FOOD REGULATION POLICY
Review of the 2003 Ministerial Policy Guideline
Food Safety Management in Australia:
Food Safety Programs

Regulation Impact Statement

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Executive Summary

At the request of the Australia and New Zealand Food Regulation Ministerial Council[1], the Food Regulation Standing Committee (FRSC) reviewed the 2003 *Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs* (2003 Policy Guideline). The review's task was to identify whether additional or alternative policy guidance on food safety management for the general food service sector and closely-related retail sectors[2] ('retail/food service') is needed.

The reasons why Ministerial Council requested FRSC to review the 2003 Policy Guideline with a particular focus on retail/food service sector include the following:

- the majority of foodborne illnesses are linked to retail/food service businesses;

- the 2003 Policy Guideline appears inadequate for retail/food service, leading to a 'gap' in national food safety management arrangements for these sectors; and

- serious technical issues have delayed finalisation of the proposed Catering Standard (currently on hold pending the review outcome).

This Regulatory Impact Statement analyses the impacts of two options whereby **either** the 2003 Policy Guideline continues to apply (Option 1 – *status quo*) **or** additional or alternative policy guidance is developed to address the problem that led to the review (Option 2).

The consultation process confirmed that Option 2 is preferred by stakeholders. The primary objective of Option 2 and the proposed draft Policy Guideline is to provide an overarching policy framework that will facilitate development of efficient, effective and nationally consistent food safety management arrangements for retail/food service.

Specifically, the proposed Policy Guideline seeks to address the issues and challenges identified by the review by ensuring that:

- a broader range of risk management tools is considered when determining potential regulatory requirements for retail/food service;

- the level of regulatory requirements and their verification is proportionate to the level of risk;

- the selection of potential risk management tools is informed by consideration of 'appropriateness' in conjunction with 'risk' and 'benefit-cost';

- regulatory decision-making considers a range of feasible interventions and the selected intervention generates the greatest net benefit; and

- regulatory requirements for retail/food service are effectively implemented in a nationally consistent manner.

Impact analysis of the two options confirms that Option 2 will generate the greatest net benefit in terms of foodborne illness reduction and cost-effectiveness.

As the issues addressed by the proposed Policy Guideline clearly cut across the roles and responsibilities of FSANZ, the Food Regulation Standing Committee and its Implementation Sub-Committee, and individual jurisdictions, the proposal includes an agreed implementation work program (see Part 7 p.22) based on collaboration over the short, medium and long-term. Any outcomes resulting in new regulation will, of course, be subject to the usual Regulation Impact Statement processes.

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[1] To be renamed the COAG Legislative and Governance Forum on Food Regulation
[2] 'closely related' refers to the fact that while these retail sectors are not considered to be 'food service', they undertake similar activities such as serving food that is ready-to-eat

Introduction

At the request of the Australia and New Zealand Food Regulation Ministerial Council[3], the Food Regulation Standing Committee (FRSC) reviewed the 2003 *Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs* (2003 Policy Guideline). The review was required to identify whether additional or alternative policy guidance on food safety management for the general food service sector and closely-related retail sectors[4] ('retail/food service') is needed.

A Policy Options Consultation Paper (FRSC Working Group, 2010), including an Example Draft Policy Guideline, was released for public comment in October 2010 and stakeholder submissions have been considered.

FRSC intends to submit a Policy Guideline Proposal to the Ministerial Council in December 2011. This Regulation Impact Statement will be submitted to Ministers with the draft Policy Guideline.

Part 1 – Problem

Foodborne illnesses are linked to retail/food service businesses

Food contaminated with harmful bacteria and viruses is a serious problem. Australia-wide, it causes around:

- 5.4 million cases of gastroenteritis;

- 6,000 non-gastrointestinal illnesses (e.g. listeriosis); and

- 42,000 episodes of long-term health effects (e.g. reactive arthritis) per year (Hall & Kirk, 2005, p.v).

In 2006, the total cost of foodborne illness in Australia was estimated at $1.25 billion per year[5] (Abelson *et al*, 2006, p.vii). A significant proportion of these illnesses, and therefore costs, are associated with retail/foodservice. From 2007 to 2009, annual OzFoodNet data has consistently indicated that, on average, approximately two-thirds, of all reported foodborne illness outbreaks in Australia involved food prepared in retail/food service settings e.g. restaurants, takeaways, commercial caterers, camps, cruise/airline, national franchised fast food restaurants and delicatessens.

National food safety management 'gap' exists for the retail/food service sector

In addition to this association with foodborne illness, there is an apparent 'gap' in national food safety management requirements for retail/food service. Retail/food service businesses need only comply with the fundamental outcome-based hygiene requirements specified within the *Australia New Zealand Food Standards Code* (Standards 3.2.2 *Food Safety Practices and General Requirements* and 3.2.3 *Food Premises and Equipment*).

Furthermore, the proposed standard for the catering sector (P290 *Food Safety Programs for Catering Operations to the General Public*) utilises only one risk management tool – relatively expensive and resource-intensive Food Safety Programs specified by Standard 3.2.1. Proposal P290 is on hold pending the review outcome.

Factors contributing to the ongoing food safety management problem in retail/food service include:

- consumers' inability to readily identify contaminated food;

- variable capacity of businesses to comply with Standards 3.2.2 and 3.2.3; and

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[3] To be renamed the COAG Legislative and Governance Forum on Food Regulation
[4] 'closely related' refers to the fact that while these retail sectors are not considered to be 'food service', they undertake similar activities such as serving food that is ready-to-eat
[5] This total cost of foodborne illness figure comprises: productivity and lifestyle costs ($771.6 million); premature mortality ($231.5 million) and health services costs ($221.9 million)

- the fact that additional State-specific food safety requirements for retail/food service have been implemented in some jurisdictions with minimal cross-jurisdiction harmonisation.

Continued foodborne illness associated with retail/food service businesses is an issue partly because consumers cannot readily discern when food has been mishandled (noted as the most common cause of foodborne illness (Food Science Australia & Minter Ellison, 2002 p. 18). In addition to the usual lack of opportunity to observe poor handling/processing practices in retail/food service kitchens, consumers also lack the technical expertise to identify unsafe practices.

Secondly, even though retail/food service businesses are subject to fundamental hygiene requirements (Standards 3.2.2 and 3.2.3), some businesses are better equipped or have increased capacity to comply with outcome-based regulations. The retail/food service sector is dominated by small business and generally these are the businesses that have limited resources and capacity. For example, depending on the level of food safety training of their food handlers, some businesses are better equipped than others to meet the 'skills and knowledge' outcomes required by Standard 3.2.2. In addition, use of non-regulatory tools that assist in compliance is variable across the sector.

Finally, the additional compliance burden arising from inconsistent food safety management requirements is a continuing concern. In the absence of an agreed national approach and given the high level of food safety risk, it is not surprising that several jurisdictions have already moved unilaterally to manage these risks. For example, Victoria, Queensland and NSW have implemented mandatory training requirements (Food Safety Supervisor) and Victoria and Queensland also require template-based food safety programs. However, there are significant cross-jurisdiction differences in these requirements. Furthermore, inconsistency of approach by local councils in their routine compliance activities is also an issue in all jurisdictions.

The 2003 Policy Guideline stipulates use of only one risk management tool (Food Safety Programs) and its deployment in only one of the two identified high-risk retail/food service sectors.

National policy makers originally envisaged that all food businesses would achieve compliance with Standards 3.2.2 and 3.2.3 by implementing the food safety management system specified by Standard 3.2.1 – *Food Safety Programs*. However, due to concerns about compliance costs, Standard 3.2.1 was gazetted only as a 'model standard' that could be adopted on a voluntary basis by individual States or Territories pending further work on the costs and efficacy of Food Safety Programs.

Research was undertaken in two major national studies. A study by The Allen Consulting Group (2002) evaluated the benefits and costs of Food Safety Programs. The *National Risk Validation Project* (Food Science Australia & Minter Ellison, 2002) identified high-risk sectors throughout the food supply chain based on foodborne illness data and further highlighted where Food Safety Programs could be justified on benefit/cost grounds.

In relation to general food service, the *National Risk Validation Project* (NRVP, 2002) identified two sectors where Food Safety Programs would be justified by the high food safety risk; 'catering operations serving food to the general public' and 'eating establishments'[6] (e.g. restaurants, cafes, takeaways) However, on benefit/cost grounds as assessed by the Allen Consulting Group study (2002), Food Safety Programs requirements could only be justified for the catering sector[7].

These studies underpinned the development of the 2003 Policy Guideline. The Guideline effectively requests Food Standards Australia New Zealand (FSANZ) to mandate Standard 3.2.1 only in the identified high-risk sectors where Food Safety Programs could be justified on benefit/cost grounds. For general food service, only the catering sector meets both the 'risk' and 'benefit/cost' criteria.

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[6] The *National Risk Validation Project* characterised "eating establishments" thus – "The intention is that these are direct cook-serve operations, home delivery/takeaway of hot foods anticipated for immediate consumption. On the basis of similar modes of operation this would include restaurants, cafes, hotel/motel restaurant, clubs, takeaway/home delivery and fast food businesses."

[7] A total of five high-risk sectors were identified by the NRVP. FSPs could be justified on benefit/cost grounds in three sectors extraneous to this review. National standards with FSP requirements are in place for these sectors, namely: producers harvesters, processors and vendors of raw ready-to-eat seafood; producers of manufactured and fermented meats; and businesses serving food to vulnerable persons (e.g. hospitals, aged care facilities, delivered meals and childcare centres). For this reason, the 'vulnerable persons' food service sector was specifically excluded from the review scope.

In terms of the national foodborne illness incidence data, the scope of the proposed standard for catering operations would only address 16% of the total reported foodborne illness outbreaks[8], leaving unaddressed the remaining 50% of reported outbreaks, associated with eating establishments and other selected retail sectors serving potentially hazardous foods (OzFoodNet, 2007).

Technical issues with the proposed Catering Standard

The proposed standard for catering operations (P290 *Food Safety Programs for Catering Operations to the General Public*) is on hold pending the review outcome.

The standard development process has highlighted a number of difficulties in the policy approach as it applies to catering operations. The first issue is that the 2003 Policy Guideline deals only with Standard 3.2.1, without considering less intensive and costly risk management interventions including, for example, less onerous Food Safety Program requirements or non-Food Safety Program measures. However, it became apparent during the P290 process that Standard 3.2.1 may be difficult to implement and/or of questionable benefit in many small-scale catering settings.

Secondly, the exclusion of 'eating establishments' generates a series of boundary issues – who is in and who is out. The 2003 Policy Guideline seeks to deal with some of these issues in its definition of catering and an exclusions section. However, it has proved difficult in practice to draw the boundaries satisfactorily in the draft standard, despite the use of criteria around frequency, timing and event planning. These concerns were raised as part of the review process and by stakeholders as part of the consultation process, including a concern that community or charitable fund-raising groups, which are exempted from the draft standard, may compete unfairly with commercial businesses, particularly in rural and regional areas.

<p style="text-align:center">* * *</p>

For all of these reasons, the Ministerial Council in October 2009 requested FRSC to review the 2003 Policy Guideline with a particular focus on retail/food service. A Policy Options Consultation Paper was prepared and the public comments received during consultation between October and December 2010 informed the development of the proposed Policy Guideline.

Part 2 - Objectives

The primary objective is to provide an overarching policy framework that will facilitate development of efficient, effective and nationally consistent food safety management arrangements for retail/food service. The proposed policy framework is comprehensive in that it covers implementation as well as the development of standards or other regulatory requirements.

Specifically, the proposed policy framework seeks to address the issues and challenges identified by the review by ensuring that:

- a broader range of risk management tools is considered when determining potential regulatory requirements for retail/food service;

- the level of regulatory requirements and their verification is proportionate to the level of risk;

- the selection of potential risk management tools is informed by consideration of 'appropriateness' in conjunction with 'risk' and 'benefit-cost';

- regulatory decision-making considers a range of feasible interventions and the selected intervention generates the greatest net benefit; and

- regulatory requirements for retail/food service are effectively implemented in a nationally consistent manner.

As the issues addressed by the proposed policy framework clearly cut across the roles and responsibilities of FSANZ, the Food Regulation Standing Committee and its Implementation Sub-

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[8] Catering food preparation settings implicated in foodborne illness outbreaks, in Australia, 2007: commercial caterer, institution, camp, cruise/airline

Committee, and individual jurisdictions, the proposal includes an agreed implementation work program based on collaboration over the short, medium and long-term (see Part 7 p.22).

Part 3 – Options

The options under consideration are:

Option 1 - *Status Quo*: The existing 2003 Policy Guideline (*Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs)* continues to apply to food safety management in the general food service sector, including catering, and closely related retail sectors. This will involve the reactivation and completion of Proposal P290

Option 2 - *Develop Additional or Alternative Policy Guidance*: Additional or alternative policy guidance is developed for food safety management in the general food service sector, including catering, and closely related retail sectors.

Description of policy options

Option 1 - *Status Quo*

In accordance with the 2003 Policy Guideline, FSANZ would re-activate and complete *Proposal P290 – Food Safety Programs for Catering Operations to the General Public*.

Specific guidance in relation to food safety management for retail/food service would continue to relate only to the application of Standard 3.2.1 *Food Safety Programs* to catering operations to the general public with specific exclusions for community or charitable fund raising events that undertake catering. This means that all catering businesses subject to the Standard would need to implement an externally audited, internally reviewed, documented monitoring program of critical process steps (a Food Safety Program).

The NRVP (2002 p.7) calculated indicative costs and benefits amounts for implementation of Food Safety Programs by catering businesses. The total cost for initial implementation of Standard 3.2.1 was estimated to be $25.2 million with ongoing annual costs of $29.1 million. Total benefits were estimated to be $348.5 million per year in terms of reducing food borne illness by 15%.

No policy guidance would be provided in relation to consideration of other potential risk management tools, nor in relation to "appropriateness" as a distinct criterion that can be applied in conjunction with the risk and benefit-cost criteria as part of the impact analysis.

Therefore, there would be no policy basis to identify alternative, and potentially more cost-effective, risk management approaches for catering, or to address the serious incidence of foodborne illness attributable to the remaining retail/food service sectors. Furthermore, there would no policy guidance in relation to the implementation issues identified by the review.

Option 2 - *Develop Additional or Alternative Policy Guidance*

The 2003 Policy Guideline, as it applies to industry sectors that are beyond the scope of the review and have already implemented Standard 3.2.1 *Food Safety Programs,* would be retained. Additional or alternative policy guidelines would be developed that address the issues identified by the review.

FSANZ would need to consider the overall risk management approach for retail/food service. The policy guidance would enable FSANZ to take a holistic view of retail/food service by considering a broad range of risk management tools, including Standard 3.2.1, and determining their appropriateness for the different business types within the sector. This would necessarily include reconsideration of the scope of Proposal P290.

 In addition to Food Safety Programs, a variety of regulatory and non-regulatory tools would be considered under Option 2 and applied as appropriate to caterers and non-caterers. Tools include

various forms of business-based systems (externally verified, documented monitoring systems), codes-of-practice and tools involving the provision of information including food handler training[9].

The policy guidance would also require FSANZ and jurisdictions (through FRSC and ISC) to develop strategies to address the implementation issues identified by the review.

While it is too early to estimate the overall costs and benefits of Option 2, it is broadly expected that similar levels of reduction of food-borne illness would be experienced under this option as in Option 1 but would not be limited to caterers only.

Rationale for the two-option approach

When developing a policy or regulatory approach to a problem, three or more options (including the status quo) are generally identified.

However, it was considered appropriate for the purposes of this proposal, and the associated consultation, simply to put forward the two options identified above. The reasons relate to the circumstances of the review and its terms of reference. The review was established due to concerns that the 2003 Policy Guideline may not provide adequate or appropriate guidance for food safety management in the retail/food service sectors. The review's terms of reference required it to consider whether additional or alternative policy guidance is needed.

The review confirmed that the five critical issues identified in the consultation paper, and not addressed by the 2003 Policy Guideline, impact on FSANZ's capacity to formulate a cost-effective risk management approach to these sectors and on jurisdictions' capacity to implement regulatory requirements effectively, efficiently and consistently. The alternative to the status quo is therefore to develop additional or alternative policy guidance to address these issues.

From this perspective, there are really only two options: leave the 2003 Policy Guideline in place **or** develop additional or alternative policy guidance to address the issues.

Stakeholders were given all the information needed to comment on or critique the review's analysis and express a view on whether change to the status quo is warranted. The presentation of Option 2 and the draft example Policy Guideline also gave stakeholders the opportunity to comment on any aspect of the proposed policy approach to the review's findings. A summary of the consultation outcomes is provided in Part 5.

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[9] As identified in the Policy Options Consultation Paper, regulatory and non-regulatory tools that might be considered under Option 2 could include: business-based systems (including externally audited food safety programs, externally audited template-based food safety programs and externally inspected, prescribed record keeping for targeted controls to address issues in certain sectors); government-endorsed codes of practice; and mandatory food handler training. Examples of potential non-regulatory food safety management tools under Option 2 include: provision of food safety information, voluntary training, and public release of regulatory information. It is proposed that Risk Management Tools will be further examined as a discrete project under Option 2's proposed Implementation Work Program

Part 4 – Impact Analysis

Key impacts of the proposal

The starting-point for the impact analysis of the two options under consideration is the recognition that the high-level nature of the principles in the proposal's draft Policy Guideline do not lend themselves to a quantifiable, detailed impact analysis. In particular, Option 2 proposes broad principles for a national approach to food safety management in the retail/food service sector, including implementation of existing food safety standards and future standards, if any[10].

For this reason, the impact analysis assesses the qualitative impacts of the two approaches to food safety management presented in the proposal. Potential impacts have been identified in four key areas: on public health outcomes generally, and specifically on the food industry, consumers, and governments as affected groups in the community.

Public health impacts

Food safety management policy must consider public health impacts, which may include impacts relevant to the whole population, specific groups or individuals.

In particular, food safety management policy should not have adverse effects upon:

- protection of public health and safety;

- incidence of contamination of food; and

- incidence of foodborne illness.

The 2006 report *Annual Cost of Foodborne Illness in Australia* acknowledges that there is a risk that the effects of foodborne illness on the economy may increase, unless interventions can decrease the incidence of these illnesses (Abelson *et al*, 2006, p.viii). Food safety management policy guidance targeted specifically at retail/food service has the potential to underpin arrangements that will significantly reduce food safety risks in the sector, which is currently over-represented in causal and costing data.

Industry impacts

Business types in the retail/food service sector are summarised in the box below.

Business Types within the General Food Service and Closely-Related Retail Sectors[11]	
Food service – onsite and offsite catering Food service – ready-to-eat food prepared in advance e.g. takeaways that hot-hold ready-to-eat food, restaurants that pre-prepared ready-to-eat food, Food service – express order e.g. eating establishments or takeaways that do not prepare food in advance	Bakeries – retailers and processors of potentially hazardous foods (e.g. high risk products) Retailers of ready-to-eat[12]: - potentially hazardous bakery products (not processors) - delicatessen products; - processed seafood products; and - perishable packaged foods (e.g. packaged sandwiches).

Retail/food service is largely the domain of small-to-medium enterprises (SMEs). Potential costs to industry, and the particular needs of SMEs must be considered alongside potential benefits to public

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[10] However, it is noted that Option 1 – the *status quo* – strongly encourages FSANZ to develop a standard requiring catering businesses to implement food safety programs complying with Standard 3.2.1.

[11] Allen *et al* (2002, p.66) provided estimates of the numbers of businesses in each sector: food service (n=76,751), not-for-profit (30,000) and retailers (supermarkets, corner stores, delis and service stations, n=21,228)

[12] As per the definition of ready-to-eat food in *Food Standards Code* Standard 3.2.1(1)

health. Good regulatory practice consistent with the principle of minimum effective regulation and effective implementation will assist in achieving regulatory objectives, while having proper regard for the limited resources available to many businesses within the sector.

In particular, food safety management policy should consider impacts on industry in relation to:

- compliance and regulatory costs;

- national consistency, in particular the potential for increased compliance costs due to inconsistent requirements and/or implementation/enforcement;

- industry reputation, including impacts from foodborne illness outbreaks or from undue constraints on cost competitiveness; and

- ability to innovate, including unnecessary constraints on compliance mechanisms and/or product range.

Consumer impacts

Along with the primary objective of protecting public health and safety, there are a number of consumer interests, which will be impacted by food safety management policy for retail/food service. This sector provides the main interface between consumers and the food regulatory system. The increasing sophistication and depth of consumer knowledge and interests means that perceived and actual concerns should be addressed in any policy guidance.

In particular, food safety management policy should consider impacts on consumers in relation to:

- expectations and confidence in the food supply, food regulations and government regulators;

- choice and ability to make informed decisions;

- food prices due to costs attributable to regulatory intervention (or lack of); and

- costs borne by individuals from foodborne illness.

Government impacts

Food safety management policy has the capacity to impact upon government at all levels. In particular, food safety management policy guidance for retail/food service should consider potential impacts on local governments as the key "front-line" regulators of the sector. Enforcement agencies (including local government), food safety agencies and departments of health and trade may all be impacted, although the extent of impact may vary.

In particular, food safety management policy should consider impacts on government in relation to:

- implementation and maintenance of food safety systems

- investigating and monitoring foodborne illness;

- enforcement and surveillance, including in response to foodborne illness outbreaks;

- national consistency, as it relates to the 'implementation burden' at State/Territory and local government levels; and

- health care costs, including emergency care, general practitioner and specialist services.

The Annual Cost of Foodborne Illness in Australia report (2006) states that of the total $1.25 billion annual cost of foodborne illness in Australia, the cost to health care services alone is estimated to be $221.9 million annually[5]. This cost is borne both by individuals and by government at various levels (Abelson *et al* 2006, p.vii).

Analysis of the options
The potential qualitative impacts of both options in each of the four areas outlined above are presented here. The consultation process did not identify any additional impacts requiring consideration when analysing the options.

In summary, the main impacts relate to: incidence of foodborne illness; regulatory consistency; industry compliance costs; government implementation costs; and consumer confidence, consumer choice and food prices.

Option 1 - *Status Quo***:** The existing 2003 Policy Guideline (*Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs)* continues to apply to food safety management in the general food service sector, including catering, and closely related retail sectors ('retail/food service').

Analysis of Option 1

Public Health

Advantages
Introduction of the Catering Standard is likely to result in fewer foodborne illness outbreaks attributable to the catering sector[13].

Disadvantages
Requirements for retail/food service businesses outside the scope of FSANZ Proposal P290 will remain unchanged. Therefore, the number of foodborne illness outbreaks attributable to this sector is not likely to change (around half of all identified foodborne illness outbreaks [OzfoodNet, 2007]) and the retail/food service sector will continue to be over-represented among the sectors causing foodborne illness.

Industry

Advantages
Catering businesses would be subject to nationally consistent requirements thus addressing any issues arising from jurisdiction-specific requirements. The compliance burden for nationally-operated catering businesses is likely to be reduced because the need to comply with multiple inconsistent jurisdiction-specific requirements will be avoided.

Decline in the number of food-borne illnesses attributable to the catering sector is likely to have a beneficial effect on the reputation of the catering sector resulting in increased demand for catering services and no cause for heightened sector-specific enforcement response by government

No extra costs are likely to be imposed on retail/food service business types (non-caterers) outside the scope of Proposal P290.

No extra costs will be imposed on community groups that provide catering services to the general public as 2003 Policy Guideline exempts them from the proposed draft standard. These caterers would continue to provide much needed services in rural and regional areas

Disadvantages
Catering businesses will incur the cost of complying with Standard 3.2.1 *Food Safety Programs*. In 2002, the Allen Report estimated that in the first year the average cost per catering business to implement and maintain an audited Food Safety Program to be approximately $3,200. Ongoing annual costs were estimated at approximately $1,700 per catering business (The Allen Consulting Group, 2002, pp.62-65) [14]. It is worthwhile to note that business costs may vary in accordance with the business size and complexity.

Compliance with Standard 3.2.1 may be particularly onerous for certain businesses subject to the Catering Standard potentially requiring additional resources. Smaller businesses or those with limited resources, or those hosting infrequent catering events, may be unable to sustain the implementation and maintenance of Standard 3.2.1, resulting in poor or nil compliance and/or ineffective Food Safety

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[13] The Allen Report (2002, p.73) estimated that the introduction of Food Safety Programs for caterers would result in an estimated 15% reduction in the incidence of food-borne illness attributable to the sector.

[14] In 2002, the average first year cost per catering business to implement and maintain an audited FSP was calculated to be approximately $3,200. This includes the following costs: FSP development ($1350), training ($150), record keeping and review ($1600) and audit ($133 per year). Ongoing annual costs (after the first year) were estimated to be $1700 and include record keeping/ review ($1600) and audit costs ($133) only (The Allen Consulting Group, 2002, pp.62-65).

Programs. As a result, fewer businesses may be able or willing to provide catering services. There also may be, as evidenced by high levels of audit failure resulting from poor compliance rates, negative impacts on industry reputation, in turn affecting demand for catering services.

Start-up costs are likely to be higher, resulting in a barrier to entry for small catering businesses.

Poor or nil compliance and/or ineffective Food Safety Programs may lead to a continued increased incidence of foodborne illness.

Community groups, which will be exempt from the requirements, may compete unfairly with commercial businesses resulting in potentially fewer commercial caterers operating in regional/rural areas. During the P290 standards development process, stakeholders raised this competitive advantage as a serious issue for rural and regional areas.

For catering businesses, where jurisdiction-specific initiatives are also implemented, compliance costs arising from inconsistency may be incurred.

For non-catering businesses operating in jurisdictions with no additional food safety management requirements, it is foreseeable that the continued incidence of food borne illness outbreaks attributable to non-caterers may result in heightened sector-specific enforcement response by government.

Consumer

Advantages
It is likely that the introduction of the Catering Standard will result in increased consumer confidence in the catering sector. Demonstrated compliance with a Food Safety Program is often used as an effective and highly visible marketing tool.

Disadvantages
Consumer choice may be diminished if fewer businesses (especially smaller businesses) are able or willing to provide catering services due to the relatively onerous requirements of the Catering Standard.

If fewer businesses enter the market or continue to provide catering services, reduced competition may result in higher prices.

Catering businesses are likely to pass on to consumers the costs of implementing the Catering Standard, resulting in higher prices for catering services.

Under Option 1, it is expected that non-catering businesses would experience no additional compliance costs and therefore consumers will not experience any flow-on price increases from these businesses.

Government

Advantages
The introduction of the Catering Standard is likely to reduce the food safety risk posed by the catering sector by reducing foodborne illness attributable to the catering sector. In turn, this is likely to reduce costs borne by government (State and local) when investigating and responding to foodborne illness outbreaks and providing healthcare services.

The Food Safety Program record-keeping requirements will enable regulators to verify that catering businesses are adequately managing food safety risks over time.

If outbreaks do occur, Food Safety Program record-keeping requirements will facilitate foodborne illness outbreak investigations (e.g. ingredient traceability).

Disadvantages
Reactivating Proposal P290 might prove to be time consuming, as the standards development process was underway for a number of years without completion. Agreement by stakeholders could not be reached on two key elements: the definition of catering and the scope of the standard.

Implementing Proposal P290 is likely to require high levels of Government (State and/or local) resources. Many businesses are likely to require implementation support in the form of guidance materials, extended periods to implement compliant programs, and multiple follow-up visits by the regulatory agency.

Responding to foodborne illness outbreaks attributable to the retail/food service businesses outside the scope of Proposal P290 will continue to require Government resources.

Repeated or high-profile foodborne illness outbreaks may lead to loss of confidence in Government's ability to manage food safety in the retail/food service sector. This could lead to knee-jerk policy responses instead of considered and consultative development of efficient, effective and nationally consistent food safety management arrangements.

In the absence of a national approach, jurisdiction-specific initiatives may (continue to) be implemented to manage food safety risks in retail/food service businesses other than catering.

Option 2 - *Develop Additional or Alternative Policy Guidance***:** Additional or alternative policy guidance is developed for food safety management in the general food service sector and closely related retail sectors including catering ('retail/food service').

Analysis of Option 2

Public Health

Advantages
Additional or alternative policy guidance will support development of efficient, effective and nationally consistent food safety management arrangements that will better manage food safety risks across the retail/food service sector and any concomitant decrease in foodborne illness outbreaks would not just be limited to catering sector. A better public health outcome is therefore expected under Option 2 as it applies to both catering and non-catering businesses. It is also likely that greater levels of compliance will be experienced under Option 2 as it considers the selection of 'appropriate' food safety management tools from a range of options. Ultimately, this will provide a positive public health outcome compared with Option 1.

Disadvantages
Policy development processes and subsequent standards development/implementation processes take considerable time. Foodborne illness and food contamination rates attributable to the retail/food service sector are unlikely to change during this period.

Industry

Advantages

Under Option 2, over all compliance costs for catering sector businesses are likely to be less than for Option 1 because some businesses will be able to obtain benefit from implementing more 'appropriate' risk management tools (selected from a range of options). Comparatively, under Option 1, a 'one size fits all' approach is to be adopted and one risk management tool (Food Safety Programs) is to be implemented for all catering businesses. It is worthwhile to note that some tools, such as mandatory food safety training, impose very modest costs as compared to Food Safety Programs[15].

For other non-catering businesses, consistent national arrangements could provide benefit to businesses that operate in more than one jurisdiction by lowering compliance costs as compared with the current patchwork of inconsistent jurisdiction-specific requirements (assuming that all States/Territories would eventually implement jurisdiction-specific requirements to manage food safety in the high-risk retail/food service sector).

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[15]In 2009 the average cost per business in New South Wales (NSW) for Food Safety Supervisor training was estimated to be $450 every five years assuming a 10% loading for new staff training, includes the cost of the training class, the Certificate (transferrable between businesses) and lost work time. Therefore, the cost of Food Safety Programs would be approximately 21 times greater than the cost of mandatory food safety training calculated over a five year period.

However, some non-catering businesses located in jurisdictions where there are no additional food safety management requirements may face slightly increased compliance costs.

While it is too early in the process to estimate compliance costs that may arise from Option 2, these will vary, depending on business type. For some businesses, the costs may be less under Option 2 and for others it might mean a higher cost. However, it is likely that costs will vary between zero (for areas where no additional compliance requirements are considered necessary) and the cost of implementing and maintaining a Food Safety Program[14] (as per Option 1), noting that any future regulatory requirements will undergo the usual detailed analysis prescribed by the Commonwealth's Regulatory Impact Statement process.

Under Option 2, higher levels of industry compliance and lower implementation costs are likely when businesses implement risk management tools that are 'appropriate' for their business setting.

Consistent interpretation and enforcement of food regulatory requirements can significantly reduce compliance burden for industry. Option 2 will support achievement of national consistency, as agreed risk management tools will be implemented by nationally consistent instruments such as the Food Standards Code, Model Food Provisions and/or nationally agreed implementation plans.

Effective food safety management arrangements are likely to reduce the disproportionate share of foodborne illness attributable to retail/food service businesses, and thereby enhance the sector's reputation with consumers and government. Perceptions by government and consumers of poor sector compliance are more likely to result in a heightened enforcement response by government.

Disadvantages
Implementing appropriate risk management tools for the retail/food service sector generally will require industry resources from all retail/food service businesses not just catering businesses.

For non-catering businesses with no jurisdiction specific requirements, Option 2 is likely to result in the imposition of additional costs. However, because these additional requirements are more appropriate and nationally consistent, it is expected that these costs will be less than for those businesses subject to a patchwork of jurisdiction-specific food safety requirements. This may be qualified by the possibility that some jurisdictions may not otherwise have introduced additional food safety requirements for non-catering businesses.

Policy development processes and subsequent standards development/implementation processes take considerable time. In the interim, the reputation of the retail/food service industry may be negatively affected, as the rate of likely foodborne illness outbreaks attributable to retail/food service is likely to remain unchanged.

Consumer

Advantages
In the long term, consumer confidence in the retail/food service sector is likely to improve if effective, efficient and nationally consistent food safety management arrangements are implemented. This is because decreased rates of foodborne illness/food contamination are likely and compliance with fundamental hygiene requirements will be seen to improve.

Additionally, sectors with perceived high-levels of compliance are also unlikely to be subject to a reactive, heightened enforcement response by government.

Lower compliance costs for some catering businesses and non-catering businesses could well result in lower costs to the consumer under this Option compared with Option 1. However, it is unclear whether this would translate into a material benefit to consumers.

Disadvantages
Policy development processes and subsequent standards development/implementation processes take considerable time. Foodborne illness and food contamination rates attributable to the retail/food service sectors are unlikely to change during this period.

Consumer confidence in the food produced by the retail/foodservice sector and the food regulatory system may be adversely affected during this period resulting in reduced custom and/or increased complaints made to government agencies that would result in a heightened enforcement response.

Generally, any additional requirements will result in increased compliance costs and it is likely that these will be passed on to consumers in the form of increased in food prices (see above).

Government

Advantages

Efficient, effective and nationally consistent food safety management arrangements will instil confidence in Government's ability to manage food safety in the retail/food service sector.

Higher levels of compliance may be anticipated, thereby reducing enforcement costs.

Reduced rates of foodborne illness are likely, thereby reducing healthcare costs.

Implementation burden on regulatory agencies is likely to be minimised, as the most 'appropriate' risk management tools can be selected from a range of options and nationally consistent instruments will be available to implement the agreed tools.

Disadvantages

Significant State and local government resources will be required to develop and implement the food safety management arrangements. The development of a multi-tool, multi-sector risk management approach, including associated stakeholder consultation, is complex compared with the approach taken in Standard 3.2.1 *Food Safety Programs*.

Under Option 2, a greater level of resources and consultation by all levels of government is required compared with Option 1. In comparison, the food safety management approach for Option 1 is pre-determined, is limited to one tool (Food Safety Programs) and is to be implemented in one retail/food service sector (e.g.caterers only).

However, it is possible that the extent of the resources required by States and Territories under Option 2 could be mitigated if resources for jurisdiction-based programs are diverted into the national process.

Part 5 – Consultation

A Policy Options Consultation Paper (Consultation Paper) on the Review of the 2003 *Ministerial Policy Guideline Food Safety Management in Australia: Food Safety Programs* was released for public consultation for eight weeks between 22 October and 17 December 2010. The Consultation Paper (FRSC Working Group, 2010) presented two options as described in the previous section. It also provided for structured feedback from stakeholders.

Consultation Process

The consultation process was undertaken in accordance with the Ministerial Council's guideline document for the development of food regulation policy guidelines (FRSC, 2008). The Consultation Paper was publicised through an advertisement in *The Australian* newspaper, with electronic survey responses or written submissions invited from all stakeholders. Jurisdictions also agreed to a number of additional consultation processes such as providing information on jurisdiction websites, additional targeted email notifications, and conducting face-to-face briefing sessions for all stakeholders in Melbourne and Sydney. The FRSC Working Group conducted two briefing sessions (18 and 19 November 2010) and a follow up briefing session (7 December 2010).

A strongly representative cross-section of retail/food service stakeholders, including all industry members of the Advisory Group[16] for P290 *Food Safety Programs for Catering Operations to the General Public*, participated in the consultation. A total of nineteen stakeholder groups was represented at the briefing sessions (see Appendix 1, p 25).

Consultation Outcomes

A total of nineteen submissions was received. Stakeholders responded to specific questions that related to various sections of the Consultation Paper. Appropriately, submitters did not address every question and some submitters offered their unstructured comments via letter (n=8) and others completed the electronic submission survey form (n=11). Submitters are listed in the table at Appendix 1, p.25.

Stakeholder comments comprised five key themes

Nearly all submitters preferred Option 2 *(Develop additional or alternative policy guidance)*. However, due to the broad nature of the options presented, views expressed by stakeholders in submissions and at the briefing sessions were systematically analysed to identify key themes. These included:

1. Concerns about inconsistency of approach and commitment to enforcing standards, reflecting issues relating to the capability and capacity of regulatory agencies;

2. Support for consideration of a range of risk management tools and the concept of 'appropriateness';

3. Identification of training in basic food safety skills and knowledge as an appropriate and justified intervention for the retail/food service sector;

4. Support for use of Risk Profiling classifications to inform and guide risk management approaches; and

5. Support for nationally consistent approaches to implementation, including the local government role.

This analysis of stakeholder comments was then used to inform the amendments made to the Draft Policy Guideline (the revised version is located at Appendix 2, p.26) the development of the proposed work program for its implementation (as set out in Part 7 p.22).

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[16] This group consisted of representatives from industry, Commonwealth, State and Territory Governments, and from consumers. Industry representatives included specific bodies/organisations identified as representing the interests of commercial catering operations.

A summary of stakeholder comments relating to each key theme are listed below:

1. Concerns about inconsistency of approach and commitment to enforcing standards

Large national industry stakeholders identified issues experienced at the local, jurisdictional and national levels relating to inconsistent enforcement and interpretation of requirements.

The professional association for Environmental Health Officers *(Environmental Health Australia)* provided further comment that 'lack of resources (e.g. training) provided by state and local governments to industry and enforcement agencies is a major impediment to improving food safety outcomes.'

Stakeholders also indicated in their submissions that greatest regulatory compliance burden for businesses is attributable to inconsistent interpretation of the *Australia and New Zealand Food Standards Code* and inconsistent Government commitment to enforcing standards.

These concerns, raised by Government and industry submitters, highlighted the need to include development of an agreed high-level strategy as a key element in the proposed work program for implementing the Policy Guideline (see Part 7, p.22).

2. Support for a range of risk management tools and the concept of 'appropriateness'

Submitters identified a number of additional potential regulatory and non-regulatory interventions and considered that these should be formally agreed and documented.

Many stakeholders provided advice in their submissions on additional potential interventions. In addition to those referenced in the Consultation Paper (FRSC, 2010), submitters considered that regulatory risk management tools could also include: mandatory incident reporting, targeted controls for certain sectors in response to specific issues, mandatory food safety training and skills enhancement for all regulatory personnel, mandatory food safety refresher training and compliance with Australian Standard (e.g. Building and Construction). Examples of potential non-regulatory tools were also provided. These could include business-based verification activities and industry-based complaints database for self-monitoring.

Stakeholder comments on the range and application of possible risk management tools for the retail/food service sector and the relevant section of the Consultation Paper (FRSC, 2010) provides a solid basis for beginning work on the proposed 'Risk Management Tools' project outlined in the Policy Guideline's implementation work program (see Part 7, p.22)

3. Identification of food safety training as the right tool for retail/food service sector

Consistently, stakeholders offered the view that that the application of Standard 3.2.1 – *Food Safety Programs* was not an appropriate sector-wide regulatory risk management tool.

A substantial number of stakeholders from both industry and government identified training in basic food safety skills and knowledge as an appropriate and justified intervention for the retail/food service sector.

4. Risk Profiling classifications used to inform and guide risk management approaches

Submitters considered that Risk Profiling classifications should be used to guide inspection activities, the choice of risk management tools and to inform strategy about allocating enforcement resources in response to critical violations. Finalisation of Risk Profiling classifications for the retail/food service business types has been included in the implementation work program (see Part 7, p.22)

5. Nationally consistent approaches to implementation

Briefing session stakeholders stated that the development of nationally implemented and consistently enforced food safety management tools (especially template systems) needs input from local Councils. Template developers should also consider potential users with limited English language and literacy skills.

In response, Policy Principle 10 of the Draft Policy Guideline relating to implementation strategies, was amended to require the development of a engagement, consultation and communication strategy that would ensure an appropriate level of input from local government and industry will be achieved.

Another stakeholder *(Clubs Australia)*, representing individual businesses that typically do not operate across State boundaries, stated that it was wary of nationally consistent regulation due to the diverse nature of its members in the retail/food service sector and requested that 'the concept of appropriateness be considered above other means of designating policy, including risk profiling and cost benefit analysis'. While the Working Group acknowledged the validity of these concerns, the Working Group does not agree that the concept of appropriateness takes precedence over risk and benefit cost. In response, Policy Principle 8 was amended to include a statement that appropriateness should be determined in accordance with any framework developed.

Comments on Policy Options

Submitters preferred Option 2 *(Develop additional or alternative policy guidance)*. Of the 17 respondents on this issue, 15 indicated a preference for Option 2. Two submitters (*Coles* and *Town of Victoria Park Council*) preferred Option 1[17]. A further two submitters did not list a preference. Appendix 3, p.31 summarises the support for each option and categorises submitters by stakeholder group.

A number of submissions included additional comments and a selection have been included here:

- *Clubs Australia* indicated in its submission that it 'prefers the proposed Option 2 but has some concerns……that appropriateness will be lost in the policy development process.'

- *SA Health* indicated that it strongly supported Option 2.

- A number of submitters stated that they believed that public health outcomes for the retail/food service sector are sufficiently met when businesses comply with current requirements (Standards 3.2.2 and 3.2.3) (*Coles, Restaurant and Catering, Clubs Australia*). However, *Restaurant and Catering* also indicated that it supported mandatory training for all food handlers and the use of best practice systems (such as voluntary food safety plans) as this would best achieve the food safety outcomes as defined in the Standards 3.2.2 and 3.2.3.

A number of submitters also stated that Option 2 could provide the impetus for evaluating the effectiveness of the current national and state-based requirements in the retail/food service sector. This evidence could then be used to inform the national approach on food safety management in the retail/food service sector.

It was noted by one submitter (*Clubs Australia*) that State-specific interventions for the retail/food service sector have been introduced in a number of jurisdictions and that time is needed to see evidence of increased compliance before any new arrangements are considered nationally.

Another submitter (*Australian Hotels Association*) noted that it has been a considerable time since the development and implementation of the 2003 Guideline and that, assuming that there is a case for action beyond the current legislation requirements (Standards 3.2.2 and 3.2.3), then the intervention decision needs to consider

- all feasible options both regulatory and non-regulatory
- 'appropriateness'
- whether there is evidence that the intervention has been effective and
- multi-tool approaches to food safety management' (*Australian Hotels Association*).

Consequently, an evaluation project on State-specific initiatives has been included in the implementation plan. In response to these stakeholder comments, the implementation work program includes an evaluation project on State-specific initiatives (see Part 7, p.22).

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[17] One stakeholder (Coles) appears to have mistakenly identified Option 1 as their preferred option because the associated comments indicated satisfaction with the current food safety standards (Standards 3.2.2 and 3.2.3) for the retail/food service sector.

However, it is important to note that the selection of indicators measuring the success of State-specific initiatives needs careful consideration and cannot rely solely on foodborne disease data. Input from OzfoodNet cautioned that it is difficult to use foodborne illness data to show underline direct improvements in food safety as only large-scale differences changes can be observed in the surveillance data. It is widely acknowledged that there are issues accurately measuring (e.g. underreporting, different jurisdictional disease monitoring systems) and interpreting foodborne disease data (e.g. other interventions, seasonal/environmental/economic conditions also influence foodborne disease rates).

Clearly, submitters are in support of developing additional or alternative policy guidance for food safety management in the retail/food service sector. Submitters overwhelmingly supported Option 2 along the lines suggested in the Consultation Paper (2010). Nonetheless, when implementing the proposed Policy Guideline, governments should be mindful of issues relating to 'appropriateness' of risk management tools and of the outcomes from evaluation of State-specific food safety management initiatives.

Comments on Policy Principles informed revision of the Draft Policy Guideline

Submitters broadly supported the Example Draft Policy Guideline included in the Consultation Paper.

Around half of submitters commented on the 12 Specific Policy Principles. A minimum of 8 submitters (for Principle 4) and a maximum of 11 submitters (for Principle 2) provided their views on the desirability and relevance of each Specific Policy Principle. The table provided in Appendix 4, p.32 comprehensively sets out the submitter responses to each Specific Policy Principle.

All of the Policy Principles were supported by a high proportion of submitters. However, it is worthwhile to note that Policy Principle 1 (Overarching Principle), Policy Principles 6 and 7 (relating respectively to risk and benefit-cost) and Principle 12 (relating to implementation strategies) received one 'disagree' response from submitters.

Principle 5 and Principles 7 through 12 also received responses (at most two per Principle) that specified the 'agree with amendment' category. Comments received in relation to Principle 5 included the need for any risk profiling classification to be applied also to the not-for-profit sector (*Bundaberg Regional Council).* Consequently, Principle 5 was amended to include specific reference to the not-for-profit sector.

Comments from one jurisdiction (*SA Health*) on the need to clarify policy principles relating to 'appropriateness', also resulted in amendments. Principle 8 was revised to include a reference to the importance of 'appropriateness' and how it should be determined in accordance with any framework developed.

Stakeholder comments from both government and industry prompted amendments to the policy principles relating to implementation strategies. While most stakeholders raised concerns about consistency, they also did not want a 'one size fits all' approach and sought acknowledgement of regional differences.

Consequently, Principle 10 was amended highlighting the importance of ensuring that the development of any nationally agreed process includes the development of mechanisms to achieve input at appropriate level from local Government.

Principle 12 was also amended and now references the fact that implementation mechanisms should be flexible in addition to enabling recognition of existing equivalent industry–based systems where possible.

Summarising the consultation outcomes

The stakeholder responses, taken as a whole, support the development of additional or alternative food safety management policy guidance for the retail/food service sector, encompassing both standards development and implementation along the lines of the Consultation Paper's Example Draft Policy Guideline. The proposed final version of the Guideline is at Appendix 2, p.26. It includes a number of relatively minor but significant changes in response to stakeholder concerns.

Additionally, stakeholder comments also proved to be valuable in informing the development of the proposed work program for implementing the proposed draft Policy Guideline. The proposed work program is set out below in Part 7 (p.22).

Part 6 – Conclusion and recommended option

Option 2 is the preferred option. The review findings together with the stakeholder responses to the Consultation Paper make a compelling case for this option.

Option 2 is likely to yield a greater net benefit than Option 1 because it squarely seeks to address the issues that will impact on the effectiveness, efficiency and consistency of food safety management arrangements for retail/food service. These issues were identified and discussed in detail in the Policy Options Consultation Paper (pp. 11-26). The key elements of Option 2's response to the issues are summarised at p6 of this RIS.

In relation to effectiveness, Option 2 is likely to have a greater impact on foodborne illness rates because it enables a holistic approach to food safety management across all the business types in the retail/food service sector. In contrast, Option 1 provides food safety management guidance only in relation to catering operations.

In relation to efficiency, Option 2 provides the basis to develop the most cost-effective approach to food safety management by considering a range of risk management tools and assessing their appropriateness in relation to each business type. This may result in lower compliance costs for a proportion of catering businesses than under Option 1.For non-catering businesses, compliance costs may also be lower compared with the alternative of inconsistent jurisdiction-specific requirements. In respect to both catering and non-catering businesses, impact on their compliance costs depends on the current arrangements in their jurisdictions. In contrast, Option 1 enables only the application of Standard 3.2.1 across all catering operations, even though more cost-effective approaches might be possible for some catering business types.

Although it is too early in the process to estimate the compliance costs that may arise from Option 2, it is generally acknowledged that the selection of 'appropriate' risk management tools from a range of options is likely to result in lower compliance costs than a 'one size fits all' approach.

Option 2 is also more likely to ensure consistency of implementation. It encourages the integration of standards development and implementation planning and the collaborative development of implementation strategies. Nationally consistent implementation will further reduce compliance costs.

In summary, the proposed Policy Guideline under Option 2 provides the framework to develop efficient, effective and nationally consistent food safety management arrangements for retail/food service that comply with the principles of best practice regulation. In the absence of a national approach, it is likely that individual jurisdictions will consider it necessary to introduce jurisdiction-specific initiatives as has occurred already in Victoria, Queensland and NSW.

Development and implementation of the framework envisaged by the Policy Guideline will be a complex task. The realities of a federated system, including the key regulatory role of local government in retail/food service, will necessitate the collaborative and consultative approach intended by the Policy Guideline.

Part 7 – Implementation and Review

This section outlines the key elements of the implementation work program to be undertaken if the Ministerial Council endorses the proposed Draft Policy Guideline.

The Consultation Paper included an 'Indicative Next Steps' section setting out the likely processes needed to implement the proposed Policy Guideline, if endorsed. Based on this section and consideration of stakeholder responses (including input from jurisdictions), three key elements are envisaged:

- development of a high-level strategy for implementation of the Policy Guideline, for endorsement by the Food Regulation Standing Committee (FRSC);

- technical work of several kinds; and

- integrated development of standards or other regulatory requirements and the associated implementation mechanisms.

The Policy Guideline establishes a framework for development of a nationally consistent approach to food safety management in the retail/food service sectors. The framework envisages consideration of a broad range of risk management tools and a range of options for consistent implementation. Furthermore, a number of jurisdictions are already managing food safety risks in these sectors under State-specific initiatives. Finally, while local government plays a key role in food safety management in each jurisdiction, the specific responsibilities and coordination mechanisms differ.

For all these reasons, it is considered essential that a high-level strategy for this work first be developed collectively by jurisdictions and agreed by FRSC.

In parallel with development of this strategy, technical work of several kinds should be undertaken:

- finalisation of Risk Profiling Framework outcomes for retail/food service;

- collation and analysis of evaluation data on existing State-specific food safety management initiatives in retail/food service; and

- definition of the set of potential risk management tools, including options for nationally consistent implementation of each tool if/when it is deployed.

When the strategy has been agreed and the technical work has been completed, the integrated development of nationally consistent standards/regulatory requirements, as appropriate, and the associated implementation mechanisms can begin. This may involve examination by FSANZ of the scope of Proposal P290 and formulation of a revised or alternative proposal.

The first step will be to develop a model for the integrated process, using the Integrated Model for Primary Production and Processing Standards as a starting-point. The end product of all this work will be a nationally consistent approach to food safety management, documented by the outputs of the Integrated Model process.

Table 1 on the following page outlines key tasks and deliverables if the Policy Guideline Proposal (as per Option 2) is endorsed by the Ministerial Council.

Table 1   **Proposed work program for implementing the Policy Guideline on Food Safety Management for General Food Service and Closely-related Retail Sectors**

#	Project Description	Deliverable	Complete (indicative)	Critical Path	Responsible	Comments
1	Risk Profiling Framework Consult with industry on risk classifications for 8 retail/food service business and resolve any technical challenges using an expert panel	Published risk classifications, developed by the nationally-agreed methodology, for 8 retail/food service business types	December 2011	Complete before projects 2-5 commence	DoHA, assisted by FRSC Food Safety Management Working Group	Agreed by FRSC on 1 April 2011. Work underway.
2	Develop high-level strategy for Policy Guideline implementation Policy-based project to identify and agree on the key elements of a nationally consistent approach to food safety management within the framework established by the Policy Guideline. Examine scope of further work for application to retail/food service businesses.	Strategy document agreed by FRSC.	For FRSC October 2012 meeting	Complete before project 5 commences	FRSC	Should include a strategy for stakeholder engagement, consultation and communication (Policy Principle 10)
3	Evaluation of State-specific Initiatives Collate and analyse available evaluation data on existing State-specific food safety management initiatives in the retail/food service sectors	Report, including findings and/or recommendations for the national work	For FRSC October 2012 meeting	Complete before project 5 commences	FSANZ and relevant jurisdictions	
4	Risk Management Tools Define the set of potential risk management (RM) tools that could be considered for deployment in the retail/food service sector. Identify options for nationally consistent implementation of each RM tool, if deployed	Document explaining key features of each RM tool and available options for nationally consistent implementation	For FRSC October 2012 meeting	Complete before project 5 commences	ISC and FSANZ	National workshop could probably generate necessary material, building on previous work
5	Develop and apply Integrated Model Develop an integrated model, aligning standards development and implementation planning, that is appropriate for the retail/food service sector. If appropriate, FSANZ to raise a new proposal for standard development work. Existing Proposal P290 disbanded. Progress revised or alternative P290 in accordance with the Integrated Model. Progress any other agreed initiatives for nationally consistent food safety management.	Nationally consistent approach to food safety management, documented by the outputs of the Integrated Model process.	TBD	Requires completion of projects 1-4	ISC and FSANZ	This project will proceed in accordance with the high-level strategy agreed in project 2 and utilise the technical outputs of projects 1, 3 and 4

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Appendix 1 - Stakeholder participation list

	Briefing session attendees	Submitters
Industry	Spotless George Western Foods Metcash	Sodexho Australia Coles Spotless Services Australia Ltd
Industry Association	Restaurant and Catering Association Clubs Australia Australian Hotels Association	Restaurant and Catering Association Clubs Australia Australian Hotels Association Australian Food and Grocery Council
Local Council	Ryde Council, NSW Canada Bay Council, NSW Waverly Council, NSW City of Botany Bay, NSW	Bundaberg Regional Council QLD Town of Victoria Park, WA Holroyd City Council, NSW City of Perth, WA
State Government	Department Health Victoria, Dept of Primary Industry Victoria	SA Health WA Health QLD Health SafeFood QLD
Commonwealth Government	FSANZ Department of Defence DAFF (Food Branch) DoHA (Food Policy)	DAFF (Food Branch)
Government	Implementation Sub-Committee	
Professional Association	Food Technology Assoc. of Australia Dieticians' Association of Australia	Food Technology Assoc. of Australia Environmental Health Australia
Industry consultant		Safe-T-Eat

Appendix 2 - Amended Draft Policy Guideline on Food Safety Management for General Food Service and Closely Related Retail Sectors

BACKGROUND

The fundamentals of good hygienic practice are incorporated into the Australian food regulatory system by Standards 3.2.2 and 3.2.3 of the *Australia New Zealand Food Standards Code*. State and Territory Food Acts contain nationally consistent provisions that enable compliance and enforcement action by State and Territory agencies and local government. In combination, they are a strong foundation for food safety management by government and industry.

Additional intervention may be warranted in some circumstances. This intervention should be (or is intended to be) preventive rather than reactive in nature, given the compliance and enforcement powers already available. Intervention will involve the use of 'risk management tools' that may be a regulatory requirement (e.g. a food safety management system or mandatory training) or a non-regulatory initiative (e.g. an information campaign or voluntary training).

The 2003 *Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs* identifies four high-risk industry sectors where implementation of the food safety program requirements of Standard 3.2.1 of the *Australia New Zealand Food Standards Code* would be justified. These sectors include catering operations to the general public. Requirements consistent with the 2003 Policy Guideline are now in place nationally in three of these sectors[18] but the proposed standard for catering operations (*P290 Food Safety Programs for Catering Operations to the General Public*) has been in development for a number of years without completion.

A fifth sector – eating establishments[19]– was also identified as high-risk, but at the time of the policy guideline's implementation the benefit-cost ratio of implementing Standard 3.2.1 *Food Safety Programs* in this sector was considered insufficiently high.

A review of the 2003 Guideline identified the need for comprehensive policy guidance, covering implementation as well as standards development, on food safety management in the general food service and closely related retail sectors ('retail/food service').

SCOPE/AIM

This policy guideline provides a framework for food safety management in Australia in retail/food service. Businesses subject to the recently implemented Standard 3.3.1 *Food Safety Programs for Food Service to Vulnerable Persons* are specifically excluded.

The policy guideline recognises the strong foundation provided by Standards 3.2.2 and 3.2.3 of the *Australia New Zealand Food Standards Code* and by State and Territory Food Acts. It seeks to ensure that any additional regulatory interventions that may apply to retail/food service are justified and are implemented effectively, efficiently and consistently.

The policy principles are therefore directed to the implementation process as well as the standards development process. They encourage a collaborative approach involving FSANZ, the Food Regulation Standing Committee (FRSC) and its Implementation Sub-Committee (ISC), and individual jurisdictions and agencies.

The business types that fall within the scope of this guideline include the following:

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[18] These sectors are: food service to vulnerable persons; producer, harvesters, processors and vendors of raw ready-to-eat seafood; producers of manufactured and fermented meats.
[19] The National Risk Validation Project characterised "eating establishments" thus – "The intention is that these are direct cook-serve operations, home delivery/takeaway of hot foods anticipated for immediate consumption. On the basis of similar modes of operation this would include restaurants, cafes, hotel/motel restaurant, clubs, takeaway/home delivery and fast food businesses."

General food service sector

- on and off-site catering; and
- eating establishments.

Closely related retail sectors[20]

Retailers of ready-to-eat[21]:

- potentially hazardous bakery products (including processors);
- delicatessen products;
- processed seafood products; and
- perishable packaged foods (e.g. sandwiches).

The aim of the policy guideline is to ensure that food safety management:

- reduces foodborne illness by ensuring food is safe;
- targets food safety risk in a cost-effective manner; and
- is consistent with international best practice.

The policy guideline **supersedes** the 2003 *Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs* (in particular Part 3.3 at p. 414) **in relation to retail/food service**, including catering operations and eating establishments. Food safety management tools (including food safety program requirements) currently in place in the Food Standards Code and at jurisdictional level may be supplemented through further initiatives developed in accordance with this policy framework.

While this guideline applies only to retail/food service, it is anticipated that the generic principles may have wider application subject to consultation with the affected industry sectors.

"HIGH ORDER" POLICY PRINCIPLES

The *Food Standards Australia New Zealand Act 1991* establishes a number of objectives for FSANZ ('the Authority') in developing or reviewing of food standards.

1. The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are:

   (a) the protection of public health and safety; and

   (b) the provision of adequate information relating to food to enable consumers to make informed choices: and

   (c) the prevention of misleading or deceptive conduct.

2. In developing or reviewing food regulatory measures and variations of food regulatory measures the Authority must also have regard to the following:

   (a) the need for standards to be based on risk analysis using the best available scientific evidence;

   (b) the promotion of consistency between domestic and international food standards;

   (c) the desirability of an efficient and internationally competitive food industry;

   (d) the promotion of fair trading in food;

   (e) any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.

These objectives apply to the development of standards regulating food safety management within the scope of this guideline.

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[20] 'closely related' refers to the fact that while these retail sectors are not considered to be 'food service', they undertake similar activities such as serving food that is ready-to-eat

[21] As per the definition of ready-to-eat food in *Australia New Zealand Food Standards Code* Standard 3.2.2 (1)

A number of other policies are also relevant to the development of food standards including COAG's *Best Practice Regulation* (Australia only), the *New Zealand Code of Good Regulatory Practice*, the *Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System*, and WTO agreements.

COAG documents also contain principles and intended outcomes applicable to food regulation and implementation of food standards. The *National Partnership Agreement to Deliver a Seamless National Economy*, (COAG, 2008) identifies as one of three intended outcomes:

> 'creating a seamless national economy, reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions' (p4).

COAG's *Best Practice Regulation* (2007) includes three principles particularly relevant to implementation:

- Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear

  '…Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties…' (p5)

- Consulting effectively with affected key stakeholders at all stages of the regulatory cycle

  '…possibly enhancing voluntary compliance through greater understanding and acceptance of a proposal, thereby reducing reliance on enforcement and sanctions…' (p6)

- Government action should be effective and proportional to the issue being addressed

  '…Consideration should be given to the effectiveness of implementation and administration and, as relevant, an assessment of likely compliance rates should be made taking into account matters such as incentive structures and costs to regulated parties…The principle of proportionality applies equally to the implementation of regulation, including the development of frameworks for ensuring compliance' (p6)

SPECIFIC POLICY PRINCIPLES – Overarching Principles

These policy principles are intended to guide the processes for determining and implementing appropriate risk management tools for specified retail/food service sectors or business types. Regulatory risk management tools, including standards or other regulatory requirements, should be determined in accordance with principles of best regulatory practice[22].

1. Impact analysis should be used to assess feasible options and determine which option generates the greatest net benefit. The key issues, to be considered iteratively, relate to risk, benefit-cost, and appropriateness. Assessment of risk will play a primary role in addressing the threshold issue of whether or not to regulate.

2. The following components should be available, or be developed as necessary, to support the processes that determine and implement risk management tools:
   - an agreed set of potential regulatory and non-regulatory risk management tools;
   - legislative, administrative and/or policy instruments to implement regulatory risk management tools;
   - when regulatory risk management tools are determined, strategies to apply them consistently across Australia and implement them effectively and consistently;
   - strategies to minimise the implementation burden on States and Territories and on industry including, where appropriate, implementation assistance for small business and community groups; and
   - evaluation and review processes.

3. The intervention determined for a particular retail/food service sector or business type(s):

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[22] *Best Practice Regulation: A Guide for Ministerial Councils and Standard Setting Bodies* (COAG, 2007) and *Best Practice Regulation Handbook* (Commonwealth of Australia 2010).

- may include more than one risk management tool;
- may combine regulatory and non-regulatory risk management tools;
- should be consistently applied and implemented by States and Territories;
- should be evaluated and reviewed after implementation; and
- may be implemented in stages following evaluation and review of the previous stage.

Specific policy principles related to risk[23]

The 2003 Policy Guideline includes several principles related to risk that continue to be relevant to food safety management in retail/food service. These have been updated to current circumstances and are included below.

4. The level of regulatory requirements and their verification should be proportionate to the level of risk.

5. Risk profiling by an agreed national methodology should be used to classify retail/food service business types (including not-for-profits)[24] in Australia on the basis of risk. The risk classification of a business type, and the rationale for that classification, should inform consideration of any additional intervention.

6. Risk classification of a business type may change when new data on the causes and incidence of foodborne illness that affect the risk profile become available, or when the specific circumstances of an individual business type justify such change.

Specific policy principles related to benefit-cost

COAG has agreed that, where appropriate, benefit-cost analysis will be used to improve the quality of information used to inform regulatory decision-making[25]. .

7. Benefit-cost analysis should be used to assess a range of feasible interventions. The intervention determined should generate greatest net benefit for the community.

Specific policy principles related to appropriateness

The appropriateness concept can be described as ensuring that the 'right tool for the job' is used. Although the concept could be seen as inherent to risk and benefit-cost analysis, a stronger focus on the appropriateness of a potential risk management tool will be beneficial.

8. The proposed risk management tool, including external verification options (auditing/inspection) should be effective and sustainable in the context of the business type and its setting. This may require consideration of a number of factors including the scale and nature of the food handling process, existing systems and the food safety culture, and outcomes of any past interventions. Appropriateness should be determined in accordance with any framework developed.

9. Consideration of appropriateness may be linked to and help inform the application of other policy principles, for example:

- whether the available set of potential risk management tools is adequate; and
- whether a staged approach to intervention in a particular sector or business type(s) is desirable.

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[23] This section refers to the concept of profiling all businesses on the basis of their assessed risk, as distinct from the concept of risk management. The risk profiling outcomes then inform the risk management process.

[24] Two issues must be carefully balanced when developing food safety management policy for the not-for-profit retail/food service sector. Exempting not-for profits from regulatory requirements can lead to 'level playing field' issues for-profit businesses of the same type. This effect is magnified in regional and remote areas. Conversely, imposition of regulatory requirements can have adverse social and community impacts (especially in regional and remote areas) if not-for-profits withdraw services.

[25] These requirements are set down in the Council of Australian Governments (COAG) endorsed *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (2007)

Specific policy principles related to implementation strategies

Legislative, policy and/or administrative instruments are used to apply and implement regulatory requirements, including any necessary verification (e.g. by audit). Depending on the nature of the risk management tool, this may be done entirely through the *Australia and New Zealand Food Standards Code* and State and Territory Food Acts based on the current Model Food Provisions. Otherwise, jurisdiction-specific instruments may be used (for example, in implementing some requirements of the Primary Production and Processing Standards).

Use of jurisdiction-specific instruments generates an 'implementation burden' for jurisdictions and leads to inconsistency that may increase the compliance burden on industry.

Expansion of the set of potential risk management tools carries with it the challenge to find ways to apply and implement these tools through nationally consistent instruments. The aim should be to ensure that food standards are fully and effectively implemented in a consistent manner.

However, jurisdictions may be at different stages of readiness to implement specific measures. In such cases, nationally-agreed model approaches may be the best way to ensure consistency.

10. Regulatory requirements and the legislative, and/or policy instruments[26] necessary for effective implementation should be developed by a single or integrated process. Mechanisms should be developed for input at appropriate level from local government, as the co-regulator in most jurisdictions, throughout the process. To ensure effective stakeholder participation, the process should include a strategy for engagement, consultation and communication.

11. Regulatory requirements and implementation mechanisms should be promulgated through nationally consistent instruments such as the *Australia New Zealand Food Standards Code* and the Model Food Provisions.

12. Implementation mechanisms should be flexible and to the extent possible take account of existing equivalent industry-based systems.[27]

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[26] This Specific Policy Principle does not refer to aadministrative mechanisms such as jurisdiction-specific licensing requirements and fees or charges.
[27] Due to the variety of businesses in the national retail/food service sector, a 'one-size-fits-all' approach may often be inappropriate even for a single business type. There also may be merit in allowing businesses to choose between specified implementation options, for example between a tailored food safety program subject to verification by a third party auditor and a template program verified by a local government EHO.

Appendix 3 – Preferred options by stakeholder group

Stakeholder Group	Total no. of submissions received	Option 1	No.	Option 2	No.	None indicated	No.
		Summary support for each option*					
Industry Company	3	Coles#	1	Sodexho Australia Spotless Services Australia. Ltd	2		
Industry Association	3			Restaurant and Catering Clubs Australia Australian Hotels Association. (AHA)	3	Australian Food Grocery Council (AFGC)	1
Industry Consultant	1			Safe-T-Eat Pty Ltd	1		
Professional Association	3			Food Technology Assoc. of Australia Environmental Health Australia (EHA)	2		
Local Government	4	Town of Victoria Park, WA	1	Bundaberg Regional Council QLD Holroyd City Council, NSW City of Perth, WA	3		
State Government	4			SA Health QLD Health WA Health	3	SafeFood QLD	1
Commonwealth Government	1			DAFF (Food Branch)	1		
Totals	19		2		15		2

*Stakeholders that attended a briefing session but did not make a submission were: George Weston Foods, Metcash (Industry Company); Dietician's Association of Australia (Professional Association); Ryde Council, NSW, Canada Bay Council, NSW, Waverly Council, NSW, City of Botany Bay, NSW (Local Government); Department Health Victoria, Dept of Primary Industry Victoria (State Government); FSANZ, Department of Defence, DoHA (Food Policy) (Commonwealth Government). Stakeholders were not asked to express a preference for Options 1 or 2 at the briefing sessions, but any views that were expressed have been incorporated into this document.
included the comment that current requirements (FSC 3.2.2 and 3.2.3) are adequate for this sector

Appendix 4 - Summary of responses to specific principles in the Example of a Draft Policy Guideline

	Agree	Agree with amendment	Disagree	Response Count
Principle 1	9	0	1[16]	10
Principle 2	11	0	0	11
Principle 3	10	0	0	10
Principle 4	8	0	0	8
Principle 5	8	1[16]	0	9
Principle 6	9	0	1[8]	10
Principle 7	6	2[16, 13]	1[6]	9
Principle 8	7	2[1, 13]	0	9
Principle 9	9	1[13]	0	10
Principle 10	7	2[1, 12]	0	9
Principle 11	8	1[12,]	0	9
Principle 12	6	3[1, 10, 12]	1[8]	10

[1]**SA Health**

[6] **Government of Western Australia, Department of Health**

[8] **City of Perth**

[10]**Environmental Health Australia**

[12] **QLD Health**

[13] **Spotless Services Australia Limited**

[16] **Bundaberg Regional Council**