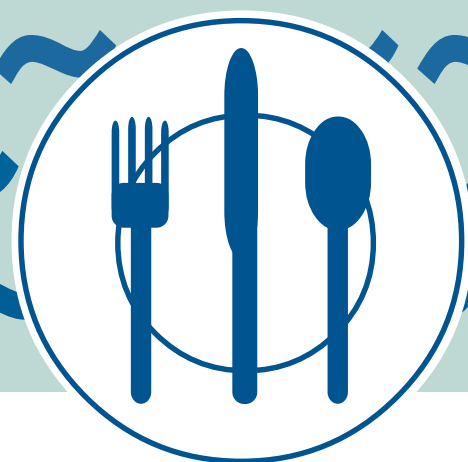


Toward a strong food regulation partnership



**A Directions Paper for State and
Local Government**

November 2003

Toward a strong food regulation partnership

This paper aims to promote discussion about the evolving roles and responsibilities of governments and agencies involved in food regulation in NSW. It outlines regulatory changes and describes cooperative mechanisms in other jurisdictions as examples of possible ways forward.

The paper does not aim to pre-empt discussions about detailed changes to roles and responsibilities. The relevant ministers will be initiating dialogue with local government through the Presidents of the Local Government Association of NSW and the Shires Association of NSW about these matters.

The paper has been prepared by the Public Health Strategic Liaison Group – a consultation forum between local government bodies and health service agencies in NSW. The group has representatives from the

- Local Government Association of NSW and Shires Association of NSW
- Australian Institute of Environmental Health
- Development and Environmental Professionals Association
- NSW Department of Local Government
- NSW Department of Health
- SafeFood Production NSW

Safer food for NSW

The NSW Government is committed to making NSW a leader in food safety by establishing an effective through-chain system of food regulation.

In working toward this goal, the NSW Government established SafeFood Production NSW in 1998, and its operations were independently reviewed in 2002 by the Hon. John Kerin (the Section 73 Review). He consulted stakeholders from industry, the public health and scientific community, State and local government, and the general community. The Review recommended establishing a stand-alone agency responsible for food regulation from production to consumption. It also recommended that the agency have a consumer information and education function.

The NSW Government is yet to make its formal response to the findings of the Section 73 Review. However, it has agreed, in-principle, to establish a new NSW food agency. The food regulatory resources and skills of NSW Health and SafeFood will be merged to form the new agency, which is likely to be launched by the end of 2003.

The new NSW food agency will provide a 'one-stop-shop' at the NSW State Government level. It will address food issues ranging from food safety and nutrition to consumer information and community education. Governments, industry and consumers will be able to draw on the expertise and resources of the agency to assist food inquiries and safety issues.

An integrated partnership is required

When the new agency is established, the food regulatory system will be completely integrated at the State level. Integration of the system with local government will then be needed.

The final report of the Section 73 Review, *Integration of the NSW Food Safety System*, recognised the need for a strong and genuine partnership between the proposed new NSW food agency and local government. The Review recommended that:

The responsibility of local government for food regulation should be clearly defined and appropriately resourced. The NSW Government should explore with local government the implementation of a model which would mandate a local government role:

- *commensurate with the skills, expertise and range of responsibilities of local government Environmental Health Officers;*
- *involving activities for which cost recovery would be appropriate;*
- *funded by a mechanism for cost recovery such as an annual administration fee;*
- *assisted by the NSW food agency through the provision of tools and/or training as appropriate;*

- *coordinated by the NSW food agency through mechanisms such as approved local plans or service level agreements; and*
- *supported by robust strategic liaison arrangements. (Recommendation 8)*

The Public Health Strategic Liaison Group recognises the need for local government's role in food regulation to be more definite and secure. It therefore supports timely action by State and local government in response to Recommendation 8.

Local government involvement is essential

Local government has played an important role in food regulation enforcement in NSW since the introduction of specific food laws in 1896. While the Pure Food Act in 1908 removed the prescribed role of local councils, local councils remained integral to food regulation enforcement. In 1911 the NSW Government requested local councils to appoint local food inspectors. Local government has been involved in food regulation ever since, although the precise nature of the role of local government has evolved.

A comprehensive survey¹ of local government found 98% have a role in food regulation. Collectively, councils perform 29 different food and nutrition activities.

The ongoing work of local councils is needed to make sure food regulations are comprehensively enforced. Mandating a role for local government will secure their future involvement. It will also increase consistency between local government areas and ensure that local governments' food regulatory activities are adequately resourced.

Effective state and local government partnership – an example

State and local governments in NSW are working together effectively to protect the environment. Aspects of this partnership may be applicable in the area of food regulation.

The *Protection of the Environment Operations Act 1997 (NSW)* (POEO Act) and the *Contaminated Land Management Act 1997 (CLM Act)* provide a framework for allocating and supporting environmental enforcement activities. The framework clearly divides environmental protection activities between local government and the central State agency, the Environmental Protection Authority (EPA). Local government is responsible for activities that have local impacts (and so do not require an EPA licence). The EPA has responsibility for activities that have significant regional or state-wide impacts (and so require an EPA licence).

The power to issue notices is the key regulatory tool for councils provided by the POEO Act. 'Clean-up' notices are for quick responses to pollution incidents. These can be issued verbally but must be followed up within 72 hours in writing, and may not be appealed. 'Prevention' notices address more systemic pollution and waste management problems. These must be issued in writing and may be appealed in the NSW Land and Environment court.

¹ Yeatman, H. (1997) *National Review of Food and Nutrition Activities in Local Government*. Department of Health and Family Services, Canberra, Australia.

Councils are entitled to charge a fee (currently prescribed as \$320) where a clean-up or prevention notice is issued. Reasonable costs associated with monitoring and ensuring compliance with notices can also be recovered.

The framework includes an accredited site auditor scheme that provides governments and the community access to technical advice about properly managing contaminated land. It ensures that planning authorities and developers can have confidence in any prescribed assessment and remediation.

Under the CLM Act the EPA accredits site auditors. Site auditors review reports prepared by contaminated land consultants. (eg. contaminated site assessment, remediation and validation reports). Councils are free to engage site auditors whenever they need independent expert advice about contamination issues, although in some circumstances an accredited site auditor is mandatory.

A mandated role must be adequately resourced

Simply mandating a role for local government to deliver food regulation services is not enough – local government must be adequately resourced. Lack of resources constrains the capacity of local governments to carry out the tasks required of them, including regulatory functions². Funding mechanisms for the future food regulation role of local government must be addressed.

Recovering the cost of enforcing food regulations

Substantial precedent exists at both state and local government levels to recover the costs of enforcing food regulations. These precedents include:

- charging administration/registration fees;
- redirecting state government revenue;
- fee for service (eg per inspection/audit); and
- fines for breaches.

Some examples:

- Local authorities in several Australian states charge registration fees to food businesses operating in their area. In South Australia, the *Food Regulations 2002* allow councils to charge an inspection fee at their discretion (with a prescribed maximum of \$80 for a small business, \$200 for other businesses).
- In the Northern Territory, select local authorities provide food regulation enforcement services under a service agreement with the Department of Health & Community Services.
- Primary production authorities in most Australian jurisdictions fund most or all of their activities by licensing and/or service fees.
- In NSW, cost recovery approaches in non-food regulation fields provide options that should be considered – for example the fines for breaches of the POEO Act, as described earlier.

² Anonymous (2002) *The Role of Local Government in Public Health Regulation*. National Public Health Partnership, Melbourne, Australia.

Defining roles based on risk

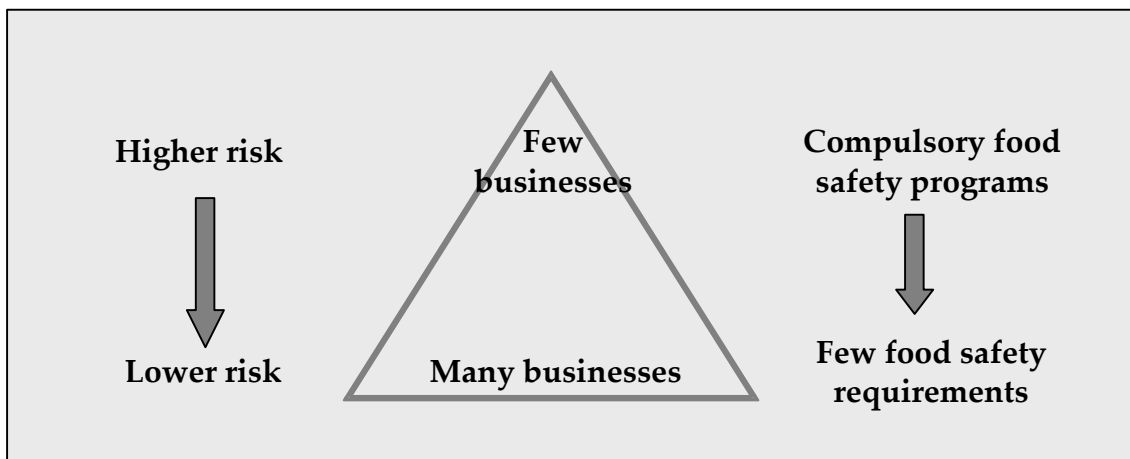
Classifying food businesses according to risk may be a way of defining how to share responsibility for food regulation among the various agencies and governments, in keeping with resources they have.

There is national work underway to categorise sectors of the food industry into a number of risk categories: from very high risk through to very low risk.

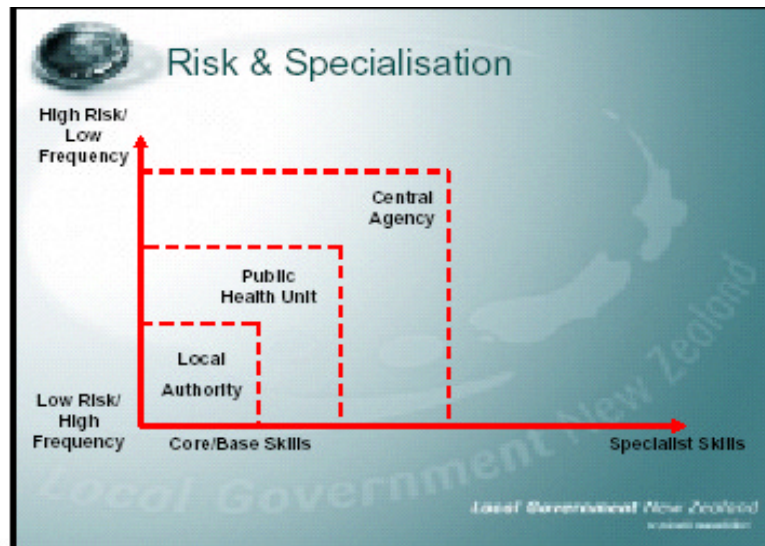
The Food Regulation Standing Committee (FRSC) Food Safety Management Working Group has identified the following industry sectors as potentially in the high-risk category:

- food services, where potentially hazardous food is served to vulnerable populations (pregnant women, the immunocompromised, children aged four years or less and the elderly aged 70 and over);
- businesses that produce, harvest, process or distribute raw oysters and other bivalves;
- catering operations serving food to the general public; and
- producers of manufactured and fermented meat.

The FRSC working group has recommended that businesses in the 'high risk' category be required to adopt compulsory food safety programs, as provided in Standard 3.2.1 of the Food Standards Code. Those in the 'low risk' category are likely to face little or no food safety inspections.



Categorising food businesses according to risk may assist allocation of appropriate statutory food regulation responsibilities for local government. Local Government New Zealand has proposed a similar risk based system to determine agency and local government responsibility.



Slide presented to a New Zealand Food Safety Authority conference by Peter Winder, CEO Local Government New Zealand.

An approach like this should recognise the different needs and priorities between councils. While all councils may be responsible for basic food requirements in low-risk businesses, some councils may have the skills and resources to be involved in higher risk areas.

Coordinating the vision for food safety in NSW

Achieving an effective through-chain system depends on developing a genuine partnership between the NSW food agency and local government. Existing consultation structures at the local level, between Public Health Units and councils, provide a strong foundation to build on.

The public will expect, and regulated food businesses will demand, that the NSW food agency and local councils work together. The system must completely cover all food activities without any duplication, and accountability for enforcement activities must be assigned. This will require a robust framework to coordinate and report all food regulation enforcement activities.

However, there are some limitations on the design of the framework. At a national level, the *Food Regulation Agreement*³ obliges all States and Territories to adopt the *Model Food Provisions*. Once enacted in NSW, these provisions will give certain powers to the NSW food agency. As the regulatory authority, the NSW food agency will be able to:

- impose conditions or limits on the exercise of functions by “enforcement agencies” (eg. local councils) under the Food Act (after consultation);
- require enforcement agencies to adopt national guidelines about how they exercise their functions under the Food Act; and
- require enforcement agencies to submit reports on the exercise of functions under the Food Act.

There is a wide range of potential models to coordinate food law enforcement activities of the NSW food agency and local government. The advantages and disadvantages of each model need to be carefully analysed so that the best approach for NSW is adopted.

Examples of coordination frameworks

Queensland has a voluntary agreement, *A Public Health Partnership Protocol*. Public Health Services (Queensland Health) and the Local Government Association of Queensland Inc. are signatories to this protocol. The protocol is not specifically about enforcing food law, but the agreement aims to help the parties discuss issues of common interest and decide joint actions. It provides a way to:

- coordinate working arrangements and services to minimise duplication and gaps;
- formulate policies and procedures to develop and implement services; and

³ An agreement made the sixth day of December 2002, between the Commonwealth of Australia and the States and Territories.

- plan, deliver and evaluate collaborative and complementary services and programs.

An Advisory Group, in consultation with stakeholders, develops Action Plans that are then incorporated into the Protocol. The performance of all levels of government against the Action Plans are assessed and reported.

In the United Kingdom the framework is very formal. The central Food Standards Agency has a formal coordinating role; 499 local authorities enforce food standards in over 600,000 food businesses. The Food Standards Agency has statutory power to

- set performance standards in relation to food law enforcement;
- monitor the performance of local enforcement authorities;
- require information from local authorities relating to food law enforcement;
- enter the premises of a local authority to inspect records and take samples;
- publish information on the performance of enforcement authorities;
- report to individual authorities, and give them guidance on improving performance; and
- require enforcement authorities to publish these reports and state how they will respond.

The way the Food Standards Agency works with local enforcement authorities is set out in the *Framework Agreement on Local Authority Enforcement*. The framework agreement sets out the Agency's expectations about how food law enforcement is planned and delivered. It describes a monitoring scheme to collect information about food law enforcement activity from local authorities, and a scheme for the Food Standards Agency to audit the food enforcement services of selected local authorities.

The Food Standards Agency's relationship with local government is not purely regulatory. The Agency supports local authorities by providing information, briefings, tools and training.

Food regulation in other Australian states and territories

Responsibility for food regulation is shared between local and state governments in most other Australian states and territories. Each jurisdiction has a unique approach to defining roles, securing adequate funding and coordinating State and local effort. An overview of each is provided to assist NSW stakeholders consider the most appropriate system for NSW. The Australian Capital Territory is not included as it does not have a system of local government.

Queensland

Roles

Local governments are required to enforce Food Safety Standards 3.1.1, 3.2.2 and 3.2.3; as well as register or license food businesses. The State Government enforces all other provisions of the Food Standards Code and the *Food Hygiene Regulation 1989*.

Funding

Councils charge to issue annual licences and registrations and to monitor compliance. The fees are determined at the discretion of individual councils eg. Brisbane City Council fees vary with business type and size from \$124 (temporary food stall) to \$2,077 (large food manufacturer – floor area >1,000 m²). However, the *Local Government Act 1993* limits local government charges to no more than the cost of providing the service.

Coordination

There is no formal central coordination, monitoring or evaluation of local government food regulation. Public Health Services (Queensland Health) and the Local Government Association of Queensland Inc. are signatories to a voluntary agreement entitled '*A Public Health Partnership Protocol*'. While not specifically about food law enforcement, the agreement provides a potential framework for future coordination.

Victoria

Roles

All local councils are enforcement authorities under the *Food Act 1984*. They must inspect and register all food premises and food vehicles annually. The Act divides Victorian food businesses into two classes based on risk. High-risk businesses are subject to third party audit. Lower risk food businesses are audited by local councils.

Funding

Councils levy registration fees. The amounts are determined by council resolution eg. Port Phillip City Council fees vary with business type and number of employees; \$120 flat fee for liquor stores, \$400 base fee for cafes and takeaway stores (businesses employing more than four staff incur extra fees - \$50 per employee).

Coordination

Central coordination is informal and achieved by centrally managing things like Food Safety Program templates and the registration of food safety auditors. There is no statutory requirement for councils to report to the State Government on their enforcement activities.

The Department of Human Services has recently established a committee to coordinate statewide food sampling programs and is implementing a database for councils to record business registration and audit data.

Tasmania

Roles

Councils enforce the *Food Act 1998*, register food premises and licence food manufacturers and retailers.

Funding

Councils charge registration/ licence fees at their discretion. eg. Hobart City Council's annual food premise licence is \$100. It includes two inspections per year for high-risk businesses.

Coordination

The Department of Health and Human Services advises and assists local government in their enforcement activities. This includes regular meetings, newsletters and advice on policy and legislation. Data on local government enforcement activities is reported annually. However, the reporting regime is currently under review, and the scope of data collected will increase in line with emerging state and national expectations on enforcement statistics.

South Australia

Roles

Local councils are the enforcement agency for the safety and suitability aspects of the Food Standards Code. The Department is the enforcement agency for food businesses operating outside the area of a council (primarily remote areas of the state).

Funding

Councils may levy inspection fees, up to \$80 for small businesses, \$200 for others. (*Food Regulations 2002*)

Coordination

The Department of Human Services guides local councils about the exercise of their food enforcement functions. It issues circulars, fact sheets, etc., and runs seminars. The Department collects food enforcement data annually, and tables a report in Parliament. A new IT system is being developed that will replace the annual questionnaire and allow councils to submit enforcement data on-line.

Western Australia

Roles

Councils enforce the *Health Act 1911* and subordinate legislation. In practice the Department of Health is the enforcement agency for dairy, meat, shellfish and hospitals with local government covering the remainder.

Funding

Councils may charge licence fees up to \$300. (*Local Government Act 1995*)

Coordination

There is no formal central coordination, monitoring or evaluation of local government food regulation. Section 38 of the Health Act obliges councils to submit annual reports to the Executive Director, Public Health on the sanitary conditions of its district, and all works executed and proceedings taken.

Northern Territory

Roles

In general, local government does not have a role. The Food Act is enforced by the NT Department of Health & Community Services. However, Alice Springs Town Council and two Aboriginal Health Boards have service agreements with the Department to provide environmental health services, including food related services.

Funding

Redirection of state revenue.

Coordination

Defined by the service agreement.

Moving forward – inter-government consultation

The food regulatory functions of local government will continue as they currently stand when the new NSW food agency is launched at the end of 2003. The only immediate change will be an administrative one; responsibility for administration of the NSW Food Act will transfer from NSW Health to the new agency.

Soon after the new food agency is established, the NSW Government will explore, together with local government, a model that would mandate a local government role in food regulation. It is envisaged that the relevant ministers will initiate these discussions with local government through the Presidents of the Local Government Association of NSW and the Shires Association of NSW.

The inter-governmental discussions should deliver a draft strategy for local government's future role in food enforcement. All stakeholders would then be consulted before finalising and, ultimately, implementing the strategy.

Indicative timetable

Inter-governmental discussions initiated	1st quarter 2004
Draft strategy prepared and released for comment	3rd quarter 2004
Strategy agreed	1st quarter 2005
Legislation amended	1st quarter 2006
Implementation of agreed strategy commences	1st quarter 2006
Full implementation of the strategy may take an additional 1-3 years.	

Key issues

The inter-governmental discussion and stakeholder consultation process will need to address the issues detailed below. The process may include focus groups and formal written submissions.

Defining local government's role

1. Should risk-based classification of food industry sectors guide the division of statutory responsibilities for food enforcement between local government and State Government?
2. Should all local councils take responsibility for basic food safety requirements in low risk food businesses?
3. Should flexibility be provided to allow some councils (or consortia of councils sharing specialist food enforcement resources), to be involved in higher risk areas if they have local skills and resources?

4. Should division of responsibilities differ between regions (eg. urban v's rural)?

Funding mechanism

5. What principles should guide the choice of a mechanism for local councils to recover costs?
6. How can the mechanism be transparent so that food businesses clearly understand how their fee is derived?
7. How can the mechanism be simple so that administration of the fee(s) is not complex and costly to local councils?
8. Should fees be applied consistently State-wide?
9. Should food businesses that require more regulatory intervention due to, for example, their higher risk status or poor performance record incur higher costs than lower risk businesses or good performers?
10. How can we make sure food businesses operating in remote locations are not disadvantaged?

Coordination framework

11. What services should the new NSW food agency provide to local government to support and assist their role in food enforcement?
12. What principles should guide the choice of a framework for integrating the new NSW food agency and local government's roles in food regulation?
13. How will the bodies involved in food regulation demonstrate accountability for their activities?
14. What would be the essential elements of a framework for coordinating local government's role in food regulation? Would they include
 - a performance standard (defined by service agreement between the new NSW food agency and individual councils)
 - a monitoring scheme (under which councils submit reports to the new NSW food agency)
 - an audit scheme (by which the NSW food agency would verify conformance with the performance standard)?

Interim arrangements

15. What interim arrangements will be required for local government's role in food regulation as we move towards the ideal vision?

Participating in the process

Formal responses to this directions paper are not called for at this time. If you would like to make a comment, or register your interest in being involved in the future consultation, please contact one of the associations, departments or agencies involved in preparing this paper:

- Local Government Association of NSW and Shires Association of NSW
- Australian Institute of Environmental Health
- Development and Environmental Professionals Association
- NSW Department of Local Government
- NSW Department of Health
- SafeFood Production NSW

For information about the progress of the new NSW food agency and the inter-governmental discussion process please contact:

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