

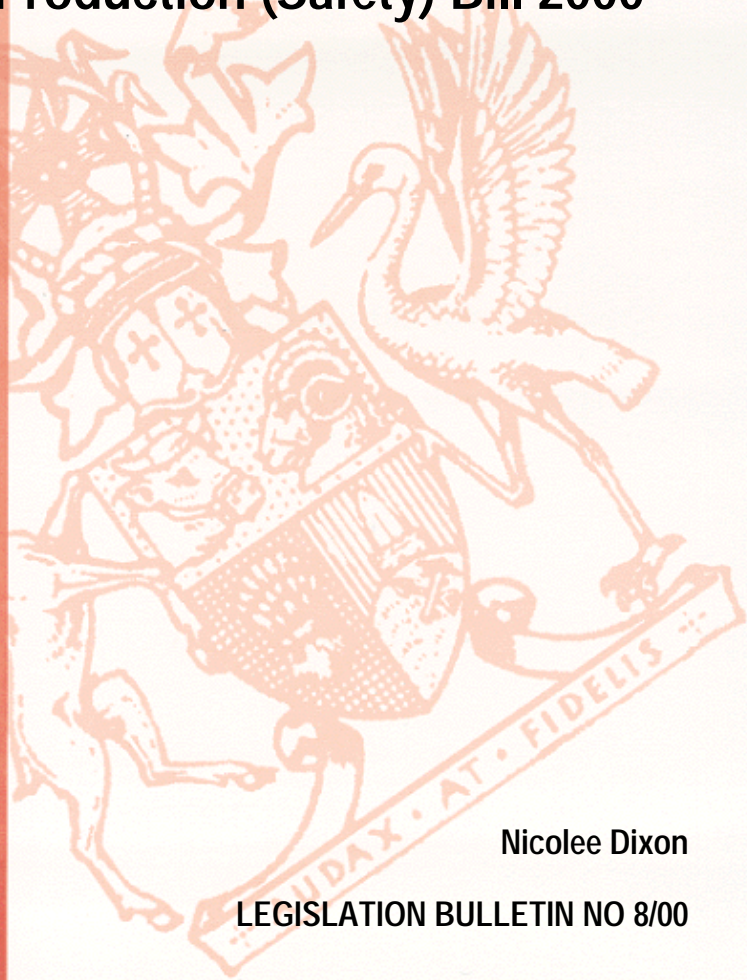


'Paddock to the Plate': Food Production (Safety) Bill 2000

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LEGISLATION BULLETIN NO 8/00



**‘PADDOCK TO THE PLATE’:
FOOD PRODUCTION (SAFETY) BILL 2000**

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NICOLEE DIXON

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ABSTRACT

The Food Production (Safety) Bill 2000 (the FPS Bill) forms part of Queensland's response to a number of moves on a national and international level to regulate food safety from 'paddock to plate'. The FPS Bill covers the primary industry sector in Queensland, setting up a regulatory body known as Safe Food Production Qld to take over the food safety functions of the Queensland Meat and Livestock Authority and the Queensland Dairy Authority.

The FPS Bill emerged in the context of a national overhaul of food safety standards. As part of its formulation of a new joint Australia New Zealand Food Standards Code, the Australia New Zealand Food Authority has developed four new Food Safety Standards (three of which will be considered by the Australia New Zealand Food Standards Council in late July 2000). The Food Standards Code (including the Food Safety Standards) must be implemented by each state and territory within six months, once it has been approved. For Queensland, it means substantial changes to the Food Act 1981 (Qld) and the Food Hygiene Regulation 1989.

Concurrently with the review of the Food Standards Code, the Senior Officials Working Group of the Council of Australian Governments has developed an Intergovernmental Agreement on a coordinated approach to the food reforms and had ANZFA develop a draft Model Food Bill to allow consistent adoption of the new Food Standards Code (including the Food Safety Standards) in each jurisdiction. However, progress on these measures has been delayed because of some differences between the states regarding implementation. In particular, coverage of the primary industry sector has been a sticking point for New South Wales and Queensland. It is unlikely that there will be significant progress on the draft Model Food Bill and the Intergovernmental Agreement before 2001 which is outside the timeframe for implementation by states and territories of the Food Standards Code and new Food Safety Standards.

It has been apparent, however, that a number of states have been keen to progress food safety reforms and it is in this climate that the Queensland Government has introduced the FPS Bill.

CONTENTS

1	INTRODUCTION.....	1
2	BACKGROUND	2
2.1	THE PROBLEM.....	2
2.2	WHY IMPLEMENT SAFE FOOD PRACTICES?	4
3	EXISTING REGULATORY CONTROL OF FOOD HYGEINE	5
3.1	COMMONWEALTH POWERS	6
3.1.1	Other Commonwealth Regulatory Bodies	7
3.1.2	The Australia New Zealand Food Authority.....	7
3.1.3	Food Standards Code	8
3.2	STATES AND TERRITORIES.....	9
3.3	FOOD SAFETY REGULATION IN QUEENSLAND	9
3.3.1	The Food Hygiene Regulation 1989	10
4	REFORMS.....	11
4.1	IMPETUS FOR REFORM	12
4.2	FOOD – A GROWTH INDUSTRY: THE REPORT OF THE FOOD REGULATION REVIEW.....	13
4.3	PROBLEMS WITH THE CURRENT REGIME	13
4.3.1	Prescriptive Requirements	14
4.3.2	Lack of Uniform Legislation.....	14
4.3.3	Inconsistent Interpretation and Application of Food Laws	15
4.3.4	Lack of Clarity and Consistency in Agency Roles and Responsibilities	15
4.3.5	Inadequate and Uncoordinated Enforcement Effort.....	15
4.3.6	Multiple Audits	16
4.3.7	Lack of Training in Hygiene Matters by Food Handlers	16
4.4	FINDINGS AND RECOMMENDATIONS.....	16

4.5	RESPONSE TO FOOD REGULATION REVIEW REPORT.....	18
4.6	THE JOINT <i>FOOD STANDARDS CODE</i>	18
4.7	NATIONAL FOOD SAFETY STANDARDS	19
4.7.1	Standard 3.1.1: Interpretation and Application.....	20
4.7.2	Standard 3.2.1 Food Safety Programmes.....	21
4.7.3	Standard 3.2.2 Food Safety Practices and General Requirements.....	23
4.7.4	Standard 3.2.3 Food Premises and Equipment	24
4.8	IMPLEMENTATION OF THE FOOD SAFETY STANDARDS	24
4.9	MODEL FOOD PROVISIONS.....	26
5	PRIMARY INDUSTRY SECTOR.....	27
5.1	QUEENSLAND'S RESPONSE	28
6	THE FOOD PRODUCTION (SAFETY) BILL 2000 (QLD).....	29
6.1	SAFE FOOD QUEENSLAND.....	31
6.1.1	Funding.....	32
6.2	FOOD SAFETY SCHEMES AND PROGRAMMES	33
6.2.1	Food Safety Advisory Committee	34
6.2.2	Food Safety Programmes.....	34
6.3	ACCREDITATION	35
6.4	AUDITING	35
6.5	ENFORCEMENT MEASURES	37
7	SOME OVERSEAS EXPERIENCES.....	38
8	CONCLUSION	39
	BIBLIOGRAPHY	40
	APPENDIX A	42

1 INTRODUCTION

The Food Production (Safety) Bill 2000 (the FPS Bill) was introduced into the Queensland Parliament on 18 May 2000. It forms part of Queensland's response to a number of moves on a national and international level to regulate food safety from 'the paddock to the plate' or 'the fishing boat to the plate'. The FPS Bill covers the primary industry sector in Queensland, setting up a regulatory body known as Safe Food Production Qld to take over the food safety functions of the Queensland Meat and Livestock Authority and the Queensland Dairy Authority.

The FPS Bill emerged in the context of a national overhaul of food safety standards. As part of its formulation of a new joint Australia New Zealand *Food Standards Code*, the Australia New Zealand Food Authority (ANZFA) has developed four new Food Safety Standards. Three of the four Food Safety Standards are due for consideration by the Australia New Zealand Food Standards Council in late July 2000 while consideration of the remaining Standard concerning Food Safety Programmes has been deferred until October 2001, pending a study commissioned by Government to evaluate the impact of its requirements on the food industry.

Concurrently with the review of the *Food Standards Code*, the Senior Officials Working Group of the Council of Australian Governments (CoAG) has developed an *Intergovernmental Agreement* on a coordinated approach to the food reforms and had ANZFA develop a draft Model Food Bill to allow consistent adoption of the new *Food Standards Code* (including the Food Safety Standards) in each jurisdiction. However, progress on consideration of the Model Food Bill and *Intergovernmental Agreement* has stalled due to some differences between the states regarding implementation. In particular, coverage of the primary industry sector has been a sticking point for New South Wales and Queensland.

Once the *Food Standards Code* (including the Food Safety Standards) has been approved, each state and territory has six months to determine the manner in which it will be implemented. In the case of Queensland, there will be a need to significantly alter the *Food Act 1981* (Qld) and the Food Hygiene Regulation 1989 (through a complete repeal of the latter or through an incorporation of the new Standards). The draft Model Food Bill and the *Intergovernmental Agreement* will not be considered again by CoAG before November 2000 and it is unlikely that any significant progress will be made prior to early 2001. That protracted timeframe is beyond that within which states and territories must implement the Food Safety Standards (by approximately January 2001). It has been apparent, however, that a number of states have been keen to progress food safety reforms in various sectors within their own jurisdictions.

It is in this climate that the Queensland Government has introduced the FPS Bill. At present it is unclear how the Bill will affect the implementation of the Model Food Bill, given some differences between those pieces of legislation regarding the treatment of primary produce.

2 BACKGROUND

In the past decade, public awareness of food-borne illness has steadily increased. This has been prompted by recent severe outbreaks of food poisoning in Australia causing death and serious illness on a scale that seems to surpass similar incidents in the past. A recent survey conducted by the Commonwealth Government Agency, Biotechnology Australia, has revealed that more Australians are concerned about the safety of their food than they are about genetic modification of food.¹

2.1 THE PROBLEM

Australia's food industry provides over 20 billion meals every year² and in 1997/98 food, beverage and tobacco manufacturing turnover of \$47,142m was the largest contributor to total manufacturing turnover.³ On the whole, Australia's food safety standards are good (only about 0.1% of those 20 billion meals would result in a bout of food poisoning⁴), but there have been some notorious, and very serious, lapses. The latest estimate is that there were approximately 4.2 million cases of food poisoning in Australia last year (although only 10% were reported) and that Australian consumers have a 22% chance of getting such an illness every year. However, underreporting and misdiagnosis has made actual data difficult to obtain.⁵

The following are examples of recent, and well publicised, incidents:

¹ 'Concerns about food safety', *Rural News*, 5 May 2000, at ABC Internet Site: <http://www.abc.net.au>

² Australia. Australia New Zealand Food Authority, *Food safety standards – costs and benefits: An analysis of the regulatory impact of the proposed national food safety reforms*, May 1999, p xiv.

³ Australian Bureau of Statistics at Internet Site <http://www.abs.gov.au>

⁴ Belinda Hickman, 'One man's meat', *Australian*, 17 September 1999, p 16 (reporting a comment made by Mr Richard Souness, Programme Manager for Food Safety at the Australia New Zealand Food Authority).

⁵ Ian Lindenmayer, Managing Director, Australia New Zealand Food Authority, *Food Regulation in Australia and New Zealand – the Changing Environment*, Address, 10.30 am, Thursday 7 October 1999 at the ANZFA Internet Site <http://www.anzfa.gov.au/> (follow link 'speeches').

- the Garibaldi mettwurst incident in South Australia in 1995, where smallgoods infected with *E.coli*, killed a child and hospitalised many others. There were 23 cases of permanent health damage, including 16 (many of them children) with haemolytic-uraemic syndrome which causes bloody diarrhoea and kidney failure leading to life-long need for treatment;
- the Wallis Lake incident in New South Wales in 1997 where oysters affected by sewage contamination caused more than 700 incidents of hepatitis A;
- approximately 500 people became ill after eating Vietnamese pork rolls in Melbourne that were contaminated with *Salmonella*;
- peanut butter containing peanuts infected with traces of *Salmonella* caused more than 60 illnesses in Victoria in June 1996 and prompted a massive nationwide recall of most brands of the product;
- Nippy's recalled its orange juice products during March 1999 because of a *Salmonella* outbreak affecting over 100 Adelaide people.

Overseas countries have had their own problems. Cancer-causing dioxins found in animal feed led to the banning from sale of all Belgian chicken and pork and other bi-products such as chocolate. Even Coca-Cola was forced to suspend sales of its products in Belgium and France when contaminants were blamed for an illness outbreak.

Consumers are becoming more sophisticated in their expectations concerning food safety and are increasingly wary of unclean restaurants or take-aways whose staff prepare sandwiches without plastic gloves, or sneeze or cough over food, or leave chicken sandwiches to sit for long hours at warm room temperatures.

They are also learning more about hygienic preparation of food in the home with numerous public health campaigns warning of the dangers of using dishcloths to wipe up spills on the floor or using the same cutting board for raw meat and raw vegetables. Even the school lunch box has come under scrutiny such that it would be more uncommon now than ten years ago to find egg sandwiches awaiting lunchtime in a warm school cloakroom.

Despite growing consumer awareness and education, the risks and incidence of food-borne illness have been rising. While data on the exact number of outbreaks is limited, often due to the fact that many cases go unreported or undiagnosed, some factors contributing to the causes have been identified:

- more virulent and more lethal strains of bacteria and viruses. Pathogens such as *Salmonella typhimurium*, *Listeria monocytogenes* and *E.coli* 0157 have recently emerged. Also, bacteria once found only in meat has been

found in vegetables.⁶ There are many arguments about the reason for that phenomenon, including the increased use of antibiotics for animals and humans; the expanding array of anti-bacterial cleaning products for the home; the greater use of intensive farming leading to more potential for infection in animals; or the mechanisation of food preparation⁷;

- changing consumer tastes and way of life. No longer do consumers prepare the majority of their own meals. Pre-packaged foods to cater for busy lifestyles are becoming increasingly popular and consumers tend to eat a greater variety of foods from different cultures, particularly in restaurants. Overall, consumers now buy a lot of food products that have been prepared at considerable distance from them;⁸ and
- the increase in more vulnerable older persons in the community.

2.2 WHY IMPLEMENT SAFE FOOD PRACTICES?

It is estimated that food-borne illnesses cost Australia approximately \$2.1 billion annually. It is difficult for food businesses to actually quantify the cost of compliance with food regulations and separate that cost from what would amount to good business practice.⁹ Quantification of the costs of food safety failures and the benefits of effective regulation of food safety to consumers, industry and government is also difficult.¹⁰ Costs, however, can be widespread and even negatively impact on Australia's reputation as a market for clean and green produce.

While consumers may suffer illness, medical costs and loss of wages, an outbreak of food-borne illness that can be traced back to a business has severe and lasting repercussions. The particular business can lose profits from decreased productivity and incur the costs of damaged reputation, fines and/or law suits (a recent example being the class action claim involving over 1000 people affected by contaminated peanut butter). Such impact may be wider than the company involved. For example, failure of products such as mettwurst in one company can affect the entire

⁶ Hickman, p 16.

⁷ Hickman, p 16.

⁸ Australia. National Food Safe Working Group, *National Safe Food System*, July 1997, p 3. Downloaded from Internet Site: <http://www.affa.gov.au/idg/food2/index.html>.

⁹ Australia. Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, 1998, pp 31-37.

¹⁰ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 27.

smallgoods industry for many years. The outbreak of illness from consumption of oysters from Lake Wallis in New South Wales resulted in a decline in the consumption of oysters right across Australia and a drop in sales of all types of seafood for some time after the incident.¹¹

There are, indeed, incentives in implementing measures that will ensure that food supply, from the paddock or ship to the plate, is safe. Many food businesses do employ safe food practices as a result of good business practices as well as needing to comply with food regulations. In particular, where the business supplies food to large retailers, fast-food businesses or increasingly more exacting overseas markets, preventative quality assurance mechanisms have been implemented, some of which exceed existing legal standards or regulations.

However, it is necessary to ensure that food safety requirements do not impose unnecessary burdens upon the food industry which already finds that food laws are inconsistent, overlap, are overly prescriptive and often ambiguous, particularly where one business operates across a number of jurisdictions.¹² In response, governments worldwide are moving to regulate the safety of food from 'paddock to plate' implementing measures that are as non-prescriptive and seamless as possible along the entire food chain. Many primary industries, especially the meat and dairy industries, already have effective and reputable quality assurance systems and programmes in place for controlling food hazards at the source. Hence the wariness that some primary producers have towards any new laws or regulations.

3 EXISTING REGULATORY CONTROL OF FOOD HYGEINE

As with so many vital areas of concern to the community, with education and health among the prime examples, food hygiene is regulated by a myriad of federal, state and local government laws.

There are about 150 Acts and associated regulations for controlling food or agrifood¹³ businesses which are developed, administered and enforced by a number of Commonwealth, state and territory agencies and over 700 local governments.

¹¹ ANZFA, *Food safety standards – costs and benefits: An analysis of the regulatory impact of the proposed national food safety reforms*, p 10.

¹² Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 34 citing a survey conducted by the Australian Food Council.

¹³ The Food Regulation Review Committee use the term 'agrifood' to describe the food supply chain from the farm, fishing vessel or orchard to the kitchen, restaurant or cafe in Australia or overseas: Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 7.

Not all are confined to food safety but also regulate matters such as trade practices, labelling, control of agriculture and veterinary chemicals.¹⁴

3.1 COMMONWEALTH POWERS

Any comprehensive role by the Commonwealth is precluded by lack of constitutional power over general food safety standards with direct control limited to interstate and international trade, quarantine measures, bounties, fisheries in Australian waters beyond territorial limits and weights and measures.¹⁵

The Commonwealth's main food safety role is through the auspices of the Australia New Zealand Food Authority (ANZFA) which develops food standards for incorporation into the *Food Standards Code*. Once they have been approved by the Australia New Zealand Food Standards Council (ANZFS), consisting of Commonwealth, state, territory and New Zealand Health Ministers, they are adopted by the state and territory laws (for example, in Queensland this occurs under the *Food Act 1981* (Qld) and the Food Standards Regulation 1994) and enforced by state and territory agencies and local governments.

The *Food Standards Code* relates only to the composition, safety and labelling of food products ie food quality. Presently, there are no standards that deal directly with food safety. Regulation of safe production and processing of foods is basically a matter for individual states and territories (eg. the Food Hygiene Regulation 1989 (Qld)). However, ANZFA has developed four Food Safety Standards with a view to their inclusion in the *Food Standards Code* and adoption in all jurisdictions through appropriate legislation. To assist in this, ANZFA has circulated a draft Model Food Bill that lays down how the new safety standards should be taken up by state and territory legislation.

The difficult part is implementation at a state and territory level, particularly with opposition from some parts of the primary industry sector regarding the appropriateness of certain aspects of the four new Food Safety Standards. The added complication is New South Wales and Queensland legislation which attempts to comprehensively cover the primary industry sector.

¹⁴ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 14.

¹⁵ See Commonwealth Constitution, s 51(i), (ix), (iii), (x), (xv).

3.1.1 Other Commonwealth Regulatory Bodies

Other Commonwealth agencies with food regulation responsibilities include:

- the Department of Agriculture, Fisheries and Forestry (AFFA) incorporating other bodies such as Australian Quarantine and Inspection Service (AQIS),¹⁶ the National Office of Food Safety, and a number of meat and livestock corporations;
- the Department of Health and Aged Care which oversees, *inter alia*, ANZFA, the Therapeutic Goods Administration, the National Health and Medical Research Council;
- the Australian Competition and Consumer Commission (ACCC);
- the Consumer Affairs Division of the Department of the Treasury (responsible for mandatory product recalls).

3.1.2 The Australia New Zealand Food Authority

ANZFA is established by the *Australia New Zealand Food Authority Act 1991* (Cth). It has a number of educative and research functions but its most important activity is probably to develop draft standards for inclusion in the *Food Standards Code*, and to make recommendations to the ANZFSO in relation to those draft standards. It also reviews standards; develops draft codes of practice and guidelines; and has a monitoring and surveillance role concerning activities relating to food. In addition, it is empowered to facilitate the harmonisation of state and territory laws and procedures relating to food.¹⁷

The predecessor of the ANZFA was the National Food Authority until July 1996 when New Zealand became a party to the process of development of uniform food standards.

ANZFA is comprised of a part-time Chairperson, a Managing Director and six other government appointed members (two of whom are New Zealand members) with experience in fields such as public health, food science, human nutrition, food production or retailing, public administration and consumer rights. ANZFA is managed by an executive director and a scientific director.¹⁸

¹⁶ AQIS inspects imported food to check compliance with the *Food Standards Code*. It also jointly administers with ANZFA the Imported Food Inspection Scheme.

¹⁷ *Australia New Zealand Food Authority Act 1991* (Cth), s 7, as amended by the *Australia New Zealand Food Authority Amendment Act 1999* (Cth).

¹⁸ *Australia New Zealand Food Authority Act 1991*, s 40.

3.1.3 Food Standards Code

The *Food Standards Code* is a means of facilitating consistent food standards between Australia and New Zealand in accordance with the 1995 Agreement between the Government of Australia and the Government of New Zealand, establishing a system for the development of joint food standards.

ANZFA develops food standards in accordance with a number of objectives, the most important of which are the protection of public health and safety; the provision of adequate information to enable consumers to make informed choices; and the prevention of misleading or deceptive conduct.¹⁹ There is also recognition of the need for standards to be based on risk analysis using the best available scientific evidence.

The *Food Standards Code* collects together over 90 food standards concerning the standard and quality of food. Part A concerns general standards applying to all foods (eg. labelling, genetically modified food, use-by-dates, preservatives, colourings, food additives, maximum residue limits, processing aids, vitamins and minerals, food irradiation), Parts B to Q impose standards dealing with particular classes of food (eg. cereals, meat, vegetables, eggs, fruit, fish, sugar, beverages), Part R concerns special purpose foods (eg. formula for infants, low joule foods, carbohydrate modified foods) and Parts S and T concern miscellaneous and transitional matters.

The food standards are developed or varied by ANZFA in either of two ways. The first is through application made to it by a body or agency, the other is on its own initiative. It is a public process with submissions and comment being sought in separate rounds. Once a new standard or variation is made, it is recommended for adoption by ANZFSC. If ANZFSC adopt the standard, it is gazetted in Australia and New Zealand and commences on the date specified as part of the *Food Standards Code*.

The *Food Standards Code* has the force of law and it is an offence to supply food which does not comply with the Code. Enforcement occurs through legislation in the states and territories in Australia and New Zealand and the various agencies within each jurisdiction.

ANZFA has undertaken a major overhaul of the *Food Standards Code* (including the introduction of Food Safety Standards), with a view to developing a joint Code in accordance with the abovementioned treaty obligations with New Zealand. The proposed joint *Food Standards Code* is examined at Section 4.6.

¹⁹ *Australia New Zealand Food Authority Act 1991*, s 10.

3.2 STATES AND TERRITORIES

In May 1980, Australian Health Ministers endorsed a Model Food Act which was intended to bring into line all food laws in Australia by each state and territory enacting uniform Food Acts. However, uniformity was diluted by the fact that most legislatures made amendments to the Food Acts, ultimately resulting in eight different Food Acts throughout the nation.²⁰

In 1986, an attempt was made by each state and territory Health Minister to achieve uniform food standards by agreeing to adopt the *Food Standards Code* developed by the National Food Authority (the predecessor of the ANZFA).²¹ However, it was not until 1991 that this came to fruition with the adoption of the *Food Standards Code* by each state and territory.

The *Food Standards Code* is adopted by each jurisdiction in either of two ways: by reference and without amendment (Northern Territory, New South Wales, South Australia and Western Australia), or by stating that the standards in the Code are 'prescribed standards' with which food must comply (Australian Capital Territory, Tasmania, Victoria and Queensland). In Queensland, the *Food Standards Code* is adopted by the Food Standards Regulation 1994.²²

3.3 FOOD SAFETY REGULATION IN QUEENSLAND

In Queensland, the main food legislation is the *Food Act 1981*, the *Meat Industry Act 1993* (Qld) and *Dairy Industry Act 1993* (Qld). The Food Standards Regulation 1994 (incorporating the provisions of the *Food Standards Code* as 'prescribed standards') and the Food Hygiene Regulations 1989 (regulating the safety of food preparation, sale and handling) are subordinate legislation to the *Food Act*. Other legislation (not further considered in this Bulletin) includes the *Agricultural Standards Act 1994* (Qld), the *Agricultural and Veterinary Chemicals Act 1994* (Qld), and the *Stock Act 1915* (Qld).

²⁰ Another attempt at uniformity has been manifested in the Mutual Recognition Agreement for Goods and Services between Australian governments, enabling goods to be sold in any state or territory provided that they comply with the laws of the originating jurisdiction.

²¹ This was under the terms of the National Food Standards Agreement 1986 which established the National Health and Medical Research Council to create the *Food Standards Code*.

²² See Food Standards Regulation 1994, ss 3 and 5.

Enforcement of the *Food Standards Code* and Food Hygiene Regulation is left mainly in the hands of local government food inspectors.²³

3.3.1 The Food Hygiene Regulation 1989

Under the *Food Act*, a local government officer may be authorised to exercise various administration and enforcement functions that would be performed by the chief health officer. Administration of the Food Hygiene Regulation is undertaken by each local government (there are approximately 140 councils in Queensland) which is responsible for licensing, registering and inspecting food premises and vehicles within its own local area.²⁴

The Food Hygiene Regulation deals with matters which include:

- construction and design specifications for food premises (eg. lighting, walls, floors, fixtures, fittings, cool rooms, hand washing facilities, toilets);
- protection of food and appliances from contamination through certain practices eg. interference with food packaging, use of unclean labels;
- personal hygiene and conduct of workers;
- protection of food during transportation;
- temperatures for food storage; use of appliances,
- utensils and tableware;
- usage of packing materials for food;
- maintenance of food premises and vehicles and appliances.

The Regulation also covers licences and registration of food stores, premises and vehicles.

Offences, including the possession or use of unsound food (eg mouldy, damaged or unwholesome food), and preparation of food in premises used as a sleeping area or where an animal is allowed to be, are included in the Regulation.

Many of the provisions of the Food Hygiene Regulation are quite prescriptive and lacking in any real food safety outcomes.

²³ Other regulatory bodies in Queensland include Queensland Health, Department of Primary Industries (DPI), Department of Premier and Cabinet, Department of Communication & Information, Department of Environment, Office of Fair Trading, Local Government & Planning, & Sport, Queensland Dairy Authority, and the Queensland Livestock and Meat Authority.

²⁴ Food Hygiene Regulation 1989, s 6.

4 REFORMS

Over the past decade, food hygiene issues have been the focus of a number of reform initiatives, including:

- Primary Industry Ministers at all levels of government agreed to develop national food safety standards for domestic meat. This has led to the Australian Standards for the hygienic production, processing, handling and transportation of meat and meat products (the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ) Meat Standards) which have been adopted by each state and territory in the various Meat Acts eg. the *Meat Industry Act 1993* (Qld) (see [Section 5.1](#));
- Food Regulation Review Committee (FRR) Report which examined food regulatory matters at all government levels (see [Sections 4.2-4.4](#));
- ANZFA's overhaul of the *Food Standards Code* and proposed joint Code for Australia and New Zealand (see [Section 4.6](#));
- ANZFA's development of four national food safety standards (see [Section 4.7](#));
- Proposals for uniform 'model' state and territory Food Acts (see [Section 4.9](#));
- Establishment of the National Safe Food Working Group (NSFWG), by the Standing Committee on Agriculture and Resource Management, the Standing Committee on Fisheries and Agriculture and the ANZFA Advisory Committee, which recommended the implementation of a Model for a National Safe Food System. The recommendations reflected the need for nationally consistent regulatory arrangements across the whole food chain and a framework for monitoring and compliance;²⁵
- In Queensland, the former Minister for Health established the Food Safety Task Force to investigate the underlying issues in the outbreak of food-borne illness and to recommend strategies to reduce the incidence of food-borne illness in Queensland. Its Final Report in July 1997 made a number of recommendations including 'in principle' adoption of the proposed Food Safety Standards, subject to further consultation with relevant stakeholders; a review of the roles and responsibilities of Queensland Health, the Department of Primary Industries, the Queensland Meat and Livestock Authority, the Queensland Dairy Authority and local government with a view to amalgamation into a single agency; a review of all food legislation

²⁵ Australia. Department of Primary Industries and Energy, National Safe Working Group, *National Safe Food System*, July 1997, Unpublished..

with a guiding principle of incorporation into a single Act with subordinate legislation;²⁶

- Also in Queensland, a Food Industry Committee of the Chief Officers' Forum was set up to improve the coordination of government programmes for the food industry under which there are two working groups – the Safe Food Working Group and the Industry Development Working Group.²⁷

4.1 IMPETUS FOR REFORM

A number of issues have been an impetus for reform of the manner in which food safety is regulated. Among those have been a strong push for better food safety laws by consumer groups in response to outbreaks of food poisoning over the past decade; pressure from the food industry to make laws more efficient and less costly; National Competition Policy reforms advocating the reassessment of laws that restrict competition without having any countervailing benefit to the public interest; and reforms undertaken by Australia's trading partners in relation to food safety issues.

In 1994, the NFA (predecessor of ANZFA) published a discussion paper concerning the future direction of food hygiene regulation in Australia, including proposals for the development of uniform hygiene standards for adoption by each jurisdiction.²⁸

In March 1997, the Prime Minister announced, in his *More Time for Business* Statement that the Commonwealth Government would cooperate with state and territory governments to reform regulations concerning food and agriculture in order to reduce overlap and duplication, encourage greater national consistency, and simplify processes thus resulting in lower compliance costs.²⁹ The Statement was in response to the 1996 Report of the Small Business Deregulation Task Force (*Time for Business*, known as 'the Bell Report') which found that small business

²⁶ Queensland. Queensland Health, Food Safety Task Force, *Moving Forward with Food Safety in Queensland*, Final Report, July 1997.

²⁷ Other measures that will not be considered further in this Bulletin are: the review of the *Imported Food Control Act 1992* (Cth) by the Imported Food Control Act Review Committee in 1998 to ensure consistency with National Competition Policy and ANZFA's revised Food Industry and Government Health Authorities Food Recall Protocols to achieve more consistency in food recall across all three levels of government.

²⁸ Australia. National Food Authority, *Safe Food Handling – Australia: A Discussion Paper On The Future Direction Of Food Hygiene Regulation*, Discussion Paper, AGPS, 1994.

²⁹ Hon J Howard MP, Prime Minister of Australia, *More Time for Business*, Statement, March 1997 at Internet Site <http://www.dewrsb.gov.au/>

felt extremely burdened by paperwork and dealing with a multitude of overlapping regulatory bodies in many areas of business activity. The Food Regulation Review (FRR) stemmed from this initiative along with the Commonwealth Government's legislative review programme under the National Competition Policy Agreement.

4.2 FOOD – A GROWTH INDUSTRY: THE REPORT OF THE FOOD REGULATION REVIEW

The FRR Committee comprised industry, consumer and government representatives from all Australian jurisdictions and New Zealand and was chaired by Dr W H Blair OAM. The Final Report: *Food: A Growth Industry* was released in August 1998.

The key objectives of the FRR were:

- while protecting public health and safety, to reduce the regulatory burden on the food sector, and examine those regulations which restrict competition, impose costs or confer benefits on business; and
- improve the clarity, certainty and efficiency of food regulatory arrangements.

The scope of the Review covered the whole of the domestic, exported and imported food industry, including primary production, processing and retail.

4.3 PROBLEMS WITH THE CURRENT REGIME

The FRR Committee consulted extensively with a number of industry groups, government bodies and consumers and identified the main issues of concern regarding the current system of food regulation.³⁰ It found that the food industry wanted regulations that effectively sought to control food hazards and risks rather than merely imposed undue burden on commercial activities and were essentially unrelated to food safety and public health. Prescriptive and inappropriate food standards and regulations were viewed as preventing innovation and competition.³¹

The problems identified fall into the broad headings below.

³⁰ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, pp 39-40.

³¹ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 47.

4.3.1 Prescriptive Requirements

Many hygiene regulations are prescriptive and outdated, having been written up to 70 years ago. Some are no longer relevant to today's society nor reflect current practices. A number have no real safety basis as their rationale and yet require strict compliance. For example, s 9(5) of the Food Hygiene Regulation 1989 (Qld) prescribes, in meticulous detail, the structure, position and height of ledges and window sills:

9(5) Ledges and window sills on or in walls—

(a) that are located in areas in which food is prepared, packed or served shall—

(i) be splayed downwards at an angle sufficient to ensure that they cannot be used as shelves; and

(ii) be finished with all edges rounded to smooth surfaces;

(b) that are located in areas in which food is prepared and in which splashing or soiling is likely to occur shall be situated not less than 300 mm above the top of any bench or appliance that is in a position below or adjacent thereto.

It is also important that junctions between falls and walls *are coved to a radius of not less than 25 mm, with such coving being firmly supported* (s 10(2)).

An example from another jurisdiction:

Fish shops are required to have two doorways (one for business and one for service) and a bakehouse cannot be used unless the interior walls are either painted with oil paint or kept well lime washed.

4.3.2 Lack of Uniform Legislation

A difficulty facing many food businesses is that there are different food safety regulations in each state and territory and for various parts of the food chain. There are also separate laws for exported food. Many requirements are inconsistent. For example, food businesses operating in many jurisdictions have to comply with a number of different sanitising temperatures (ranging from 70°C in Victoria to 77°C in New South Wales and South Australia).

In addition, there are no consistent arrangements for registering or licensing agrifood businesses. Domestic dairy and meat works must be registered by the dairy and meat authorities of the relevant jurisdiction. Some businesses have complained that a single food business may have to hold a number of separate registrations, particularly if operating across a number of jurisdictions, adding to the cost and paperwork for those businesses.

4.3.3 Inconsistent Interpretation and Application of Food Laws

Many agrifood businesses have complained that they have experienced inconstant enforcement of food laws by food inspectors, even within the one jurisdiction where the law is the same.³²

In most cases the complaints were regarding variation between agencies and even between individual inspectors from the one agency. One pertinent example was of a meat retailer in one area in Victoria being allowed to use sawdust on the floor but in another shire, this was unlawful. Another was of three veterinary officers approving an abattoir operator to load chillers in a particular way but two other officers later withdrawing that approval leading to a huge disruption in the company's production.

4.3.4 Lack of Clarity and Consistency in Agency Roles and Responsibilities

Food businesses operating across a number of jurisdictions find that, while in one state it is accountable to a particular agency, in another it is to a totally different agency. In particular, domestic meat producers find that auditing and enforcement in some states is carried out by health inspectors but in others it is by local government inspectors.

There is also a feeling that there is a blurring of roles carried out by health department officers and primary industry/agriculture department officers with nobody particularly sure which officer has responsibility for certain aspects of the food chain.

4.3.5 Inadequate and Uncoordinated Enforcement Effort

Some food businesses complain that it is unfair if their competitors are not punished for not complying with food laws. Inconsistent enforcement is often created by differences in the allocation of resources between local government areas for pursuing compliance activities. This has resulted in a more reactive and less proactive management of food safety where local government budgets have been unable to accommodate the growth in food businesses and growing pressures to eliminate risks.³³

³² Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 41.

³³ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 44.

4.3.6 Multiple Audits

A common complaint among agrifood businesses was that some of them experience 10 or 12 audits each year, or more, by private and government auditors. Audits are generally charged to the business and there is also the expense of providing the required information. In addition, sometimes the audit outcomes are not consistent. There was also dissatisfaction expressed with the present system of accreditation of auditors and their lack of training to cope with new processes and standards in the food industry.

4.3.7 Lack of Training in Hygiene Matters by Food Handlers

Much support was received from consumers and the industry for any new hygiene standards to include a requirement for mandatory training of food handlers. This reflects current dissatisfaction with general food hygiene.

In addition, more education for consumers in general food safety issues was seen as an ideal means of increasing an awareness of food safety practices.³⁴ There were reports of both consumers and small business having difficulty in accessing correct and easily understood information about government food policies and programmes, particularly changes in laws and standards and complaints handling.

4.4 FINDINGS AND RECOMMENDATIONS

The FRR Report's main findings were:

- the food regulatory system in Australia generally delivers safe food and Australia enjoys an enviable international reputation in that regard. Much of that has been due to the food industry having adopted standards and practices that are often in excess of what is required by law. However, occasional significant lapses in food safety do occur;
- the current regulatory framework for food in Australia is complex and fragmented;
- governments must take a proactive rather than a reactive role to urgently address the inefficiencies, duplication and fragmentation of the current system by implementing an integrated and coordinated national food regulatory system involving a partnership between the three levels of government, industry and consumers;

³⁴ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 46.

- there must also be a move towards industry self-regulation, but it was recognised that consumers will always expect some basic regulatory framework in order to maintain confidence. A co-regulatory approach could be a compromise; and
- moves must be made to overcome the currently disparate method of data collection about food-borne illness and food safety.

The key recommendations were broadly as follows:

- implementation of an integrated and coordinated national food regulatory system through improved partnership arrangements between the three levels of government, the food industry and consumers where nationally consistent minimum performance standards are set by government, in consultation with industry, and a responsibility is imposed upon food businesses to achieve the standards imposed through preventative, risk-based programmes;
- a need for a whole of food chain approach from 'paddock to plate'. There is little point managing food safety hazards within one part of the industry if contamination can be introduced at other points that are not managed;³⁵
- improvement of legislation and national decision making processes (especially through nationally uniform laws, streamlining food standards setting procedures and rationalisation of food regulatory agencies);
- improvement in compliance and enforcement arrangements (eg. national auditor accreditation framework; service agreements);
- improvement of monitoring and surveillance systems through integration of systems from 'paddock to plate';
- improvement of communications with consumers and industry provision of consumer access to information about food, diets, food-borne illnesses and disease; and
- prioritisation of food safety research and data collection.

The Committee was concerned that obligations placed on agrifood businesses be commensurate with the level of food safety risk within those businesses and that if a business was part of an industry-sponsored quality assurance programme that delivered substantially equivalent food safety outcomes, it should be recognised as being 'deemed to comply' with the new arrangements.³⁶

³⁵ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 71.

³⁶ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 76.

4.5 RESPONSE TO FOOD REGULATION REVIEW REPORT

As indicated above, during the same period as the FRR, a number of government initiatives were being undertaken concerning strategies for food safety reform. There was considerable industry and consumer involvement in those projects. Thus, the FRR Report was well received by all stakeholders.

The response by the Senior Officials Working Group (SOWG) of the Committee for Regulatory Reform under CoAG was to call for the adoption of a new regulatory model which included nationally consistent food laws (a Model Food Bill being considered) and an *Intergovernmental Agreement* concerning the implementation by each state and territory of the new *Food Standards Code* (including the new Food Safety Standards) developed by ANZFA. Queensland is represented on SOWG by the Department of Premier and Cabinet.

The reforms to be discussed below are consistent with the recommendations of the FRR Report.

4.6 THE JOINT *FOOD STANDARDS CODE*

ANZFA has reviewed the *Food Standards Code*, which will become joint Australia and New Zealand food standards. The process was begun in 1995 and was given further catalyst from the signing by Australia and New Zealand of a Treaty, referred to earlier, agreeing to harmonise food standards by the development of a joint Code. The draft joint Code was released for public comment in March 2000. It is expected to be approved by ANZFSC in October 2000 and come into force shortly thereafter. A phase-in period of 18 months of the new joint Code will follow.

The new Code will embrace a number of foods that are not covered by specific standards in the present *Food Standards Code* or in the New Zealand food laws, and will reflect current scientific and clinical knowledge. Many of Australia's current standards are up to 20 years old and out of step with current knowledge (eg. new pathogens or new technology) and consumer expectations. Many existing standards are unnecessarily cumbersome and prescriptive. For instance, labelling requirements are complicated and are located throughout the Code rather than just in one place.³⁷

The new standards are streamlined and are consistent for a range of foods rather than there being separate standards for every single food. The aim is to simplify existing standards, remove unnecessary red tape and allow industry more flexibility

³⁷ P Liehne, 'Food Standards Code Review', *Food Australia*, 52(3), March 2000, p 84.

for innovation by imposing fewer prescriptive requirements.³⁸ This should also improve the competitiveness of food businesses and keep prices down. There is a shift in culture from businesses being caught out for doing the wrong thing to businesses having to show that they are complying with the standards through providing information concerning the systems they have implemented for various activities.

The new joint *Food Standards Code* will be likely to have three parts:

- General provisions (Part 1) concerning matters such as contaminants and microbiological and processing standards, labelling, additives;
- Standards for food products (Part 2);
- Food Safety Standards (Part 3) which will apply to Australia only.

The main features of the new joint *Food Standards Code* are outlined in Appendix A.

Once the new *Food Standards Code* has been approved by ANZFSO, it will require implementation by legislation in each state and territory. As noted earlier, the Food Safety Standards (Part 3 of the *Food Standards Code*) cannot be readily picked up by all jurisdictions without amendments being made to existing legislation dealing with food hygiene.

4.7 NATIONAL FOOD SAFETY STANDARDS

In 1995, ANZFSO requested that ANZFA develop a series of nationally uniform food safety standards for the production of safe food over the entire food chain, a concept broadly consistent with the FRR Report recommendations regarding the production of safe food from 'paddock to plate' or from 'fishing vessel to plate'.

An extensive consultation process was undertaken with government, consumer and industry stakeholders over the five-year development process.

The Food Safety Standards will apply generally to all food businesses and food premises in Australia. The underlying philosophy of the new regime is a cooperative preventative approach which will no longer depend upon businesses being caught out by food safety inspectors. It will require food businesses to identify food safety risks and implement appropriate programmes to prevent food-

³⁸ Ian Lindenmayer, Managing Director, Australia New Zealand Food Authority, *Food Regulation in Australia and New Zealand – the Changing Environment*, Address, 10.30 am, Thursday 7 October 1999 at ANZFA Internet Site <http://www.anzfa.gov.au>

borne illness.³⁹ The new Standards will contain 'outcomes-based', rather than prescriptive, measures that do not have a safe food outcome eg. the colour of walls or height of window sills. There is a basic requirement that food that is produced be safe for consumption and it is then for the particular business to ensure that this occurs.

The proposed Food Safety Standards reflect international best practice, taking into account standards developed by the Codex Alimentarius Commission (Codex); reforms by other countries, such as the New Zealand draft Code of Good Regulatory Practice; Australia's obligations under the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures (the SPS Agreement); and National Competition Policy Principles, agreed by CoAG, concerning legislative review.

As previously mentioned, the Food Safety Standards will not apply in New Zealand, which has its own food safety regime and is attempting to streamline its laws in its own way. However, it too is adopting the new philosophy of an 'outcomes-based' approach to food safety management with government and industry working in partnership in developing risk management programmes. The eventual aim is to create, as nearly as possible, a seamless national and international food safety system from 'paddock to plate' and to establish a single agency responsible for overseeing food safety and other produce matters

The four new Food Safety Standards are outlined below.

4.7.1 Standard 3.1.1: Interpretation and Application

Standard 3.1.1 *Interpretation and Application* explains how the provisions of the other three Standards apply to food businesses. It contains some exemptions for certain businesses within the primary industries sector and for food supplied by charitable or community groups or by food businesses for fundraising events (in relation to which ANZFA will develop a Code of Practice). Consultation revealed a concern that compliance with the new laws by charitable bodies may increase costs to such extent that it would no longer be viable to provide food to people in need. At the same time, it was recognised that existing laws already covered major aspects of the supply of such food and that charitable organisations were already implementing safe food practices. Thus, it was considered that charitable bodies

³⁹ See Australia New Zealand Food Authority, *Food Safety Standards – Costs and Benefits: An analysis of the regulatory impact of the proposed national food safety reforms*, May 1999, at ANZFA Internet Site <http://www.anzfa.gov.au> follow the 'Food Safety' link.

would not need to implement food safety programmes but would be required to follow relevant Codes of Practice to be developed by ANZFA.⁴⁰

4.7.2 Standard 3.2.1 Food Safety Programmes

Standard 3.2.1 (Food Safety Programmes) requires food businesses to examine their food production, manufacturing and handling operations to identify potential food safety hazards and to prepare food safety programmes to control them. The programmes have to establish requirements for dealing with, and controlling, the particular hazards. The relevant business will be regularly audited to ensure compliance with the programme. The programmes are based on Hazard Analysis Critical Control Point (HACCP) principles (explained below) but have particular content requirements as set out in the Standard.

The rate of implementation of the programmes and frequency of auditing depends upon the risk classification of the businesses, as determined under the Priority Classification System, discussed below. ANZFA has developed food industry guidelines for each major sector to assist businesses in devising their programmes.

In many cases, businesses will already have in place practices which identify and control hazards in their operations and the implementation of food safety programmes may only amount to a documentation of the fact that practices of the business already control the relevant hazards. Processes and criteria will be established to allow the recognition of existing industry or regulatory HACCP based audit systems that meet the outcomes of the Standards.

The HACCP Principles

The HACCP system is scientifically based and identifies and assesses specific hazards at any point along the food chain, from the primary producer to the consumer, and establishes measures for their control. It was first developed in the United States by NASA to ensure food was safe for astronauts. Thus, HACCP aims to prevent potential hazards through determining critical points of control and establishing procedures for monitoring and control of identified food hazards rather than rely on end-point testing.

A number of countries, including New Zealand, the United States, Canada and the European Union have implemented food safety measures based on HACCP principles. In addition, the move is consistent with the rules promoted by Codex (the international body which sets food standards and guidelines for protecting the

⁴⁰ Australia. Australia New Zealand Food Authority, *Regulatory Impact Analysis Incorporating a National Competition Policy Review of the Food Law*, October 1999, p 94-95.

health of consumers and promoting fair trade). Australia's World Trade Organisation obligations under the SPS Agreement require that it have equivalent food safety measures to other parties unless Australia can demonstrate that its measures are justified by achieving a level of appropriate protection eg. of public health. Consistency with the *Codex HACCP Principles and Guidelines* presumes consistency with WTO obligations.

Application of HACCP principles in other countries has reduced the levels of pathogens in food. For instance, studies in the United States have found that out of the 300 meat and poultry plants surveyed, the introduction of HACCP reduced *Salmonella* levels in beef by 40%, in pork by 25% and in chicken by 50%.⁴¹ It has also been reported that bacterial counts on carcasses at Victorian meat works operating a quality assurance system based on HACCP were about 40% lower than those which did not.⁴²

Priority Classification System

A Priority Classification System will be used to guide the timeframe for the implementation of food safety programmes by food businesses and the frequency of auditing of those programmes. This Classification System was developed by ANZFA, Food Science Australia and state and territory Health departments to classify food businesses into priority ratings:

- (a) high risk: foods such as raw meat, fish, poultry, milk, salami, tofu, fresh filled pasta, meat pies, frankfurts, cooked rice and lasagne;
- (b) medium risk: foods such as fruits, vegetables, canned meats, pasteurised milk, ice cream, peanut butter and milk-based confectionery; and
- (c) low risk: foods such as grains, cereals, bread, sugar-based confectionery, alcohol, fats, oils, carbonate beverages.

Food businesses will be given a priority classification through a desktop process linked to notification requirements imposed upon businesses under Standard 3.2.2. The classification of the relevant business depends upon the following:

- the type of food (eg. is the food high in fat which may carry more bacteria and increase chances of food poisoning? Is it ready to eat food?);

⁴¹ United States. Department of Agriculture, 'HACCP has greatly reduced threat of *Salmonella*', *CRC Press*, February 1999, pp 11-12.

⁴² Sumner J, 'The hygiene status of Victorian meat 1993-97: a scientific appraisal', *Australian Institute of Food Science and Technology*, 1997 referred to in ANZFA, *Food safety standards – costs and benefits: An analysis of the regulatory impact of the proposed national food safety reforms*.

- the activity of the business (eg. amount of handling of the food, whether it is packaged, whether there is need for transportation and therefore temperature variations which increase potential for risk of increased pathogen levels);
- method of processing (eg. does the business use processing steps that reduce the level of microorganisms in food?); and
- customer base (eg. is the business catering to the elderly, young children, or other vulnerable members of the community?).

Auditing of Programmes

Food businesses must ensure that their food safety programme is audited by a food safety auditor at the frequency applicable to the food business as determined by the Priority Classification System (above). ANZFA has been involved in the development of approval criteria for auditors. However, the matter of whether private auditors will be permitted to conduct audits of food businesses has been a controversial one.

4.7.3 Standard 3.2.2 Food Safety Practices and General Requirements

Standard 3.2.2 *Food Safety Practices and General Requirements* applies to food handling operations in the areas of food transportation, food service, wholesale or retail and substantial transformation operations. While training of food handlers and supervisors will not be mandatory, businesses must ensure that food handlers and supervisors possess skills and knowledge in food safety and hygiene matters commensurate with their work activities.⁴³

The Standard attempts, among other things, to prevent contamination of food by food handlers and to ensure hygienic practices are adopted (eg washing of hands, not sneezing or coughing or smoking over food). Food businesses are also required to ensure a certain standard of cleanliness and also cleanliness and maintenance of fixtures, fittings and equipment (eg. not use chipped or broken eating or drinking utensils).

The Standard also sets out control requirements (eg. temperature control) for the following food operations: receipt, storage, processing, display, packaging (including requirements for physical material of packaging), transportation, safe disposal of food and recall of unsafe food.

⁴³ Standard 3.2.2 also requires businesses to provide information concerning the business.

4.7.4 Standard 3.2.3 Food Premises and Equipment

This Standard sets out requirements that will assist compliance with Standard 3.2.2 *Food Safety Practices and General Requirements* and will be incorporated in the Building Code of Australia. The Standard attempts to ensure that the layout of food business premises, vehicles, fixtures, fittings and equipment are such as to minimise the risk of opportunity for contamination of food and that they are able to be cleaned and sanitised. However, the prescriptive mandates for design and construction of structures, noted earlier, have been replaced by a general requirement that design and construction be appropriate to the food activities being carried on and are able to be cleaned and sealed.

There are also a general obligation on food businesses to provide facilities such as water, waste disposal, light, ventilation, cleaning, storage space and access to toilets.

4.8 IMPLEMENTATION OF THE FOOD SAFETY STANDARDS

The new Food Safety Standards were the subject of a Regulatory Impact Statement by ANZFA which was launched by the Commonwealth Parliamentary Secretary for Health and Aged Care, Senator the Hon Grant Tambling in May 1999. The Statement, *Food Safety Standards – Costs and Benefits: An analysis of the regulatory impact of the proposed national food safety reforms* considered the impact of various food regulatory options (including the proposed four Food Safety Standards) on government, businesses and consumers. Overall, it was concluded that the net costs were outweighed by the accrued benefits to all stakeholders.

A Senior Officials Working Group, under CoAG, is addressing the administrative and legislative issues involved with the implementation of the new Food Safety Standards. It is considering the whole package of reforms comprising the Food Safety Standards, the *Intergovernmental Agreement*, and its annexures (which comprise the draft Model Food Bill for adoption by states and territories (see [Section 4.9](#))).

ANZFSC has agreed to three of the four Food Safety Standards (Standard 3.1.1 *Interpretation and Application*; Standard 3.2.2 *Food Safety Practices and General Requirements*; and Standard 3.2.3 *Food Premises and Equipment*) which have been referred to CoAG for consideration. It is expected that they will be formally adopted by ANZFSC in late July 2000. It is envisaged that the Food Safety Standards, except for the notification and skills/knowledge requirements of Standard 3.2.2, will commence six months from gazettal.

Standard 3.2.1 *Food Safety Programmes* is still under consideration after ANZFSC recommended that CoAG defer endorsement of the Standard pending the results of

a study (due for completion in October 2001) to evaluate the costs and effectiveness of food safety programmes before they are adopted as a national standard. The studies also involve input from industry and consumer groups.⁴⁴ In New Zealand, there has been recognition that the revised regime involving widespread introduction of risk based management plans may be a costly exercise, particularly for small businesses who may even be driven out of business. In particular circumstances, an alternative to management plans is the use of risk-based codes of practice comprising quality systems so as to ensure appropriate standards are met.⁴⁵ It is also noted that the Victorian Government has recently wound back the implementation, by some food businesses, of food safety programmes pending further consultation.

Once ANZFSO has adopted the four new Food Safety Standards as part of the *Food Standards Code*, states and territories have six months to implement them within their own jurisdictions. Reforms will need to be made to state and territory food legislation to ensure consistency and uniformity in the implementation of the standards. At present, some state and territory Food Acts would not be able to implement the new food safety measures. A Model Food Bill is designed to ensure uniform implementation of the standards but its future is uncertain in view of the different approaches by some states. CoAG will not meet to consider the Model Food Bill and the *Intergovernmental Agreement* until November 2000 and there is unlikely to be much progress until sometime in 2001. This exceeds the deadline for implementation within each jurisdiction of the *Food Standards Code*, including the Food Safety Standards.

In Queensland, the introduction of the new Food Safety Standards will considerably replace the current Food Hygiene Regulation 1989. As yet, it is undecided how the Food Safety Standards will be implemented but it is clear that amendments to the *Food Act 1981* and the Food Hygiene Regulation (maybe even repeal of most, if not all, of that Regulation) will be required.

Although implementation of the Food Safety Programme standard has been delayed, some states have decided that they wish to move ahead to implement food safety programmes to various extents to certain sectors of industry within their own jurisdictions. As will be seen below (at [Section 6](#)), Queensland has taken legislative action regarding the introduction of food safety schemes and programmes in the primary industry sector. Earlier, in 1998, New South Wales

⁴⁴ Senator Grant Tambling, Parliamentary Secretary for the Federal Minister for Health and Aged Care, 'Food Ministers make further progress with food standards', Media Release, 26 October 1999.

⁴⁵ New Zealand. Ministry for Agriculture and Forests, 'Strategic technical focus for MAF Food Assurance Authority' at the MAF Internet Site <http://www.maf.govt.nz/MAFnet/press>, updated 2 February 2000.

took a very similar step while, earlier still, in 1997, Victoria introduced its Food Hygiene Strategy to establish a single integrated framework applying to all stages of preparation and processing of food from 'paddock to plate' and passed amendments to its *Food Act 1984* (Vic) to impose requirements on proprietors of food premises or food vehicles to implement a food safety programme. Recently, however, the Victorian Government wound back the effects of that new legislation.

4.9 MODEL FOOD PROVISIONS

The intention is that all food legislation throughout Australia will be uniform to allow consistent application of the new Food Safety Standards and that each piece of legislation conforms with principles of National Competition Policy.

An *Intergovernmental Agreement* commits each level of government to implement consistent legislation but with adoption methods appropriate to each particular state or territory. Such agreement will also require governments to develop and amend the Food Law and engage in periodic reviews.

In April 1999, ANZFA released an Exposure Draft of the Food (Name of Jurisdiction) Bill 1999 which is yet to progress further. The model provisions form two annexures to the *Intergovernmental Agreement*.

The idea is that the entire Bill will be enacted by a 'lead' jurisdiction with the 'core' policy provisions in the Bill (Annexure A of the *Intergovernmental Agreement*) being implemented across the board by all states and territories. Those provisions provide for the implementation of the *Food Standards Code* (including the Food Safety Standards) and measures to ensure the production of safe food, including primary produce, including offences and powers. There are other administrative 'non-core' provisions (eg. enforcement), forming Annexure B of the Agreement, that do not require uniformity provided that they are similar in basic effect.⁴⁶

While it has generally been agreed by Health and Primary Industry sectors that the Model Food legislation would affect food at the primary production level, there is yet to be consensus reached as to the manner in which it will apply to the production of primary produce. Some states such as New South Wales, Victoria and Queensland have, in the meantime, developed their own legislative framework for the implementation of food safety programmes to various sectors, including the primary industry sector.

⁴⁶ J Lederman, *Development of uniform food acts for Australia and New Zealand*, on the Food Law and Policy Australia Internet Site maintained by Baldwins Australian Lawyers and Consultants <http://www.ausfoodnews.com.au/flapa>, revised April 2000.

5 PRIMARY INDUSTRY SECTOR

The current *Food Standards Code* and Food/Health Acts do apply to the primary industry sector whereby health inspectors can take action.⁴⁷ In relation to food hygiene or safety regulations, the primary industry sector is not specifically exempted but health authorities leave management of such issues to the relevant meat and industry dairy authorities and will not usually involve themselves unless the farm is engaging in practices such as selling directly to the public or involved in processing that leads to a 'substantial transformation' of the product.⁴⁸

Under the new Food Safety Standards and Model Food Bill, the relevant definitions are such as to cover the primary industry. The proposed changes thus imply a 'paddock to plate' approach.

There has been some disquiet by some sectors of primary industry and agencies working with them concerning how the provisions of the new Food Safety Standards and the Model Food Bill should apply. Many sectors of primary industry already have in place well recognised and superior quality assurance systems (particularly meat and dairy). A number of businesses have systems based on HACCP principles and are subject to independent auditing and inspections. Export meatworks (regulated by the Australian Quarantine Inspection Service) are required to demonstrate compliance in accordance with HACCP principles. It is recognised that much primary industry sector production is relatively 'low risk' (with a three year project funded by Meat and Livestock Australia confirming that there is a low level of pathogens on Australian farms).⁴⁹ Indeed, many in the industry consider that food-borne illness is generally caused by unhygienic practices adopted by retail food businesses or by consumers in the home.

It is proposed by ANZFA that primary industry sector businesses complying with mandatory laws, such as the Australian Standard for Hygienic Production of Meat for Human Consumption or independently audited industry schemes which address food safety, will be taken as meeting the outcomes of Standard 3.2.1 *Food Safety Programmes*.⁵⁰

⁴⁷ See definition of 'food' in the *Food Act 1981*(Qld), s 5 which is widely cast so as to mean 'a substance or matter ordinarily consumed or intended for human consumption...'. That would cover cuts of meat.

⁴⁸ ANZFA, *Food safety standards – costs and benefits: An analysis of the regulatory impact of the proposed national food safety reforms*.

⁴⁹ 'MLA food safety study', *ABC Rural News*, 12 November 1999.

⁵⁰ ANZFA, *Food safety standards – costs and benefits: An analysis of the regulatory impact of the proposed national food safety reforms*.

In addition, most jurisdictions have specific safety laws applicable to particular sectors of primary industry – mainly dairy and meat - and sector specific regulatory bodies such as the Queensland Livestock and Meat Authority (QLMA) and the Queensland Dairy Authority. There is thus some concern by jurisdictions which have already adopted measures akin to those proposed by the new Food Safety Standards as to the manner in which the new Standards and Model Food Bill will relate to the primary industry sector. This state of affairs has led to the stalling of progress on the passage of the *Intergovernmental Agreement* and Model Food provisions.

New South Wales and Queensland have recently taken the initiative, based on the proposals recommended in the FRR Report and the proposed new Food Safety Standards, to define food safety responsibilities in their respective jurisdictions and provide a legislative basis for the implementation by primary producers of independently audited food safety programmes. Victoria's approach is to have legislation covering all sectors in the interim but which enables the new Model Food legislation to take over once introduced.

5.1 QUEENSLAND'S RESPONSE

Similarly to other jurisdictions, Queensland's meat industry has adopted the Australian Standard for Hygienic Production of Meat for Human Consumption endorsed by the Agriculture and Resource Management Council of Australia and New Zealand to ensure the safe production of meat.⁵¹ The Standard incorporates safety programmes based on HACCP principles.

In September 1999, the Premier announced that Queensland was set to become the national leader in food safety for the three high risk animal protein sectors – meat, dairy and seafood with a 'paddock to plate' approach.⁵² A new Authority was to be created to absorb the food safety functions of the QLMA and the Queensland Dairy Authority and also undertake responsibility for seafood.

⁵¹ Meat Industry (Hygienic Production of Meat for Human Consumption) Standard 1996, made under the *Meat Industry Act 1993* (Qld).

⁵² Hon Peter Beattie MLA, Premier of Queensland, 'Queensland to lead Australia in food safety', Ministerial Media Statement, 27 September 1999.

6 THE FOOD PRODUCTION (SAFETY) BILL 2000 (QLD)

The main objects of the Food Production (Safety) Bill (Qld) (FPS Bill) are:

- to establish Safe Food Production Qld; and
- to ensure the production of primary produce⁵³ is carried out in a way that –
 - (i) makes the primary produce fit for human or animal consumption; and
 - (ii) maintains food quality; and
- to provide for food safety measures for the production of primary produce consistent with other state laws relating to food safety.⁵⁴

The Minister for Primary Industries stated that it was considered that the name 'Queensland Agrifood Authority' (which was chosen initially) did not adequately capture the fundamental principles underpinning the new agency. Also, 'Safe Food Production Queensland' (Safe Food) has a counterpart in New South Wales (Safe Food Production (NSW)), established by the *Food Production (Safety) Act 1998* (NSW), that has received acceptance from consumers and industry. It is anticipated that Safe Food can work together with its New South Wales counterpart to promote food safety.⁵⁵

Although there are points of contention among governments regarding the application of the proposed Model Food Bill to the primary industry sector, the intention is that, eventually, the responsibilities of Safe Food and those of Queensland Health and local government will complement each other. Safe Food's responsibilities for ensuring food safety will occur at the beginning of the food chain (the paddock or ocean) or at retail premises where raw meat is further processed (eg. butcher shops and supermarket meat departments) and Queensland Health's and local government's responsibilities will commence where produce enters the manufacturing sector for transformation or the retail, restaurant and takeaway sectors. The Queensland Government believes it is necessary to define food safety responsibilities in Queensland between the Health and Primary Industries portfolios before the Food Safety Standards are introduced.

⁵³ 'Production of primary produce' is defined to cover anything grown, cultivated, picked, harvested or collected from the source (farm or vessel) through to a point where they enter the manufacturing process (for 'substantial change') or retail sectors: Food Production (Safety) Bill, cl 11. Generally, once a thing is 'substantially changed' (eg. another food is added to it) it ceases to be 'primary produce'.

⁵⁴ Food Production (Safety) Bill (Qld), cl 3.

⁵⁵ Hon H Palaszczuk MLA, Minister for Primary Industries and Rural Communities, Food Production (Safety) Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 18 May 2000, pp 1203-1206, p 1204.

The FPS Bill accords with the philosophies of the recent national reviews, outlined above, such as the FRR Report and picks up the principles of the Food Safety Standards developed by ANZFA for inclusion in the *Food Standards Code*. In particular, prescriptive regulations give way to outcomes-based measures where food businesses assume responsibility to develop programmes for minimising and controlling food safety hazards in their production and handling processes, based on HACCP principles, and the Government assumes an 'approval and audit' role.

It is interesting to note that the move in New Zealand towards a more self-regulatory approach in the meat industry was criticised as one which would lead to a decline in food safety standards. This was countered by the New Zealand Ministry of Agriculture and Forests' Chief Meat Veterinary Officer who claimed that the regulatory environment for meat inspections had to be based on modern food safety principles which enabled the government to set the standards and verify that they were met while industry must adopt the best way of meeting them, rather than end-point inspections when it was too late.⁵⁶

It is hoped that if Queensland adopts the Model Food Bill, it will tie in with (or maybe even assimilate) the provisions of the FPS Bill so that there are no inconsistencies regarding the treatment of primary produce and the various portfolio responsibilities.

Safe Food will take over the food safety functions of the QLMA and the Queensland Dairy Authority in order to be the one body responsible for the regulatory oversight of the meat and dairy industries. The *Meat Industry Act 1993* and *Dairy Industry Act 1993* will eventually be repealed. In time, the seafood industry will also be covered. Unlike the meat and dairy industries, seafood industries have not yet been subject to statutorily mandated quality assurance systems and inspection procedures at the 'vessel' stage. Eventually, the FPS Bill may be extended to cover products such as fruit and vegetables.

The *Explanatory Notes* indicate that the *Meat Industry Act 1993* and *Dairy Industry Act 1993* currently impose food safety programmes and auditing regimes for those industries. Provisions in the *Meat Industry Act* concerning accreditation, auditing, enforcement, investigations and offences will continue to operate for about 18 months, but under the control of Safe Food, until the new requirements of the FPS Bill have been implemented.

The *Food Act 1981* will not be affected by the new legislation.

Consistency with national and overseas trends is observed by following features of the FPS Bill.

⁵⁶ New Zealand. Ministry for Agriculture and Forests, 'Food safety standards for meat will be maintained', Media Release, 17 October 1996, at the MAF Internet Site <http://www.maf.govt.nz/MAFnet/press>, updated 2 February 2000.

6.1 SAFE FOOD QUEENSLAND

The FPS Bill establishes Safe Food under the Primary Industries portfolio, managed by a Chief Executive Officer (CEO). Safe Food's main role will include the following:

- regulation, under food safety schemes, of the production of primary produce from the source (paddock or ocean) to the point where the product enters the manufacturing or retail sectors, to ensure that it is safe for human and animal consumption;
- advising or making recommendations to the Minister about food safety matters relating to the production of primary produce and the development or implementation of food safety schemes;
- monitoring the hygiene and operating procedures relating to the production of primary produce;
- encouraging food businesses in development of food safety programmes and quality assurance measures;
- approving food safety programmes of producers;
- accrediting the production of primary produce; and
- managing auditing procedures, accrediting and training of auditors.⁵⁷

Similar bodies with responsibilities, covering 'paddock to plate' (or 'farm to fork', as it is known in some countries), have recently been established in a number of countries. This is largely in response to growing public concerns about food safety issues and/or industry dissatisfaction with fragmentation and inconsistencies in regulation of food safety. Examples include: the United Kingdom (the Food Standards Agency), Ireland (the Food Safety Authority of Ireland), Canada (the Canadian Food Inspection Agency), France (French Food Safety Agency), and Denmark (Ministry of Food, Agriculture and Fisheries). The European Union is also considering the establishment of its own food agency.

In a study conducted by the United States General Accounting Office (GAO) of the new food safety systems in Canada, Great Britain, Denmark and Ireland, it was found that all four countries were experiencing initial start-up costs in establishing their new agencies but food safety stakeholders in each country considered that the benefits of consolidation and integration would soon begin to outweigh those costs through improved service delivery, reduction in overlap and duplication of services and more comprehensive oversight of food safety over the whole food chain.⁵⁸

⁵⁷ Food Production (Safety) Bill, (Qld) cl 14.

⁵⁸ United States. United States General Accounting Office, 'Food safety experiences in four countries in consolidating their food safety systems', *Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, United States Senate*, April 1999, pp 8-9.

6.1.1 Funding

It is interesting to note that although the NSW Government funded the establishment of Safe Food (NSW), its ongoing costs will be financed entirely by industry through fees or levies and by cost recovery for services. The enabling legislation sets up a Safe Food Production Fund allowing the body to levy contributions towards administration of the legislation. The Queensland FPS Bill has no express provision for a fund to be established for Safe Food or to enable it to levy contributions from persons subject to the schemes under it. However, it would appear that most of Safe Food's operating expenses, as is currently the case with the QLMA and the Queensland Dairy Authority, would be subsidised by fees levied upon applicants for accreditation to produce primary produce or for approval as an auditor. In addition there may be a source of funding from any charges it might impose for providing services, such as training for auditors.

The Chief Executive Officer of Safe Food (NSW) has noted that the most pressing issue is to secure adequate funding for the body. He commented that there is a strong argument that the protection of public health is largely a government responsibility such that recovering costs from industry could be seen as unfair and burdening the competitiveness of certain industry sectors as against interstate rivals. Accordingly Safe Food (NSW) is in the process of negotiating matters of funding with government and industry to work out a fair and equitable funding proposal.⁵⁹

It appears that one of the impediments to the United Kingdom passing legislation to underpin its new Food Standards Agency was not just industry resistance to the levying of fees to assist funding the new agency, but opposition by some consumer groups which considered that the Agency might become too reliant on industry for its funding and that there was potential for a conflict of interest to emerge.⁶⁰

When the Queensland Government announced its intention to establish Safe Food, some concern was expressed by the Shadow Minister for Primary Industries that this might bring with it an increase in fees and red tape upon industry.⁶¹ However, the Minister for Primary Industries states that Safe Food was established after extensive consultation with industry and has its backing. Moreover, the requirements under the FPS Bill will reduce duplication in food safety regulation

⁵⁹ New South Wales. 'Message from the CEO', *Safe Food Newsletter*, Edition 1, February 2000 on Internet Site <http://www.safefood.nsw.gov.au>.

⁶⁰ United States. United States General Accounting Office, 'Food safety experiences in four countries in consolidating their food safety systems', *Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, United States Senate* April 1999, p 10.

⁶¹ Hon R Cooper MLA, Shadow Minister for Primary Industries, 'Food safety cost assurance needed', Ministerial Media Statement, 30 September 1999.

and cut compliance costs for producers.⁶² An example of such savings would be the eventual move to single auditing where food businesses would no longer be audited under both Queensland Health and Department of Primary Industry (DPI) systems but would be subjected to a single food audit with the audit report given to Safe Food, Queensland Health and the relevant local government.⁶³

6.2 FOOD SAFETY SCHEMES AND PROGRAMMES

The FPS Bill establishes a framework for development and implementation of food safety schemes covering a particular sector primary production eg the meat industry. The schemes will have the status of regulations under the Act and thereby be subject to the regulatory impact statement requirement under the *Statutory Instruments Act 1992* (Qld). It is anticipated that the food safety schemes will therefore be soundly based, effectively targeted and will not unduly hamper business.⁶⁴ In addition, a scheme may make provision for a penalty if it is contravened. The food safety schemes provisions of the FPS Bill appear to be modelled on Part 4 of the *Food Production (Safety) Act 1998* (NSW).

The schemes will first cover the highest risk categories of primary produce - meat, then dairy produce and then seafood before other types of primary produce. The scheme must set out the produce and aspects of production of the produce to which it applies; accreditation requirements; state which businesses have to adopt a food safety programme; and set out auditing requirements. It is anticipated that, in the future, the difficulties created by multiple and frequent audits will be overcome by a more regularised and single auditing process.

A food safety scheme can be made about issues such as:

- how production is carried out eg. storage temperatures;
- the premises, vehicles, plant or equipment used;
- matters going to safety eg. wholesomeness, and about handling and processing of produce;

⁶² Hon H Palaszczuk MLA, Minister for Primary Industries and Rural Communities, 'Queensland puts stamp on food safety', Ministerial Media Statement, 18 May 2000; Siobhain Ryan, 'Agency guards food chain', *Courier Mail*, 7 June 2000, p 8.

⁶³ Hon H Palaszczuk MLA, Minister for Primary Industries and Rural Communities, Food Production (Safety) Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 18 May 2000, p 1205.

⁶⁴ Hon H Palaszczuk MLA, Minister for Primary Industries and Rural Communities, Food Production (Safety) Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 18 May 2000, p 1205.

- accreditation of primary producers and the qualifications, skills or expertise required of a person to handle primary produce;
- development, implementation, auditing and approval of food safety programmes; and
- other matters such as fees, reviews of the food safety scheme and adoption of food safety standards.⁶⁵

Safe Food (NSW) has developed food safety schemes for meat, some seafood industries, and has commenced work on the goat and sheep milk and plant products food safety schemes. The schemes have been developed in consultation with the relevant industry sectors.

6.2.1 Food Safety Advisory Committee

The FPS Bill establishes a Food Safety Advisory Committee to give advice or make recommendations to Safe Food or the Minister about matters such as the development of food safety schemes or regulations under the FPS Bill. It has an advisory role only. Similar provision is made in Part 3 of the *Food Production (Safety) Act 1998* (NSW). The Committee will consist of the chief executive officers of Safe Food, DPI, Queensland Health and representatives of organisations that represent the interests of each section of an industry to which a food safety scheme exists, as well as a person appointed by the Minister who has some expertise or experience in any of the fields listed in **clause 27** (including areas such as food technology nutrition, agricultural science, aquacultural science, food science or veterinary science, consumer advocacy, environmental health).

The Minister and Safe Food must consult with the Committee about a proposed food safety scheme. The representative nature of the membership of the Committee attempts to ensure that all relevant interests are involved and consulted in the development of a scheme which applies to a particular primary industry sector.

6.2.2 Food Safety Programmes

Importantly, in many cases the food safety scheme will require a primary producer to develop a food safety programme for their particular business eg. a butcher shop. The content of the programme (the requirements of which are set out in **clause 41(2)**) is based on HACCP risk management principles. It must also set out the way in which training for food handlers will be provided.

It is an offence to fail to keep a copy of the programme at each place to which it relates. All persons involved in production should become familiar with it.

⁶⁵ Food Production (Safety) Bill, cl 39(2).

6.3 ACCREDITATION

Accreditation under **Part 5** of the FPS Bill allows the holder of the accreditation given by Safe Food to produce primary produce as stated in, and on conditions imposed by, the accreditation. Applicants must pay the prescribed fee and the accreditation must be renewed each year. Each accreditation contains mandatory conditions, such as requiring compliance with the applicable food safety scheme and requiring the holder to allow an auditor to enter the business and conduct an audit. Safe Food may also impose other reasonable and relevant conditions.

The *Explanatory Notes* indicate that the mandatory condition imposed on accreditation holders to allow an auditor to enter the business place arguably breaches the fundamental legislative principle in the *Legislative Standards Act 1992* (Qld) that power to enter and search for or seize documents or other property should only be where the person entering has a warrant obtained from a judicial officer. However, it is explained that the power is only to be used for auditing of food safety, not for enforcement, and the auditor carrying it out may even be one chosen by the accreditation holder off Safe Food's register of auditors. Also, because the legislation could potentially cover many thousands of businesses it would be impractical to obtain a warrant every time an audit is carried out.⁶⁶

A special procedure exists for the amendment, suspension or cancellation of accreditations incorporating procedural fairness requirements (right to respond, reasons for decision, rights of appeal). A right of appeal to the Magistrates Court is given under **Part 9** to persons whose application for accreditation has been refused, or whose approval has been made conditional, or where an accreditation has been amended, suspended or cancelled.

6.4 AUDITING

It is realised, however, that in any regime that places an onus on food businesses to implement risk management programmes, checks and balances must be provided to ensure compliance and thereby maintain public confidence. Consequently, **Part 6** of the FPS Bill establishes an auditing system to ensure compliance with food safety programmes and the FPS Bill generally. The current difficulties caused to businesses by multiple audits will, it appears from the Minister's Second Reading Speech, be replaced by a single audit.⁶⁷

⁶⁶ Food Production (Safety) Bill, *Explanatory Notes*, p 6.

⁶⁷ Hon H Palaszczuk MLA, Minister for Primary Industries and Rural Communities, Food Production (Safety) Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 18 May 2000, p 1205.

Any person may apply to Safe Food for approval or renewal of approval as an auditor which authorised that person to conduct audits under the FPS Bill. Approval is given only if Safe Food is satisfied that the person has the necessary expertise and experience to carry out the functions of an auditor and if the approval complies with any relevant public sector policy notified to Safe Food.⁶⁸

It is likely that many local government environmental health officers, who may currently have enforcement roles under the present laws, will form the majority of applicants for approval as auditors. It is envisaged that Safe Food and DPI will be required to offer training courses to officers in local government and within DPI who currently have food safety roles. However, there is potential for appropriately trained and experienced persons from outside government to become auditors under the FPS Bill. Competition from the private sector in a previously government dominated area appears to align with National Competition Principles. The Government is also hopeful that costs of auditing will be kept down as a consequence of the competitive presence of private auditors.⁶⁹

Integrity in the auditing system is sought to be addressed by the FPS Bill. In terms of ensuring adequate levels of skill and competency, there is a requirement that all auditors must possess relevant training and expertise in order to obtain approval. Safe Food may also place conditions on approvals. Approvals are for one year only and renewal of approval depends upon the applicant having maintained appropriate skills and expertise. In addition, Safe Food must keep a register of auditors open to public inspection. The register will also be used by accreditation holders to choose an auditor to conduct an audit of their business.

To safeguard against partiality or bias by auditors, the FPS Bill requires that auditors provide all audit reports directly to Safe Food within 14 days of completion of the audit (with a penalty imposed for non-compliance). Such report must include the auditor's opinion concerning compliance with the food safety scheme and the reasons why or why not, thus establishing a degree of consistency and keeping Safe Food sufficiently informed. Also, if the auditor believes that the person being audited is in breach of the FPS Bill, the auditor must inform Safe Food. If the breach is a serious food safety offence (as defined in Part 7 of the FPS Bill), the auditor must inform Safe Food immediately or be subjected to a fine.

⁶⁸ Similarly to the accreditation process, the approval process for auditors incorporates procedural fairness requirements. A right of appeal (see Part 9) is given to persons whose application has been refused, or granted subject to conditions, or whose approval has been amended, suspended or cancelled.

⁶⁹ Minister for Primary Industries and Rural Communities, Food Production (Safety) Bill 2000 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 18 May 2000, p 1205.

Auditors will not have enforcement powers. There is also a provision for Safe Food to carry out an audit of auditors.

The auditing system is based on the partnership philosophy underlying the recommendations of the FRR Report and the Food Safety Standards. The concept of contestability of service provision in auditing was one that was advocated by the FRR, provided appropriate checks were in place to ensure that public health and safety was not compromised.⁷⁰ This approach is also one that is taken by the audit system existing in New Zealand in conjunction with food hygiene legislation.

6.5 ENFORCEMENT MEASURES

Part 7 of the FPS Bill sets out a number of acts that will constitute a 'food safety offence':

- supplying or producing unsafe primary produce (ie likely to cause harm to a person consuming it);
- engaging in production of primary produce other than under an accreditation where a food safety scheme applies;
- supplying meat or seafood that is unwholesome (ie contains a substance or is in a condition that a consumer would ordinarily regard as making it unfit for human consumption);
- substituting meat species with the intent to deceive;
- supplying or selling equipment that is likely to make the primary produce unsafe.

Significant penalties are imposed for the above offences: a large fine (up to \$225,000) or, in some cases, one to two years' imprisonment, depending on the offence committed. The *Explanatory Notes* justify the large penalties on the basis that a sufficient deterrent is needed to ensure that people do not sell or produce food that they know, or ought to reasonably know, poses a food safety risk and may even cause death.⁷¹ It also serves to maintain public confidence when the system is one imposing primary responsibility upon primary producers. In any event, the penalty provisions are consistent with those in the *Meat Industry Act 1993*.

Part 8 allows authorised officers to conduct investigations and inspections to monitor and enforce compliance with the FPS Bill, subject to any relevant conditions or limitations. Those officers will have powers of entry, search and

⁷⁰ Food Regulation Review Committee, *Food – a growth industry: The report of the Food Regulation Review*, p 59.

⁷¹ Food Production (Safety) Bill, *Explanatory Notes*, p 7.

seizure, subject to a number of controls and procedures. Those provisions are drawn from the draft Model Food Bill.

There is a limit to whom Safe Food may appoint as an 'authorised officer': government employees, or employees from statutory authorities with food safety functions who possess the necessary expertise or experience to be an authorised officer. Note that private auditors would not be included in this list.

7 SOME OVERSEAS EXPERIENCES

Given the moves afoot at state and national level to overhaul the regulation of food production and handling, it is worthy to take note of some overseas experiences.

In April 1999, the United States General Auditing Office provided a Report to the Government reviewing the experiences of four countries that have, or were in the process of, consolidating into one agency food safety responsibilities from the 'paddock to the plate'.⁷² The four countries visited were Great Britain, Ireland, Canada and Denmark. One of the terms of reference was to identify the lessons that the United States might learn from those countries' experiences. Officials in the four countries identified a number of lessons that other countries considering taking the same consolidation process might take heed of:

- there needs to be consensus and support among stakeholders for a need for change as well as its scope and arrangement. In Great Britain, one impediment to the passage of legislation implementing the new Food Standards Agency was opposition by industry and some consumer groups to the imposition of a 'user-pays' fees system;
- there needs to be strong leadership during the establishment phase of the new agency to overcome any bureaucratic opposition to change. Ireland was regarded as an example of successful implementation because a director was appointed to oversee the establishment of the Food Safety Authority of Ireland at an early stage in the whole process and was able to build up a relationship with all stakeholders to help the body over its initial hurdles;
- there needs to be a dedicated start-up group where key officials from responsible agencies are relieved of their normal duties so that they are able to focus upon the creation of the new body;
- there needs to be additional start-up funding because the old system needs to be phased out while the new one is phased in, resulting in the operation of a dual system for a certain period. In Canada, for example, a delay in creating

⁷² United States. United States General Accounting Office, 'Food safety experiences in four countries in consolidating their food safety systems', *Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, United States Senate* April 1999.

a new personnel system in the new agency was partly due to the fact that the cost and expertise required was underestimated by the relevant parties;

- there needs to be organisational flexibility within the new agency to be able to move resources to the areas of greatest risk. An example is that the Canadian and Danish agencies can shift inspectors when a risk assessment reveals that this is required;
- there needs to be personnel integration strategies so that the new staff, who may be coming from other bodies with their own particular cultures, readily adapt to a new organisational culture and identity. This can be done, as in Canada, through involving new staff in the agency's missions and values;
- there needs to be open decision making in order to maintain consensus and public confidence. In the three countries with new agencies in place, consumer protection groups will be given input into the decision making process. This move would appear to have greater impact in those countries who have not had a reputation for openness, as seen during the BSE ('mad cow disease') outbreak in Great Britain where consumer groups believed that information had been withheld from the public concerning the disease. In Australia, on the other hand, there has been a history of involvement by, and consultation with, relevant public interest groups in government decision making;
- there needs to be an ability to evaluate the new regime through criteria developed at an early stage. An example of such criteria to assist in measuring performance of the new agency are: downward trends in the incidence of food borne illness, increases in levels of confidence by the public in the new agency and the reduction in pathogens in food products. In Canada, for example, the lack of performance criteria made it difficult for the Auditor General to be able to determine if and what the Food Inspection Agency was trying to achieve.

8 CONCLUSION

The FPS Bill attempts to introduce into Queensland's primary industry sector the recommendations of the FRR Report and a number of the components of the proposed Food Safety Standards. The philosophy of a partnership approach to food safety regulation, where government sets the standards for achieving food safety and food businesses implement HACCP based programmes to identify and control food hazards, will not be entirely new to meat and dairy producers. It is one that will require some adjustment by other primary producers, such as seafood. With the implementation of the Food Safety Standards in the near future (once the manner in which they are to be adopted is settled), it is anticipated that the new regime will apply right along the food chain, 'paddock to plate'. The problems of prescriptive, inconsistent laws and numerous enforcement agencies should soon be a thing of the past.

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APPENDIX A

The main features of the new joint *Food Standards Code* are as follows:

- labels will have to provide a nutrition information panel listing the amounts of fats, sodium, energy, protein and carbohydrates in foods rather than merely stating that the food is, for example, 'low fat'. However, it will not be necessary for the amount of saturated fat to be disclosed, only total fat. The Australian Consumers' Association (ACA) has argued that this is a disadvantage to consumers wanting access dietary information, given the negative role that saturated fats play in contribution to heart disease;⁷³
- labels must give a list of key ingredients but it will no longer be necessary for certain foods to contain a minimum amount of a specific ingredient. For example, presently, ice-cream must contain at least 10% milk fat and jam, at least 40% fruit. Under the new rules, ice cream need not have any milk fat and jam could contain cheap extenders. Consumers will have to decide for themselves whether they are satisfied with the amount of ingredient contained in the product. In addition, the proposed standard does not exclude any animals in the definition. The ACA argues that to protect the consumer, standards that specify the minimum level of defining ingredients in certain foods should be maintained.
- there will be a change in the 'use-by' date system where foods that *must* be consumed before a certain date because of health or safety risks must have a 'use-by' date whereas other foods will have a 'best-before' date.
- changes to the food additive requirement will allow a wider range of foods to contain additives provided that manufacturers use them according to good manufacturing practice guidelines. At present, additives can only be used in situations where there was a technological justification for doing so.
- presently, there is a minimum size and standard type and colour requirements for the text in labels which will be removed under the new standards. This may mean that the readability of labels may be difficult for elderly or vision impaired members of the public.

⁷³ Australian Consumers' Association, *Food Issues: New food standards*, at Internet Site <http://www.choice.com.au/articles> , reviewed May 2000.



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