Zealand and States and Territories each have a single vote on ANZFRMC when the economic impact of food standards varies greatly from jurisdiction to jurisdiction. Representation, and influence, on the Ministerial Council should reflect that some States (Vic, NSW & Qld) and New Zealand have larger populations and substantial food industries making important contributions to their economies.

The AFGC recognizes, and supports the preeminence of protection of public health and safety as an objective of food standards, but does not consider that equality of protection of public health and safety for Australians can only be provided by ANZFRMC participants having equal voting rights. On the contrary, the current situation of one jurisdiction one vote potentially disenfranchises Australians in larger states whose economies are supported by food manufacturing industries. Unnecessary regulatory burden imposed by smaller States through their collective vote is, in effect, regulatory imposition of comparative disadvantage on food manufacturing industries in the larger States. The AFGC considers that a more appropriate distribution of votes would be to allocate one vote to the Commonwealth, one vote to New Zealand and one vote collectively to the States and Territories – with it being decided by majority if consensus was not possible. This would ensure that all Australians were represented more equitably, and those Australians required to shoulder a greater part of the regulatory burden would have at least equal representation in the food regulatory development process.

Recommendation:

The AFGC recommends that votes are allocated to the Australia New Zealand Ministerial Council as follows: one vote to the Commonwealth, one vote to New Zealand and one vote collectively to the States and Territories.

8.2 RESOURCES FOR FOOD POLICY AND REGULATORY DEVELOPMENT IS INADEQUATE

The food manufacturing industry is Australia's largest manufacturing industry. Therefore the impact of food regulations is substantial with the potential to impose great and unnecessary cost if the regulations are inappropriate. Government departments and regulatory agencies responsible for assessing and determining Australia's food policy and regulatory needs are poorly resourced from both the public health and practical technology perspective which hinders their sensible assessment of the potential impact of regulation. Responsibility for food regulation should be transferred to lead government departments able and committed to devoting appropriate skills and expertise to their development.

Protection of public health and safety is not, of itself, strong argument for primary responsibility being in health as other, non-health agencies address issues which are important for public health and safety – for example Transport portfolios. Industry portfolios have the brief of facilitating the socially responsible development of industry which in the case of the food industry would include protection of public health and safety and informed consumer choice. History has shown that food policy and regulation is a poor cousin to other government health priorities when included in health portfolios. In NSW the New South Wales Food Authority is a successful example of a [relatively] well resourced food regulatory agency reporting through to an industry portfolio.

Recommendation

The AFGC recommends that Industry portfolios take over primary responsibility for food policy and regulation with policy input from other departments such as Health.

8.3 LACK OF NATIONAL CONSISTENCY BETWEEN JURISDICTIONS

8.3.1 Model Food Bill

As detailed earlier in this submission the Model Food Bill has not been enacted across the whole of Australia, and where it has regulatory differences and enforcement priorities vary greatly between jurisdictions imposing substantial, unnecessary costs on industry. Consistent regulations across Australia through uniform adoption of the Model Food Bill and coordinated enforcement of food regulations between jurisdictions are required.

Recommendation

The AFGC recommends immediate adoption of the Model Food Bill by all Australian jurisdictions and review and amendment of local food regulations to remove unnecessary variances.

8.3.2 Enforcement

Food standards are enforced in three broad areas:

- food production and processing – primary industry standards and the food safety standards mandate requirements to ensure food is safe and suitable for consumption;
- food composition – requirements for levels of ingredients, nutrients, additives and processing aids, allergens, endogenous toxins, contaminants and novel foods; and
- food labelling – information on food composition, origin and safe use.

Food Production and Processing

Enforcement of food production and processing standards requires local inspection and audit of production systems and premises, and systematic sampling and testing of products for sale. These are resource intensive activities some of which can be carried out by industry itself, through the use of independent, accredited third party audit. Minimising costs and reducing duplication of activities can be achieved where Government accepts third party audits. Audit frequency based on risk assessment and reduced frequencies for companies which perform well can further reduce costs for industry and allow government resources to be focused on areas of greatest public health risk. Government also has a role, particularly in product and systems surveillance and monitoring. This requires local offices and officers with local knowledge of the agricultural and food industries. Consequently, for optimal effectiveness, this area of standards enforcement is best carried out locally.

Food composition and Food Labelling

Food composition and labelling requirements are applicable nationally – there are no unique regional requirements. Therefore, their provisions and enforcement should be uniform in all regions. Uniform enforcement is best achieved by a central food standards enforcement agency. Enforcement responsibilities would involve:

- product monitoring and surveillance of compliance with composition and labelling standards – some of this activity might be contracted out to other agencies to provide national coverage;
- oversight of industry codes of practice which might provide further regulation of the market in composition or labelling areas;

- coordination of enforcement policies and activities with other agencies such as the ACCC; and
- provision of formal compliance advice to industry generally, or individual companies, to support the intent of the food standards in the event of ambiguity in interpretation – this would be similar to the tax rulings provided by the Australian Tax Office.

Enforcement of food composition and labelling should therefore become a Commonwealth responsibility residing in the Government department with primary responsibility for food standards implementation. The department would require substantial technical capability through competent staff with a detailed knowledge of food science and regulatory requirements to be effective.

Food Standards Australia New Zealand (FSANZ) should not have its power extended to enforcement due to inherent conflicts of interest.

States, Territories and the Commonwealth need to agree that responsibility for some enforcement activity (i.e. food composition and labelling) should be ceded to the Commonwealth. This will require amendments to State and Territory food acts which provide for food regulation to adopt by reference provisions of the FSC. As a first step States and Territories should adopt the Model Food Bill in its entirety (Parts A and B) and without amendment.

At the State and Territory level further steps can be taken towards consistency and streamlining of responsibility for enforcement between Departments and local government in the areas of primary production and food safety enforcement, and particularly if the major food producing and manufacturing States were to accept third party audits as an alternative to inspections.

Recommendation

The AFGC recommends centralisation of enforcement of labelling and compositional standards by a new national enforcement regulator.

8.4 POLICY VS. REGULATION

As described earlier in this submission there is no overarching food regulatory policy which guides the development of all food standards in Australia. Many important areas are without policy coverage, and other areas prescriptively addressed in the manner of regulation. Clear and unambiguous policy overlay to all areas of the FSC restricted to general higher principles is required. Specificity and prescription should be restricted to regulation only, and then only following appropriate processes demonstrating need, feasibility and that it is economically sustainable.

Recommendation

The AFGC recommends amendment of the Australia New Zealand Food Regulation Ministerial Council *Principles and Protocols for the Development of Food Regulation Policy Guidelines* detailing:

- features of effective food policy;
- required coverage of food policies to all food regulatory areas;
- disclosure requirements – full publication of policy assessments (i.e. policy impact statements); and

- **publication of a work plan for the development of food policies.**

8.5 OPERATING PRINCIPLES

As has been demonstrated through the examples cited in this submission food standard development is not always based on clear evidence of a market failure and minimum effective regulation. Policy and regulatory interventions need to be based on the principles of demonstrate need, risk assessment, regulatory impact and proportionate response with each of these being appropriately informed by sound science, and evidence.

Recommendation

The AFGC recommends introduction of minimum hurdles in market failure and regulatory impact statements which must be met before regulation is introduced to ensure a substantial need for a regulatory measure exists.

8.6 REGULATORY SCOPE

There is pressure for food regulations to address issues not directly related to food composition and production and their impact on foods as consumed. Recently there have been suggestions that food products should carry labels indicating food miles and carbon footprints. The AFGC considers that the scope of the FSC should be restricted to matters directly relevant to foods as consumed with other matters of interest to consumers addressed by the market, or if necessary within other regulatory frameworks subject to COAG principles.

Recommendation

The AFGC recommends the scope of the Australia New Zealand Food Standards Code needs to be reaffirmed through amendment of the FSANZ Act and supporting policy statements.

8.7 LEGISLATIVE ENVIRONMENT

The FSC and other legislation intersect in some areas – such as food labelling – with occasional conflict in areas due to technical realities in product specific legislation not gelling with generic legislation of the Trades Practices Act. Greater coordination and cooperation between regulatory agencies is required to ensure that consumers and industry are not disadvantaged by ambiguity created by the requirements of different legislation.

Recommendation

The AFGC recommends that regulatory agencies make ruling statements to indicate which legislation takes priority in areas of ambiguity and that agencies agree on the provision of “safe harbours” when necessary and on an issue-by-issue basis.

8.8 BUSINESS ENVIRONMENT

Industry needs are inappropriately discounted during some standards development, even when standards are addressing issues of marginal direct consumer benefit. Protection of public health and safety must remain paramount in food standards, but for other issues of less importance to consumers the interests of the industry should receive a greater

consideration as ultimately, the whole community will benefit if food industry remains profitable and competitive.

Recommendation

The AFGC recommends amendment of the FSANZ Act to more appropriately reflect that for some regulatory issues greater benefits will flow to the consumer if the interests of business are given greater prominence.

8.9 SELF- AND CO- REGULATORY APPROACHES

The technical basis for food industry operations is becoming more complex and our understanding of relationships between food components, total diets and health outcomes is becoming more sophisticated. Both scenarios will require greater complexity and flexibility in food policy and regulatory approaches. The AFGC considers there is a strong case for combined and complementary regulatory and self- and co- regulatory approaches in food safety, food composition, and food labelling. The industry has several examples of effective codes of practice and would welcome opportunities to explore their greater use, provided they are fully effective at meeting their objectives and high levels of compliance can be secured.

Recommendation

The AFGC recommends food policy provide guidance on the use of industry codes of practice to complement full regulation within the Australia New Zealand Food Standards Code.

9 CONCLUDING COMMENTS

The regulatory burden on the food industry and governments in Australia can be substantially reduced by reforming regulatory arrangements. Key steps include addressing the inherent inequities of the current Ministerial Council representation and practices, which can result in some jurisdictions imposing a regulatory comparative disadvantage on the food industries of other States. Institutional reforms are also required such as centralizing responsibilities for efficiency gains (e.g. composition and labelling) and maintaining decentralization of others (food safety) for effectiveness.

Reforms will require agreement of the States and Territories to a fundamental overhaul of the food regulatory system and will require coordination between the States and Territories and the Commonwealth and New Zealand to change legislation (Acts) which allocate enforcement responsibility to authorities. States and Territories would concentrate on food safety enforcement in their local industries, whilst the Commonwealth would focus on enforcement of food standards which apply equally to all business and protect all consumers equally across the nation.

The whole system would gain from a greater focus on the food industry and how to most effectively regulate it for optimum consumer protection and well-being appropriately

balanced by the need to ensure food industry's competitiveness in domestic and overseas markets. The AFGC stands ready to provide further information on the positions it has expressed in this submission if required.

AFGC MEMBERS AS AT 03 MARCH 2007

AAB Holdings Pty Ltd
Arnott's Biscuits Ltd
 Snack Foods Ltd
 The Kettle Chip Company Pty Ltd
Asia-Pacific Blending Corporation Pty Ltd
Barilla Australia Pty Ltd
Beak & Johnston Pty Ltd
BOC Gases Australia Ltd
Bronte Industries Pty Ltd
Bulla Dairy Foods
Bundaberg Brewed Drinks Pty Ltd
Bundaberg Sugar Ltd
Cadbury Schweppes Asia Pacific
Campbell's Soup Australia
Cantarella Bros Pty Ltd
Cerebos (Australia) Ltd
Christie Tea Pty Ltd
Clorox Australia Pty Ltd
Coca-Cola Amatil (Aust) Ltd
 SPC Ardmona Operations Ltd
Colgate-Palmolive Pty Ltd
Coopers Brewery Ltd
Dairy Farmers Group
Danisco Australia Pty Ltd
Devro Pty Ltd
Dole Australia
DSM Food Specialties Australia Pty Ltd
 DSM Nutritional Products
Earlee Products
Ferrero Australia
Fibrisol Services Australia Pty Ltd
Fonterra Brands (Australia) Pty Ltd
Foster's Group Limited
Frucor Beverages (Australia)
General Mills Australia Pty Ltd
George Weston Foods Ltd
 AB Food and Beverages Australia
 AB Mauri
 Cereform/Serrol
 Don
 GWF Baking Division
 George Weston Technologies
 Jasol
 Weston Cereal Industries
GlaxoSmithKline Consumer Healthcare
Golden Circle Ltd
Goodman Fielder Limited
 Meadow Lea Australia
 Quality Bakers Aust P/L
H J Heinz Company Australia Ltd
Hans Continental Smallgoods Pty Ltd
Harvest FreshCuts Pty Ltd
Heimann Foodmaker Group
Hoyt Food Manufacturing Industries Pty Ltd
J Boag and Son Brewing Ltd
Johnson & Johnson Pacific Pty Ltd
 Pfizer Consumer Health
Kellogg (Australia) Pty Ltd
 Day Dawn Pty Ltd
Kikkoman
Kimberly-Clark Australia Pty Ltd
Kerry Ingredients Australia Pty Ltd
Kraft Foods Asia Pacific
Lion Nathan Limited
Madura Tea Estates
Manildra Harwood Sugars
Mars Australia
 Mars Food
 Mars Petcare
 Mars Snackfood
McCain Foods (Aust) Pty Ltd
McCormick Foods Aust. Pty Ltd
Merino Pty Ltd
Merisant Manuf. Aust. Pty Ltd
National Foods Ltd
Nerada Tea Pty Ltd
Nestlé Australia Ltd
 Nestlé Foods & Beverages
 Nestlé Confectionery
 Nestlé Ice Cream
 Nestlé Chilled Dairy
 Nestlé Nutrition
 Foodservice & Industrial Division
 Novartis Consumer Health Australasia Pty Ltd
Nutricia Australia Pty Ltd
Ocean Spray International, Inc
Parmalat Australia Ltd
Patties Foods Pty Ltd
Peanut Company of Aust Ltd
Procter & Gamble Australia Pty Ltd
 Gillette Australia
PZ Cussons Australia Pty Ltd
Quality Ingredients Ltd
 Prima Herbs and Spices
Reckitt Benckiser (Aust) Pty Ltd
Ridley Corporation Ltd
 Cheetham Salt Limited
Sanitarium Health Food Company
Sara Lee Australia
 Sara Lee Foodservice
 Sara Lee Food and Beverage
SCA Hygiene Australasia
Schwarzkopf and Henkel
Sensient Technologies
Simplot Australia Pty Ltd
Specialty Cereals Pty Ltd
Spicemasters of Australia Pty Ltd
Stuart Alexander & Co Pty Limited
Sugar Australia Pty Ltd
SunRice
Swift Australia Pty Ltd
Symrise Pty Ltd
Tate & Lyle ANZ
The Smith's Snackfood Co.
Unilever Australasia
Waters Trading Pty Ltd
Wyeth Australia Pty Ltd
Yakult Australia Pty Ltd

Associate members

Accenture
Australia Pork Limited
ACI Operations Pty Ltd
Amcor Fibre Packaging
CHEP Asia-Pacific
Concurrent Activities
Dairy Australia
Exel (Aust) Logistics P/L
Focus Information Logistics Pty Ltd
Food Liaison Pty Ltd
Food Science Australia
Foodbank Australia Limited
IBM Business Cons Svcs
innovations & solutions
KPMG
Lawson Software
Legal Finesse
Linfox Australia Pty Ltd
Meat and Livestock Australia Ltd
Monsanto Australia Ltd
PricewaterhouseCoopers
Promax Applications Group Pty Ltd
Sue Akeroyd & Associates
Swire Cold Storage
Swisslog Australia Pty Limited
Touchstone Cons. Aust Pty Ltd
Visy Pak
Wiley & Co Pty Ltd

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**Comparison of
Food Acts in Australia
with the
Model Food Bill**

31st July 2007

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1. Introduction

In the late 1990s, a working party, consisting of State and Territory health department and industry and consumer association representatives coordinated through Food Standards Australia New Zealand (formerly called ANZFA), reviewed the State and Territory Food Acts. The purpose of the review was to enable uniformity of legislation and to implement the new national hygiene standards. The intended outcome of the project was to be a set of nationally uniform Food Acts across Australia. (Food Regulation Review Committee, 1998, p22)

The resultant Model Food Bill published in October 2000 was designed to be the blue print for food legislation throughout Australia. The Model Bill has two parts:

- Annex A contains the 'core provisions' including offences relating to food and emergency powers. This part of the Model Food Bill was considered to be so important that each State and Territory agreed to adopt its provisions as near 'word for word' as possible.
- Annex B contains the 'non core provisions' and details inspection and seizure powers, improvement notices and prohibition orders for premises or equipment, taking and analysis of samples, auditing, notification and registration of food businesses and approval of food premises, administration, procedural and evidentiary provisions. Annex B allowed for some flexibility, as each State and Territory could choose to adopt those provisions that best suited its needs.

With this approach it would be possible to overcome the problems that had been experienced with a similar review in the mid 1980s. At that time, most jurisdictions made amendments to the Model Food Bill as it passed through their Parliaments and this resulted in eight different Acts relating to food with some states adopting the model provisions into their Health Act or Public Health Act. (Blair Review, p16)

In 2007, has the situation improved on that experienced in the 1980s?

This report analyses the current situation regarding food legislation by comparing the Food Acts in place (or soon to be in place) in each State and Territory with the provisions described in the Model Food Bill.

2. Overview of legislation

This report focuses on the various Food Acts that relate to non primary food production. The Food Acts cannot be read in isolation as they may refer to other Acts and Regulations for definitions, offences, penalties and processes for various activities. In addition, some Food Acts advertise changes in their Government Gazettes, not in regulations. This means that a food business operating in more than one jurisdiction would need to check every Government Gazette for changes to legislation. For example, classes of food business that require food safety programs in Victoria are listed in the Government Gazette, not regulations. Similarly, in Tasmania, classes of food business that require registration are in that State's Government Gazette, not regulation.

With the introduction of food safety programs in the primary food production area, some jurisdictions have parallel primary production legislation that include the establishment of food safety schemes for certain industry sectors to administer food safety requirements. Sometimes these may impact on the regulations made pursuant to a Food Act. For example, in NSW, the regulations for primary industry and non primary industry are combined in the NSW Food Regulations.

The Model Food Bill was published in 2000, and its provisions are contained in proclaimed Food Acts in all States and Territories, except Western Australia.

The WA Food Bill 2005 had its second reading in the Legislative Council on 22/6/2006 with the committee report being tabled on 27/9/2006. Currently, in Western Australia, food businesses operate under Part VIII of the Health Act 1911. The Health (ANZ Food Standards Code Adoption) Regulations 2001 detail that

where inconsistency prevails between the Food Safety Standards and the WA Health (Food Hygiene) Regulations 1994, the regulations apply. Therefore, food businesses (and enforcement officers) that operate in Western Australia are faced with a very confusing, complex legislative situation that has existed for many years. For example, in Western Australia non hands operated taps and changing rooms are mandatory in many food businesses, but not in other parts of Australia where the Food Safety Standards prevail.

For the purposes of this report, comparison has been made with the WA Food Bill, not existing WA legislation, as it is hoped that the Bill may be enacted soon.

By comparing the number of sections and subsections contained in the various Food Acts with those in the Model Food Bill, it soon becomes clear which jurisdictions have kept closely to the Model Food Bill design.

Table 1: Composition of Food Acts compared to Model Food Bill

Model Food Bill	ACT	NSW	NT	SA	QLD	TAS	VIC	WA
Total number of sections (e.g. S1, S2, S3 - total =3) Annex A: 32 Annex B: 24 Total = 156	153	147	145	115	296	137	157	153
Total number of sections and subsections (e.g. 1 (1)(2), 2, 3(1)(2) - total = 5) Annex A: 74 Annex B: 294 Total = 368	365	410	365	293	716	317	389	426
Food regulations made pursuant to Food Act – number of regulations (2 sets of Regs in Vic)	13	176	-	15	6	7	4+10= 14	-

Queensland has nearly double the number of sections in its Food Act than those detailed in the Model Food Bill. The provisions all relate to non primary industry as the Food Production (Safety) Act 2000 contains a further 172 sections covering primary food production food safety matters.

The regulations in NSW include those for primary industry which is why these regulations are much larger than those in other jurisdictions. In Victoria, so far, there are two sets of regulations made under the Food Act, one relating to forms and the other to listing a certified training body, so these regulations have been added together.

3. Has Annex A been adopted consistently?

The provisions in Annex A were intended to be adopted consistently by each State and Territory Government and for the most part this has been achieved. Table 2 shows the comparisons of each section in Annex A of the Model Bill with the relevant Food Acts and all columns should contain ✓ or ≈ to indicate that the provision has been adopted word-for-word or with the same intent, but slightly different wording.

Table 2: Comparison of Annex A of Model Food Bill with State/Territory Food Acts

- In Western Australia comparison has been made with that State's Food Bill 2005 that is still under consideration in the WA Parliament.

Section	Model Food Bill	ACT	NSW	NT	SA	QLD	TAS	VIC	WA
Annex A (Intended to be the same in each State and Territory)									
Preliminary									
1	Objects of act	✓	✓	✓	✓	✓	✓	✓	✓
2	Definitions	✓	✓	✓	✓	✓	✓	✓	✓
3	Meaning of Food	✓	✓	✓	✓	≈	✓	≈	✓

Key: ✓ Wording same with local names numbers used ≈ Intent same, wording slightly different Δ Intent similar, but information is reworded and/or contained in more than 1 section/subsection + Extra requirement/wording to that in Model Food Bill ? This item not included in this legislation									
Section	Model Food Bill	ACT	NSW	NT	SA	QLD	TAS	VIC	WA
4	Meaning of food business	✓	≈	✓	✓	≈	✓	✓	✓
5	Meaning of primary food production	✓	✓	✓	✓+	?	✓+	✓	✓
6	Meaning of unsafe food	≈	✓	✓	✓+	✓	✓	✓	✓
7	Meaning of unsuitable food	≈	✓	✓	✓	≈	✓	✓	✓
8	Application of Act to primary food production	✓	✓	✓	✓	≈	✓	✓	✓
Serious offences relating to food									
9	Handling of food in unsafe manner	✓	✓	✓	✓	✓	✓	✓	✓
10	Sale of unsafe food	✓	✓	✓	✓	≈	✓	✓	✓
11	False description of food	✓	✓	✓	✓	≈	≈	✓	≈
Other offences relating to food									
12	Handling and sale of unsafe food	≈	✓	✓	✓	≈	✓	✓	✓
13	Handling and sale of unsuitable food	≈	✓	✓	✓	✓	✓	✓	✓
14	Misleading conduct relating to sale of food	≈	✓	✓	✓	✓	✓	✓	✓
15	Sale of food not complying with purchasers demand	≈	✓	✓	✓	≈	✓	✓	✓
16	Sale of unfit equipment or packaging or labeling material	✓	✓	✓	✓	≈	✓	✓	✓
17	Compliance with Food Standards Code	≈	✓	✓	✓	≈	✓	✓	✓
18	False descriptions of food	✓	✓	✓	✓	≈	✓	✓	✓
19	Application of provisions outside jurisdiction	✓	✓	✓	✓	✓	✓	✓	✓
Defences									
20	Defence relating to publication of advertisements	≈	≈	✓	✓	≈	✓	✓	✓
21	Defence in respect of food for export	≈	≈	≈	✓	✓	✓	✓	✓
22	Defence of due diligence	≈	✓	≈	✓	≈	✓	✓	≈
23	Defence of mistaken and reasonable belief not available (optional)	≈	✓	✓	✓	?	✓	✓	?
24	Defence in respect of handling food	≈	✓	✓	✓	≈	✓	✓	✓
25	Defence in respect of sale of unfit equipment or packaging or labelling material	≈	✓	✓	✓	≈	✓	✓	≈
Emergency powers									
26	Making of order	≈	✓	≈	≈	≈	≈	≈	≈
27	Nature of order	≈	≈	≈	✓	≈	✓	✓	✓
28	Special provisions relating to recall orders	≈	✓	≈	✓	≈	✓	✓	≈
29	Manner of making orders	≈	✓	≈	✓	≈	✓	✓	≈
30	Compensation	≈+?	✓	≈+	✓	≈	✓	≈	≈
31	Failure to comply with emergency order	≈	✓	≈+	✓	≈	✓	✓	≈
Proceedings for offences									
32	Alternative verdicts for serious offences	≈	≈	≈	✓	≈	✓	✓	≈

While most columns indicate the core provisions have been adopted either word-for-word or with slight changes that do not change their intent, the use of the other symbols can be explained by the following:

- In the ACT, if a person is aggrieved by the decision of the Minister in relation to seeking compensation for an emergency order, there is no opportunity to review the determination as there is in other jurisdictions. In addition compensation is not payable to the person if loss or damage was due to an act or omission of the person or if they caused or contributed to the danger to public health.
- In Queensland, the meaning of primary food production is not contained in the Food Act, but in the Food Production (Safety) Act 2000.
- In Queensland and WA the optional provision, making the defence of mistaken and reasonable belief unavailable, has not been adopted.
- In SA, an extra provision has been added to the definition of unsafe food, to clearly identify that between sale and consumption the food has been properly subjected to all processes, nothing happened to it to prevent it being used, it was consumed according to its reasonable intended use and the person suffered physical harm that is reasonably attributed to the food.
- In SA and Tasmania, extra provisions have been added to the definition of primary food production, so that it does not include places where food is packed or treated by customers or contractors (not employed by the business) on premises associated with where the food was grown, raised, cultivated, picked, harvested, collected or caught
- In NT, the compensation provisions regarding emergency powers include requirements for the Local Court to write to the person requesting the review outlining the decision made and reasons for the determination. In addition, if a person fails to comply with an emergency order the penalty includes a fine or imprisonment for six months.

So, overall, Annex A has been successfully taken up by each State and Territory.

4. Has Annex B been adopted consistently?

Annex B contains a smorgasbord of provisions and Table 3 shows which legislation is closely aligned to the Model Food Bill and which is not. For example, compared to the other jurisdictions, Queensland's Food Act has not kept to the Model Food Bill format, with many sections being omitted, significantly reworded, amended or added to.

The question marks in the table indicate that a provision is not included in a particular Food Act. The provision may be contained in other legislation and, given time, it may be possible to locate all the 'missing' provisions.

From the table it can be seen that, for example, the ACT Food Act does not contain provisions for approving laboratories, analysts or food safety auditors. There are no provisions adopted for administering food safety programs, identifying functions of enforcement agencies or appointing authorised officers. This does not mean the activities are not undertaken – it just means that they may be contained in other Acts and regulations.

The table is therefore useful for directing a future 'legislation-finding investigation' and revealing the true complexities of working with a supposedly modern, consistent model. For businesses, working in more than one jurisdiction this could be an extremely time-consuming and expensive task.

Table 3: Comparison of Annex B of Model Food Bill with State/Territory Food Acts

Key:										
	✓	Wording same with local names numbers used				≈	Intent same, wording slightly different			
	Δ	Intent similar, but information is reworded and/or contained in more than 1 section/subsection								
	+	Extra requirement/wording to that in Model Food Bill				?	This item not included in this legislation			
Section	Model Food Bill	ACT	NSW	NT	SA	QLD	TAS	VIC	WA	
Annex B (Intended that each State and Territory adopt appropriate provisions)										
Preliminary										
1	Name of Act									
2	Commencement									
3	Definitions	✓≈+?	✓≈+?	✓≈+?	✓≈+?	✓≈+?	✓≈+?	✓≈+?	✓≈+?	
4	Application of Act to water suppliers	≈	✓	?	✓	≈?	✓	≈+	✓	
Offences relating to food										
5	Handling of food in unsafe manner	✓	✓	?	✓	≈	✓	✓	✓	
6	Sale of unsafe food	✓	✓	?	✓	≈	✓	✓	✓	
7	False description of food	✓	✓	?	≈	≈	≈	✓	✓	
Emergency powers										
8	Limitation on stay of operation of emergency powers	?	✓	✓	?	?	✓	?	≈	
Inspection										
9	Powers of authorized officers	≈	✓	≈	✓+	Δ	✓	Δ	✓+	
10	Self-incrimination not an excuse	?	?	≈	✓	Δ	✓	?	✓	
11	Power of seizure	≈	✓	✓	Δ	Δ	Δ	Δ	≈	
12	Search warrants	≈+	≈	≈	✓+	Δ	≈	?	≈	
13	Failure to comply with requirements of authorized officers	≈	✓	≈	✓?	Δ	✓?	Δ?	Δ	
14	Interfering with seized items	✓	✓	≈	Δ	Δ	✓	Δ	✓	
15	False information	?	✓	✓	✓	Δ	✓	Δ	✓	
16	Obstructing or impersonating authorized officers	Δ?	✓	✓ Δ	✓?	✓?	Δ?	✓	≈	
Items seized by authorized officers										
17	Seized items	≈	✓	≈	?	Δ?	✓	✓ Δ?	✓	
18	Notification of seizure	≈+	✓	≈	?	Δ?	✓	Δ?	✓	
19	Destruction of filthy, decomposed or putrid matter	≈+	✓	≈	?+	Δ	✓	Δ	✓	
20	Return of seized item	≈	✓	≈	≈	Δ	≈	?	✓	
21	Forfeiture of item	≈	✓	≈	Δ?	Δ	✓	Δ	≈	
22	Cost of destruction or disposal of forfeited item	≈?	✓	✓+	?	?	✓	Δ?	≈	
23	Return of forfeited item	≈	✓	≈	Δ?	?	✓	?	✓	
24	Compensation to be paid in certain circumstances	≈?	≈	≈+	Δ+?	Δ?	✓	?	≈	
25	Application for order disallowing seizure	≈	≈	Δ?	?	?	✓	Δ	≈	
26	Enforcement agency entitled to answer application	≈	✓	≈+	?	+?	✓	?	✓	
27	Order for return of seized item	≈	✓	≈	Δ?	?	✓	Δ?	✓	
28	Ancillary orders	≈	✓	≈	≈?	?	✓	Δ?	≈+	
29	Adjournment pending hearing of other proceedings	≈	✓+	≈+	?	?	≈	?	≈	
Improvement notices and prohibition orders for premises or equipment										
30	Unclean or unfit premises, vehicles or equipment	≈	≈	≈	✓	Δ?	≈	Δ?	≈	

Key: ✓ Wording same with local names numbers used ≈ Intent same, wording slightly different Δ Intent similar, but information is reworded and/or contained in more than 1 section/subsection + Extra requirement/wording to that in Model Food Bill ? This item not included in this legislation									
Section	Model Food Bill	ACT	NSW	NT	SA	QLD	TAS	VIC	WA
31	Improvement notice	≈+	✓	≈	✓Δ	?	≈	Δ?	✓
32	Compliance with improvement notice	≈	✓	≈	✓	?	✓	?	✓
33	Prohibition order	≈?	✓	≈	✓	Δ+?	≈+	Δ?	≈+
34	Scope of notices and orders	≈+	✓	?	✓	?	✓	Δ	≈+
35	Notices and orders to contain certain information	≈	✓	≈	✓	Δ	✓	?	✓
36	Request for re-inspection	≈	✓	≈Δ	✓	Δ?	≈	?	✓
37	Contravention of improvement notice or prohibition order	≈+	✓	≈	✓+	Δ	≈	Δ	✓
38	Review of decision to refuse certificate of clearance	?	Δ	≈+	✓+	?	≈+	Δ+	✓+
39	Compensation	≈+?	✓?	≈Δ+	✓?	?	≈Δ	?	≈?
Taking of samples									
40	Proprietor to be informed	≈+	✓+	≈	✓	?	≈	Δ	≈
41	Payment for sample	≈	✓	≈	✓	?	Δ	Δ	✓
42	Samples from vending machines	≈	✓	≈	✓	?	✓	Δ	≈
43	Packaged food	≈	✓	≈	✓	?	✓	Δ	✓
44	Procedure to be followed	≈	✓	≈	✓	?	✓	≈Δ+	✓
45	Samples to be submitted for analysis	?	✓	✓	✓	?	✓	?	✓
Procedures relating to analysis									
46	Compliance with Food Standards Code	✓	✓	≈	✓	?	✓	?	✓
47	Certificate of analysis	≈?	✓	≈?	✓	Δ?	✓?	Δ?	≈
Approval of laboratories									
48	Approval of laboratories	?	≈+	?	✓	Δ?	✓+	?	✓+
49	Term of approval	?	✓	?	✓	?	✓	?	✓
50	Approved laboratory to give notice of certain interests	?	✓	?	✓	?	✓	?	≈
51	Variation of conditions or suspension or cancellation of approval of laboratory	?	✓	?	✓	?	✓	?	✓
52	Review of decisions relating to approval	?	✓Δ+	?	✓	?	≈+	?	≈
53	List of approved laboratories to be maintained	?	✓	?	✓	?	✓+	?	✓
Approval of analysts									
54	Approval of persons to carry out analyses	+?	✓	≈	✓	Δ?	?	Δ?	≈
55	Term of approval	?	✓	≈	✓	Δ	?	?	✓
56	Approved analyst to give notice of certain interests	?	✓	≈	✓	?	?	Δ	✓
57	Variation of conditions or suspension or cancellation of approval of analyst	+?	✓	≈+?	✓Δ	?	?	Δ?	✓
58	Review of decisions relating to approval	?	✓+	≈	✓	?	?	?	≈
59	List of approved analysts to be maintained	?	✓	≈	✓	?	?	Δ	✓
Approval of food safety auditors									
60	Approval of food safety auditors	?	✓+	?	✓	Δ?	?	Δ?	✓

Key: ✓ Wording same with local names numbers used ≈ Intent same, wording slightly different Δ Intent similar, but information is reworded and/or contained in more than 1 section/subsection + Extra requirement/wording to that in Model Food Bill ? This item not included in this legislation									
Section	Model Food Bill	ACT	NSW	NT	SA	QLD	TAS	VIC	WA
61	Term of approval	?	✓	?	✓	Δ	?	Δ	✓
62	Food safety auditor to give notice of certain interests	?	✓Δ	?	✓Δ	Δ?	?	Δ?	≈
63	Variation of conditions or suspension or cancellation of approval of auditor	?	≈	?	✓Δ	Δ+?	?	Δ?	✓
64	Review of decisions relating to approvals	?	✓Δ+	?	✓?	Δ?	?	?	≈
Auditing and reporting requirements									
65	Food safety programs and auditing requirements		?	?	✓Δ+	Δ?	?	Δ?	≈
66	Priority classification system and frequency of auditing	✓?	✓	?	✓	Δ+?	?	Δ?	✓
67	Duties of food safety auditors	?	✓	?	✓	Δ+?	?	Δ?	≈
68	Reporting requirements	?	✓	?	✓	Δ?	?	Δ?	≈
69	Re-determination of frequency of auditing	?	✓Δ+	?	✓	Δ	?	?	≈
70	Certificates of authority of food safety auditors	?	✓	?	✓	Δ?	?	?	✓+
71	List of food safety auditors to be maintained	?	✓	?	✓	Δ	?	?	✓
72	Obstructing or impersonating food safety auditors.	?	✓Δ?	?	✓Δ?	Δ?	?	Δ?	≈
Notification and registration of food businesses and approval of food premises									
73	Notification of conduct of food businesses	≈?	✓+?	Δ+?	✓Δ+	?	✓	Δ	≈?
74	Exemption in relation to notification of information		✓Δ+	?	?	?	✓	Δ?	≈
75	Registration of food businesses	≈+?	?	≈+	?	Δ+	≈+	Δ+?	≈
76	Renewal of registration	≈?	?	≈+?	?	Δ+?	≈	Δ?	?
77	Term of registration	?	?	?	?	Δ	≈	Δ	≈
78	Variation of conditions or suspension or cancellation of registration of food businesses	≈?	?	≈?	?	Δ+?	✓	Δ+?	≈Δ+?
79	Review of decisions relating to registration	Δ?	?	≈Δ	?	Δ	≈	Δ?	≈
80	Register of food businesses to be maintained.	≈+	?	≈+?	?	Δ?	✓+	Δ+?	≈?
Relevant authority									
81	Functions of the relevant authority in relation to this Act	?	✓+?	≈	≈	?	✓Δ+	?	≈Δ
82	Delegation	?	✓+?	≈+?	Δ+?	Δ?	Δ?	?	≈Δ+
Function of enforcement agencies									
83	Functions of enforcement agencies in relation to this Act	?	✓	≈+	✓?	?	Δ	?	≈
84	Conditions on exercise of functions by enforcement agencies	?	✓	≈	✓	?	Δ	?	≈
85	Exercise of functions by enforcement agencies	?	✓	≈	✓	Δ?	?	?	≈+
86	Reports by enforcement agencies	?	✓	≈	✓		Δ	?	≈
Appointment of authorized officers									
87	Appointment of authorized	?	✓	≈+	✓	Δ?	Δ?	Δ?	≈

Key: ✓ Wording same with local names numbers used ≈ Intent same, wording slightly different Δ Intent similar, but information is reworded and/or contained in more than 1 section/subsection + Extra requirement/wording to that in Model Food Bill ? This item not included in this legislation									
Section	Model Food Bill	ACT	NSW	NT	SA	QLD	TAS	VIC	WA
	officers								
88	Certificates of authority	?	≈+	≈+	✓	Δ	≈	Δ	≈
Advisory committees									
89	Establishment of advisory committees	?	✓	?	?	?	?	Δ?	≈?
90	Functions of advisory committees	?	✓	?	+?	?	?	Δ	?
Procedural and evidentiary provisions									
91	Nature of proceedings for offences	?	≈?	?	?	?	Δ?	Δ?	?
92	Institution of proceedings	?	✓	≈	?	?	Δ+?	≈Δ?	✓?
93	Penalty notices for certain offences	?	≈+?	?	Δ?	?	?	?	?
94	Offences by employers	?	✓	≈	≈	≈?	✓	✓	≈Δ
95	Offences by corporations	≈	≈+	≈+	≈	Δ?	≈	Δ?	Δ?
96	Liability of employees and agents	≈	✓+	≈	✓	?	✓	✓	≈
97	No defence to allege deterioration of sample	✓	✓	≈	✓	?	≈	Δ	✓
98	Onus to prove certain matters on defendant	≈	✓	≈	✓	Δ?	≈	Δ?	Δ?
99	Presumptions	≈	✓	≈	✓	Δ?	✓+	Δ?	✓
100	Certificate evidence and evidence of analysts	≈+?	✓	≈?	≈	Δ+?	≈+?	Δ?	≈
101	Power of court to order further analysis	≈	≈+	≈	≈	≈?	≈	Δ?	≈
102	Right of defendant to have third person before court	≈+	?	≈		?	≈Δ?	✓Δ?	?
103	Alternative defendants	≈	?	≈		?	Δ	≈	
104	Disclosure by witnesses		✓	≈	?	?	✓	≈?	✓
105	Court may order costs and expenses	✓	✓	≈	?	?	✓	≈?	✓
106	Court may order forfeiture	✓	✓	≈	✓	Δ	✓	Δ	≈
107	Court may order corrective advertising	≈Δ	≈	≈	≈	?	✓	✓	≈
Miscellaneous									
108	Protection from liability	≈Δ	✓+	≈?	≈Δ?	≈Δ?	Δ?	✓Δ?	?
109	Bribery	?	?	≈	?	?	✓	?	?
110	Disclosure of certain confidential information	✓?	✓	≈?	✓	Δ	≈Δ+?	≈Δ+?	≈
111	Publication of names and offenders	?	✓	≈	?	?	?	?	≈
112	Act to bind Crown	?	≈+	≈	≈+	?	Δ	✓	✓
113	Regulations	≈	≈+?	≈+?	≈Δ+	Δ?	≈Δ	Δ?	≈Δ+
114	Temporary emergency regulations	≈	≈	≈?	Δ?	Δ+?	✓Δ	?	≈?
115	Savings and transitional regulations	?	✓	≈+	✓	?	✓Δ?	Δ?	≈?
116	Service of infringement notice	?	?	?	?	?	✓	?	≈Δ?
117	Form of infringement notice	?	?	?	?	?	✓	?	Δ
118	Acceptance of infringement notice	?	?	?	?	?	✓	?	Δ
119	Extension of acceptance period	?	?	?	?	?	✓	?	Δ
120	Payment	?	?	?	?	?	✓	?	?

Key:										
	✓	Wording same with local names numbers used				≈	Intent same, wording slightly different			
	Δ	Intent similar, but information is reworded and/or contained in more than 1 section/subsection								
	+	Extra requirement/wording to that in Model Food Bill				?	This item not included in this legislation			
Section	Model Food Bill	ACT	NSW	NT	SA	QLD	TAS	VIC	WA	
121	Payments to council or Consolidated Fund	?	?	?	?	?	✓	?	Δ	
122	Effect of acceptance	?	?	?	?	?	✓	?	Δ?	
123	Withdrawal of infringement notice	?	?	?	?	?	✓Δ	?	Δ?	
124	Certain evidence not admissible	?	?+	?	?	?	✓	?	?	

Table 3 above provides a broad brush of what happens in each jurisdiction, but the following profiles focus in on a few activities to show how the Acts vary in their execution. The profiles are limited to brief summaries of the following information:

- *Legislation* – For readability this has been restricted to the major relevant Acts and Regulations.
- *Changes to Food Standards Code* – it is interesting to note how many jurisdictions have made changes to this supposedly nationally consistent legislation.
- *Inspection/seizure provisions* – These include the day-to-day powers of enforcement officers.
- *Improvement notices* – These are written instructions issued by authorised officers that are used to clean up insanitary businesses and make businesses take action to ensure food handling complies with the Food Safety Standards, food safety programs are implemented adequately and food handling complies with the Food Standards Code. Businesses are given 24 hours (or longer if specified) to comply. If the work is done within the time, no more action is taken. However, if the work is not done, a prohibition order may be given.
- *Prohibition orders* – These are given if an improvement notice has not been complied with or if immediate action is necessary to prevent or mitigate a serious danger to public health. A prohibition order may stop food handling, sale of food, the use of specified equipment or particular food handling processes. A clearance certificate is given when, on inspection, all work in the improvement notice has been actioned or there is no longer a serious danger to public health.
- *Penalty notice* – This is used for contraventions of the Food Safety Standards and gives the person the option to pay a financial penalty within a specified time rather than have the matter determined in court. It only applies to specified offences.
- *Infringement notice* – This is similar to a penalty notice in that a person can accept the fine rather than have the case heard in court for some offences. It only applies to prescribed offences.
- *Approved laboratories and approved analysts* – these are the people who undertake analysis for legal purposes. Some are appointed, some apply.
- *Approved auditors* – These provisions detail the requirements for food safety auditors that audit food safety programs. In some jurisdictions they may be individuals, in others, they must be authorised officers.
- *Food safety programs* – Some jurisdictions already require food safety programs. In October 2008, the Food Standards Code will require food businesses catering to vulnerable groups to have food safety programs. All jurisdictions will need to have a system in place to manage this process before this time.
- *Notification of premises* – This requirement is in the Food Safety Standards and the intent is that enforcement agencies know where food businesses are in their jurisdictions and what they do.
- *Registration of food businesses* – The registration process is a way that enforcement agencies can monitor businesses more closely and place conditions on its operation, if necessary. In some places, if the legislation is not complied with, the registration is cancelled so the business cannot operate.
- *Publication of names of offenders* – Many countries overseas routinely publish details of offenders in newspapers and on the internet. Some jurisdictions have adopted this provision, but others have not.

4.1 Profile: Australian Capital Territory

Is this activity undertaken?		Comment
Legislation		<p>The Food Act 2001 and the Public Health Act 1997 both contain provisions that could be used to control food safety. The Public Health Act 1997 Section 6, enables functions under the Food Act 2001 to be <i>exercised independently of, in conjunction with, or instead of</i>, a function under the Public Health Act 1997.</p> <p>The Food Regulation 2002 contains</p> <ul style="list-style-type: none"> • Excluded reticulated water systems • Excluded primary food production activities • Food businesses exempt from registration • Incorporation of Food Standards Code into regulation • Meaning of appropriate enforcement agency • Food safety program provisions <p>Note: many other pieces of legislation must be read to interpret the Food Act: e.g. Criminal Code 2002, Legislation Act 2001, Magistrates Court Act 1930</p>
Changes to Food Standards Code	N	No changes to Code noted.
Inspection/seizure	Y	Sections 45-71. Also Sections 75-92 in Public Health Act 1997. Authorised officers are appointed under the Public Health Act 1997 Section 12.
Improvement notices	Y	Sections 79-81. Also Sections 57-60 in Public Health Act 1997.
Prohibition order	Y	Sections 82-88. Similar provisions are also in Sections 61-66 of the Public Health Act 1997. In addition Sections 67-74 of the Public Health Act 1997 provides for abatement notices to be used when premises are insanitary.
Penalty notices	N	No reference to penalty notices in the Act.
Infringement notices	N	No reference to infringement notices in the Act.
Approved laboratories	N	No references to approved laboratory in the Act.
Approved analyst	Y	Appointed to be authorized analyst for the Food Act 2001 via Section 15 in Public Health Act or Section 183 Drugs of Dependence Act 1989
Approved auditors	Y	See Part 3 of Food Regulation 2002. <i>The chief health officer may, in writing, authorize a public health officer to be a food safety auditor.</i> No reference to qualifications, experience.
Food safety programs	Y	See Part 3 of Food Regulation 2002. Regulations 11-13 require: <ul style="list-style-type: none"> • food safety auditor to give copy of audit report to food business, • chief health officer to determine audit frequency based on public health and safety and business' compliance with food safety programs • registered food businesses that are required to have a program, must give a copy of food safety program to the chief health officer (including changes) and keep a copy at each premises for employees to inspect
Notification of premises	Y	Section 89. Food businesses that are exempt from registration, must notify the chief health officer before conducting business. Exemptions are contained in regulation 6 of Food Regulation 2002 and include businesses selling only non-potentially hazardous food (including from vending machines); cooked food for immediate consumption; businesses operating for no more than 5 periods a year of no longer than 3 days; food sold from registered transport vehicles and businesses that transport food.
Registration of premises	Y	Sections 91-106. Registration is annual and may be with conditions. Businesses receives certificate and must advise of changes to business activity, address etc. Chief health officer can give a disciplinary notice to amend, suspend or cancel the registration.
Publication of names of offenders	N	No provisions for this in Food Act 2001 or Public Health Act 1997.

4.2 Profile: New South Wales

Is this activity undertaken?		Comment
Legislation	Y	Food Act 2003 Food Regulations 2004 – these include provisions for primary industry food safety schemes. Developing Food Safety Schemes for: eggs, food service to vulnerable groups and catering operations.
Changes to Food Standards Code	Y	Regulation 4 amends Clause 4 of Standard 3.2.2 of the Food Standards Code so notification is not required of food handling operations for fundraising events at which all food is consumed after thorough cooking or foods that are not potentially hazardous.
Inspection/seizure	Y	Sections 37-54. Food Regulation 20 lists charges for inspections and audits at the rate of \$140 hour with minimum charge of half an hour plus \$35 for traveling expenses.
Improvement notices	Y	Sections 57-59. Used to clean up premises/vehicles, gain compliance with Food Safety Standards, ensure food safety program prepared with regulations and Food Standard Code. Copy of notice given to business and must be complied with in specified time.
Prohibition order	Y	Sections 60-65. Given if improvement notice not complied with in specified time or to prevent serious danger to public health. Prohibits food to be handled or sold until specified action has been taken. Activities can resume when premises are inspected and a clearance certificate is given.
Penalty notices	Y	Section 120. When a penalty notice is served, if a person pays the penalty within a set time and at a set place, the person is not liable to any further proceedings for the alleged offence. The Food Regulations 2004 list 34 offences for which penalty notices (between \$110 and \$2640) may be served for offences against the Act and lists penalty units (between 2 and 5 penalty units) ascribed to a further 18 offences against the Food Regulations 2004. Penalty notices may be served by police officers, the Director-General or an authorized officer. (Authorised officers must have appropriate qualifications or experience.)
Infringement notices	N	Infringement notices are not used, but penalty notices serve a similar purpose, ie pay the lesser fine or go to court to have the case heard.
Approved laboratories	Y	Section 75. A person wishing to provide analysis services at a laboratory can apply on an approved form, including required information and a fee set by regulation. No fee is currently prescribed.
Approved analyst	Y	Section 81. A person may apply to carry out analysis, on an approved form, including required information and a fee set by regulation. Regulation 173 charges a \$50 fee to accompany an application.
Approved auditors	Y	Section 87-99. Auditors may be staff of the Food Authority or other natural competent person. An application fee may be set by regulation, but no fee is currently prescribed. Food safety auditors may determine the audit frequency within certain parameters. Food safety auditors must submit within 21 days, audit reports in prescribed form to enforcement agency if done for the purposes of the Act. Any contraventions to Act that may cause imminent and serious risk must be reported within 24 hours. A copy of the audit report given to the enforcement agency must be given to the food business proprietor.
Food safety programs	Y	Sections 102-105 allow for food safety schemes to be established via regulations made in consultation with industry that detail how schemes are administered. Food safety schemes require food businesses in certain industries to be licensed and have audited food safety programs, including dairy, meat, plant products and seafood. Schemes are being developed for eggs and food service to vulnerable groups and catering operations.
Notification of premises	Y	Section 100-101. If a business is required to be licensed, it is exempt from notification. Regulation 5 permits a processing fee of \$50 for 5 premises or less or \$10 per premises if more than 5 to be paid to the Director-General or local council.
Registration of premises	N	Under Section 102, regulations can be made for schemes to include licensing provisions. See licensing provisions as part of food safety schemes.

Publication of names of offenders	Y	Section 137. The Food Authority, after any appeal period, may publish the address, trade name, description of offence, court decision, penalty imposed and other food safety information in the Gazette or a state newspaper of any person convicted of an offence.
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4.3 Profile: Northern Territory

Is this activity undertaken?		Comment
Legislation	Y	Food Act No regulations found.
Changes to Food standards Code	N	No changes to Food Standards Code noted.
Inspection/seizure	Y	Sections 48-67. Note that penalties include prison sentences for providing false information, obstructing, impersonating or threatening authorized officers.
Improvement notices	Y	Section 100. Used to clean up premises/vehicles, gain compliance with Food Safety Standards, food safety program prepared with regulations and Food Standard Code. If improvement notice is complied with the person to whom it was issued may request a copy showing the date of compliance.
Prohibition order	Y	Section 100. Given if improvement notice not complied with in specified time or to prevent serious danger to public health. Prohibits food to be handled or sold until specified action has been taken. Activities can resume when premises inspected and a clearance certificate is given. Prohibition order must be displayed in a conspicuous place.
Penalty notices	N	No references to penalty notices in Act.
Infringement notices	N	No reference to infringement notices in Act.
Approved laboratories	N	No reference to approved laboratory in Act.
Approved analyst	Y	Sections 94-99. Persons may make application on approved form with prescribed fee (set in regulations, though none set yet).
Approved auditors	N	Section 134 permits regulations to be made in the area of food safety programs. All items in Model Bill are listed under this section e.g. food safety programs, frequency of audits, reporting, approving food safety auditors – however, regulations not available yet.
Food safety programs	N	None in Act. However, may make regulations
Notification of premises	N	No notification in Act.
Registration of premises	Y	Sections 70-84. All premises must be registered. Registration includes notification information as required by Food Safety Standard 3.2.2 clause 4. Registration is for financial year and a fee may be set by regulation. Registration notice must be displayed. Register of food businesses kept to which public may pay a prescribed fee (none set yet) to view.
Publication of names of offenders	Y	Section 133. The Chief Health Officer, after any appeal period, can publish the business address, trading name, description of offence, court decision, penalty imposed and other food safety information in the Gazette or a Territory newspaper of any person convicted of an offence.

4.4 Profile: Queensland

Is this activity undertaken?		Comment
Legislation	Y	Food Act 2006 Food Regulation 2006 Food Production (Safety) Act 2000 – food safety in primary industry Food Production (Safety) Regulation 2002 – food safety in primary food production that regulate for food safety schemes in the dairy, egg and meat industries. Seafood food safety scheme is being developed. Food (Postponement) Regulation 2007 extends the period before automatic commencement of the uncommenced provisions to 23 February 2008. Note: <ul style="list-style-type: none"> Penalty units are only for individuals. Section 260 explains that in a

		<p>corporation, each executive officer is required to pay the individual penalty.</p> <ul style="list-style-type: none"> • Can only appeal for licensing, food safety programs and auditors. No appeal in this legislation for analysts, laboratories or seizure. • State administers and enforces sections relating to false descriptions of food, misleading conduct (advertising), selling unsuitable equipment/packaging and selling food that does not comply with the Food Standards Code. It also approves auditors, undertakes check audits, and administers emergency powers of chief executive. • Local governments administer the Food Standards Code in relation to the conduct of a business or to food intended for sale or food for sale, licensing, food safety programs and auditing accredited food safety programs.
Changes to Food Standards Code	Y	<p>Section 14 (2)(a)(i) Schedule 2 provides some changes to definitions in Standard 3.1.1.</p> <p>Section 4 indicates that the following clauses of the Food Standards Code do not apply to this Act:</p> <ul style="list-style-type: none"> • Standard 1.6.2 clause 9: Production of uncooked comminuted fermented meat (UCFM) • Standard 3.2.1: food safety programs • Standard 3.2.2 clause 4: notification of food businesses • Chapter 4: primary production standards. • The Food Act does not apply to a school tuckshop operated by a parents and citizens association at a State school or the handling at a person's home of food intended to be given away to a non-profit organization for sale by the organization.
Inspection/seizure	Y	<ul style="list-style-type: none"> • Sections 175-196. All these sections are worded differently to the Model Bill so it is very difficult to map them. For example there is a lot of detail on obtaining warrants to enter premises and stopping vehicles. If documents are copied they may be certified by the person responsible for them as being true copies. There is no legal food sampling method contained in Food Act or Food Regulations.
Improvement notices	Y	<p>Sections 209-211. These sections are worded differently to the Model Bill so it is very difficult to map them. For example, they do not refer to cleaning up premises/vehicles, gaining compliance with Food Safety Standards, preparing food safety program as per regulations or complying with Food Standard Code. They apply to a person <i>contravening a provision of the Food Act or ... contravening a provision in circumstances that make it likely the contravention will continue or be repeated.</i> The improvement notice must be approved by the local government if remedying the contravention in a reasonable time would be likely to stop the person's food business from operating.</p>
Prohibition order	N	<p>There are no prohibition orders referred to in the Food Act 2006. However, Sections 222-226 describe 'injunctions' that can be used by the chief executive officer to stop food being handled in an unsafe way, selling unsafe food or falsely describing food. These are applied for through the District Court. The terms of the injunction could include restraining a person from carrying on a food business or requiring a person to take stated action, disclose information or publish advertisements to remedy adverse consequences of the person's conduct.</p>
Penalty notices	N	No reference to penalty notices in Act.
Infringement notices	N	No reference to infringement notices in Act. However, other publications indicate that Prescribed Infringement Notices (PIN) will soon be introduced for certain breaches.
Approved laboratories	Y	Section 231. <i>The chief executive may approve a laboratory to analyse things taken under this Act if the chief executive is satisfied the laboratory has the resources and expertise to conduct the analysis.</i> No mention of terms of approval, notice of interests, procedure to vary conditions etc.
Approved analyst	Y	Section 227-230. Totally different wording to Food Bill. Chief executive appoints analysts. Persons do not apply to be an analyst. Section 270 requires laboratories (and businesses who may use interstate laboratories) to report immediately to the chief executive about prescribed contaminants isolated from food: <i>Campylobacter jejuni</i> , <i>Clostridium botulinum</i> , <i>Listeria monocytogenes</i> , <i>Salmonella</i> (any species), Shiga toxin-producing <i>E. coli</i> (STEC), <i>Shigella</i> (any species), <i>Yersinia enterocolitica</i> (pathogenic strains only).
Approved auditors	Y	Sections 127-155 (yes, 28 sections...!) Auditors can be individuals who apply

		and have the necessary expertise or experience and are suitable to be an auditor. Fines for auditors include: \$7,500 for not complying with conditions of their approval, \$1,500 for not returning cancelled/suspended approval within 7 days, \$7,500 for not reporting on compliance audit within 14 days and \$37,500 for not informing local government within 24 hours if they find contraventions to the Act that may pose a serious risk to the safety of food.
Food safety programs	Y	Sections 98-126 Off site caterers, on-site caterers (with some exemptions), private hospitals and food businesses prescribed by a regulation (none yet) must have an 'accredited' food safety program. The food safety program is submitted with the licence application and fee for accreditation by the local government. The application is considered with the advice of an auditor. Approval is on basis of a desk top audit. If program is approved, a copy is kept by the local government. The local government determines the frequency of compliance audits. 3 negative audit reports trigger a non conformance audit. If the business changes the process and has to amend the program to address new hazards, a copy of the amendment with a fee will need to be sent to the local government for approval.
Notification of premises	N	No reference to notification of premises in Act.
Registration of premises	N	<p>Section 48 refers to a 'licensable food business'. These include food manufacturers, for profit businesses selling unpackaged food by retail (e.g. restaurant) and non profit organizations selling meals on at least 12 days each financial year. There are 12 types of food businesses that are exempted including primary producers, unpackaged snack food, whole fruit or vegetables, seeds/spices, sale of drinks (other than fruit or vegetable juice processed at the place of sale), ice/flavoured ice, meals by non profit organizations if only fruit/cereal/toast or consumer helps prepare it, sale of meals by non profit organization that are pre-prepared elsewhere and heated up e.g. frozen meal or meal prepared by non profit organisation for education or training activity or sale of other food prescribed by regulation e.g. non profit organizations such as surf lifesaving club where member is involved in preparing meal and meal is sold to member for a nominal amount.</p> <p>Application must be in the approved form, be signed and include the fee (if any, none set yet) and be sent to local government (with food safety program if applicable), for consideration. Local government assesses suitability of applicant and premises, and if acceptable issues a licence (with or without conditions) for up to 3 years.</p> <p>Businesses will need to appoint staff member(s) as food safety supervisors to be go-between between council and the business' food handlers on food safety matters. Food safety supervisors must know about food safety hazards, have food safety skills and knowledge and have authority to supervise and give food safety directions to food handlers in the business. The business must advise local government of names of each food safety supervisor and any changes to their contact details within 14 days. (This could be a huge task.)</p>
Publication of names of offenders	N	No reference to the publication of names of offenders in the Act ie section 111 of Model Food Bill annex B is not adopted. However, the web page http://www.health.qld.gov.au/industry/food/prosecutions.asp contains a Prosecutions Table that publishes information relating to Queensland Health prosecutions and does not contain any information about prosecutions undertaken by local government. There are no prosecutions listed yet, but they will be published for a period of two years. Section 272 refers to non disclosure of confidential information, but confidential information does not include information that is publicly available.

4.5 Profile: South Australia

Is this activity undertaken?		Comment
Legislation	Y	Food Act 2001 Food Regulations 2002 Primary Produce (Food Safety Schemes) Act 2004 – for primary industry, under which regulations have been made for the citrus, meat, dairy and seafood industries.
Changes to Food standards Code	Y	<ul style="list-style-type: none"> Standard 2.5.1 subclause 4(2) does not apply to goat's milk. (ie pasteurization) Standard 3.1.1 clause 3 added subclause – However this Chapter does not apply to a food business to the extent that the food business is constituted by a) an activity or process that is regulated by or under the Primary Produce (Food Safety Schemes) Act 2004 or the Meat Hygiene Act 1994; or b) an activity or process that is exempt from the operation of Parts 5, 7 and 8 of the Food Act 2001 by virtue of the operation of regulation 13 of the food Regulations 2002. (even if the activity or process involves the substantial transformation of food. Standard 3.2.1 (food safety programs) does not apply
Inspection/seizure	Y	Sections 37-42. In the Food Act 2001 Section 39, the authorized officer does not need to inform a person that failing or refusing to comply with a requirement of an authorized officer may constitute an offence. Regulation 11 provides for a maximum inspection fee of \$80 for a small business and \$200 in any other case. Prison penalties for serious food offences are up to 4 years (Model Bill is 2 years)
Improvement notices	Y	Sections 43-45. These provisions have been adopted practically word for word from the Model Food Bill. A provision has been added to include ancillary or incidental directions.
Prohibition order	Y	Section 46. This section has been adopted practically word for word from the Model Food Bill. A provision has been added to include ancillary or incidental directions.
Penalty notices	N	No reference to penalty notices. However, Section 29 refers to expiable offences for 'other offences relating to food' ie not serious offences. These are minor indictable offences where the prosecution may elect to charge a person with a summary offence. A person alleged to have committed an offence is given an expiation notice and if payment is not made then the case must be brought as a summary offence. If proceedings are brought (ie expiation fee is not paid) the maximum penalty is \$10,000 despite any higher maximum penalty provided for that offence.
Infringement notices	N	No reference to infringement notice in Act.
Approved laboratories	Y	Sections 61-66. These provisions have been adopted practically word for word from the Model Food Bill with the only difference being to double the recommended penalty for not giving notice of direct or indirect interest in food business in Section 63 and extending the review period to 28 days for application refusal in Section 65.
Approved analyst	Y	Sections 67-72. These provisions have been adopted practically word for word from the Model Food Bill with the only difference being to double the recommended penalty for not giving notice of direct or indirect interest in food business in Section 69 and extending the review period to 28 days for application refusal in Section 71.
Approved auditors	Y	Sections 73-77. These provisions have been adopted practically word for word from the Model Food Bill with the only difference being to double the recommended penalty for not giving notice of direct or indirect interest in food business in Section 75 and extending the review period to 28 days for application refusal in Section 77.
Food safety programs	Y	Sections 78-85. Expiation fees apply to all auditing offences except obstructing a food safety auditor in Section 85.

Notification of premises	Y	Section 86. If the business is transferred to another person or changes address the appropriate enforcement agency is to be notified within 14 days. There are penalties for not complying with notification for which there are expiation fees.
Registration of premises	N	No reference to registration of premises in the Act, not even in provisions to make regulations provision in Section 113.
Publication of names of offenders	N	No reference to publication of names of offenders in the Act.

4.6 Profile: Tasmania

Is this activity undertaken?		Comment
Legislation	Y	Food Act 2003 Food Regulations 2003
Changes to Food standards Code	N	No changes noted.
Inspection/seizure	Y	Sections 40-58. These provisions have been adopted practically word for word from the Model Food Bill.
Improvement notices	Y	Sections 59-61. These provisions have been adopted practically word for word from the Model Food Bill. A provision has been added to include ancillary or incidental directions.
Prohibition order	Y	Section 62. This section has been adopted practically word for word from the Model Food Bill. A provision has been added to include ancillary or incidental directions.
Penalty notices	N	No reference to penalty notices in Act.
Infringement notices	Y	Sections 118-126. These sections have been adopted practically word for word from the Model Food Bill. Time to pay not to exceed 63 days (Model Bill 60 days) and the time for withdrawing an infringement notice is up to 42 days (Model Bill 108 days). The schedule for the 32 offences (including serious offences relating to food) that infringement notices apply are contained in the Food Regulations 2003.
Approved laboratories	Y	Sections 78-83. These provisions have been adopted practically word for word from the Model Food Bill. In Section 83, the Director of Public Health may charge a reasonable fee for inspection of the list of approved laboratories. There is no requirement for the list to be revised at least annually.
Approved analyst	N	No reference to approved analysts in Act.
Approved auditors	N	No reference to approved food safety auditors in Act.
Food safety programs	N	No reference to food safety programs in Act. Section 127 makes provision for regulations to be made concerning the preparation, implementation, monitoring of food safety program and, specifying requirements for food safety programs, but no regulations have been made in these areas yet.
Notification of premises	Y	Sections 84-85. These provisions have been adopted practically word for word.
Registration of premises	Y	Sections 86-94. Section 86 permits the Director of Public Health to place a notice in the Gazette requiring the registration of any food business or class of food business. Section 88 allows for a single certificate of registration for food businesses conducted in a vehicle. Other sections are similar to the Model Bill.
Publication of names of offenders	N	No reference to publication of names of offenders in the Act.

4.7 Profile: Victoria

Is this activity undertaken?		Comment
Legislation	Y	Food Act 1984 Health Act 1958 Food (Competency Standards Body) Regulations 2001 Food (Forms and Registration) Regulations 2005 Also: Meat Industry Act 1993, Dairy Act 2000, Seafood Safety Act 2003
Changes to Food standards Code	N	Nil noted
Inspection/seizure	Y	Sections 20-29. While these sections carry a similar intent to the Model Food Bill they have been totally reworded that makes mapping difficult. Section 9(1)(g) of the Model Food Bill that relates to taking <i>samples of water or soil or any other thing that is part of the environment in which food is handled...</i> has not been adopted. Penalties are provided for first offences and second and subsequent offences. Identity card provisions for authorised officers are in the Health Act 1958 Section 399A.
Improvement notices	N	No mention of improvement notices in Act.
Prohibition order	Y	While there is no mention of the term 'prohibition order', Section 19 of the Act includes references to 'orders' that may be given in relation to cleaning up food premises and food vending machines. These written orders are given to the proprietor when known, or affixed in a conspicuous place to the premises or machine. In Section 19B an order may also be served if the Act has been contravened by a person's insanitary clothing, poor food handling or health condition. In both cases, the order is revoked when it has been complied with and decisions may be appealed at the Magistrates Court. The Model Food Bill has a system of improvement notice and then using a prohibition order for non compliance with the improvement notice or to prevent or mitigate a serious danger to public health.
Penalty notices	N	No mention of penalty notices in Act.
Infringement notices	N	No mention of infringement notices in Act
Approved laboratories	N	No mention of approved laboratories in Act
Approved analyst	Y	Section 30-31. These sections carry a similar intent to those in the Model Food Bill, but are completely reworded. The Secretary may authorize persons whom the Secretary considers to be appropriately qualified, i.e no formal application/approval system included.
Approved auditors	Y	Sections 19O – 19T. Only approved food safety auditors for a particular class of food premises may conduct a food safety program audit for that class of premises. Auditors are certified through a certifying body (either the Secretary or prescribed in regulations- no regulations found yet) and conditions may be put on their certification. Reasons to revoke approval include if the auditor has not satisfactorily carried out 2 or more food safety program audits. Penalties for auditors include not complying with conditions or auditing when there is a conflict of interest. Only the Secretary can revoke a certification it has made.
Food safety programs	Y	Sections 19BA-19GB. Have to search the Government Gazettes to find the declared premises that require programs. In the GG of 6/12/2001, Class 1 and 2 premises require programs. Class 1 handle or sell high risk ready to eat food to vulnerable groups and Class 2 is all other food premises except retail food premises which only handle or sell pre-packaged low risk food. Audit frequencies are also in the GG. On 21/12/2001 Class 1 premises require a first audit at six months and subsequent annual audits. Class 2 premises require annual audits. Businesses can create their own program (that can be independently audited) or use a template (registered by publishing in GG) that is checked for compliance by the registration authority. If program is not adequate, registration may be revoked. All declared food business must have a food safety supervisor who understands food safety hazards and has an appropriate food safety competency standard, and ability and authority to supervise safe food handling. Food competency standards are approved by bodies listed in the regulations ie currently just the Australian National Training Authority.
Notification of premises	Y	Section 37 implies that premises that are not registered should be notified.

Registration of premises	Y	Sections 35-43A. Businesses must register with the local council, but those operated on behalf of the Crown are registered with the Secretary. Meat, Dairy and Seafood businesses having licences under the relevant Acts are exempt from licensing under the Food Act. Application for registration is accompanied by signed copy of the current food safety program and name of food safety supervisor. Premises are inspected before registration is approved (with conditions if necessary) and a certificate is provided which must be shown on demand. Registration fees are published in the GG and each registration authority keeps details in books in the prescribed form. If food safety program is not followed or other infringement occurs to the Act the registration may be revoked. An appeals process is outlined.
Publication of names of offenders	N	No mention of publication of names of offenders in Act.

4.8 Profile: Western Australia

Is this activity undertaken?		Comment
Legislation	?	The Food Bill 2005 had its second reading in the Legislative Council on 22/6/2006 with the committee report being tabled on 27/9/2006. Currently, in Western Australia food businesses operate under Part VIII of the Health Act 1911. The Health (ANZ Food Standards Code Adoption) Regulations 2001 detail that where inconsistency prevails between the Food Safety Standards and the WA Health (Food Hygiene) Regulations 1994, the regulations apply. <i>Comparison has been made with the WA Food Bill, not the existing legislation unless indicated.</i>
Changes to Food standards Code	Y	Currently, the Health (ANZ Food Standards Code Adoption) Regulations contains some minor wording amendments and the following: <ul style="list-style-type: none"> • Standard 1.6.1 – amended microbiological requirements for packaged water and packaged ice and mineral water. • Standard 2.5.2 – does not apply to goat's milk
Inspection/seizure	Y	Sections 38-61. The provisions are very similar to the Model Food Bill with the additions that Section 38 includes provision to examine labeling or advertising material and Sections 41-44 detail how to obtain and execute a warrant to enter and search premises.
Improvement notices	Y	Sections 62-64. These provisions have been adopted practically word for word from the Model Food Bill. A provision has been added to include ancillary or incidental directions.
Prohibition order	Y	Sections 65-66. These provisions contain similar wording to the Model Food Bill. A provision has been added to include ancillary or incidental directions and also for the CEO to provide written notification to the proprietor of the decision not to give a certificate of clearance.
Penalty notices	N	No reference to penalty notices in WA Food Bill.
Infringement notices	Y	Section 126. An enforcement agency may designate in writing authorized officers to give an infringement notice in the prescribed form within 28 days of offence. The penalty in the infringement notice must be paid within 28 days but another designated officer may extend or withdraw the infringement notice.
Approved laboratories	Y	Sections 82-87. Section 82 indicates that persons may apply to provide analytical services by providing information required by CEO and the fee prescribed in regulations. Other provisions are similar to the Model Food Bill.
Approved analyst	Y	Sections 88-93. These provisions have been adopted practically word for word from the Model Food Bill.
Approved auditors	Y	Sections 94-98. These provisions have been adopted practically word for word from the Model Food Bill.
Food safety programs	Y	Sections 99-103. These provisions have been adopted practically word for word from the Model Food Bill.
Notification of premises	Y	Section 107. This section requires all food businesses (apart from those exempted in the Food Safety Standards) to provide written notification and allows for a fee to be prescribed by regulation (this fee may be set under the Local Government Act 1995). If a food business is registered, it is exempted from

		notification.
Registration of premises	Y	Sections 109-115. Food businesses can be exempted from registration by regulation. Applications must be accompanied by design, fitout and food handling information together with a fee (that may be set under the Local Government Act 1995). After consideration, registration may be approved (with conditions) and may be cancelled on a number of grounds.
Publication of names of offenders	Y	Section 143. The CEO, after any appeal period, may publish the address, trade name, description of offence, court decision, penalty imposed and other food safety information in the Gazette or a state newspaper of any person convicted of an offence.

From the summary of the profiles in Table 4, it can be seen that no two jurisdictions have the same 'Food Act'. Some are close, but each has adopted its own mixture of provisions.

Table 4: Summary of profiles

	ACT	NSW	NT	SA	QLD	TAS	VIC	WA
Legislation	Y	Y	Y	Y	Y	Y	Y	?
Changes to Food standards Code	N	Y	N	Y	Y	N	N	Y
Inspection/seizure	Y	Y	Y	Y	Y	Y	Y	Y
Improvement notices	Y	Y	Y	Y	Y	Y	N	Y
Prohibition order	Y	Y	Y	Y	N	Y	Y	Y
Penalty notices	N	Y	N	N	N	N	N	N
Infringement notices	N	N	N	N	N	Y	N	Y
Approved laboratories	N	Y	N	Y	Y	Y	N	Y
Approved analyst	Y	Y	Y	Y	Y	N	Y	Y
Approved auditors	Y	Y	N	Y	Y	N	Y	Y
Food safety programs	Y	Y	N	Y	Y	N	Y	Y
Notification of premises	Y	Y	N	Y	N	Y	Y	Y
Registration of premises	Y	N	Y	N	N	Y	Y	Y
Publication of names of offenders	N	Y	Y	N	N	N	N	Y

These tables demonstrate that Annex B has not been adopted consistently.

5. What about penalties for offences?

Further evidence of inconsistency can be found when the penalties for offences are compared. It would be expected that the same offence would attract the same penalty anywhere in Australia. This was the intention of the Model Food Bill. However, with the adoption of penalties associated with penalty notices, infringement notices and expiation requirements, it means that there is a wide range of penalties for the same offence around the country.

In addition, some Food Acts refer to penalty units with another piece of legislation in each jurisdiction determining the value of a penalty unit. For example, the value of a penalty unit varies from \$75 in Queensland to \$110.12 in Victoria and will soon be \$120 in Tasmania. Also, the number of penalty units assigned to offences varies, partly because of the value given to the unit.

Table 5 lists the dollar value of penalties identified in the various Acts. It also lists penalties for 'extra' offences identified by the jurisdictions.

Table 5: Comparison of food offences contained in the Model Food Bill with State/Territory Food Acts (as at July 31st 2007)

Notes:

- This table compares the offences and penalties contained in the Model Food Bill with those adopted in relevant Food Acts in each State and Territory.
- In Western Australia comparison has been made with the WA Food Bill 2005 that is still under consideration in the WA Parliament.
- Some States and Territories assign penalty units that have a dollar value. In these situations the penalty unit and its value are shown in the column's heading and the monetary value shown in the column's body.
- In Victoria, the Act sometimes refers to dollar amounts and at other times refers to penalty units. Therefore, the amount shown is the dollar amount in the Act unless indicated by the PU values.
- In Queensland, some provisions shown with an * were due to commence in July 2007, but these have been postponed to February 2008.

	Model Food Bill	ACT Penalty units Ind: \$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
Annex A (Intended to be the same in each State and Territory)									
Serious offences relating to food									
9	Handling of food in unsafe manner	A person must not handle food intended for sale in a manner that the person knows will render, or is likely to render, the food unsafe.							
	Individual: \$100,000	\$100,000	\$110,000	\$110,000	\$100,000	\$101,250	\$100,000 (Inf: \$300)	\$100,000	\$100,000
	and/or 2 years imprisonment	2 years	2 years	2 years	Or 4 years	or 2 years	2 years	2 years	and 2 years
	Corporation: \$500,000	\$500,000	\$550,000	\$550,000	\$500,000	-	\$500,000 (Inf: \$1,000)	\$500,000	\$500,000
10	Sale of unsafe food	A person must not sell food that the person knows is unsafe.							
	Individual: \$100,000	\$100,000	\$110,000	\$110,000	\$100,000	\$101,250	\$100,000 (Inf: \$300)	\$100,000	\$100,000
	and/or 2 years imprisonment	2 years	2 years	2 years	or 4 years	or 2 years	2 years	2 years	and 2 years
	Corporation: \$500,000	\$500,000	\$550,000	\$550,000	\$500,000	-	\$500,000 (Inf: \$1,000)	\$500,000	\$500,000
11	False description of food	1) A person must not cause food intended for sale to be falsely described if the person knows that a consumer of the food who relies on the description will, or is likely to, suffer physical harm							
	Individual: \$100,000	\$100,000	\$110,000	\$110,000	\$100,000	\$101,250	\$100,000 (Inf: \$300)	\$100,000	\$100,000
	and/or 2 years imprisonment	2 years	2 years	or 2 years	or 4 years	or 2 years	2 years	2 years	and 2 years
	Corporation: \$500,000	\$500,000	\$550,000	\$550,000	\$500,000	-	\$500,000 (Inf: \$1,000)	\$500,000	\$500,000
		2) A person must not sell food that the person knows is falsely described and will, or is likely to, cause physical harm to a consumer of the food who relies on the description							
	Individual: \$100,000	\$100,000	\$110,000	\$110,000	\$100,000	\$101,250	\$100,000 (Inf: \$300)	\$100,000	\$100,000
	and/or 2 years imprisonment	2 years	2 years	or 2 years	or 4 years	or 2 years	2 years	2 years	and 2 years
	Corporation: \$500,000	\$500,000	\$550,000	\$550,000	\$500,000	-	\$500,000 (Inf: \$1,000)	\$500,000	\$500,000

	Model Food Bill	ACT Penalty units Ind: \$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
Other offences relating to food									
12	Handling and sale of unsafe food	1) A person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsafe.							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000
		2) A person must not sell food that is unsafe							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000
13	Handling and sale of unsuitable food	1) A person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsuitable							
	Individual: \$40,000	\$40,000	\$44,000 (Pen: \$550)	\$44,000	\$40,000	\$41,250	\$40,000 (Inf: \$200)	\$40,000	\$40,000
	Corporation: \$200,000	\$200,000	\$220,000 (Pen: \$1,100)	\$220,000	\$200,000	-	\$200,000 (Inf: \$600)	\$200,000	\$200,000
		2) A person must not sell food that is unsuitable							
	Individual: \$40,000	\$40,000	\$44,000 (Pen: \$550)	\$44,000	\$40,000	\$41,250	\$40,000 (Inf: \$200)	\$40,000	\$40,000
	Corporation: \$200,000	\$200,000	\$220,000 (Pen: \$1,100)	\$220,000	\$200,000	-	\$200,000 (Inf: \$600)	\$200,000	\$200,000
14	Misleading conduct relating to sale of food	1) A person must not, in the course of carrying on a food business, engage in conduct that is misleading or deceptive or is likely to mislead or deceive in relation to the advertising, packaging or labeling of food intended for sale or the sale of food							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000
		2) A person must not, for the purpose of effecting or promoting the sale of any food in the course of carrying on a food business, cause the food to be advertised, packaged or labeling in a way that falsely describes the food							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000
		3) A person must not, in the course of carrying on a food business, sell food that is packaged, or labelled in a way that falsely describes the food.							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000

	Model Food Bill	ACT Penalty units Ind: \$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
15	Sale of food not complying with purchasers demand	1) A person must not, in the course of carrying on a food business, supply food by way of sale if the food is not of the nature or substance demanded by the purchaser.							
	Individual: \$50,000 (no prison sentence in Bill)	\$50,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$101,250	\$50,000 (Inf: \$100)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	Or 2 years	\$250,000 (Inf: \$300)	\$200,000	\$250,000
16	Sale of unfit equipment or packaging or labeling material	1) A person must not sell equipment that if used for the purposes for which it was designed or intended to be used: a) would render or be likely to render food unsafe, or b) would put other equipment, or would be likely to put other equipment, in such a condition that, if the other equipment were used for the purposes for which it was designed or intended to be used, it would render, or be likely to render, food unsafe.							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$100)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf: \$300)	\$200,000	\$250,000
		2) A person must not sell packaging or labeling material that if used for the purposes for which it was designed or intended to be used would render or be likely to render food unsafe.							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$100)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf: \$300)	\$200,000	\$250,000
17	Compliance with Food Standards Code	1) A person must comply with any requirement imposed on the person by a provision of the Food standards Code in relation to the conduct of a food business or to food intended for sale or food for sale.							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$330)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$660)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000
		2) A person must not sell any food that does not comply with any requirement of the Food Standards Code that relates to the food							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$330)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$660)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000
		3) A person must not sell or advertise any food that is packaged or labeled in a manner that contravenes a provision of the Food Standards Code							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$330)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$660)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000
		4) A person must not sell or advertise for sale any food in a manner that contravenes a provision of the Food Standards Code							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$330)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$660)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	\$200,000	\$250,000

	Model Food Bill	ACT Penalty units Ind:\$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
Emergency powers									
31	Failure to comply with emergency order	A person must not, without reasonable excuse: a) carry on an activity in contravention of any prohibition imposed on the person by an order under this Part, or b) neglect or refuse to comply with a direction given by such an order, or c) fail to comply with a condition specified in such an order.							
	Individual: \$50,000	\$50,000	\$55,000 (Pen: \$1,320)	\$55,000	\$50,000	\$52,500	\$50,000 (Inf: \$200)	\$40,000	\$50,000
	(no prison sentence in Bill)	-	-	Or 6 months in prison	-	-	-	-	-
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$2,640)	\$275,000	\$250,000	-	\$250,000 (Inf: \$600)	\$200,000	\$250,000
Annex B (Intended that each State and Territory adopt appropriate provisions)									
Preliminary									
Offences relating to food									
5	Handling of food in unsafe manner	A person must not handle food intended for sale in a manner that the person ought reasonably to know is likely to render the food unsafe.							
	Individual: \$75,000	\$75,000	\$82,500	-	\$75,000	\$101,250	\$75,000 (Inf: \$200)	\$75,000	\$75,000
	(no prison sentence in Bill)					or 2 years			
	Corporation: \$375,000	\$375,000	\$412,500	-	\$375,000	-	\$375,000 (Inf: \$600)	\$375,000	\$375,000
6	Sale of unsafe food	A person must not sell food that the person ought reasonably to know is unsafe							
	Individual: \$75,000	\$75,000	\$82,500	-	\$75,000	\$101,250	\$75,000 (Inf: \$200)	\$75,000	\$75,000
	(no prison sentence in Bill)					or 2 years			
	Corporation: \$375,000	\$375,000	\$412,500	-	\$375,000	-	\$375,000 (Inf: \$600)	\$375,000	\$375,000
7	False description of food	1) A person must not cause food intended for sale to be falsely described if the person ought reasonably to know that a consumer of a food who relies on the description is likely to suffer physical harm							
	Individual: \$75,000	\$75,000	\$82,500	-	\$75,000	\$101,250	\$75,000	\$75,000	\$75,000
	(no prison sentence in Bill)					or 2 years			
	Corporation: \$375,000	\$375,000	\$412,500	-	\$375,000	-	\$375,000	\$375,000	\$375,000
		2) A person must not sell food that the person ought reasonably to know is falsely described and is likely to cause physical harm to a consumer of the food who relies on the description							
	Individual: \$75,000	\$75,000	\$82,500	-	\$75,000	\$101,250	\$75,000 (Inf: \$200)	\$75,000	\$75,000
	(no prison sentence in Bill)	-	-	-	-	or 2 years	-	-	-
	Corporation: \$375,000	\$375,000	\$412,500	-	\$375,000	-	\$375,000 (Inf: \$600)	\$375,000	\$375,000

	Model Food Bill	ACT Penalty units Ind: \$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
Inspection									
13	Failure to comply with requirements of authorized officers	1) A person must not, without reasonable excuse, fail to comply with a requirement of an authorized officer duly made under this Division.							
	Individual: \$50,000	\$50,000	\$55,000	\$55,000	\$50,000	(see extra penalties not in Food Bill)	\$50,000 (Inf: \$200)	1 st offence \$2,753 (25PU) 2 nd offence \$5506 (50PU)	\$10,000
	Corporation: \$250,000	\$250,000	\$275,000	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	-	\$50,000
14	Interfering with seized items	A person must not, without the permission of an authorized officer, detain, remove or tamper with any food, vehicle, equipment, package or labeling or advertising material or other thing that has been seized under this Act, unless it has been returned in accordance with Division 2 or an order disallowing the seizure has been made under that Division.							
	Individual: \$50,000	\$5,000	\$55,000 (Pen: \$660)	\$55,000	\$20,000	\$7,500	\$50,000 (Inf: \$200)	1 st offence \$2,753 (25PU) 2 nd offence \$5506 (50PU)	\$10,000
	(no prison sentence in Bill)	± 6 months prison	-	or 6 months prison	-	-	-	-	-
	Corporation: \$250,000	\$250,000	\$275,000 (Pen: \$1,320)	\$275,000	-	-	\$250,000 (Inf \$600)	-	\$50,000
15	False information	A person must not, in connection with a requirement or direction under this Act, provide any information or produce any document that the person knows is false or misleading in a material particular.							
	Individual: \$50,000	-	\$55,000 (Pen: \$660)	\$55,000	\$50,000	\$7,500	\$50,000 (Inf: \$200)	1 st offence \$2,753 (25PU) 2 nd offence \$5506 (50PU)	\$10,000
	(no prison sentence in Bill)	-	-	or 6 months prison	-	-	-	-	-
	Corporation: \$250,000	-	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf \$600)	-	\$50,000
16	Obstructing or impersonating authorized officers	1) A person must not, without reasonable excuse, resist, obstruct, or attempt to obstruct, an authorized officer in the exercise of the authorized officer's functions under this Act							
	Individual: \$50,000	-	\$55,000	\$55,000	\$50,000	\$7,500	\$50,000 (Inf: I&C \$200)	1 st offence \$2,753 (25PU) 2 nd offence \$5506 (50PU)	\$10,000
	(no prison sentence in Bill)	-	--	or 6 months prison	-	-	-	-	-

	Model Food Bill	ACT Penalty units Ind: \$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
	2) A person must not impersonate an authorized officer								
	Individual: \$50,000	-	\$55,000 (Pen: \$660)	\$55,000	\$10,000	\$7,500	\$10,000	-	\$10,000
	(no prison sentence in Bill)	-	-	or 6 months prison	-	-	-	-	-
	3) A person must not threaten, intimidate or assault an authorized officer in the exercise of the authorized officer's functions under this Act								
	Individual: \$50,000	-	\$55,000 (Pen: \$1,320 in respect of assaulting officer only)	\$55,000	-	-	\$50,000 (Inf: \$200)	1 st offence \$2,753 (25PU) 2 nd offence \$5506 (50PU)	\$10,000
	(no prison sentence in Bill)	-	-	or 6 months prison	-	-	-	-	-
	Corporation: (not in Bill)	-	-	\$275,000	-	-	(Inf: \$200)	-	-
Improvement notices and prohibition orders for premises or equipment									
37	Contravention of improvement notice or prohibition order	A person must not contravene or fail to comply with a prohibition order served on the person under this Part							
	Individual: \$50,000	\$10,000	\$55,000 (Pen: \$660)	\$55,000	\$50,000	-	\$50,000 (Inf: \$200)	State Govt: 1 st offence \$5,506 (50 PU) 2 nd offence \$11,012 (100PU) Authorised officer: 1 st Offence \$2753 (25PU) 2 nd Offence \$5506 (50PU)	\$50,000
	Corporation: \$250,000	\$50,000	\$275,000 (Pen: \$1,320)	\$275,000	\$250,000	-	\$250,000 (Inf: \$600)	-	\$250,000
Approval of laboratories									
50	Approved laboratory to give notice of certain interests	The person in charge of an approved laboratory must notify the relevant authority of any direct or indirect interest in any food business that a person concerned in the management of, or an employee of, the approved laboratory has as soon as possible after becoming aware of that interest.							
	Individual: \$5,000	-	\$5,500 (Pen: \$110)	-	\$10,000	-	\$10,000 (Inf: \$100)	-	\$5,000
	Corporation: (not in Bill)	-	(Pen: \$220)	-	-	-	(Inf: \$100)	-	-
Approval of analysts									
56	Approved analyst to give notice of certain interests	A person who is an approved analyst must notify the relevant authority of any direct or indirect interest in any food business that the person has as soon as possible after becoming aware of that interest.							
	Individual: \$5,000	-	\$5,500	\$11,000	\$10,000	-	-	-	\$5,000

	Model Food Bill	ACT Penalty units Ind: \$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
Approval of food safety auditors									
62	Food safety auditor to give notice of certain interests	1) A food safety auditor must notify the relevant authority of any direct or indirect interest in any food business that the auditor has as soon as possible after becoming aware of that interest.							
	Individual: \$5,000	-	\$5,500 (Pen: \$110)	-	\$10,000	\$7,500	-	1 st offence \$2,202.40 (20PU) 2 nd offence \$4404.80 (40PU) (S19S)	\$5,000
	Corporation: not in Bill	-	(Pen: \$220)	-	-	-	-	-	-
Auditing and reporting requirements									
65	Food safety programs and auditing requirements	1) The proprietor of a food business must ensure that any requirement imposed by the regulations in relation to the preparation, implementation, maintenance or monitoring of a food safety program for the food business is complied with.							
	Individual: \$50,000	-	\$55,000	-	\$25,000 Expiation \$750	\$37,500	-	Refusal/revocation of registration (S19E)	\$20,000
	Corporation: \$250,000	-	\$275,000	-	\$120,000 Expiation \$2,500	-	-	-	\$100,000
		2) The proprietor of a food business must ensure that any food safety program required to be prepared by the regulations in relation to the food business is audited at least as frequently as is determined under section 66(1), or as redetermined under section 69, in relation to the food business.							
	Individual: \$50,000	-	\$55,000	-	\$25,000 Expiation \$750	\$7,500	-	Refusal/revocation of registration (S19A)	\$20,000
	Corporation: \$250,000	-	\$275,000	-	\$120,000 Expiation \$2,500	-	-	-	\$100,000
72	Obstructing or impersonating food safety auditors.	1) A person must not, without reasonable excuse, resist, obstruct or attempt to obstruct, a food safety auditor in the exercise of the food safety auditor's functions under this Act.							
	Individual: \$50,000	-	\$55,000 (Pen: \$660)	-	\$50,000	\$7,500	-	-	\$10,000
	Corporation: \$250,000	-	\$275,000	-	-	-	-	-	-
		2) A person who impersonates a food safety auditor is guilty of an offence.							
	Individual: \$50,000	-	\$55,000	-	\$5,000 Expiation \$250	\$7,500	-	1 st offence \$2,202.40 (20PU) 2 nd offence \$4404.80 (40PU) (S19R)	\$10,000
		3) A person who assaults a food safety auditor in the exercise of the food safety auditor's functions under this Act is guilty of an offence.							
	Individual: \$50,000	-	-	-	-	-	-	-	-

	Model Food Bill	ACT Penalty units Ind: \$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
Notification and registration of food businesses and approval of food premises									
73	Notification of conduct of food businesses	1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted.							
	Individual: \$50,000	\$5,000	\$55,000 (Pen: \$330)	-	\$25,000 Expiation \$300	-	\$50,000 (Inf: \$100)	\$40,000 (N/A if registered business)	\$10,000
	Corporation: \$120,000	\$25,000	\$275,000 (Pen: \$660)	-	\$120,000 Expiation \$1,500	-	\$120,000 (Inf: \$300)	\$200,000 (N/A if registered business)	\$50,000
		2) The proprietor of a food business that is being conducted when the notification requirements of the Food Safety Standards commence must give written notice, in the approved form and within 3 months after the commencement of those requirement, of the information specified in the Food Safety Standard that is to be notified to the appropriate enforcement agency.							
	Individual: \$50,000	-	-	-	\$25,000 Expiation \$300	-	-	-	-
	Corporation: \$120,000	-	-	-	\$120,000 Expiation \$1,500	-	-	-	-
Procedural and evidentiary provisions									
93	Penalty notices for certain offences	The penalty for an offence that is dealt with by way of a penalty notice							
	Individual: \$500	-	See table to clause 275 of Regs. Up to: \$1,320 (if offence to Act) \$550 (if offence to regs)	-	\$500	-	-	-	-
	Corporation : Not in Bill	-	See table to clause 275 of Regs. Up to: \$2,640 (if offence to Act)	-	\$2,500	-	-	-	-
Miscellaneous									
109	Bribery	A person must not give, procure, offer or promise any bribe, recompense or reward to influence any person in the exercise of functions or the performance of duties under this Act.							
	Individual: \$50,000	-	-	\$55,000 Or 2 years prison	-	-	\$50,000 (Inf: I&C \$200)	-	-

	Model Food Bill	ACT Penalty units Ind:\$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria Penalty unit \$110.12	Western Australia
110	Disclosure of certain confidential information	1) A person who has, in connection with the administration or execution of this Act, obtained information relating to manufacturing secrets or commercial secrets or working processes must not disclose that information unless the disclosure is made a) with the consent of the person from whom the information was obtained or b)-e) (list of government agencies/officers)							
	Individual: \$50,000	\$5,000 ± 6 months prison	\$55,000 (Pen: \$330)	\$55,000	\$50,000	\$3,750	\$5,000	1 st offence \$5,506 (50PU) 2 nd offence \$11,012(100PU) (S54)	\$50,000
	Corporation: Not in Bill	-	(Pen: \$660)	\$275,000	-	-	-	-	-
113	Regulations	2) A regulation may create an offence punishable by a penalty not exceeding							
	\$500	\$2,000	\$2,750	\$11,000 \$55,000	\$2,500 (Expiation \$500) \$5,000	\$3,750	\$20,000 (plus \$2,000 per day)	\$1101.20 (10PU)	\$5,000

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Description	ACT Penalty units Ind:\$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria PU = penalty unit @ \$110.12	Western Australia	
Extra penalties not in Model Food Bill									
Power to destroy decomposed food etc	\$5,000 (S53)								
Power to require name and address	\$500 (S54)								
Food businesses to be registered (exemptions are listed)	\$5,000 ± 6months prison (S91)		\$55,000 \$275,000 (S70)			\$50,000 (Inf: \$200) \$120,000 (Inf: \$600) (S86)	1 st offence \$5,506 (50PU) 2 nd offence \$11,012(100PU) (S35)		
Application to register food business (1 month before start)			\$55,000 \$275,000 (S71)						
Change in details of registration or operation of food businesses	\$5,000 (S97)		\$11,000 \$55,000 (S82, 83)					\$20,000 \$100,000 (S113)	
Food business to be conducted in accordance with conditions of registration	\$5,000 (S99)		\$55,000 \$275,000 (S75)				1 st offence \$5,506 (50PU) 2 nd offence \$11,012(100PU) (S39B)		
Return of certificate of registration (due to suspension/cancellation)	\$500 (S103)								
Codes of practice – failure to comply	\$5,000 (S149)								
Offences relating to food safety schemes - handling or selling food that contravenes a provision of a food safety scheme - operating business without a required licence - Failing to comply with licence condition - Failing to comply with food safety scheme requirement - Food safety program not audited to required frequency		\$55,000 (Pen: \$330) \$275,000 (Pen: \$660) (S104)							

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Description	ACT Penalty units Ind:\$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria PU = penalty unit @ \$110.12	Western Australia
Sale of unfit equipment or packaging or labeling material A person must not sell equipment, packaging or labeling material that would make food unsuitable...			\$44,000 \$220,000 (S19)					
Exemption from application of Act – must comply with provisions of exemption			\$55,000 \$275,000 (S32)					
Analysts – notify if acquire interest in food business			\$11,000 (S96)					
Compliance with improvement notice			\$55,000 \$275,000 (S 102)	\$50,000 \$250,000 Expiation fee \$750 (S50)	\$15,000 (S209)	\$50,000 \$250,000 (S66)		
Failure to display prohibition order			\$2,200 \$11,000 (S106)					
Licence required to carry on licensable food business					\$75,000 (S49)			
Where licensee may carry on licensable food business					\$37,500 (S50)			
Licensee to comply with conditions of licence					\$15,000 (S51)			
Licensee to have food safety supervisor or Declared premises to have food safety supervisor					\$3,750 (S86*)		Refusal/revocation of registration (S19GA)	
Availability of food safety supervisor – 1) available to local govt, 2) available to food handlers in business					\$3,750 (S87*)			
Licensee to advise local govt about food safety supervisor – 1) within 30 days of licence issue 2) within 14 days of new food safety supervisor starting 3) with 14 days of food safety supervisor stopping 4) within 14 days of food safety supervisor contact details changing					\$3750 (S88*)			

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Description	ACT Penalty units Ind:\$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria PU = penalty unit @ \$110.12	Western Australia
Who must have accredited food safety program – certain businesses must have program					\$75,000 (S99*)		Refusal/revocation of registration (S19E)	
Local Govt may direct holder to amend accredited food safety program/or program in Declared premises					\$15,000 (S114*)		Refusal/revocation of registration (S19F)	
Keeping copy of accredited food safety program on premises					\$3,750 (S124*)			
Keeping accredited food safety program available for inspection					\$3,750 (S125*)			
Licensee not holding accredited food safety program must not advertise that licensee has program for business					\$15,000 (S126*)			
Auditor to comply with conditions of approval					\$7,500 (S137)			
Auditor to return cancelled or suspended approval within 7 days					\$1,500 (S150)			
Report about audit for compliance or nonconformance audit- auditor to report within 14 days					\$7,500 (S161*)			
Auditor's responsibility to inform local govts- 1) contraventions, 2) facts, 3) within 24 hours, 4) written follow up to oral details					\$37,500 (S162*)			
Authorised officer to return identity card within 21 days of ceasing position					\$1,500 (S174)			
Failure to help authorized person when monitoring and enforcing compliance with Act					\$3,750 (S183)			
Failure to give information to authorized officer when monitoring and enforcing compliance with Act					\$3,750 (S184)			

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Description	ACT Penalty units Ind:\$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria PU = penalty unit @ \$110.12	Western Australia
Powers to support seizure – 1) may require person to take thing to place and control it					\$7,500 (S190)			
Authorised person may require thing's return					\$7,500 (S191)			
Failure to give name and address					\$3,750 (S198)			
Failure to produce document					\$3,750 (S200)			
Failure to certify copy of document					\$3,750 (S201)			
Power to require information when suspect offence committed					\$3,750 (S202)			
Emergency powers of authorized officers – direct person to take reasonable steps to avoid imminent risk of death or serious illness					\$15,000 (S207)			
Prohibition about use of results of analysis-to advertise or promote thing					\$3,750 (S235)		1 st offence \$2,202.40 (20PU) 2 nd offence \$4404.80 (40PU) (S34)	
False or misleading statements to: 1) licensing, food safety programs, auditing 2) auditor					\$7,500 (S267)			
False or misleading documents to: 1) licensing, food safety programs, auditing 2) auditor					\$7,500 (S268)			
Notice of isolation of prescribed contaminant					\$7,500 (S270)			
Chief executive may give direction to business to reduce risk in relation to prescribed contaminant					\$7,500 (S271A)			
Reporting suspected intentional contamination of food 1) immediate oral notification to chief exec					\$15,000 (S271B)			
Potentially contaminated food must not be disposed of – applies to suspected intentionally contaminated food					\$15,000 (S271C)			

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Description	ACT Penalty units Ind:\$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria PU = penalty unit @ \$110.12	Western Australia
Chief executive may give direction to business to reduce risk in relation to suspected intentional contamination					\$15,000 (S271D)			
If person does not expiate offence, max penalty for summary offence				\$10,000 (S29)				
Notification of food business – give written notice of change of address or ownership				\$5,000 Expiation \$250 (S86)				
Disclosure of certain information relating to standardized food sold on multiple sites of food business				\$2,500 Expiation \$125 (S112)				
Proprietors name to be affixed to premises							\$1101.20 (10 PU) (S17)	
Powers with respect to unclean food handlers							1 st offence \$2753 (25PU) 2 nd offence \$5506 (50PU) (S19B)	
Inspection of standard food safety program – must comply with notice							Refusal/revocation of registration (S19HB)	
Audit certificates must be given to the registration authority – within 14 days							Refusal/revocation of registration (S19N)	
Only approved auditors may conduct audits							1 st offence \$2,202.40 (20PU) 2 nd offence \$4404.80 (40PU) (S19O)	
Auditor must comply with conditions of auditors certification							1 st offence \$2,202.40 (20PU) 2 nd offence \$4404.80 (40PU) (S19Q)	
Restrictions applying to council staff – must not conduct or assist audit in council district							1 st offence \$2,202.40 (20PU) 2 nd offence \$4404.80 (40PU) (S19U)	

Key: *Provision of Act not enforced yet. In Victoria both dollar amounts and penalty units are used in Act therefore, amount is dollar amount in Act unless PU indicates is calculated from penalty unit amount..									
	Description	ACT Penalty units Ind:\$100 Corp: \$500	New South Wales Penalty unit \$110	Northern Territory	South Australia	Queensland Penalty unit \$75	Tasmania Penalty unit \$100 (soon to be \$120)	Victoria PU = penalty unit @ \$110.12	Western Australia
	Exemptions concerning food safety programs – must comply with conditions							Refusal/revocation registration (\$19V)	
	Members of Food Safety Council must not 1) disclose confidential information, 2) use information for pecuniary advantage							\$550.60 (5PU) (S60H)	
	Must not threaten or intimidate a food safety auditor								\$10,000 (S106)
	Food business must only conduct business at premises in registration								\$10,000 \$50,000 (S109)

6. Discussion

When the various Acts and Regulations are compared, it soon becomes apparent that food safety legislation is complex and inconsistent in Australia. The Acts all make reference to supporting legislation, so cannot be read in isolation.

Queensland's Food Act contains 296 sections, with the next largest Act being that from Victoria with 157 sections which is very close to the 156 sections contained in the Model Food Bill. Other jurisdictions have between 115 and 153 sections.

Western Australia does not have a separate Food Act and relies on the provisions contained in part VIII of the WA Health Act 1911. The WA Food Bill 2005 is currently working its way through the WA parliamentary process and this report has focused on the new Bill, as it has been developed using the Model Food Bill and not the existing legislation. In the meantime, food businesses in that State have to comply with the WA Health (Food Hygiene) Regulations 1993 as well as the Food Safety Standards that have been adopted through the WA Health (ANZ Food Standards Code Adoption) Regulations 2001. Where there is inconsistency the food hygiene regulations apply and this can lead to differences with requirements in other States and Territories. For example, food businesses making potentially hazardous food, under the existing WA legislation require changing rooms and hands free taps to be provided, regardless of the size of the business. These provisions are not required in the Food Safety Standards.

Food Regulations made pursuant to the Food Acts are generally very small with less than 20 regulations in them. However, New South Wales' includes regulations relating to primary food production including food safety schemes and as a result, its Food Regulations contain 176 regulations.

Different jurisdictions have adopted different provisions of the Model Food Bill, with some adopting sections word-by-word and others re-writing, adding or omitting provisions completely.

Most of the sections contained in Annex A of the Model Food Bill have been adopted by all jurisdictions word-for-word or with slight amendments that have not changed their intent.

However, the same does not apply to Annex B. These provisions were designed to allow for flexibility between jurisdictions, but the intent was that, if a provision was included in an Act, then it would be similar to that shown in the Model Food Bill. Queensland and Victoria seem to have made most modifications to the wording used in the Model Food Bill.

The Model Food Bill contained provisions relating to a range of activities, including food safety programs, that would prepare jurisdictions for the modern food safety world, and bring Australia in line with our international trading partners (and competitors). Businesses that operate in a progressive food safety environment are more likely to be more successful operating in markets where these requirements are already an accepted part of doing business. The Food Standards Code requires some primary food production industries to have food safety programs and these will begin to extend to the non primary food production sector from October 2008, when food businesses providing food to vulnerable populations will need to have food safety programs.

Some States already require food safety programs, with Victoria having led the way with its template food safety programs. In New South Wales a food safety scheme is being developed for food service to vulnerable groups and catering operations in readiness for the new requirements. Queensland is also preparing itself by implementing a system of accrediting food safety programs for certain high risk businesses, with programs being submitted for approval in a desk top audit process.

Some jurisdictions have made provision for food safety programs in their regulations, but have not yet prepared the regulations or implemented them. South Australia, Western Australia, Northern Territory and Tasmania all fall into this category. In the ACT, the regulations provide for food safety programs in registered businesses that are required to have them, but as yet, there is no information as to which businesses these may be, in either the Act or the Regulations.

The overall impression with food safety programs, is that it is still early days and administrative systems are still being developed.

The system for approving auditors also varies between jurisdictions from those that make no mention (TAS) to those that have placed the requirements in regulations (ACT, NT,), those that have adopted the provisions in the Model Food Bill (SA, WA) and those that have added extra provisions (NSW, QLD, VIC).

Some jurisdictions provide penalty notices (NSW) or expiation notices (SA) or infringement notices (TAS, WA and possibly QLD soon) for certain offences. Some limit these to non serious food offences while others include the serious food offences too. These notices all provide for an offender to accept a financial penalty rather than have a case heard in court. The financial penalties, and the offences they apply to, vary from jurisdiction to jurisdiction. The penalty notices in NSW provide for set amounts of money for offences against the Food Act, but penalty units for offences against the regulations.

Day to day operations by enforcement officers are carried out in different legislative environments. In the ACT for example, the Public Health Act is used in combination with the Food Act and provisions from either can be used to control food safety. The ACT Public Health Act provides for either prohibition orders or abatement notices to be used when premises are insanitary. Unlike other States and Territories, in Queensland, officers do not have a legal sampling procedure to follow. In NSW inspections and audits can be charged at the rate of \$140 per hour with a minimum charge of half an hour plus \$35 for traveling, whereas in South Australia there is a maximum inspection fee of \$80 for small business and \$200 in any other case. The Queensland and WA Food Acts contain a lot of detail relating to search warrants. In SA the authorised officer does not need to warn someone, that not helping the officer when asked, may be an offence. In Victoria officers are authorised through the Health Act 1958.

Improvement notices are used in all States and Territories, except Victoria. In Queensland, the improvement notice provisions have been totally reworded, but the general intention is similar to that in other jurisdictions.

Prohibition orders have been adopted in all States and Territories except Queensland that uses 'injunctions' and Victoria that uses 'orders' in relation to cleaning up food premises, food vending machines, a person's insanitary clothing, poor food handling or health condition.

Laboratories are another area of interest, as one jurisdiction approves only laboratories (TAS), some approve only analysts (ACT, NT and VIC) while others approve both laboratories and analysts (NSW, SA, QLD and WA).

When it comes to notification of food businesses, all jurisdictions except QLD and the NT have adopted the separate notification provisions.

In the NT, all premises must be registered and this process captures the information required for notification purposes. The ACT (and WA in future) lists businesses that must be registered in its regulations, but in Tasmania the lists are contained in the Government Gazette. In Victoria, businesses must be registered, unless they are licensed under primary production legislation. In this State the process involves a premises and food safety program inspection before registration is approved. In SA, registration is not mentioned in the Act or Regulations.

In QLD certain food businesses are 'licensable' and in NSW, some food businesses will be licensed under food safety schemes.

In many countries there is a trend for enforcement agencies to publish the details of businesses that have been convicted of an offence. The Model Food Bill includes a provision for this that has been adopted in the Food Acts of NSW, NT and WA. Queensland has a web page for prosecutions taken by Queensland Health (not local governments), but has not adopted this provision from the Model Food Bill in its Food Act.

All in all, the Model Food Bill provided an opportunity for jurisdictions to have uniform food legislation with a common language, similar penalties for offences and complementary administrative systems, but the resultant Food Acts have not been able to achieve these aims.

7. Conclusion

This report has shown that the intentions of the Model Food Bill have for the most part been achieved for the important core provisions in Annex A, even though there is some disparity in the penalties for offences.

However, the non core provisions contained in Annex B, where they have been adopted, have not been adopted consistently and this has led to a range of food safety management systems developing in each jurisdiction. Legislation is contained in many supporting Acts and Regulations, as well as the main Food Acts and Food Regulations and some operational requirements are only published in Government Gazettes, not regulation.

The resulting eight Food Acts are all unique, each containing provisions to support the different food safety administrative systems in place in their State and Territory.

The Model Food Bill, has taken one step forward with the adoption of Annex A provisions, but the inconsistent adoption of the Annex B provisions has resulted in an overly complex legislative environment, which could impact on businesses seeking to operate in more than one jurisdiction.

8. Reference

Food Regulation Review Committee. 1998. *Food: a growth industry*. The report of the Food Regulation Review. Commonwealth of Australia, Canberra.