

Summary

A primary objective of the NSW Government is to reduce the incidence of food-borne illness. Improving the State's food safety management system will assist in achieving this objective.

An improved food safety system would focus on risk prevention throughout the food chain in addition to reacting to illness at the point of consumption.

The goal should be a system which:

- makes sure food is safe from the point of production to consumption;
- ensures state-of-the-art technologies are used to assist in minimising risks to public health while maximising benefits to industry;
- implements consistent standards;
- educates industry and consumers in food safety; and
- is adequately funded, coordinated and cohesive.

Food safety is currently managed by a number of agencies

Safe Food Production NSW was established by the NSW Government in 1998 as a stand-alone food safety agency under the *Food Production (Safety) Act 1998* (the Act). SafeFood has implemented programs in the dairy, meat and seafood industries, from production to 'back door' of retail. SafeFood is also responsible for retail meat premises, such as butcher shops and supermarket meat departments. The agency is currently developing programs for the plant products and goat and sheep milk industries.

NSW Health and Local Government councils are responsible for managing food safety regulation in the retail, food service and some secondary manufacturing sectors.

NSW Agriculture is responsible for primary industry regulation and covers a range of on-farm food safety issues related to "inputs" such as stock feed and agricultural and veterinary chemicals.

SafeFood under review

Section 73 of the Act requires a review of the SafeFood initiative to be conducted this year. The Review provides an opportunity to further improve the food safety system throughout the food chain from 'paddock-to-plate'. In particular it seeks to determine whether all food safety operations should be managed by one "umbrella agency" and, if so, how.

The review will consider a number of issues

To answer the question ‘should we further integrate the current food safety system or maintain it as is?’ a number of issues need to be considered. The key issues are canvassed in this paper and presented below in summary. Comment on these issues is invited from producers, processors, retailers, consumers, scientists, government agencies and other interested parties. The Reviewer, the Hon. John Kerin AM, will consider all submissions. Full details on how to participate in the Review are provided in Chapter 4.

How food regulatory functions should be allocated

The Review will recommend whether a through-chain agency should be created or whether the current system should be maintained. It will consider the benefits and costs of a change, the resources required and the culture, skills and expertise of respective agencies. Creating a through-chain agency will have an impact on the allocation of functions between agencies.

a) Would reallocating the food safety functions to a through-chain agency achieve better food safety outcomes than the current system?

The new Food Act, to be enacted in NSW by mid-2002, requires the designation of an overall coordinator of food regulation known as the “relevant authority”. If the current system is maintained, NSW Health will be the “relevant authority”. If a through-chain agency is established, it could become the “relevant authority”.

b) If the current system is maintained, NSW Health will become the ‘relevant authority’ under the Act and be responsible for coordinating the entire food safety system in NSW. What are the implications for SafeFood’s activities?

c) Should SafeFood or NSW Health take on the coordination role?

d) If the through-chain agency becomes the “relevant authority”, what are the implications for coordinating the food regulatory system?

e) Should the through-chain agency be a separate agency or should it be a business unit within a larger agency?

The Food Standards Code is also part of the NSW food safety system. The Code provides standards for managing both food safety and non-food safety issues (e.g. labelling and nutritional composition). Under the current system different agencies are responsible for different aspects, but there may be benefits if one agency manages all food standards.

f) Which agency should be responsible for implementing the Food Standards Code?

g) What is the most effective regulatory structure for addressing the non-food safety and indirect food safety components of the Food Standards Code?

Under the current system NSW Agriculture is responsible for implementing on-farm agricultural regulations that contribute to food safety.

h) How is the interface with primary industry regulation and the food safety system to be managed?

NSW Health is the lead agency for the surveillance, notification and investigation of food-borne illness in NSW under the Public Health Act. This role will continue in the future, irrespective of changes to the food safety system.

i) If a through-chain agency is established, how should the interface between health regulation and the food safety system be managed?

How non-statutory food safety functions should work

The way people handle food has a significant impact on outbreaks of food-borne illness. Food safety education is an important way to reduce illness. However, food safety education for consumers is not currently a statutory function.

j) Should a through-chain agency address non-statutory functions related to food safety, such as consumer and public health information?

k) What is an adequate level of consumer information and education? How should consumer information and education be delivered?

How a through-chain agency should be resourced

Some stakeholders may believe that the funding of some aspects of the current food safety system should be reviewed.

l) Are current food safety activities appropriately resourced?

m) Where are the gaps in resourcing the current food safety system?

A review of SafeFood's funding in 2001 resulted in a set of principles to share funding for food safety functions between government and industry. The funding principles for compliance audit, inspection and stakeholder consultation, were set aside to be re-considered during the Section 73 Review.

n) How should the functions of compliance audit, inspection and stakeholder consultation be funded?

o) Should audit and inspection services be contestable?

However, if a through-chain agency is created there may be functions that the funding principles do not cover.

p) Would a through-chain agency have functions that are outside the accepted funding framework for SafeFood? If so, how will these functions be funded?

Existing resources may need to be reallocated to implement the NSW Food Act, the Food Standards Code or to create a through-chain agency.

q) Should resources be realigned toward high risk areas? If so, how?

r) If existing institutional arrangements change, how will funding arrangements have to change?

If a through-chain agency is created, it will take time to be established.

- s) **What transitional funding arrangements may be needed?**

Benefits and costs of adopting a through-chain agency model

A through-chain agency is likely to deliver a number of benefits, such as allocating resources according to risk along the entire food chain and reducing the frequency of audits and inspection as only one agency is involved.

- t) **Will a through-chain agency provide a higher net benefit to the community than the current situation?**

Role of Local Government

Local Government (or most councils) has an established role in food safety. Roles may change with a shift to preventative and enterprise based food safety programs. NSW Health has initiated negotiations with Local Government about its future role designed to bring greater consistency to State and local efforts and to address resourcing issues. A move to a through-chain agency may have further implications.

- u) **What are the implications of a through-chain agency on the role of Local Government?**
- v) **How would it impact current efforts to introduce more consistent enforcement of food standards?**

Inter-agency linkages and responsibilities

The efficiency and effectiveness of the current food safety system, or a system involving a through-chain agency, would improve with formalised arrangements for consultation among all agencies.

- w) **After allocating functions and responsibilities for food safety regulations, what linkages between agencies are required to make a through-chain agency operate effectively?**

Food safety accountability and agency governance

A key focus of the accountability debate has been whether food safety should sit within a health-related or an industry-related portfolio. Ultimately the test will be how the institutional arrangements function as a whole. It will be important to identify a set of principles to assess the institutional arrangements against.

- x) **What principles should be reflected in the institutional arrangements? How should these principles operate in practice?**
- y) **What institutional arrangements will best ensure accountability to the community for food safety outcomes?**

Legislative issues

The nationally-developed Model Food Act, soon to be enacted as the new NSW Food Act, may have implications for existing food safety related legislation.

z) If SafeFood's jurisdiction is extended through the food chain, what are the implications for the new NSW Food Act and the Food Production (Safety) Act?

Transitional legislative arrangements may be necessary for the through-chain agency to function, particularly in relation to funding and enforcement.

aa) What transitional arrangements would be needed?

1 SafeFood – a step towards integration

In 1998, the NSW Government established Safe Food Production NSW (SafeFood) to streamline and integrate responsibility for food safety and food safety regulation. SafeFood minimises food safety risks in the primary production and seafood industries by implementing preventative programs. It is also responsible for enforcing food laws in these sectors.

SafeFood will implement the preventative programs over a 6-year period. SafeFood's initial focus is on high risk areas, as identified through scientific risk assessments. Programs have been implemented for dairy, meat and seafood products and a program is currently being developed for priority risk areas in the plant products industries. These programs address food safety risks from production to 'back door of retail' – risks in the retail and food service sectors remain the responsibility of NSW Health and Local Government councils.

Reviewing SafeFood – should it expand its operations?

SafeFood was established by the Food Production (Safety) Act 1998. Section 73 of the Act requires a review after three years. The Section 73 Review, as it is called, will assess SafeFood's performance to date. It will also answer the questions:

- Should a single agency undertake the food safety operations currently undertaken by different government agencies? and, if so,
- How should the single agency operate?

That is, should we establish a single food safety authority – a 'through-chain' agency – covering food safety from paddock-to-plate? Or, should we maintain the current system, or some variation of the current system?

The Section 73 Review provides an opportunity to investigate ways and means of achieving a better food safety system¹.

How this Issues Paper fits in

The Review will be of interest to a broad range of stakeholders: all sectors of the food industry, consumers and public health advocates, scientific and technical experts, Commonwealth and State Government agencies and Local Government councils. The Issues Paper will help stakeholders give input by highlighting the issues which need to be considered by the Review. The Review is interested in all perspectives and will make recommendations as required by the terms of reference. Full details on how to participate in the Review are in Chapter 4.

¹ The Review begins after December 2001; the report is to be tabled in Parliament by 18 December 2002. A relevant extract from the Terms of Reference for the Review is at Appendix 1.

Section 73 Review Issues Paper

This document is based on an Issues Paper prepared by an independent consultant, Hassall & Associates, as required by the Review methodology. They acknowledge the valuable contribution of the Stakeholder Reference Group and Agency Steering Committee formed to advise the Reviewer, the Hon. John Kerin AM, appointed by the NSW Government.

2 Keeping food safe – prevention is best

The food safety environment is changing rapidly due to factors such as:

- global concerns for food safety²;
- global trends to adopt preventative approaches³;
- increasing complexity and interconnectedness of the food chain that affect all participants;
- advances in technology, including microbiological testing of products;
- consumer expectations for effective and efficient delivery of government services;
- fragmented food safety arrangements in NSW and unclear boundaries between multiple agencies; and
- domestic food safety incidents involving, among others, fruit juice, smallgoods and bivalve molluscs⁴.

To address these changes, Australian food regulators and the food industry are moving towards preventative approaches to food safety. There is a move to managing risks throughout the entire food chain – sometimes called through-chain risk management. This approach involves regulators setting consistent standards for food safety in consultation with industry and consumers. Food businesses then have the responsibility of meeting those standards. This proactive approach is different to traditional reactive approaches. Previous approaches involved inspections and punitive action triggered by illness.

NSW has come a long way in implementing effective food safety systems based on through-chain management of food safety risk and adoption of preventative approaches to food-borne illness.

The Section 73 Review provides an opportunity to investigate ways and means of achieving an even better food safety system. A better food safety system will:

- give people in NSW greater confidence that food is safe to consume and that the government is looking at emerging food safety issues,
- employ a range of mechanisms to ensure food is safe from the point of production to consumption. The responsible agency will adopt best practice in setting standards, monitoring and surveillance, and will adopt practical auditing mechanisms,
- be adequately funded, co-ordinated and cohesive. Consistent standards will be implemented in partnership with industry,

2 Internationally, the mishandling of the BSE issue in Europe led the UK government to establish the Food Standards Agency, directly accountable to Parliament and food safety systems based in preventative approaches.

3 Hazard Analysis Critical Control Point (HACCP), a preventative risk analysis and management tool is now becoming a condition of entry to export markets, including Europe and USA

4 The Australia New Zealand Food Authority estimated the cost of foodborne illness to consumers, industry and government to be \$2.1 billion annually (Kerin Funding Review 2001, p.1).

- ensure state-of-the-art technologies are used to assist in minimising risk to public health and, where possible, are applied to maximising benefits to industry, and
- provide a consistent and integrated framework which includes broader, essential issues such as industry training, consumer education and nutrition.

2.1 The existing NSW Food Safety System

The regulatory framework

In NSW, a number of agencies are responsible for various aspects of food safety regulation. These agencies include Safe Food Production NSW (SafeFood), NSW Health, NSW Agriculture and Local Government.

Australia and New Zealand have established a joint food regulatory framework. The Australia New Zealand Food Authority (soon to be reconstituted as Food Standards Australia New Zealand) develops food safety standards and other requirements related to labelling and composition. The draft standards may be amended or rejected by a Ministerial Council – Ministers from each State and Territory – before they take effect. Once in force, they are implemented and enforced by State and Territory Governments together with Local Government.

In November 2000, the Council of Australian Governments (COAG) agreed to significant reforms intended to strengthen national consistency in food regulation along the entire food supply chain. These reforms include primary and seafood production and processing and are briefly described at 2.2 below.

SafeFood established as the first step to correct a fragmented food safety system

In 1997, a Food Safety Taskforce found that the fragmented food safety system in NSW had led to inconsistency, duplication and gaps in coverage. The Taskforce recommended a long-term commitment to integrate the food safety system, beginning with the various agencies and programs covering primary/seafood production and processing. The NSW Government acted on this recommendation by establishing Safe Food Production NSW (SafeFood) in December 1998.

The decision was a major step towards implementing a through-chain, or ‘paddock-to-plate’, approach to minimising food safety risks. SafeFood’s approach is based on scientific assessment of food safety risks in accordance with national and international “best practice”⁵. Industry-based preventative programs are then established to minimise risks and meet national standards.

SafeFood has established risk based Food Safety Schemes

SafeFood currently covers primary production and processing for all commodities from production, catch or harvest to the ‘back door of retail’, with the exception of

⁵ Codex Alimentarius Commission of the United Nations promotes two key tools to target and manage risk; Risk Analysis and HACCP.

meat where cover extends to retail butchers. SafeFood has established regulations known as “Food Safety Schemes” which are grounded in a scientific assessment of risk. Schemes have been implemented for the meat, dairy and seafood industries and are currently being developed for priority sectors in the plant products industries and for the goat and sheep milk industries.

SafeFood’s activities reflect a preventative approach built around audit of industry-based food safety programs. There is an increasing emphasis on specifying outcomes rather than having detailed prescriptive requirements. This approach is in common with other food safety regulators in the primary sectors.

NSW Health & NSW Agriculture also have key roles in food safety

NSW Health – retail, food service and secondary manufacturing

NSW Health covers food safety issues in the retail, food service and secondary manufacturing sectors. Local Government shares this role at the local level, ensuring compliance and enforcement of the Food Standards Code and receiving notification requirements placed on food businesses. In addition, NSW Health is responsible for notification, surveillance, investigation and response to food-borne illness, as well as for providing advice and education on nutrition and food safety.

NSW Health and Local Government are currently negotiating to more clearly define the roles of both in implementing the Public Health Act and current Food Act. A key outcome to date is the recognition that Local Government has an important and continuing role in food regulation. These negotiations run parallel to the Section 73 Review.

NSW Agriculture – responsible for regulating primary industry

NSW Agriculture is responsible for primary industry regulation and related environmental management. It covers a range of on-farm food safety issues related to “inputs” such as stock feed and agricultural and veterinary chemicals.

For example, NSW Agriculture implements the Fertilisers Act 1985, regulating contaminant standards, and the Stock (Chemical Residues) Act, regulating residue limits. NSW Agriculture also provides services to food agencies including policy development, extension services, diagnostic and analytical services, education and training, regulatory services and communication with rural industries.

The State’s 48 Rural Lands Protection Boards (RLPBs) assist in ensuring appropriate food safety outcomes for animal products in NSW. Their District Veterinarians and Rangers (stock inspectors) are the front-line of the State’s animal health services⁶.

6 Role of Rural Lands Protection Boards in the NSW Food Safety System

Boards are primarily responsible for delivering on-farm programs to monitor, prevent, control and eradicate endemic and exotic animal disease. This includes diseases with food safety implications, such as salmonella, anthrax, BSE and trichinosis, as well as diseases that may limit livestock production or threaten market access. The boards also deliver similar monitoring, response and prevention programs for chemical residues in livestock.

...continued

RLPBs have a similar relationship with NSW Agriculture as Local Government has with NSW Health.

NSW Health, Local Government and NSW Agriculture have all taken a more reactive approach to food safety in the past. The emphasis has been on detecting and correcting violations. However, this approach is under review and is changing.

2.2 National initiatives are driving an integrated approach to food safety

In November 2000, the Council of Australian Governments (COAG) signed a new Food Regulation Agreement that will establish a new integrated food regulatory framework for Australia (and New Zealand under related treaty arrangements). A key feature of these reforms is to bring the health-related and agriculture-related components of the food regulatory system together in a single integrated framework.

The Australia New Zealand Food Authority (ANZFA) will be reconstituted as Food Safety Australia New Zealand (FSANZ). It will focus entirely on developing food standards. The draft standards may be amended or rejected by an expanded Food Regulation Ministerial Council. The Council includes Ministers nominated by each State and Territory jurisdiction. NSW, like most jurisdictions, has nominated both its Health Minister and its Agriculture Minister as members of the Council.

The Ministerial Council also sets national food regulation policy. The Council is advised by the Food Regulation Standing Committee. The Committee comprises the heads of Commonwealth, State and Territory agencies involved in food regulation. NSW Health, SafeFood NSW and NSW Agriculture are all represented on the Standing Committee and participate in its subordinate bodies.

The new Food Act

The new NSW Food Act will be enacted by mid 2002. It comes from the Model Food Act developed at a national level (a revised Food Standards Code has also been developed). This new Act will be enacted in a consistent form in each State and Territory, demonstrating commitment from all levels of government to implementing consistent food safety standards across Australia.

Boards also administer and regulate livestock identification and traceback systems. These systems monitor, identify and trace both diseased stock (whether or not the disease is a food safety concern) and those with chemical residues.

These stock identification and tracing systems combine with animal health programs to give consumer markets confidence in the safety of foods of animal origin.

These systems and programs safeguard the food safety interests of domestic consumers. They also protect the livestock industries from the spread of diseases that would otherwise threaten the economics of livestock production. They are a prerequisite to Australia's export of meat, dairy products, wool and hides to international markets.

Board animal health staff are inspectors under the Exotic Diseases of Animals Act 1991, the Stock Diseases Act 1923 and Stock (Chemical Residues) Act 1975. NSW Agriculture administers these Acts. The Boards' animal health activities are delivered under a Memorandum of Understanding (MoU) between the State Council of RLPBs and NSW Agriculture. The MoU provides that Boards will deliver animal health programs and exercise authorities given under animal health legislation in accordance with policies and procedures agreed by NSW Agriculture.

The NSW Food Act will provide the legislative framework for managing food regulation in NSW. The new Food Standards Code will include all national food standards and is automatically drawn down into State and Territory regulation. As national standards are developed for primary production and processing under the new arrangements, these will be included in the Food Standards Code.

How will NSW respond to the changes?

A key issue for food safety in NSW during 2002 is whether or not to continue with the integration process that began with the establishment of SafeFood NSW in 1998. Section 73 of the Food Production (Safety) Act 1998, which establishes SafeFood, requires a review of SafeFood's performance to date and consideration of:

whether food safety operations currently undertaken by different government agencies should be undertaken by a single agency and, if so, the means of achieving that objective.

The Review also provides an opportunity to investigate ways and means to achieve a better food safety system.

2.3 Maintain the current system or establish a new agency

The Review is required to consider two main options for managing food safety in NSW:

1. maintain the current system or some variation of it,
2. establish a through-chain agency with functions from food production to retail.

(Under either option NSW Health would retain responsibility for notification, surveillance, investigation and response to food-borne illness, along with a role in providing advice and education on nutrition and food safety.)

No matter which option the Review recommends, the science-based approach to food safety will not change. This approach has been agreed at the national level and all States and Territories are committed to it.

Maintaining the current Food Safety System

The current system may be maintained, however, the Review may consider the following:

- increasing or reallocating funding to address shortfalls in the system;
- further developing agency roles and legislative clarity; and
- making legislative changes to accommodate the national framework.

The table below summarises the responsibilities of the various agencies currently involved in co-ordinating or managing food safety regulation in NSW.

Agencies involved in food safety and their roles

<i>Agency</i>	<i>Current Role</i>
SafeFood NSW	• covers food safety issues from paddock or ocean to the 'back door of retail' with the exception of meat, where it extends to retail butchers • responsible for and operates under the Food Production (Safety) Act • administers and enforces the Food Safety Schemes for Dairy, Meat and Seafood • following risk assessment, develops additional Food Safety Schemes, for example Plant Products and Goat and Sheep Milk • participates in national policy and standards development through the Food Regulation Standing Committee and subordinate bodies
NSW Health	• covers retail and food service (except for meat retail) • responsible for a nationally consistent NSW Food Act (currently being drafted) • responsible for implementing the Food Standards Code • responsible for disease notification, surveillance, investigation and response to food-borne illness • provides advice and education on nutrition and food safety • participates in national policy and standards development through the Food Regulation Standing Committee and subordinate bodies
NSW Agriculture	• covers farm production issues • responsible for primary industry regulation and environmental management • role in food safety regulation where this is a secondary objective to primary industry regulation • can provide services to food agencies, including policy development, extension services, diagnostic and analytical services, education and training, regulatory services and communication with rural industries • participates in national policy and standards development through the Food Regulation Standing Committee and subordinate bodies
Local Government	• role in ensuring compliance and enforcement of the Food Standards Code • recipient of notification requirements placed on food businesses under Food Safety Standard 3.2.2 • participates in national policy and standards development through ALGA representation on the Food Regulation Standing Committee and subordinate bodies

Establishing a through-chain agency (a single food authority)

Integrated systems can be more effective in achieving safe food for consumption than fragmented systems. Setting up a single food authority or a through-chain agency is one way of integrating the system and provides opportunities for achieving a better food safety system.

The possible benefits of a through-chain agency include:

- better allocation of resources across the food chain commensurate with risk;
- reduced duplication of effort across the food chain with possibilities for reduced inspection;
- more effective use of human resources through pooling, particularly in microbiological testing and risk assessment;
- consistent and standard approaches to assessing food safety risks throughout the food chain;
- a focused agency rather than an agency with competing functions;
- a single point of contact for consumer and industry food safety concerns; and
- more open and transparent operations.

There are at least three options for setting up a through-chain agency. The options are:

1. ***SafeFood becomes the through-chain agency.*** It would assume responsibility for the NSW Food Act and Food Standards Code and would co-ordinate and enforce the Act's implementation from paddock-to-plate.
2. ***NSW Health remains responsible for the Act and Food Standards Code,*** coordinating its implementation from paddock-to-plate. SafeFood becomes the through-chain agency, implementing and enforcing the Act for NSW Health.
3. ***NSW Health becomes the through-chain agency.*** It would assume responsibility for the Act and Food Standards Code and would co-ordinate and enforce the Act's implementation from paddock-to-plate. It would assume all the existing functions of SafeFood.

No matter which option is chosen, NSW Health would maintain its role in disease surveillance, investigation and notification of food-borne illness as outlined in the Public Health Act⁷. Local Government would continue to enforce the Act at the local level. NSW Agriculture would also maintain a role on-farm. Each agency would continue to participate in national policy and standards development through the Food Regulation Standing Committee and subordinate bodies.

In considering these options for a through-chain agency, the Review will need to consider the following points:

- allocation of roles and responsibilities;
- alternative approaches to compliance and enforcement, such as contestability;
- linkages between agencies required to ensure food safety;

⁷ NSW Health retains these roles because NSW Health staff are on the front line working with the public and, therefore, become aware of food-borne illness and can react.

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- funding and resourcing;
- costs and benefits including efficiency and effectiveness;
- the role of Local Government and associated revenue requirements;
- accountability; and
- legislative issues.

3 Issues for consideration

This Chapter presents issues for consideration by the Review. Full details on how to participate in the Review are provided in Chapter 4.

3.1 Allocation of food regulatory functions within NSW

Creating a through-chain agency

a) Would reallocating the food safety functions to a through-chain agency achieve better food safety outcomes than the current system?

Creating a through-chain agency would require structural change in the NSW food safety system. The review must determine whether a through-chain agency will efficiently and effectively deliver the benefits outlined in Chapter 2.

It may be possible to achieve the benefits of a through-chain agency through other means. For example, activities could be harmonised through various coordination mechanisms, such as agreements between agencies. In New Zealand, an attempt was made to harmonise the separate regulatory systems based in the Health and Agriculture portfolios. However, the New Zealand Government has concluded that structural integration is required to deliver the full benefits of an integrated system⁸. This may or may not be the case for NSW. However, the Australian system is even more complex than the New Zealand system because it involves three, rather than two, tiers of government.

In assessing these options in terms of achieving better food safety outcomes, it may be helpful to consider a number of factors.

A single agency could deliver better consistency

The NSW Food Act (based in the Model Food Act) and the Food Standards Code requires the safety risk of food businesses to be assessed. This risk assessment needs to be approached consistently to ensure that high-risk businesses are identified — risk to food safety varies along the food chain, between sectors and within sectors. Having one single agency assess risk throughout the food chain would focus resources on businesses and sectors with the highest risk.

⁸ In February 2002, the New Zealand Government announced that a separate Food Safety portfolio with its own funding voted by Parliament would be established in July 2002. The portfolio would bring together the currently separate regimes for food administration: the Food Act (food sold on domestic market and imported food, currently administered by the Ministry of Health) and other food-related legislation (primary processing and exports, currently administered by the Ministry of Agriculture and Forestry - MAF). Implementation and enforcement of food standards and policy will be the responsibility of a single Food Safety Authority, with continued involvement of Local Government Environmental Health Officers. The Food Standards Agency will be a "semi-autonomous body", operating within MAF but responsible to the Minister for Food Safety under a purchaser-provider arrangement for delivery of its food regulatory activities.

For example, SafeFood has a rigorous and consistent risk assessment process that targets high risk areas within its jurisdiction. Also, NSW Health is in the process of assessing which food businesses in the retail and food service sectors are high risk. As two separate risk assessment processes are underway, risk is not considered in a consistent or holistic manner across the food chain. If one single agency conducts all risk assessments right across the food chain, experience would be gained and expertise developed within that agency. This would enable the legislation to be implemented more efficiently and effectively across the entire food chain.

Likely functions of a through-chain agency

Compliance and enforcement

Food safety risk should drive compliance and enforcement activities. Compliance could be ensured in three ways:

1. Audit and inspection - with government or third party auditors involved under the supervision of the through-chain agency.
2. End product testing - under the supervision of the through-chain agency.
3. Enforcement or other action in response to sampling programs, information received, or food safety incidents. This activity would require an interface with NSW Health in its disease (food-borne illness) response role. Responsibility for recall would need to be determined and allocated.

Providing advice

A through-chain agency would need to consolidate existing advisory infrastructure. It would be responsible for audit and industry support (currently SafeFood) and labelling (currently NSW Health).

Development

Current arrangements for national standard setting and policy development would continue, involving SafeFood, NSW Health and NSW Agriculture. Some responsibilities may need to be realigned depending on the through-chain agency selected. (It is likely that resource requirements for activities currently undertaken by NSW Health will increase, irrespective of whether a through-chain agency is established. This is because the responsibilities of States and Territories have increased due to recent reforms to the national regulatory framework.) *check - is the material in the brackets relevant to the heading – development?*

Industry Training and Education

Industry training could be a specific responsibility of the through-chain agency. At present, training is not a mandatory requirement of any agency. However, better training could result in better food safety outcomes. In the retail and food service sectors, industry training is under-resourced. Although all agencies currently provide some industry training, the situation could be improved.

The through-chain agency would need to decide whether training and education should become mandatory, or whether it should continue to be voluntary. Training could be provided in a number of ways:

- Delivered by the through-chain agency,

- Delivered by agencies such as Local Government or NSW Agriculture, and coordinated by the through-chain agency,
- Delivered by the private or the education sector, within an infrastructure established by the through-chain agency.

Consumer education

Further discussion is presented on this role in Section 3.2.

Coordinating the Food Safety System in NSW

- b) If the current system is maintained, NSW Health will become the ‘relevant authority’ under the Act and be responsible for coordinating the entire food safety system in NSW. What are the implications for SafeFood’s activities?**
- c) Should SafeFood⁹ or NSW Health take on the coordination role?**
- d) If the through-chain agency becomes the “relevant authority”, what are the implications for coordinating the food regulatory system?**
- e) Should the through chain agency be a separate agency or should it be a business unit within a larger agency?**

The Model Food Act will be enacted by mid-2002, as the new NSW Food Act. The Act requires the designation of an overall coordinator of the food safety system, called the “relevant authority”. Currently the food safety system in NSW is coordinated by a number of agencies along the food chain:

- NSW Health administers the Food Act (the current Act) and the Public Health Act,
- SafeFood is responsible for the Food Production (Safety) Act 1998, and
- NSW Agriculture is responsible for a range of input-related legislation.

If the current system is maintained, NSW Health will become the “relevant authority” when the new Food Act is enacted. It will take on the role of coordinating and managing the entire NSW food safety system. If the Review recommends a through-chain agency be established it must also consider whether the through-chain agency should become the “relevant authority” under the NSW Food Act. (NSW Health would most likely retain the roles of notifying, surveying, investigating and responding to food-borne illness, as well as a role in providing advice and education on nutrition and food safety, as these functions fall under the Public Health Act.)

The review must consider questions of accountability of food safety activities to industry and consumers. It is possible that the various functions required of the “relevant authority” may not be able to be performed by a single agency without causing a conflict of interest. For example, the tasks of auditing food safety programs and monitoring the integrity of the audit system may conflict with the tasks of providing advice and assistance to food businesses. Inter-agency relationships may be necessary to check the robustness and compliance of the food safety system. In

⁹ If SafeFood becomes responsible for all parts of the food supply chain, its name “Safe Food Production NSW” may need to be reconsidered.

addition, the coordination role of the “relevant authority” would have to rely on a partnership approach with Local Government and other enforcement agencies.

Non food safety and indirect food safety functions

- f) Which agency should be responsible for implementing the Food Standards Code?**
- g) What is the most effective regulatory structure for addressing the non-food safety and indirect food safety components of the Food Standards Code?**

Under the Model Food Act, the “relevant authority” must coordinate the implementation and enforcement of the Food Standards Code. The Food Standards Code sets out the compositional, microbiological, chemical and labelling standards for food, as well as food safety and handling requirements for industry. It includes standards with food safety and non-food safety implications. Within these categories, there are differing schools of thought on the categorisation of some standards. For example, nutritional, compositional and labelling standards have both direct and indirect food safety implications.

The Food Standards Code could be implemented and enforced by two separate agencies. For example, the through-chain agency could be responsible for enforcing all standards with direct food safety implications. All standards with indirect or non-food safety implications could be left with NSW Health or transferred to the Department of Fair Trading¹⁰. This would provide a single agency focussed on food safety issues. Alternatively, a single agency could be responsible for both aspects of the Code; food safety and non-food safety. An important issue to consider will be the potential for realising the efficiencies outlined in section 3.4.

However, as noted above, the delineation between food safety and non-food safety issues is not always clear. Allocating responsibility is further complicated by the degree of crossover and different safety impacts in different food chain contexts,. Separating direct food-safety from non/indirect food safety elements may add to the fragmentation of food related responsibilities. An agency (such as Fair Trading) which has minimal other involvement in food may have to develop expertise unrelated to its core responsibilities. It may also lead to duplication of compliance activities.

In contrast, if a single agency was responsible for the whole Food Standards Code, synergies may result. A single agency with food expertise and day-to-day contact with the food industry could offer cost efficiencies. For example, violations of non-food safety standards could be detected during a through-chain agency’s routine food safety activities. Resources could be allocated commensurate with food safety risk, or with other regulatory priorities.

¹⁰ Although the Code contains numerous provisions intended to facilitate informed consumer choice or prevent misleading or deceptive conduct, the Department of Fair Trading has traditionally played a minimal role in its enforcement.

Interface with primary industry regulation

h) How is the interface between primary industry regulation and the food safety system to be managed?

Under the current system, NSW Agriculture is responsible for on-farm agricultural management, which may include food safety issues. Some boundaries are unclear at present between SafeFood and NSW Agriculture. Examples include regulation of food safety on farms and regulations of food chain “inputs”, such as animal feed and fertilisers. It is possible for food safety requirements related to “inputs” to be administered by a through-chain agency rather than by NSW Agriculture. However, current approaches might be more effective and appropriate.

SafeFood and NSW Agriculture are currently considering the issue of boundaries and respective roles. Interagency consultation might be the most effective and efficient way to resolve these issues. It is important to note that although boundaries may change, a through-chain agency will always require co-ordination and linkages with NSW Agriculture to some degree.

NSW Agriculture is actively involved in administering legislation that protects consumers from chemical residues and other input contaminants. However, it may be argued that the focus of NSW Agriculture is more on production, environmental management and animal husbandry systems than on food safety outcomes.

In considering the extent to which the through-chain agency should take the lead regulatory role for on-farm food safety, the Review should determine:

- Whether supervision by SafeFood would be more effective or efficient than the current system.
- Whether supervision by SafeFood will increase or decrease the complexity of managing on-farm food safety risks.
- Whether the NSW Food Act and the Food Standards Code provide a sufficient legislative base for the through-chain agency to undertake this role. If not, what legislative changes would be needed?
- How the NSW Food Act and the Food Standards Code should work with the food safety aspects outlined in agricultural legislation.
- What impact boundary changes would have on achieving other regulatory objectives of agricultural legislation.

It is important to align with national regulatory responsibility

The direction being taken nationally should guide regulatory responsibility at the State level. Alignment can be achieved through the relevant Ministerial Councils, including the Food Regulation Ministerial Council, the Primary Industries Ministerial Council and the Natural Resource Management Ministerial Council. Further fragmentation of food-safety must be avoided. For example, the BSE (‘mad cow’) risk control measures, covering the potential inclusion of ruminant material in animal feed, are currently administered by State and Territory Primary Industry/Agriculture agencies. The new national food regulatory framework may bring about, in part, a nationally consistent approach to the boundaries issue by developing “primary production and processing standards”.

Interface with NSW Health

i) If a through-chain agency is established, how should the interface between health regulation and the food safety system be managed?

NSW Health is the lead agency for surveying and investigating food-borne illness in NSW. The Public Health Act in NSW also requires doctors, laboratories and hospitals to notify NSW Health of specified diseases. The main priority of a public health investigation is to prevent further cases of disease wherever possible. This may involve treating cases and their contacts, modifying food handling or manufacturing practices, placing clean up or closure notices on food businesses and sometimes seizing or destroying food or initiating a recall procedure. In serious cases, a food business may be prosecuted for breaches of the current Food Act.

If a through-chain agency is established, NSW Health will remain responsible for food-borne illnesses. However, all other food safety functions would be managed by the through-chain agency. The roles of NSW Health and the through-chain agency must be coordinated to minimise the incidence of food-borne illness, to maximise the effectiveness of preventative programs and to ensure a consistent approach.

3.2 Non-statutory food safety functions within NSW

Consumer information and education

- j) Should a through-chain agency address non-statutory functions related to food safety, such as consumer and public health information?**
- k) What is an adequate level of consumer information and education? How should consumer information and education be delivered?**

The overall goal of the food safety system in NSW is to improve food safety and reduce food-borne illness. Unsafe handling of food in the home contributes to the number of outbreaks of food-borne illness. However, food safety education for consumers is not currently a statutory function.

A through-chain agency could become a natural focus for consumers regarding food safety – it would be the primary contact point for making complaints and requesting information. It may be beneficial for the through-chain agency to take on a formal role in consumer education. Consumer education and information would largely complete the through-chain coverage.

Types of programs that might deliver increased awareness and understanding include:

- Public education about food risks - communicating to the general public the risk inherent in some foods and how to avoid them, including how to handle food properly.
- General food safety, nutritional and labelling information for consumers and industry.

Currently NSW Health is the primary contact point for consumers; both Local Government and SafeFood also provide some information. NSW Health provides public health information and SafeFood provides industry advice and training. In

assessing whether a through-chain agency should take on the roles currently performed by NSW Health, costs, benefits, capacity and the skills required must be considered. It is likely that NSW Health would continue to provide some education on nutrition and food safety through its health promotion activities.

If consumer information is important to achieving food safety outcomes, it needs to be given adequate and earmarked funding. To do this, the appropriate level of consumer information and education would need to be determined together with the best delivery mechanisms. The Kerin Funding Review established the principle that government should fund consumer information and education to ensure that it is objective, balanced and credible.

3.3 Resourcing a through-chain agency

Are current resource levels adequate?

l) Are current food safety activities appropriately resourced?

m) What are the gaps in resourcing the current food safety system?

The Review will need to consider whether current resource levels across the food safety system are adequate. In particular, it would need to look at resources deployed by SafeFood, NSW Health, Local Government and NSW Agriculture. For example, the Kerin Funding Review in 2001 considered that SafeFood required additional enforcement capacity and recommended a Government-funded Enforcement Unit, which has now been established. Food safety activities may require increased overall funding, regardless of how they are administered.

SafeFood funding needs to be considered further

n) How should the activities of compliance audit, inspection and stakeholder consultation be funded?

o) Should audit and inspection services be contestable?

The Kerin Funding Review established a funding framework for functions performed by SafeFood. In this framework costs are shared by industry and government. The Funding Review developed a functional model of SafeFood's activities and allocated SafeFood's recurrent food safety budget across its functional areas. (These functional areas are: setting policies and standards, implementing and ensuring compliance with Food Safety Schemes, enforcement and overheads.)

The funding principles determined that:

Government funding is appropriate where:

- the activities are undertaken for government;
- independence of the regulator is a paramount concern;
- the activity is necessary to prevent information failure; or
- positive externalities or the public good are evident and the benefits extend to the wider community.

The remaining activities are to be funded by industry.

The funding framework and its policy rationale are fully described in the Final Report of the Kerin Funding Review and the NSW Government Response, both of which may be viewed and downloaded from SafeFood's website at www.safefood.nsw.gov.au.

The Government also decided that industry funding of compliance audit, inspection and stakeholder consultation should be re-considered during the Section 73 Review. That is, funding should be reconsidered in the context of a possible extension of SafeFood's jurisdiction to cover the retail, food service and secondary manufacturing sectors. (These sectors were not involved in the Kerin Funding Review and its consultative processes.)

Audit contestability complicates funding

Funding of compliance audit is complicated by the issue of whether audit arrangements should be contestable. The Kerin Funding Review noted that effective supervision of a contestable third-party system would require the agency (SafeFood, NSW Health or a future through-chain agency) to have a detailed and practical knowledge of the risks and hazards in the relevant industries.

If industry is required to provide funding, a third-party system may impose greater costs on industry. This is because industry would have to pay both the third-party auditors and also the supervisory regime (auditing the auditors). These costs are additional to the industry cost of implementing the preventative programs.

Establishing a through-chain agency does not significantly affect the issue of audit contestability. However, any extension of preventative approaches based on enterprise-based food safety programs subject to external audit will need to be considered in terms of resourcing, skills, contestability, efficiency and effectiveness. It is important to note that risk assessments are required before any extension of these programs.

Funding stakeholder consultation needs to be considered.

Under the current system, stakeholder consultation is funded by industry as part of the scheme implementation and compliance functions of SafeFood. Consumer advocates argue that stakeholder consultation might not receive due attention if it continues to be funded by industry (in accordance with the Kerin funding principles).

A through-chain SafeFood may have added functions

p) Would a through-chain agency have functions that are outside the accepted funding framework for SafeFood? If so, how will these functions be funded?

If a through-chain agency is established, the Review must consider whether new responsibilities fit within the functional model developed by the Kerin Funding Review. If the functions do fit this model, the existing funding principles can be applied. For example, if SafeFood becomes the "relevant authority", the Review will have to determine the funding required for its coordination role and who will pay for it.

Redeploying existing resources

- q) Should resources be realigned toward high risk areas? If so, how?**
- r) If existing institutional arrangements change, how will funding arrangements have to change?**

It may be necessary to redeploy resources in order to improve the food safety system and to move towards preventative approaches. If food safety arrangements are restructured, existing resources may need to be redeployed between agencies.

Possible types of redeployment:

- If the proportions of particular activities performed by the various agencies change, one agency may require more resources and another agency may require less. For example, if NSW Health compliance activities reduce, less resources would be needed by NSW Health and more would be needed by other agencies such as SafeFood or the Local Government sector.
- If boundaries between State agencies are changed, functions may need to be transferred between them and, therefore, so would resources. For example, NSW Health may transfer food safety functions to SafeFood.
- Following risk assessment of food businesses, resources may be moved along the food chain from low risk to high risk areas. For example, resources may move from the processing sector to the food service sector.

Resources need to be allocated commensurate with risk

As government moves towards cost recovery arrangements, allocating resources in a risk based manner becomes difficult. A through chain agency may be better able to allocate resources across the food chain commensurately with risk. Furthermore, redeployment within an agency is easier than redeployment between agencies and may lead to greater efficiency due to synergies achieved by a through-chain agency (if established). It may be more efficient to assess risk by food business and commodity and perhaps fees could be collected from industry in this manner.

Investigating how the food safety system is resourced may identify gaps. For example, gaps might be found in Local Government funding for inspection, consumer and public education, as well as for any new functions. The Review welcomes submissions (with examples) about gaps in the system.

Transitional funding arrangements

- s) What transitional funding arrangements may be needed?**

The Kerin Funding Review recommended transitional funding arrangements. These would enable SafeFood to bed down its current activities and then to gradually increase audit and inspection fees to competitive levels. Transitional funding would also be necessary to establish a through-chain agency.

3.4 Benefits and costs of a through-chain agency model

t) Will a through-chain agency provide a higher net benefit to the community than the current situation?

A through-chain agency could:

- streamline the food safety system
- bring about consistency in risk management

This could have the following benefits:

1. Reducing risk to food safety by concentrating activity at the high risk points in food production. As a result, fewer cases of food-borne illness should occur (which would reduce the associated costs).
2. Reducing cost to Government by allocating resources commensurate either with food safety risk, or other regulatory priorities. For example, compliance and auditing costs could be reduced through synergy between the various sectors of the food chain and by making food safety the responsibility of one agency (a 'one-stop-shop').
3. Raising the profile of food safety as a public policy issue and providing a focus for consumer confidence and criticism. A through-chain agency may provide a system that addresses food safety concerns more efficiently because the agency can coordinate a whole-chain solution.
4. Increasing effectiveness of food safety activities. A through-chain agency would develop significant food expertise through day-to-day contact with the food industry.
5. Increasing efficiency. For example, if the through-chain agency were responsible for all parts of the Food Standards Code, the agency's routine industry activities would readily pick up non-compliance in both food safety and non-food safety aspects. Duplication would be reduced and efficiency increased.
6. Facilitating communication between different sectors of the chain.
7. Improving the management of food businesses. Shifting to a preventative approach requires improvement of management and production processes.

Assessing SafeFood's current performance

The Council on the Cost and Quality of Government is currently assessing SafeFood's performance under its existing legislation. It will deliver an assessment of the appropriateness, efficiency, effectiveness and prudence of its activities using the Council's standard approach for reviewing public sector agencies. The Review may consider whether a similar exercise should be carried out for food safety functions of NSW Health and NSW Agriculture.

3.5 Role of Local Government

- u) **What are the implications of a through-chain agency on the role of Local Government?**
- v) **How would it impact current efforts to introduce more consistent enforcement of food standards?**

The present roles of Local Government are:

- monitoring and enforcing compliance with the Food Standards Code,
- approving food premises, and
- investigating complaints and conducting training for food handlers (discretionary).

These roles may change as the regulatory approach shifts towards preventative and enterprise-based food safety programs. Local Government officers may need to upgrade their skills in auditing food safety programs.

The future role of Local Government is being negotiated

NSW Health has already initiated negotiations with the Local Government sector on its future role. It did this in preparation of the national food regulation reforms, including the introduction of the NSW Food Act and food business notification requirements.

The current system for food safety in the retail and food service sectors does not require Local Government to enforce the Food Act on behalf of NSW Health. However, the majority of the 172 local councils do appoint council officers to enforce the Act, though some do not due to insufficient resources (NSW Health 2001).

Where there are gaps, the Public Health Units of NSW Health enforce the Act. However, such gaps may not always be easy to identify. The negotiations between NSW Health and the Local Government sector involve consultation on introducing consistency in enforcing food standards and reducing duplication of audit and inspection efforts. Establishing a through-chain agency may not of itself improve this situation. Further, even under the current system additional resources may be required to reduce risks.

The “relevant authority” will need to continue to work with Local Government

As negotiations will continue beyond the Section 73 Review, it is important not to pre-empt their possible outcomes. Therefore, the Review must consider the impact of changing the coordinator of the food safety system. Also, the designated “relevant authority” will need to continue developing appropriate institutional arrangements with the Local Government sector.

The local knowledge of food businesses and risks held by Local Government is one of the major resources of the food safety system in NSW. This information is not held by NSW Health, nor is there any systematic collection of it. There is an opportunity, particularly for a through-chain agency, to work with Local Government on ways to collect and make better use of this data.

3.6 Interagency linkages and responsibilities

w) After allocating functions and responsibilities for food safety regulations, what linkages between agencies are required to make a through-chain agency operate effectively?

The success of the food safety system depends heavily on interagency linkages. This is true whether a through-chain agency is established, or whether the current system is maintained and improved. It will be vital to have robust and formalised arrangements for strategic liaison and consultation among all agencies involved in food regulation, at both state and Local Government levels.

A Strategic Liaison Group chaired by the through-chain agency could underpin these arrangements. In addition, current arrangements will continue whereby SafeFood, NSW Health and NSW Agriculture contribute directly to national policy and standards development. Improved representation by Local Government should be considered.

Options for interagency linkages

- A Memorandum of Understanding between the through-chain agency and NSW Health on notification of food-borne illness and related information;
- A Memorandum of Understanding between the through-chain agency and NSW Agriculture on food chain inputs;
- A Memorandum of Understanding between the through-chain agency and NSW EPA on food chain inputs (horticulture).
- A Memorandum of Understanding between the through-chain agency and Department of Fair Trading or the ACCC regarding non-food safety aspects of the Food Standards Code. This would involve non-food safety aspects such as country of origin labelling;
- Service level agreements to formalise NSW Agriculture's (i.e. RLPB veterinarians) approach to providing services to the through-chain agency;
- Service level agreements between Local Government councils and the through-chain agency covering food regulatory responsibilities. These would cover responsibilities under the NSW Food Act, the Food Standards Code and the Public Health Act. Resources for this activity will need to be allocated;
- Appropriate interface arrangements between NSW Health and the through-chain agency regarding public education and information;
- Reporting arrangements whereby the "relevant authority" may require reports from the heads of enforcement agencies (under the NSW Food Act) on their performance of Food Act functions;
- Coordination with AQIS and interstate agencies as required to address food imports and cross-border issues;
- Linkages between epidemiological investigations performed by NSW Health and environmental investigations performed by the through-chain agency. These two agencies will also need to develop a partnership approach to prevent further incidents.

Appendices 2 and 3 present options for allocating food safety responsibilities, roles and functions to the three tiers of government.

3.7 Food safety accountability and agency governance

x) What principles should be reflected in the institutional arrangements? How should these principles operate in practice?

The accountability debate in Australia and overseas has focused on whether food safety should sit within a health-related portfolio or an industry-related portfolio. While Ministerial responsibility is a critical issue, the Review should also consider other elements of the institutional arrangements. Ultimately the test will be how the institutional arrangements function as a whole.

Principles to assess institutional arrangements

It will be important to identify a set of principles against which the institutional arrangements might be assessed. An indicative list to generate discussion is:

- Public confidence is maintained;
- Food safety is a clear focus ;
- The objective of public health and safety is paramount;
- The required activities can be adequately resourced;
- Regulatory independence is achieved;
- Transparency is achieved;
- Consultation and communication are structured and effective;
- Industry can be effectively engaged;
- The Model Food Act can be effectively and efficiently implemented; and
- There is sufficient prudential oversight.

The institutional arrangements established by the NSW Government have a number of elements, each of which will influence performance and accountability. These elements (some of which have been discussed in detail elsewhere in this Issues Paper), will together comprise the institutional “package” which may be assessed against the principles suggested above.

Elements of institutional arrangements

y) What institutional arrangements will best ensure accountability to the community for food safety outcomes?

An agency or a business unit

The through-chain agency could be established as a business unit within a large department such as NSW Health or NSW Agriculture. This may have the advantages of reducing overheads and facilitating coordination with food-related activities of the host department. Conversely, the unit’s work could be overshadowed by the core functions of the host department. It may also be less successful in competing for resources and its operations may be made less visible.

If established as a stand-alone body, the through-chain agency and its activities would be highly visible. It may also be more independent in setting strategic and policy direction and in deploying resources, making it more accountable for its performance.

A through-chain agency would be relatively small, which would mean overhead costs might be greater than for a business unit. However, the NSW Government has a range of initiatives, including shared corporate services arrangements and co-location, which minimise the overheads of small agencies.

Agency governance

If the through-chain agency is to stand alone, governance arrangements will need to be determined to ensure its accountability as a government agency. There are two broad options for governance arrangements:

1. It could be established as a government department with a CEO reporting directly to the relevant Minister.
In this case it would be subject to the same requirements as other government departments in managing staff, budget and resources. This is the current arrangement for SafeFood NSW.
2. It could be established as a statutory authority with a CEO reporting to an independent Board, which in turn would report to a nominated Minister.
Oversight by an independent Board, with a range of relevant expertise and experience, could strengthen the agency's strategic and policy direction as well as raising the agency's profile in the community. However, the Board would add significantly to direct and indirect overhead costs (e.g. staff time).

Option 1 could include an independent Advisory Committee, which could report direct to the responsible Minister. This could be a more cost-effective way than Option 2 to provide independent oversight of, and input to, the agency's strategic and policy direction. However, the Advisory Committee would not have corporate governance responsibility, possibly reducing the perceived accountability of the agency.

Funding base

The Government-industry shared funding framework established following the Kerin Funding Review in 2001 applies to any future through-chain agency. Section 3.3 discusses in detail the funding and resourcing issues. The funding arrangements will be a key element of the Review's recommended option.

Legislative base

The NSW Food Act will be enacted in 2002 in accordance with the nationally agreed model. It provides the overall legislative framework for the NSW food regulatory system.

SafeFood NSW was established under its own legislation, the Food Production (Safety) Act 1998. This Act specifies SafeFood's functions and imposes significant requirements for risk assessment, stakeholder consultation, funding and public reporting.

When considering the through-chain agency option, the Review will need to assess whether it is desirable to retain a similar legislative base.

Ministerial Responsibility

There are three main options for Ministerial responsibility for a through-chain agency:

1. The agency could report to the Agriculture Minister, as have SafeFood NSW and its predecessor agencies;
2. The agency could report to the Health Minister, as do the current Food Branch and Public Health Units within NSW Health; or
3. A separate portfolio could be created.

Advantages of reporting to the Agriculture Minister:

- greater ability to engage industry – essential to current co-regulatory approaches which focus on prevention;
- food safety would be less likely to be marginalised by major portfolio issues unrelated to food; and
- synergy would exist with other portfolio responsibilities related to food production.

Advantages of reporting to the Health Minister:

- industry pressure is less likely to compromise the public health and safety objective;
- public confidence may be greater;
- synergy would exist with other portfolio responsibilities related to public health.

Both of these options would have corresponding disadvantages such as ??????.

Creating a separate portfolio could transcend the “Health vs Agriculture” debate¹¹. The portfolio could be Food Safety, Food Regulation or simply Food. This would depend on the agency’s remit (in particular whether it is responsible for the entire Food Standards Code). Like any portfolio, the Food portfolio would be allocated to a Minister at the Government’s discretion.

Possible advantages of creating a separate portfolio include:

- it could provide a clear focus on food safety, together with accountability to Parliament and the community;
- it could enhance transparency, including the balancing of public health and industry priorities; and
- it could raise the profile of food regulatory issues.

3.8 Legislative issues

- z) If SafeFood’s jurisdiction is extended through the food chain, what are the implications for the new NSW Food Act and the Food Production (Safety) Act?**
- aa) What transitional arrangements would be needed?**

¹¹ It was noted in Section 3.1 that the New Zealand Prime Minister recently announced the decision to create a new portfolio of Food Safety and a Food Safety Authority with through-chain responsibility. This decision will be implemented from 1 July subject to passage of enabling legislation.

Model Food Act vs Food Production (Safety) Act

The Model Food Act, when enacted as the NSW Food Act, will apply to all “food businesses,” and will provide the framework for managing food regulation in NSW. Under the Act, one State agency will be designated as the “relevant authority” with overall responsibility for the entire food safety system. This requirement of the Model Food Act suggests that it would be desirable to designate a through-chain agency as the “relevant authority”.

If SafeFood becomes a through-chain food regulatory agency and the “relevant authority” under the NSW Food Act, then SafeFood would not require the regulatory powers of the Food Production (Safety) Act. These powers are also contained in the NSW Food Act.

However, SafeFood may continue to require the provisions that enable it to prescribe industry or sector specific Food Safety Schemes. SafeFood may need to implement food safety standards in sectors not yet covered by national standards, such as the Food Safety Standards in the Food Standards Code (e.g. the sectors defined in the Model Food Act as “primary food production”). Further, the Food Production (Safety) Act may need to be amended to accommodate the extended authority of a through-chain agency.

The “relevant authority” will have broad powers

The “relevant authority” will possess the powers and functions needed to implement and enforce food regulatory requirements. It will automatically be an “enforcement agency,” and will be supported by other State or Local Government agencies designated as “enforcement agencies.”

While the “relevant authority” will have broad powers to delegate activities, it will not be allowed to delegate certain powers and functions. This restriction may influence the choice of the relevant authority. These powers that may not be delegated include:

- emergency orders,
- approval of laboratories,
- approval of analysts,
- approval of the Priority Classification System used by enforcement agencies to determine audit frequency, and
- maintaining a public register of approved food safety auditors.

Transitional arrangements

Transitional legislative arrangements may be necessary for the through-chain agency to function. This may be particularly true in relation to funding and until SafeFood can harmonise its cost-recovery arrangements across the various Food Safety Schemes.

4. The Consultation Process

1. An “Issues Paper” is prepared – this paper.
2. Stakeholders respond to matters raised in the Issues Paper and may make submissions on other relevant matters.
3. Submissions will be analysed and considered by the Reviewer
4. The Reviewer will form a view on these matters and make recommendations on the future of the NSW food safety system
5. These recommendations will be presented in a formal report to the Ministers for Agriculture and Health and to the NSW Parliament.

Key dates

May 2002	This Issue Paper is released. Consultation period starts – stakeholders can make submissions from this date.
31 August 2002	Consultation period ends. No further submissions will be considered.
31 October 2002	The Reviewer must provide his report to the Ministers for Agriculture and Health by this date.
18 December 2002	The report must be tabled in Parliament by this date.

4.1 How do I respond to the Issues Paper?

Individuals, business, government and industry/consumer/professional associations are invited to respond to this paper. You can respond to this paper in three ways:

- By writing to: Section 73 Review Secretariat
PO BOX A2613
Sydney South NSW 1235
(responses can be either hand written or typed)
- By sending an e-mail to s73review@safefood.nsw.gov.au.
- By making your comments electronically on the SafeFood web site (www.safefood.nsw.gov.au). Use the 'section 73 review' link.

In addition, individuals may ask their industry/consumer/professional association to make submissions to the Review on their behalf.

Please include your contact details with your response.

How do I structure my response?

It is not necessary to respond to all issues raised in this paper. You may comment on as many or as few as you wish.

The Review seeks responses to the issues raised in Chapter 3 of this paper but will also consider other relevant matters. Chapter 3 identifies the issues to be considered and provides some background material to assist you when making your response. (The issues are also listed below for your convenience.)

Please structure your response in a way that clearly identifies the issue(s) you are responding to. It will assist the Review if you support your comments or opinions with reasons and any available evidence. Please feel free to attach supporting documents.

Is my response confidential?

If requested, the Review will not identify the author(s) of a response or publish the response.

However, the Review wishes to help public debate of the issues by publishing on the SafeFood website all responses received in electronic or scannable form, unless confidentiality is specifically requested.

4.2 How else can I participate in the Review?

In parallel to the submission process, Mr Kerin will meet with individuals or groups to discuss specific issues. Due to time constraints it will be necessary to prepare a meeting program that may group stakeholders around issues. If you or your association wish to meet with Mr Kerin, please advise the Secretariat by 30 June at the above e-mail address or by calling (02) 9295 5796. The Secretariat will advise you of meeting arrangements.

4.3 Issues for consideration

The Review is seeking feedback on the following issues:

1. Allocation of food regulatory functions within NSW

- a. Would reallocating the food safety functions to a through-chain agency achieve better food safety outcomes than the current system?
- b. If the current system is maintained, NSW Health will become the 'relevant authority' under the Act and be responsible for coordinating the entire food safety system in NSW. What are the implications for SafeFood's activities?
- c. Should SafeFood or NSW Health take on the coordination role?
- d. If the through-chain agency becomes the "relevant authority", what are the implications for coordinating the food regulatory system?
- e. Should the through chain agency be a separate agency or should it be a business unit within a larger agency?
- f. Which agency should be responsible for implementing the Food Standards Code?

- g. What is the most effective regulatory structure for addressing the non-food safety and indirect food safety components of the Food Standards Code?
- h. How is the interface between primary industry regulation and the food safety system to be managed?
- i. If a through-chain agency is established, how should the interface between health regulation and the food safety system be managed?

2. Non-statutory food safety functions within NSW

- j. Should a through-chain agency address non-statutory functions related to food safety, such as consumer and public health information?
- k. What is an adequate level of consumer information and education? How should consumer information and education be delivered?

3. Resourcing a through-chain agency

- l. Are current food safety activities appropriately resourced?
- m. Where are the gaps in resourcing in the current food safety system?
- n. How should the activities of compliance audit, inspection and stakeholder consultation be funded?
- o. Should audit and inspection services be contestable?
- p. Would a through-chain agency have functions that are outside the accepted funding framework for SafeFood? If so, how will these functions be funded?
- q. Should resources be realigned toward high risk areas? If so, how?
- r. If existing institutional arrangements change, how will funding arrangements have to change?
- s. What transitional funding arrangements may be needed?

4. Benefits and costs of adopting a through-chain agency model

- t. Will a through-chain agency provide a higher net benefit to the community than the current situation?

5. Role of Local Government

- u. What are the implications of a through-chain agency for Local Government?
- v. How would it impact current efforts to introduce more consistent enforcement of food standards?

6. Inter-agency linkages and responsibilities

- w. After allocating functions and responsibilities for food safety regulations, what linkages between agencies are required to make a through-chain agency operate effectively?

7. Food safety accountability and agency governance

- x. What principles should be reflected in the institutional arrangements? How should these principles operate in practice?
- y. What institutional arrangements will best ensure accountability to the community for food safety outcomes?

8. Legislative issues

- z. If SafeFood's jurisdiction is extended through the food chain, what are the implications for the new NSW Food Act and the Food Production (Safety) Act?
- aa. What transitional arrangements would be needed?

Appendix 1: Extract from Terms of Reference for the Review

Without limited the scope of its work relevant to subsection 73 (4)(c), the Review shall:

- consider whether the *status quo* should be maintained;
- consider a future option which would:
 - establish a food safety agency with functions which apply from food production to retail; and
 - retain the responsibility of NSW Health for notification, surveillance, investigation and response to food-borne illness, along with a role in providing advice and education on nutrition and food safety; and
- address the following when considering future options (including the status quo):
 - recommendations as to appropriate portfolio responsibility
 - allocation of food regulatory functions in NSW, including responsibility for recall and the compositional and labelling requirements of the Food Standards Code;
 - resourcing the agency(ies), within the parameters established by the NSW Government Response to the Kerin Funding Review, and the deployment of existing resources in SafeFood, NSW Health and Local Government;
 - costs and benefits of all options;
 - the role of Local Government and associated revenue requirements;
 - linkages among SafeFood, NSW Health, Local Government and other relevant agencies which are essential for the option to work effectively; and
 - legislative issues, including necessary or recommended changes to the NSW Food Act, the Food Production (Safety) Act, or other relevant legislation.

Appendix 2: Requirements of the Food Standards Code

#	Requirement	Agency Currently Responsible	Issues and Commentary
	Standards identified by * may have direct food safety implications. Standards identified by ** may not have direct food safety implications, but may have long term impacts, for example nutritional requirements		
1	General Food Standards		
1.1	Preliminary		

#	Requirement Standards identified by * may have direct food safety implications. Standards identified by ** may not have direct food safety implications, but may have long term impacts, for example nutritional requirements	Agency Currently Responsible	Issues and Commentary
1.2	Labelling and other information requirements 1.2.1 Application of Labelling and Other Information Requirements 1.2.2 Food Identification Requirements* 1.2.3 Mandatory Advisory Statements and Declarations* 1.2.4 Labelling of Ingredients* 1.2.5 Date Marking of Packaged Food* 1.2.6 Directions for Use and Storage* 1.2.7 Reserved (Representations about Food) 1.2.8 Nutrition Information Requirements** 1.2.9 Legibility Requirements** 1.2.10 Characterising Ingredients and Components of Food**	NSW Health	• Most Standards in Section 1.2 will require direct observation in food premises/processing plant by a person with food safety expertise to identify non-compliance • There is the possibility of Fair Trading being primarily responsible for the area and referring food safety issues to SafeFood. The efficiency of this, particularly with respect to developing adequate expertise, is questioned

#	Requirement	Agency Currently Responsible	Issues and Commentary
	Standards identified by * may have direct food safety implications. Standards identified by ** may not have direct food safety implications, but may have long term impacts, for example nutritional requirements		
1.3	Substances added to food 1.3.1 Food additives* 1.3.2 Vitamins and minerals 1.3.3 Processing aids* 1.3.4 Identity and purity*	NSW Health	• “Food additives”, Processing aids” and “Identity and purity” have food safety implications • May require direct observation in food premises/processing plant to identify non-compliance
1.4	Contaminants and Residues 1.4.1 Contaminants and natural toxicants* 1.4.2 Maximum residue limits* 1.4.3 Articles and materials in contact with food* 1.4.4 Prohibited and restricted plants and fungi*	NSW Health NSW Agriculture SafeFood NSW AQIS	• Consideration needs to be given to NSW Ag NCP Review • Compliance to Standard 1.4.1 is primarily ensured by survey work rather than inspections. It is likely that the agency responsible for the Code will need to continue this activity. This may be done in conjunction with other agencies such as NSW Agriculture • Arrangements between NSW Agriculture and agency responsible for the Code may be required for “on farm” aspects of compliance
1.5	Foods requiring pre-marketing clearance 1.5.1 Novel foods* 1.5.2 Foods produced using gene technology* 1.5.3 Irradiation of food*	NSW Health	• May require direct observation in food premises/processing plant to identify non-compliance • Will require specialised expertise • Issues cross over between agricultural and processing jurisdictions

#	Requirement Standards identified by * may have direct food safety implications. Standards identified by ** may not have direct food safety implications, but may have long term impacts, for example nutritional requirements	Agency Currently Responsible	Issues and Commentary
1.6	Microbiological and processing requirements 1.6.1 Microbiological limits for food* 1.6.2 Processing requirements*	NSW Health SafeFood NSW	• Crossover of public health and food safety (disease notification and foodborne organisms) • NSW Health to retain responsibility for notification, surveillance, investigation and response to food-borne illness • Will require presence in food premises/processing plant to identify non-compliance

#	Requirement	Agency Currently Responsible	Issues and Commentary
	Standards identified by * may have direct food safety implications. Standards identified by ** may not have direct food safety implications, but may have long term impacts, for example nutritional requirements		
2	<i>Food products standards</i> Part 2.1 Cereals Part 2.2 Meat, eggs and fish Part 2.3 Fruits and vegetables Part 2.4 Edible oils Part 2.5 Dairy products Part 2.6 Non-alcoholic beverages Part 2.7 Alcoholic beverages Part 2.8 Sugars and honey Part 2.9 Special purposes foods Part 2.10 Standards for other foods	NSW Health	• Some food safety issues – e.g. cracked eggs • Will require high level food expertise as these standards are rarely enforced in isolation • Possible for Fair Trading responsibility with referral of food safety issues to SafeFood
3	Food safety standards* Food safety requirements 3.2.1 Food safety programs 3.2.2 Food safety practices and general requirements 3.2.3 Food premises and equipment		• Core of preventative food safety activity by Government • High level competence and experience will be required, together with in-plant inspections/audit by Agency personnel and/or qualified auditors • At present requirements implemented by regulations under both Food Act and Food Production Safety Act

#	Requirement	Agency Currently Responsible	Issues and Commentary
	Standards identified by * may have direct food safety implications. Standards identified by ** may not have direct food safety implications, but may have long term impacts, for example nutritional requirements		
	Primary Food Production	N/A – similar requirements in Food Safety Scheme (FSS)	- Model assumes that a single State agency should be responsible for ensuring compliance with the standards - Local Government would almost certainly have a continuing role in retail and food service sectors. The single State agency would be responsible for development and oversight of that role.
	Processing/manufacture	- Some sectors – FSS - NSW Health - Local Government	
	Transport/storage	- Some sectors – FSS - NSW Health - Local Government	
	Retail/food service	- Meat retail – FSS - NSW Health - Local Government	

Appendix 3: Key Provisions of the Model Food Act

#	Requirement/Function/Power	Relevance to Food Safety	Agency Responsible for Enforcement
A2	OFFENCES RELATING TO FOOD		
A2	DIV 1 SERIOUS OFFENCES RELATING TO FOOD		
9	Handling food in unsafe manner	yes	enforcement agency ¹
10	Sale of unsafe food	yes	enforcement agency
11	False description of food ² (1) not falsely describe so person who relies may suffer physical harm (2) not sell food so described	yes	enforcement agency
A2	DIV 2 OTHER OFFENCES RELATING TO FOOD		
12	Handling and sale of unsafe food	yes	enforcement agency
13	Handling and sale of unsuitable food	yes, but also quality	enforcement agency
14	Misleading conduct relating to sale of food (1) not engage in misleading or deceiving conduct re advertising,	yes, eg allergens	enforcement agency

¹¹ “enforcement agency” includes the “relevant authority”

² see cl 18 definition of “falsely described” (covers quality, nutrition, value and content issues)

#	Requirement/Function/Power	Relevance to Food Safety	Agency Responsible for Enforcement
	packaging or labelling of food (2) not cause food to be advertised, packaged or labelled in way which falsely describes the food		
15	Sale of food not complying with purchaser's demand (immaterial whether food is safe)	indirect only; could rely on other offences	enforcement agency
16	Sale of unfit equipment or packaging or labelling material (which may render food unsafe)	yes	enforcement agency
17	Compliance with Food Standards Code (1) must comply re conduct of food business or food (2) not sell food which does not comply (3) not sell or advertise food which is packaged or labelled contrary to Code (4) not sell or advertise food in manner contrary to Code	yes, relevance depends on circumstances	enforcement agency
	EMERGENCY POWERS		
26	Order may be made where necessary to prevent or reduce possibility of serious danger to public health or mitigate adverse consequences	yes	relevant authority
27	Nature of order (a) require warnings that food unsafe (b) (b) prohibit cultivation, taking, harvesting, obtaining of food (c) prohibit food being advertised or sold (d) direct recall and manner of recall (e) direct that food be impounded, isolated, destroyed, disposed of and	yes	relevant authority

#	Requirement/Function/Power	Relevance to Food Safety	Agency Responsible for Enforcement
	how (f) prohibit any activity re a food or impose conditions (g) require taking and analysis of samples of food or water or soil or other thing in environment (h) specify methods of analysis of samples		
	PRELIMINARY		
4	Application of Act to water suppliers (a) certain offences do not apply (b) Parts 5, 7 and 8 (improvement notices and prohibition orders; auditing; notification, registration and approval		
B6	<u>TAKING AND ANALYSIS OF SAMPLES</u>		
B6	<u>DIV 3 APPROVAL OF LABORATORIES</u>		
48	<u>Approval of laboratories</u>	yes	relevant authority
51	<u>Vary conditions, suspend or cancel approval</u>	yes	relevant authority
53	<u>Maintain list of approved laboratories</u>	yes	relevant authority
	<u>DIV 4 APPROVAL OF ANALYSTS</u>		
54	<u>Approval of analysts</u>	yes	relevant authority
57	<u>Vary conditions, suspend or cancel approval</u>	yes	relevant authority
59	<u>Maintain list of approved analysts</u>	yes	relevant authority
B7	<u>AUDITING</u>		

#	Requirement/Function/Power	Relevance to Food Safety	Agency Responsible for Enforcement
B7	<u>DIV 1 APPROVAL OF FOOD SAFETY AUDITORS</u>		
60	<u>Approval of auditors</u>	yes	relevant authority ³
63	<u>Vary conditions, suspend or cancel approval</u>	yes	relevant authority ⁴
B7	<u>DIV 2 AUDITING AND REPORTING REQUIREMENTS</u>		
65	Proprietor of food business must: (b) comply with FSP requirements (c) ensure FSP audited as required	yes	enforcement agency
66	Priority classification system and frequency of auditing (1) enforcement agency must determine priority classification and auditing frequency (2) relevant authority must approve PCS used to determine priority classification (3) enforcement agency must notify proprietor of PC, audit frequency and date by which FSP must be implemented	yes	(1) enforcement agency (2) relevant authority (3) enforcement agency
70	Certificates of authority of food safety auditors	yes	relevant authority ⁵

³ can delegate to enforcement agency

⁴ can delegate to enforcement agency

⁵ can delegate to enforcement agency

#	Requirement/Function/Power	Relevance to Food Safety	Agency Responsible for Enforcement
71	Maintain list of approved food safety auditors	yes	relevant authority
B8	NOTIFICATION AND REGISTRATION OF FOOD BUSINESSES AND APPROVAL OF FOOD PREMISES		
73	Notification of conduct of food businesses (proprietor must give notice to appropriate enforcement agency)	yes	enforcement agency
75	Registration of food businesses (appropriate enforcement agency may register food businesses)	yes	enforcement agency
78	Vary conditions, suspend or cancel registration	yes	enforcement agency
80	Maintain list of notified and registered food businesses	yes	enforcement agency
B9	ADMINISTRATION		
B9	DIV 1 RELEVANT AUTHORITY		
81	Functions of relevant authority (1) as conferred by Act (2) (a) take measures to ensure compliance with Act (b) recommend changes to Act		relevant authority
82	Delegation (2) cannot delegate: (b) emergency powers (c) approval of labs (d) approval of analysts		relevant authority

#	Requirement/Function/Power	Relevance to Food Safety	Agency Responsible for Enforcement
	(e) Auditing powers except 60, 63, 70 (f) s84 powers (conditions on enforcement agencies) (g) s88 powers (certificates of authority)		
B9	DIV 2 FUNCTIONS OF ENFORCEMENT AGENCIES		
83	Enforcement agencies have functions conferred or delegated		enforcement agency
84	Relevant authority may impose conditions or limitations		relevant authority
85	Relevant authority may adopt national guidelines re exercise of its functions and require enforcement agencies also to adopt		relevant authority
B9	DIV 3 APPOINTMENT OF AUTHORISED OFFICERS		
87	Enforcement agency may appoint authorised officers		enforcement agency
88	Certificates of authority for authorised officers		enforcement agency