

Primary Industries Food Safety Legislation

Discussion Paper –
March 2009

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Primary Industry Food Safety Legislation - Discussion Paper

1. Introduction

Food safety is an important issue for the Australian community. The Australian Government Department of Health and Ageing has estimated conservatively that there are 5.4 million cases of food-borne illness in Australia every year, including around 80 premature mortalities. This costs the community more than \$1.2 billion annually.¹

The Tasmanian Government is presently considering whether legislative reforms are required to better regulate primary industry food safety. Whilst Tasmania's present regulatory model has served it well, change may be necessary to:

- allow new national primary industry food safety standards to be more easily implemented and enforced to ensure Tasmanian food can be exported interstate and internationally;
- better protect the 'clean and green' image often associated with Tasmanian produce; and
- allow regulators to better address changing risks such as emerging pathogens through greater flexibility.

Good food safety outcomes for Tasmania's primary industries are extremely important not only to consumers but also for the future of this important sector of the Tasmanian economy. Tasmania is a major producer of a number of high value, high risk products which rely heavily on the confidence consumers have in their safety. A major food safety incident could potentially cause significant human health and economic consequences for Tasmania.

This paper has been produced to invite discussion on food safety regulation as part of the policy development process. It will provide general background on food safety regulation and potential regulatory options.

Whilst not the formal position of the Tasmanian Government, this paper is recommending that new primary industry food safety legislation should be drafted (option 3). The major features of the proposed legislation are also set out in this paper for comment. Such legislation will allow the Department of Primary Industries and Water (DPIW) to continue its important primary industry food safety

¹ Australian Government Department of Health and Ageing 2006, *The Annual Cost of Foodborne Illness in Australian*, Government Department of Health and Ageing, Canberra p.vii.

role, a functional result of the strong linkages between food safety and animal husbandry and agricultural chemical usage.

Written comments on this paper are being sought by 29 May 2009 and should be either e-mailed to foodsafety@dpiw.tas.gov.au or posted to:

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2. Background – Why is Food Safety Regulated?

Traditionally, government intervention in markets is justified on the grounds of economic efficiency and social policy objectives. There are typically strong market incentives for food businesses to produce food that is safe for human consumption. The loss of reputation from an incident can devastate a business but some food businesses may nevertheless accept more risk than society believes is reasonable.

Food safety standards may fall below necessary levels for a number of reasons. Some businesses do not respond to the market incentives because they lack skills, they underestimate risks or they face short term pressures (such as profitability, poor facilities and staff turnover).² Some businesses may also not take into account the negative effect of their actions on others, or assume that consumers will not be able to establish a link between their product and a potential illness.

Therefore, there are at least three reasons why governments may need to intervene to increase the safety of the food supply:

- insufficient or inadequate information;
- external costs and benefits; and
- social welfare and public risk objectives.

² Victorian Competition & Efficiency Commission 2007, *Simplifying the Menu: Food Regulation in Victoria*, final report, September 2007, p xxxii.

2.1 Insufficient or inadequate information

As populations have increased and agriculture and food technology has advanced, the ability of consumers to assess the safety of food has decreased. Most people now rely on others to produce, transport, and deliver the majority of their food. Consumers cannot necessarily tell before they purchase food whether it has been produced or handled safely. For our modern food production and delivery system to work, consumers need to have confidence that the food they buy and consume is safe. Consumers look to the food-regulatory process for this assurance. Protecting the safety and integrity of the food supply has become a basic function of organised society.

Whilst an argument could be made that a market solution exists if victims of foodborne illness seek compensation from producers, in practice this is extremely problematic. Establishing microbiological links between the actions of a producer and a specific illness is costly, time consuming and not always possible. The often long lead time between exposure and illness means that samples of the contaminated food or beverage may not be available. These evidentiary difficulties linked with the typically transitory nature of such illnesses lead to few parties seeking compensation through the court system outside of major outbreaks or deaths occurring.

A lack of information may also impact on food safety in other ways. Consumers, businesses and community groups may lack appropriate knowledge about how to choose, handle, store and prepare food correctly. Some new and small businesses with a high staff turnover of casual staff may face particular challenges. They may also be unaware of, or understate, the risks of contracting or causing foodborne illness. Governments may have a role to play in ensuring these groups have sufficient information and the correct systems in place to help them to identify and manage food safety risks appropriately.

2.2 External costs and benefits (spillover effects)

Outbreaks of foodborne illness may cause third party impacts. The sale of unsafe food by one business can damage the reputation of others. If businesses do not account for the effects on other businesses when deciding how much to spend on food safety, they may spend less than is needed from a community-wide perspective. Threatened export sales are an example of third party impact, and maintaining access to international markets is sometimes presented as a reason for government intervention to encourage food safety. Two case studies illustrate this point:

*Wallis Lake Oysters*³

In the first quarter of 1997, consumption of farmed oysters from Wallis Lake, New South Wales, was held responsible for an estimated 444 cases of hepatitis A across Australia. Nearly one in seven victims was hospitalised. One 77-year-old person died two weeks after the onset of symptoms.

In February 1997, the Sydney Fish Market asked the Wallis Lake Fishermen's Co-operative to stop sending all fish for a short period, until NSW Health announced that the fish would not be a health risk once they were cooked. When fish sales to the markets were resumed the fish sold at 30% below the market value. Local production fell by 75% initially and was still 30% down in May 1997. Some commentators have suggested that the whole fishing industry in New South Wales and Australia lost sales due to the health concerns. The effect of this incident was felt as far away as New Zealand where the shellfish industry experienced difficulty getting access to some markets.

Tourist activity in the Great Lakes also suffered as a result of this outbreak. Data for guest nights and turnover suggest that the outbreak in February 1997 resulted in net income loss of \$1.0 million in 1997.

Major oyster farmers in Wallis Lake reported in 2001 that production was still 20% below pre-1997 levels and that employment had fallen by about 60 workers because of the 'loss' of the Wallis Lake brand name and investor and consumer confidence.

*Garibaldi Mettwurst*⁴

In South Australia in 1995 about 190 people experienced illnesses linked to eating mettwurst contaminated with *E. coli* O111. Twenty-three children were hospitalised, five children suffered long-term health consequences and one child died. The outbreak was traced to a batch of mettwurst produced by a South Australian smallgoods company. The company had been in operation for over 20 years; it had a turnover of \$13 million a year and employed 120 people. It was out of business in two months.

According to media reports, the smallgoods industry in South Australia at the time consisted of 85 manufacturers and employed about 1,500 people. It suffered a 50%

³ Case study taken from report of the Australian Government Department of Health and Ageing 2006, *The Annual Cost of Foodborne Illness in Australian*, Government Department of Health and Ageing, Canberra pp 37-40

⁴ Case study taken from report of the Australian Government Department of Health and Ageing 2006, *The Annual Cost of Foodborne Illness in Australian*, Government Department of Health and Ageing, Canberra pp 41-42

fall in sales of certain lines of processed meat. One family business (Wintulich) producing gourmet meat products, including mettwurst, had been operating since the early 1900s. At the start of 1995 it employed 50 people and had an annual turnover of \$3 million. It lost a large proportion of its business in 1995 and did not survive as a family business.

Minter Ellison report various sources to the effect that the outbreak reduced Australian sales of mettwurst by more than 20% for several years after the incident. In addition, general meat sales are also thought to have dropped significantly. The Australia New Zealand Food Authority (1999) estimated that the downturn in trade caused by this outbreak cost Australian industry \$400 million. Four to five hundred smallgoods producers across Australia went out of business as food safety costs went up and sales went down in response to the outbreak.

These spillover effects are typically not adequately accounted for in any small businesses assessment of risk and so are not adequately mitigated.

2.3 Addressing social welfare/ public risk objectives

There is a view within the community that certain goods and services are fundamental or essential. The provision of an adequate, safe, and nutritious food supply is a major factor in survival. Therefore, food safety and good food safety regulation is seen as an essential measure to promote public health and safety by many within the community. This view was reflected in the Tasmania media response to the series of egg-related Salmonella outbreaks that took place from 2005 to 2008 around Tasmania, which affected 172 people (with 21 people hospitalised).

Vulnerable and disadvantaged people often have the most limited capacity to protect themselves from foodborne illness, due to limited resources and knowledge. In addition, they are also the most likely to suffer the most serious consequences with the young, old and otherwise frail accounting for most hospitalisations and fatalities from foodborne illnesses. Reducing the risk of harm to vulnerable sections of the community by ensuring all food offered for sale is safe is seen by developed nations as an appropriate policy objective to address social welfare and public risk objectives.

3. Present Regulatory Framework

Food safety regulation is based around international and national standards. These standards are implemented and enforced by State and Local Governments. In Tasmania this responsibility is presently shared between the Department of Health and Human Services (DHHS), Local Government, the Tasmanian Dairy Industry Authority (TDIA) and DPIW. The consistent application of these standards is extremely important to allow food to be traded between states and internationally. The above is explained more fully in Appendix 1.

Tasmania's DHHS works in partnership with Local Government to regulate a wide range of businesses across various risk rankings. However, DPIW undertakes a narrowly-defined regulatory role in relation to distinct groups of primary industry food producers which are typically high risk. DPIW is currently managing meat, eggs and seafood.

DPIW's responsible for primary industry food safety is seen as a good fit because of the links between managing food safety and animal husbandry and chemical management. The split of responsibility is also sympathetic to the scale of the Tasmanian public service and the resources that are available. Similar regulatory divisions exist in Victoria, South Australia and Queensland. A recent report from the Victorian Competition & Efficiency Commission supported the ongoing functional divide for Victoria, including the use of separate legislation.⁵

4. Regulatory Options

Appropriate regulatory design is an important element in achieving a good outcome for the community, industry and the government. This section of the paper will examine three legislative options and assess their ability to:

- allow new national primary industry food safety standards to be more easily implemented and enforced to ensure Tasmanian food to be traded interstate and internationally;
- protect the 'clean and green' image often associated with Tasmanian primary produce; and

⁵ Victorian Competition & Efficiency Commission 2007, *Simplifying the Menu: Food Regulation in Victoria*, final report, September 2007, pp 176-8.

- allow regulators to flexible address changing risks such as emerging pathogens through greater flexibility.

4.1 Maintain Present Legislation (Option 1)

Primary food production is presently regulated under a number of pieces of legislation. Meat is regulated under the *Meat Hygiene Act 1985*, eggs under the *Egg Industry Act 2002*, seafood under the *Food Act 2003* and dairy products under the *Dairy Industry Act 1994*. The negatives and positives of maintaining the present regulatory approach are:

Positives

- maintains the functional separation between DPIW, TDIA and DHHS; and
- the costs associated with drafting, implementing and enforcing new legislation will not be incurred.

Negatives

The *Egg Industry Act 2002* is a commodity-specific Act with the following limitations:

- it provides an extremely limited range of regulatory responses, with exclusion from the industry being the only option where a producer is consistently not complying with their program (even though non-compliances may be of a minor nature);
- the Act does not provide a simple mechanism to amend and update food safety programs; and
- the Act does not provide a legislative basis to allow the implementation of national policies such as the *National Food Safety Audit Policy*.

The *Meat Hygiene Act 1985*, whilst having a greater functionality than the *Egg Industry Act 2002*, also has some limitations. These limitations include that the Act:

- does not allow infringement notices to be issued;
- it is commodity specific;
- does not allow for third party auditing (i.e. private sector auditing of food safety plans); and
- does not provide a legislative basis to allow for the implementation of national policies.

The *Dairy Industry Act 1994* is a commodity-specific Act with the following limitations:

- it provides an extremely limited range of regulatory responses, with exclusion from the industry being the only option where a producer is consistently not complying with their program (even though non-compliances may be of a minor nature); and
- it does not provide the same powers to officers as the *Food Act 2003*.

The *Food Act 2003* is the central piece of legislation regulating food safety in Tasmania and DHHS is the agency primarily responsible for the health and safety of the community. The *Food Act 2003* presently aims for the efficient and effective protection of the community.

However, it has some key limitations when it comes to regulating primary food production:

- primary food production is exempt from the application of certain provisions such as improvement notices, auditing, notification and registration. However, primary food production is not exempt from the general requirement to produce safe food;
- the Act was not designed to manage issues relating to the management of live animals;
- the Act does not allow for the regulation of meat products that end up as pet food; and
- no provision is made for a trade facilitation or a certification role.

All of the present Acts regulating food safety differ in their approach, with different powers for the regulator and conditions placed on producers. This increases administrative costs both for the regulator and for those businesses that have to comply with more than one piece of legislation.

This option is not recommended.

4.2 Regulate all food safety under the Food Act 2003 (Option 2)

An alternative to maintaining the present regulatory arrangements is to repeal the Meat Hygiene Act and Egg Industry Act and regulate all food safety through the Food Act.

Positives

The positives of this option are that it:

- creates a consistent approach to regulating food safety across the whole food supply chain;
- reduces the amount of legislation that industry needs to comply with; and
- would allow for the implementation and enforcement of new food safety standards.

Negatives

The negatives of this option are:

- primary food production is exempt from the application of certain provisions such as improvement notices, auditing, notification and registration. Therefore amendments would be required to the Food Act;
- the Act was not designed to manage issues relating to the management of live animals;
- the Act does not allow for the regulation of meat products that end up as pet food;
- no provision is made for a trade facilitation or certification role; and
- consideration would need to be given to the present division of responsibilities for food safety. If DPIW were to remain responsible for primary industry food safety it would be required to work through the Director of Public Health, as the primary decision maker under the Act, to make relevant decision in relation to primary industry. Likewise, the Minister for Health would become responsible for making ongoing amendments to regulations to support primary industry food safety.

This option is not recommended.

4.3 Introduce new food safety legislation (Option 3)

The third option is to introduce new specific purpose primary industry food safety legislation and repeal the Meat Hygiene Act, Egg Industry Act and amend the *Food Regulations 2003*.

Positives

The positive of this option are:

- existing limitations of the present commodity specific food safety legislation could be overcome (see section 5 below);
- a more consistent approach to food safety regulation across primary industry;
- it would allow the national Primary Production and Processing (PPP) Standards to be implemented and enforced; and
- provide the flexibility to address new risks; and
- allow DPIW to effectively maintain its present responsibilities.

Negatives

The negatives of this approach are:

- costs associated with drafting, implementing and enforcing new legislation; and
- will not be completely consistent with the Food Act, although efforts will be made to make it as consistent as possible.

This option is recommended.

Question 1 – Do you agree that option 3 is the most appropriate? If not, what alternative would you propose?
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5. Proposed Features of the New Legislation

As discussed, the present legislation administered by DPIW has a number of key limitations, in particular the inability to effectively implement and enforce national standards and policy. The adoption of a single piece of specific purpose, non-commodity based, primary production food safety legislation is being recommended

to overcome the identified legislative limitations described above and to better address emerging issues.

The legislation will be as consistent and complementary to the *Food Act 2003* as possible and will allow the present and future PPP Standards to be implemented and enforced. South Australian (*Primary Produce (Food Safety Schemes) Act 2004*) and Queensland legislation (*Food Production (Safety) Act 2000*) serve as models for this approach. Such an approach will also necessitate the repeal of the *Egg Industry Act 2002* and *Meat Hygiene Act 1985* and also result in potential consequential amendments to the *Dairy Industry Act 1994*. The *Food Regulation 2003* will also need to be amended.

The policy objectives of the proposed new legislation are to:

- reduce the incidence of, and potential for, foodborne illness from a range of regulated primary food products to protect consumers from illness and possible death;
- not unnecessarily burden industry;
- encourage business to minimize food safety risks and to ensure their product is safe for human and/or animal consumption;
- provide regulatory authorities with appropriate powers to prevent or mitigate food safety risks, particularly in relation to those businesses that are not adequately managing food safety risks;
- where necessary, intervene and prevent the supply of product that may potentially be unsafe or unsuitable for consumers;
- protect market access for both interstate and export markets by demonstrating adequate food safety regulation;
- create a less fragmented and more consistent legislative approach to food safety for the regulation of meat, eggs, seafood and dairy;
- be able to address emerging issues in a timely and flexible manner; and
- implement nationally developed and agreed PPP Standards. These will include new egg and poultry meat PPP Standards.

Question 2 – Do you agree with the policy objectives of the new legislation? Should some objectives be added or deleted from the list?

The major attributes of the proposed new legislation will be increased flexibility, a wider range of regulatory remedies which are consistent across commodities and an

ability for businesses to engage private sector auditors to undertake regulatory auditing.

5.1 Flexibility

Legislation needs to be sufficiently flexible to allow for the adoption and implementation of new national standards and policies. It also needs to allow for new approaches to managing changing risks. Regulators must be permitted the flexibility of applying new science. A discussion of how risks, and our understanding of them, are continually changing is contained in Appendix 2.

DPIW's aim is to develop a single piece of primary legislation that provides a flexible and broad group of powers and regulatory responsibilities to regulate all the commodities it is responsible for. Sector-specific provisions will, in the main, be introduced via regulation. For example, the PPP Standards and other support material approved by the Australian and New Zealand Food Regulation Ministerial Council will be brought into force under the Act via regulations. This will provide the flexibility to amend food safety requirements as they change at the national level without continually needing to amend the principal legislation. It should be noted that these materials will have been subjected to the Commonwealth Regulatory Impact Statement process and are based on the best science based risk analysis available. The South Australia and Queensland legislation serve as models for this approach.

DPIW is mindful that the system also needs to be proportionate and flexible enough to allow or even encourage economic progress, mindful of the impacts of its regulatory interventions on small regulated entities. DPIW has a history of assisting business to achieve compliance in a cost effective manner. To minimise implementation costs, and to ensure documented food safety systems adequately address risk, DPIW will continue to work with industry sectors to develop template documents and support materials.

5.2 Wider Range of Regulatory Remedies

This paper advocates the legislative ability to have a graduated enforcement response to noncompliant food businesses. This involves the use of a hierarchy of graduated responses to noncompliance with the least severe sanctions applied most often. This is largely reflective of DPIW's present dealing with industry with the vast majority of modifications to improve food safety being made in a cooperative and collaborative manner due to both parties' shared interest of ensuring food safety. However, while advocating the graduated application of enforcement

provisions, more serious enforcement provisions will be applied in the first instance should serious legislative breaches be encountered.

To allow for such a graduated response, which reflects national food safety policy, a range of regulatory remedies will need to be placed in the new legislation. These remedies will largely reflect the remedies in the *Food Act 2003*, resulting in more consistent enforcement capacity through the whole food chain. Regulatory remedies (some of which are non-legislative) could include:

- persuasion;
- warning letters;
- increased audits and inspections (less audit for good compliance history);
- process orders – e.g. requiring a food safety program or training;
- seizure of goods;
- infringement notices (on the spot fines);
- prohibition orders;
- civil penalties;
- licence suspension;
- licence revocation; and
- criminal penalties (including goal for serious offences).

It should be noted that the majority of these regulatory responses are presently available under *Meat Hygiene Act 1985* with a more limited set of responses available under the *Egg Industry Act 2002* and *Dairy Industry Act 1994*. The increased range of regulatory responses is also consistent with the *Food Act 2003*.

Compliance and enforcement provisions will be accompanied by evidentiary and appeal rights provisions. Likewise, authorised officer's powers and responsibilities will be set out in the legislation. These will be consistent with existing legislation and ensure fairness and that appropriate processes are followed.

5.3 Food Safety Programs/Auditing

Food safety programs for higher risk products have been an element of food safety policy and legislation in Australia for a number of years. DPIW presently requires risk-based management systems for meat, eggs and bivalve molluscs. These food safety programs are built around HACCP principles, as endorsed through Codex and the Australia New Zealand Food Standards Code.

This approach to higher risk products represents a shift from end-product inspection to risk-based assessment and prevention. Under this approach, food businesses are required to identify where food safety hazards may occur in the production and handling of food, and implement systems to manage those risks.

The role of DPIW has been to ensure businesses identify and control their food safety risks through their food safety plans by approving their plans and auditing them. Food safety programs are beneficial in that they:

- move accountability to industry and encourage responsibility;
- encourage flexibility, as food safety programs are aimed at achieving compliance with outcomes based standards (e.g. the PPP Standard for Seafood);
- are open, transparent and clearly set out obligations; and
- obtain better food safety outcomes.

To further develop this system, in line with national developments, the new legislation will provide for a system of third party auditing (i.e. private sector auditors doing regulatory auditing) to supplement the present system of regulatory auditing run by the Department.

A capacity already exists under the *Egg Industry Act 2002* to allow third party auditing and the Department has introduced such a system administratively for bivalve molluscs. The benefits of such a system are that:

- it will allow DPIW to overcome resource constraints. DPIW still has the same number of food safety staff it had when it was just responsible for meat regulation. Taking responsibility for seafood in 2008, for example, more than doubled the number of businesses requiring regulatory audits;
- it will allow DPIW to undertake more targeted and strategic enforcement, which has been its past approach, if it is not responsible for all regulatory auditing;
- it potentially provides cost savings for businesses that are already subject to other audits (e.g. an auditor could undertake a propriety audit for a major supermarket and a regulatory audit at the same time); and
- it will provide greater flexibility to business in achieving compliance with a variety of audit providers.

For such a system to work DPIW will need to act as a system auditor to ensure third party auditors are doing their job properly (a 'check the checker' role). Auditors will report to DPIW on business performance, including suspected breaches of food safety legislation, but will not be in a position to impose regulatory

sanctions. Analysis of reports, random inspections and other methods will allow DPIW to monitor both industry and auditors.

In order to comply with the *National Food Safety Audit Policy*, and to be able to undertake a system auditing role a range of powers will need to be provided to DPIW as the regulator. These will include provisions:

- setting out the duties of auditors;
- providing the capacity to set a code of conduct for auditors;
- to set conditions and fees for the approval and ongoing registration of third party auditors;
- providing the capacity to take disciplinary action and potentially excluding an auditor from doing regulatory audits; and
- creating an appeals process where an auditor may disagree with the regulator's decision.

This proposed legislation will create a market for private sector auditors to undertake regulatory auditing, it will not attempt to regulate those activities presently undertaken by the private sector. Similar provisions have recently been introduced into the *Food Act 2003*.

Question 3 – Do you agree that the proposed major features of the new legislation are appropriate? If not, please provide suggestions as to alternative approaches?

6. Conclusion

The purpose of the paper has been to outline DPIW's legislative intention in relation to primary industries food safety. The adoption of a single piece of specific purpose, non-commodity based, primary production legislation is proposed to overcome the above-mentioned legislative limitations and to better address emerging issues. Such legislation will also allow Tasmania to meet its national regulatory responsibilities. It will also allow DPIW to continue to effectively undertake its specialist primary industry food regulatory role in partnership with DHHS, Local Government and the TDIA.

DPIW is seeking feedback on this proposed approach to use as an input to its ongoing policy development. Your submission can address the three question posed in the paper or make any other comments you believe appropriate. If a decision is made to proceed with this papers recommended approach, further

opportunities will be provided to comment as the Department development draft legislation.

Written submissions are being sought by 29 May 2009.

Appendix 1 – Present Regulatory Framework

International - Codex Alimentarius Commission

The Codex Alimentarius Commission is the international body responsible for the food safety of traded goods. It was created in 1963 by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organisation (WHO) to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Program. The main purposes of this Program are protecting the health of consumers and ensuring fair trade practices in the food trade, plus promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations.

The Codex Alimentarius Commission is responsible for the development of the Codex Alimentarius (Codex), which translates from the Latin as 'food code.' Codex is a collection of internationally adopted food standards, maximum residue limits for pesticides and residues of veterinary drugs, and codes of practice. Codex includes provisions related to the:

- basic composition, hygiene and nutritional quality of raw, semi-processed and packaged foods;
- provisions for food additives, residues of pesticides, veterinary drugs, industrial chemicals, or naturally-occurring contaminants;
- labeling and presentation; and
- methods of analysis and sampling.

Codex standards are developed by consensus and on the best scientific and technical advice currently available.

The international food standards and codes of practice of Codex are developed so governments can accept that products complying with those standards represent minimal risk to the health or interests of consumers. In addition, industry can trade in foods that comply with Codex standards, confident in the knowledge that they are dealing in products that are internationally accepted as safe and of acceptable quality.

Codex has adopted risk based food safety programs as the basis for trade harmonisation and equivalence. This has effectively led to adoption of the HACCP (Hazard Analysis and Critical Control Point) system as the international standard for managing food safety at the establishment level. HACCP is a documented system which identifies, evaluates and controls hazards that are significant for food safety at each point of the production process. Such systems aim to prevent problems

arising at a range of points in the production process where hazards can be controlled, rather than relying completely on end-product testing.

Changes to Codex have a direct impact on Australian (and therefore Tasmanian) food safety legislation as our regulation and regulatory approach is expected to comply with this international standard to allow goods to be traded. Australia bases its export legislation and domestic standards on the Codex with minor variations to suit our unique risk profile. This includes the use of HACCP-based food safety programs. This approach is recognised by all major trading partners e.g. European Union, Japan, China, USA and forms the basis of Australia's international and domestic food trade.

National - Food Regulation Agreement

On 3 November 2000, the Council of Australian Governments (COAG) signed an Inter-governmental Food Regulation Agreement (FRA), (amended on 6 December 2002) agreeing to a new food regulatory system. The Commonwealth of Australia and all the Australian States and Territories are signatories to the Agreement.

The agreement establishes the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) and provides for the adoption by all States and Territories of the national Model Food Act and the adoption of food standards.

Food Standards Australia New Zealand (FSANZ), an independent Commonwealth statutory agency established by the *Food Standards Australia New Zealand Act 1991*, is responsible for the establishment of domestic food standards. Food safety standards are developed to provide more effective and nationally-uniform food safety regulation for Australia.

FSANZ has developed and administers the *Australia New Zealand Food Standards Code* (the Code). The Code lists requirements for foods such as additives, food safety, labeling and genetically modified foods. FSANZ develops food standards, and joint codes of practice in consultation with industry, the Australian Quarantine and Inspection Service (AQIS) and State Governments. The standard development process involves an evaluation of the risk to public health of the proposed change to the Code and the impact of the regulatory measures on the food industry and international trading obligations (based on CODEX standards). These standards rely on scientific evidence, are outcome-based and are subject to the Commonwealth regulatory impact assessment process.

Enforcement and interpretation of the 'Code' has been the responsibility of States and Territories. Tasmania is required to adopt, implement and enforce the standards.

Health Departments within Australia are responsible for implementing and enforcing the Code through nationally-uniform food safety legislation. In Tasmania the *Food Act 2003* implements the Code.

However, in 2002, the Australia and New Zealand Food Regulation Ministerial Council gave FSANZ responsibility to extend its evidence-based, standard-setting process to the primary production sector. This has meant that the primary industries agencies have also become involved nationally in implementation and enforcement of various food standards.

These new standards are in chapter 4 of the Food Standards Code and are known as the Primary Production and Processing (PPP) Standards. The creation of the PPP Standards recognizes that by applying principles of good agricultural practice, handling, processing, animal husbandry and improving the environmental conditions under which animals are raised, the hygienic quality of raw food products can be improved reducing the risk to the end product. However, it should be noted that, although the production of pathogen-free food of animal origin is possible experimentally, its application on a large scale is not yet feasible. Therefore the acknowledged aim of the PPP Standards is to create a safer product not one which is completely free of risk.

A further aim of the FRA is to create a consistent regulatory approach across Australia through nationally-agreed policy and enforcement procedures. A Food Regulation Standing Committee (FRSC) has been established to advise the Ministerial Council. Membership of the FRSC reflects the membership of the Ministerial Council and comprises the heads of Departments for which the Ministers represented on the Council have portfolio responsibility, as well as the President of the Australian Local Government Association and Food Standards Australia New Zealand. FRSC is responsible for co-coordinating policy advice to the Ministerial Council and ensuring a nationally consistent approach to the implementation and enforcement of food standards.

The role of the Implementation Sub Committee (ISC), a subcommittee of FRSC, is to oversee a consistent approach across jurisdictions to the implementation and enforcement of food regulations and standards, regardless of whether food is sourced from domestic producers, export-registered establishments or from imports. To date auditing and enforcement policies have been developed amongst others. Tasmania is yet to fully implement these national policies.

Tasmanian Regulation

Tasmania's food industry is regulated by four State-based entities:

1. Department of Health and Human Services (DHHS)
2. Local Government (29 local councils)
3. Department of Primary Industries and Water (DPIW)
4. Tasmanian Dairy Industry Authority (TDIA)

Tasmanian food businesses that sell internationally are also regulated by AQIS and other Commonwealth bodies.

The roles of these State-based regulators in relation to food safety are discussed below:

DHHS

The DHHS administers the *Food Act 2003*, the stated objectives of which are to:

- ensure food for sale is both safe and suitable for human consumption;
- prevent misleading conduct in connection with the sale of food; and
- provide for the application in Tasmania of the Food Standards Code.

The Food Act is the "default" Act for Tasmania in relation to food safety issues and regulates all areas of the food production chain. The Act includes provisions that limit the scope and application of the Act in relation to "primary food production". Primary food production includes growing, raising, cultivating, harvesting, collecting or catching of food.

DHHS also administers the Tasmanian Shellfish Quality Assurance Program (TSQAP) for shellfish aquaculture operations. This program carries out continual and extensive monitoring of all commercial shellfish growing areas in the state and assigns a classification to each area based on the level of public health risk found.

Local Government

Local Government Environmental Health Officers (EHOs) in conjunction with DHHS are responsible for the administration of the *Food Act 2003* and the Code. With regards to the Code, most EHOs are mainly involved with the Food Safety Standards aspect only.

While DHHS largely focuses on statewide legislative and broad policy issues, local government EHOs' primary responsibility is enforcement of this legislation. The majority of EHOs' regulatory activities are associated with retail activities, including bakeries, restaurants, takeaway food stores, and butcher and fish shops. While defined primary food production operations are generally not regulated by EHOs

due to their exemptions, such operations may “default” to local government because of the lack of an alternative regulatory framework. If this occurs, food safety matters can be regulated under the general provisions of the *Food Act 2003* from which primary production is not exempted.

DPIW

The Food Safety Branch presently regulates meat under the *Meat Hygiene Act 1985*, eggs under the *Egg Industry Act 2002* and seafood, on an interim basis, under the *Food Act 2003*. As further PPP Standards come into force, other primary industry commodities will need to be regulated in Tasmania. The Food Safety Branch of DPIW, in undertaking this function, relies upon wider expertise from within the Biosecurity and Product Integrity Division of DPIW (of which it is part) in relation to animal health, chemical management and animal welfare.

TDIA

The TDIA is established under the *Dairy Industry Act 1994*, administers the Act and licenses dairy farmers, dairy processors, dairy manufacturers and milk vendors. The Authority also is the authorized agent of the Australian Quarantine and Inspection Service (AQIS) for Tasmanian dairy exports.

The TDIA’s responsibilities cover the supply chain from farm to the delivery to retail. The TDIA’s powers are exercised by licences or certificates of competency according to HACCP and risk-based food safety procedures. Licence conditions require compliance with the appropriate Australian Standards for dairy foods.

Appendix 2 – Social and Environmental Drivers for Changing Food Safety Risks

Food regulatory responses are continually changing as a result of the increased understanding of existing risks and the emergence of new risks. These new risks are primarily as the result of emerging pathogens and the use of new processes and packaging which create new opportunities for pathogen growth. Pathogens are organisms capable of causing disease. Whilst other sorts of contamination pose a food safety risk they are generally better understood and more easily controlled, for example foreign object and chemical contamination.

With improvement in personal hygiene standards, development of basic sanitation, safe water supplies, effective vaccination programs, food control infrastructure, and the increasing application of food processing technologies such as pasteurization, many foodborne diseases have been either eliminated or considerably reduced in industrialised countries (e.g., poliomyelitis, cholera, typhoid and paratyphoid fevers, milkborne salmonellosis). Nevertheless, most countries are now experiencing increase in other foodborne diseases.

Some of these foodborne diseases are well recognized, but are considered emerging because they have become more common. *Campylobacteriosis* and *Salmonellosis*, specifically, have increased significantly over the past three decades. In many countries, poultry meat, eggs, and foods containing eggs have been identified as the predominant source of these pathogens. Other foodborne pathogens are considered to be emerging pathogens because they are newly recognised or because the role of food in their transmission has been recognized only recently. Many industrialised countries are experiencing outbreaks of disease due to relatively new types of foodborne pathogens such as *Campylobacter jejuni* and *E. coli* O157:H7.

The Tasmanian Government commissioned Dr John Sumner to prepare an independent report on potential food safety risks along the supply chain of Tasmania's primary industries.⁶ The report examines the specific food safety risk profile of Tasmania's primary industry and identifies a number of products that pose a high risk to the community if they are inadequately regulated, in line with national and international trends.

Looking back over recent decades changes in the incident and cause of disease can be identified. Likewise, social and environmental changes that have supported

⁶ The Sumner Review and the Government's response to it are available at:
<http://www.dpiw.tas.gov.au/inter.nsf/WebPages/SSKA-75U8AK?open>

changing patterns and causes of disease can be identified. Present social and environmental trends are likely to continue to support the emergence of new pathogens in the future.

Specific factors driving these new and changing risks and responses are:

Changing lifestyles

- Improved standards of living have led to a general increase in consumption of food of animal origin. This has increased the risk of exposure to meat and poultry borne pathogens.
- With dual income families meal preparation is often partially or fully undertaken outside the home. People eat more frequently in food service establishments where food is prepared in advance in large quantities and where food handlers are sometimes not aware of the special precautions required under such conditions. Likewise, households may more often purchase pre-prepared meals and ingredients where there may be a significant delay between their preparation and consumption.
- Traditional methods of food preparation, that in the past ensured the safety of food, have become less popular in recent years. There is a general increase in the popularity of raw, lightly cooked and cold foods.

Changes in microorganisms

- Living organisms have the ability to change and evolve. Changes in microbial populations can lead to the evolution of new pathogens, development of new virulent strains in old pathogens, development of antibiotic resistance that might make a disease more difficult to treat, or to changes in its ability to survive in adverse environmental conditions.⁷
- Infection with *Escherichia coli* serotype O157:H7 (*E. coli*) was first described in 1982. It has since emerged rapidly as a major cause of bloody diarrhea and acute renal failure. The infection is sometimes fatal, particularly in children. Outbreaks in infection, generally associated with beef, have been reported in Australia, Canada, Japan, United States, in various European countries, and in Southern Africa.

⁷ World Health Organisation (2002), *Foodborne disease, emerging*, Fact sheet No 124 Revised January 2002

Changing Agricultural Practices

- Extensive demand for food of animal origin has boosted the mass production of animals, with the resulting risk that many of these animals are subclinically infected with foodborne pathogens, e.g. *Salmonella* and *Campylobacter*.
- With increased knowledge, it has become apparent that our health depends increasingly on the safety of the feed and water supply for the animals themselves. For example, Bovine Spongiform Encephalopathy (BSE), a fatal, transmissible, neurodegenerative disease of cattle, was traced to contaminated recycled bovine carcasses used to make meat and bone meal additives for cattle feed. In human populations, exposure to the BSE agent (probably in contaminated bovine-based food products) has been strongly linked to the appearance in 1996 of a new transmissible spongiform encephalopathy of humans called variant Creutzfeldt-Jakob disease (vCJD). As of January 2002, 119 people have developed vCJD.

Globalisation

- Globalisation has led to increasingly long food supply chains. The length of supply chains has increased food safety risk because of the extended time between production and consumption and the risk of the cool chain being broken at some point in food distribution. International trade in perishable goods has increased significantly in line with consumer expectations of produce being available all year round.
- With increased numbers of international travelers, new diseases can more easily be imported from endemic areas to elsewhere in the world. International trade in food and animal feed also plays a major role in the spread of pathogens. For example, *Vibrio cholerae* was introduced into the waters off the coast of southern United States when a cargo ship discharged contaminated water in 1991. It is likely that a similar mechanism introduced cholera, for the first time in almost a century, into South America in 1991.

Increased ageing or otherwise immune compromised populations

- Tasmania, Australia and most developed countries have an ageing population. They also have increasingly large populations of immune compromised people due to HIV infections and other underlying medical conditions. These groups are at increased risk of suffering the most serious consequences of a food safety incident such as premature mortality and prolonged disability.

Increased knowledge

- With the growth in knowledge has come the realisation that many health problems can be traced directly to the foods we eat and drink. Moreover, a significant number of these problems are attributable to the preparation, distribution, or handling of food and are therefore controllable. This has led to changed regulatory responses.

Climate Change

- Research has suggested that the risks of diarrheal diseases may be augmented by increased temperatures which result from climate change. One study showed that for every degree of increase in temperature the rate of hospitalization of children with diarrhea increases by 8 per cent. It has also been predicted that gastrointestinal infections which are already common in our community such as *Salmonella*, *Cryptosporidium* and *Campylobacter* are likely to increase with higher temperatures.⁸

⁸ G Horton & T McMichael (2008), *Climate Change Health Check 2020*, The Climate Institute p.8