

PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION  
Productivity Commission Issues Paper  
April 2009

IMPLEMENTATION SUB COMMITTEE  
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**Background**

The Food Regulation Agreement (FRA) itself provides no guidance as to how jurisdictions are to work together to achieve national consistency in implementing the Australia New Zealand Food Standards Code. The only reference is in Clause 6 where the functions of the Food Regulation Standing Committee (FRSC) include:

- (a)(ii) ensuring a nationally consistent approach to the implementation and enforcement of food standards

However, a report to the Council Of Australian Governments by its Senior Officials Working Group, which annexed a draft of the FRA, included a proposal for a Food Standards Implementation Sub-Committee comprising "the heads of existing State/Territory enforcement agencies and AQIS"<sup>1</sup> to develop practical approaches leading to consistency across jurisdictions, with particular focus on the initiatives proposed by Blair recommendations 3-6<sup>2</sup>.

In 2001, FRSC established the Development and Implementation Sub-Committee (DISC) that operated until 2003 when it was reviewed and replaced by the Implementation Sub-Committee (ISC) with comprehensive terms of reference covering all issues identified by the Senior Officials Working Group. The Food Regulation Secretariat in the Department of Health and Aging provides administrative support to the Committee.

By August 2005, ISC had developed a *Strategy for Consistent Implementation of Food Regulation* with an associated workplan which was subsequently endorsed by FRSC and by the Food Regulation Ministerial Council in October 2005.

The ISC structure and operations were reviewed in 2005/06 and were found to be working well subject to some "fine tuning" recommendations. Further background information can be found in the *Review of the Food Regulation Standing Committee and Implementation Sub-Committee Two Committee Structure* background paper (November 2005) and report (February 2006), obtainable from the Food Regulation Secretariat.

Subsequently, Recommendation 7 in the Report of the *Review of the Operations of the Ministerial Council 2007*<sup>3</sup> further determined that "FRSC should more closely examine the ISC workplan and give ISC more strategic direction with consideration of resource implications". FRSC has implemented this recommendation by including in the FRSC Strategic Plan, seven priorities for ISC during 2009.

**Gains achieved**

A key purpose behind the FRA was to bring together the range of portfolios and agencies involved in the regulation of food. DISC served a useful purpose by starting to build cooperative relationships among many of the agencies involved in enforcement activities. DISC also made substantial progress on a national framework for food safety auditor accreditation and management, which continued under ISC.

As outlined above, ISC representation comprises all State, Territory, Commonwealth and New Zealand food enforcement agencies. Although New Zealand's involvement in ISC was originally limited to areas directly related to food labelling and composition, New Zealand has continued to expand its participation in addressing consistent implementation and between 2006 and 2008 undertook the role of ISC Chair.

### ***Achievements 2003- 2008***

The *ISC Strategy for Consistent Implementation of Food Regulation* provides a sound strategic and operational framework for cooperative action to achieve national consistency for the interpretation and implementation of food standards. This strategy comprises 8 components. Achievements to date within these components include:

#### Component 1 – Surveillance and Monitoring

- Development of a 3 year National Coordinated Survey Plan for food surveillance and monitoring; and,
- A national process for reporting results of these surveys

#### Component 2 – Regulatory and Compliance Arrangements

- Ministerial endorsement of a National Food Safety Audit Policy, now moving to implementation;
- Development of a national food safety management framework; and,
- Implementation of Primary Production & Processing Standards

#### Component 3 – Food Safety Incident Response & Management Systems

- Development of a national Food Incident Response Protocol which has been used to manage several issues including seed sprouts, cassava chips, melamine etc;
- Development of a chemical response plan; and,
- Review of national Food Recall Protocols.

#### Component 4 – Local Government Coordination

- Workshops to strengthen relationships with local governments in Australia and New Zealand and to address key issues related to effective coordination of local government's role in food regulation; and,
- EHO workforce shortage scoping project.

#### Component 5 – Investigation, Enforcement and Corrective Actions

- Acceptance of a draft national enforcement policy for trial with jurisdictions and local government; and
- Development, management and reporting through establishment of the Health Claims Watchdog function at the direction of FRSC.

#### Component 6 – Food Industry Support and Education

- Development of a national mechanism for sharing industry guidelines and support material.

#### Component 7 – Consumer Education

- Aligning the work of the national Food Communicators Group with the work of ISC;
- Consumer information audit and gap analysis; and,
- Development of a bi-national events diary.

### Component 8 – Reporting

- Development of ISC annual report to FRSC.

### ***Future Plans 2009 and beyond***

FRSC has established 7 priorities for ISC in 2008/09 to improve consistent implementation in line with the ISC Strategy. These are:

- Piloting of an integrated model for standards development and consistent implementation using the development of the egg primary production and processing standard (Component 2);
- Piloting the national audit policy implementation plan (Component 2);
- Implementation of the draft national enforcement policy, including local government (Component 5);
- Consistent interpretation of standards, including the operation of an interim process for industry to report interpretation issues and development of options to ensure consistent interpretation of standards;
- Completion of the Food Surveillance System Linkages Project (Component 1);
- Development of a program logic framework for evaluation of the ISC Strategic Plan implementation (Component 8); and,
- Stakeholder Consultation Forums in 2009 and 2011 (Components 6 and 7).

A comprehensive workplan to deliver these priorities as well as the routine activities in the strategy has been developed. This has resulted in a structured business framework evolving for the work ISC can engage in and deliver given current budget and other resource constraints.

### ***Potential barriers to successful consistent implementation***

Despite ISC's success to date in formulating a national/ Trans Tasman strategy and progressing its priorities and workplan, progress is not meeting Ministerial and other key stakeholder expectations. These expectations of ISC, as outlined in the Food Regulation Agreement (FRA) include:

- Reduction of the regulatory burden on the food sector;
- Providing cost effective compliance and enforcement arrangements; and,
- Providing a consistent approach across Australia.

The FRA framework gives effect to a nationally consistent approach to food regulation within Australia that draws together jurisdictional and agency arrangements into a coherent, integrated response. The challenge of this outcomes-based, partnership approach is achieving a balance between competing interests through the whole food production, processing, retail and consumption chain that also achieves the paramount responsibility of protecting public health and safety.

The challenge stems from:

- The complexity of agencies involved in enforcement of food regulation;
- The limited resource capacity of smaller jurisdictions in Australia to

participate, contribute and lead the work needed to deliver consistent implementation;

- The commitment of resources required to provide support to ensure delivery of the changes needed to meet stakeholder expectations; and,
- The lack of a forum to consider fundamental alternative models to current compliance paradigms that may not be sustainable in future.

### ***ISC Strategic Approach to continued improvement and enhancement***

ISC has taken several actions to continue to improve its and the food regulatory system's effectiveness, namely:

- Jurisdictional "sponsors" for each component within the overall strategy;
- Strengthening the planning, priority, and operational plans for enforcement of food regulations to also analyse resource requirements and value adding propositions without compromising public health objectives and outcomes while recognising industry needs and transition to compliance; and,
- Establishing a project pool of \$120k pa to provide financial support to ISC priority initiatives. In addition, the project pool currently supports the maintenance of a full-time position of senior policy/project officer.

### ***Risks***

If there is to be any acceleration of current initiatives, this will not occur unless there are negotiations to increase the available financial and/or staff resources.

### ***Opportunities***

The greatest opportunities for ISC to further improve consistency of interpretation and implementation of food standards are emerging through the continuing shift from "compliance - driven" to "performance- based" approaches to enforcement of food standards.

The use of minimum effective regulation by Government provides a means of reducing the regulatory burden on businesses, allowing the regulator to direct resources to areas of greatest need. Compliance and enforcement policies need to be complementary and recognise the need to educate and enhance food safety, hygiene and handling capabilities of those who operate food businesses as well as the ability to recognise alternate compliance methodologies and non-prescriptive regulation that is adaptable to changing industry, business and consumer needs.

Benchmarking of performance needs to separately compare aspects of food regulation within the two key food regulatory approaches used in Australia:

- The 'preventative approach' which encourages compliance and can be adapted to improve effectiveness and create greater efficiencies for government and business. Through this approach both quantitative and qualitative data can be generated, in some cases using 'real-time' data; and
- The 'reactive approach', which relies on enforcement and is generally evaluated through quantitative data such as number of prosecutions, notifications, complaints and notices issued.

It should be emphasised that both approaches are valid and need to be exercised when appropriate. Private benefits derived from commercial enterprises should not be used as a benchmark for food safety regulation – the independent and national standards set by Food Standards Australia and New Zealand are the benchmark.

Benchmarking must also take into account costs imposed through funding models used to implement food safety systems, which generally fall into two categories: full and/or partial cost recovery from industry, and fully government funded.

Consideration should also be given to:

- Compliance costs associated with meeting standards/legislative requirements, with recognition of costs associated with meeting existing industry and commercial arrangements, including information already collected as a cost of doing business. Examples are AQIS requirements and the requirements imposed by the major supermarkets. Caution must be exercised when examining the matter of compliance cost with a clear distinction being made between what are private benefits and what are public benefits
- Data and information sharing between agencies and between government and the various sectors of the food chain and the ability to analyse and trend this information to provide feedback on the performance of the whole food chain.

There is increasing emphasis on the food industry and businesses to implement systems that demonstrate compliance with food standards and regulations. However, governments are still accountable for ensuring the health and safety of consumers. There is a need to ensure that there is open and transparent dialogue between government and food businesses and ISC is planning to develop a Stakeholder Relations Charter/ Strategy to achieve this objective.

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<sup>1</sup> COAG Senior Officials Working Group 2000, An Enhanced Food Regulatory System for Australia: 22-3

<sup>2</sup> Food a growth industry – The report of the Food Regulation Review. The Blair Review, August 1998

<sup>3</sup> Review of the Operations of the Australia and New Zealand Food Regulation Ministerial Council 2007, May 2008