

Legislative and Governance Forum on Food Regulation
(Convening as the Australia and New Zealand Food Regulation Ministerial Council)

**Policy Guideline on Food Safety Management for General Food Service
and Closely Related Retail Sectors**

BACKGROUND

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

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

The 2003 *Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs* identifies four high-risk industry sectors where implementation of the food safety program requirements of Standard 3.2.1 of the *Australia New Zealand Food Standards Code* would be justified. These sectors include catering operations to the general public. Requirements consistent with the 2003 Policy Guideline are now in place nationally in three of these sectors¹ but the proposed standard for catering operations (*P290 Food Safety Programs for Catering Operations to the General Public*) has been in development for a number of years without completion.

A fifth sector – eating establishments² – was also identified as high-risk, but at the time of the policy guideline’s implementation the benefit-cost ratio of implementing Standard 3.2.1 *Food Safety Programs* in this sector was considered insufficiently high.

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

SCOPE/AIM

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

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

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

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

¹ These sectors are: food service to vulnerable persons; producer, harvesters, processors and vendors of raw ready-to-eat seafood; producers of manufactured and fermented meats.

² The National Risk Validation Project characterised “eating establishments” thus – “The intention is that these are direct cook-serve operations, home delivery/takeaway of hot foods anticipated for immediate consumption. On the basis of similar modes of operation this would include restaurants, cafes, hotel/motel restaurant, clubs, takeaway/home delivery and fast food businesses.”

General food service sector

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

Closely related retail sectors³

Retailers of ready-to-eat⁴:

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

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

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

The policy guideline **supersedes** the 2003 *Ministerial Policy Guidelines on Food Safety Management in Australia – Food Safety Programs* (in particular Part 3.3 at p414) **in relation to retail/food service**, including catering operations and eating establishments. Food safety management tools (including food safety program requirements) currently in place in the Food Standards Code and at jurisdictional level may be supplemented through further initiatives developed in accordance with this policy framework.

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

“HIGH ORDER” POLICY PRINCIPLES

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

1. The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are:
 - a) the protection of public health and safety; and
 - b) the provision of adequate information relating to food to enable consumers to make informed choices; and
 - c) the prevention of misleading or deceptive conduct.
2. In developing or reviewing food regulatory measures and variations of food regulatory measures the Authority must also have regard to the following:
 - a) the need for standards to be based on risk analysis using the best available scientific evidence;
 - b) the promotion of consistency between domestic and international food standards;
 - c) the desirability of an efficient and internationally competitive food industry;
 - d) the promotion of fair trading in food;
 - e) any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.

³ ‘closely related’ refers to the fact that while these retail sectors are not considered to be ‘food service’, they undertake similar activities such as serving food that is ready-to-eat

⁴ As per the definition of ready-to-eat food in *Australia New Zealand Food Standards Code* Standard 3.2.2 (1)

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

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

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

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

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

- Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear
‘...Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties...’ (p5)
- Consulting effectively with affected key stakeholders at all stages of the regulatory cycle
‘...possibly enhancing voluntary compliance through greater understanding and acceptance of a proposal, thereby reducing reliance on enforcement and sanctions...’ (p6)
- Government action should be effective and proportional to the issue being addressed
‘...Consideration should be given to the effectiveness of implementation and administration and, as relevant, an assessment of likely compliance rates should be made taking into account matters such as incentive structures and costs to regulated parties...The principle of proportionality applies equally to the implementation of regulation, including the development of frameworks for ensuring compliance’ (p6)

SPECIFIC POLICY PRINCIPLES – Overarching Principles

These policy principles are intended to guide the processes for determining and implementing appropriate risk management tools for specified retail/food service sectors or business types. Regulatory risk management tools, including standards or other regulatory requirements, should be determined in accordance with principles of best regulatory practice⁵.

1. Impact analysis should be used to assess feasible options and determine which option generates the greatest net benefit. The key issues, to be considered iteratively, relate to risk, benefit-cost, and appropriateness. Assessment of risk will play a primary role in addressing the threshold issue of whether or not to regulate.
2. The following components should be available, or be developed as necessary, to support the processes that determine and implement risk management tools:
 - an agreed set of potential regulatory and non-regulatory risk management tools;
 - legislative, administrative and/or policy instruments to implement regulatory risk management tools;
 - when regulatory risk management tools are determined, strategies to apply them consistently across Australia and implement them effectively and consistently;
 - strategies to minimise the implementation burden on States and Territories and on industry including, where appropriate, implementation assistance for small business and community groups; and

⁵ *Best Practice Regulation: A Guide for Ministerial Councils and Standard Setting Bodies* (COAG, 2007) and *Best Practice Regulation Handbook* (Commonwealth of Australia 2010).

- evaluation and review processes.
3. The intervention determined for a particular retail/food service sector or business type(s):
 - may include more than one risk management tool;
 - may combine regulatory and non-regulatory risk management tools;
 - should be consistently applied and implemented by States and Territories;
 - should be evaluated and reviewed after implementation; and
 - may be implemented in stages following evaluation and review of the previous stage.

Specific policy principles related to risk⁶

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

4. The level of regulatory requirements and their verification should be proportionate to the level of risk.
5. Risk profiling by an agreed national methodology should be used to classify retail/food service business types (including not-for-profits⁷) in Australia on the basis of risk. The risk classification of a business type, and the rationale for that classification, should inform consideration of any additional intervention.
6. Risk classification of a business type may change when new data on the causes and incidence of foodborne illness that affect the risk profile become available, or when the specific circumstances of an individual business type justify such change.

Specific policy principles related to benefit-cost

COAG has agreed that, where appropriate, benefit-cost analysis will be used to improve the quality of information used to inform regulatory decision-making⁸.

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

Specific policy principles related to appropriateness

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

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

⁶ This section refers to the concept of profiling all businesses on the basis of their assessed risk, as distinct from the concept of risk management. The risk profiling outcomes then inform the risk management process.

⁷ Two issues must be carefully balanced when developing food safety management policy for the not-for-profit retail/food service sector. Exempting not-for profits from regulatory requirements can lead to 'level playing field' issues for-profit businesses of the same type. This effect is magnified in regional and remote areas. Conversely, imposition of regulatory requirements can have adverse social and community impacts (especially in regional and remote areas) if not-for-profits withdraw services.

⁸ These requirements are set down in the Council of Australian Governments (COAG) endorsed *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (2007)

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

Specific policy principles related to implementation strategies

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

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

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

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

10. Regulatory requirements and the legislative, and/or policy instruments⁹ necessary for effective implementation should be developed by a single or integrated process. Mechanisms should be developed for input at appropriate level from local government, as the co-regulator in most jurisdictions, throughout the process. To ensure effective stakeholder participation, the process should include a strategy for engagement, consultation and communication.
11. Regulatory requirements and implementation mechanisms should be promulgated through nationally consistent instruments such as the Australia New Zealand Food Standards Code and the Model Food Provisions.
12. Implementation mechanisms should be flexible and to the extent possible take account of existing equivalent industry-based systems¹⁰.

⁹ This Specific Policy Principle does not refer to administrative mechanisms such as jurisdiction-specific licensing requirements and fees or charges.

¹⁰ Due to the variety of businesses in the national retail/food service sector, a ‘one-size-fits-all’ approach may often be inappropriate even for a single business type. There also may be merit in allowing businesses to choose between specified implementation options, for example between a tailored food safety program subject to verification by a third party auditor and a template program verified by a local government EHO.