



## Dairysafe response to South Australian Productivity Commission Inquiry into Reform of SA's Regulatory Framework

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## Context

The Dairy Authority of South Australia, trading as 'Dairysafe', is the statutory authority responsible for regulating the South Australian dairy industry to safeguard public health, implementing a robust regulatory framework that underpins market access and the growth of the dairy industry.

As a statutory authority Dairysafe is accountable to the South Australian Government, through the Minister for Primary Industries and Regional Development, for fulfilling its statutory responsibilities in line with government policy and within an appropriate governance framework.

Dairysafe accredits all dairy businesses operating in South Australia; approving and verifying compliance with food safety programs to ensure state legislation and nationally agreed standards are maintained.

## Background to Dairysafe and its operating model

Dairysafe, as a statutory body, operates within a framework which both delivers in accordance with the *Primary Produce (Food Safety Schemes) Act 2004*, whilst operating in a 'business like' manner such that it utilises its relationship with industry to influence 'food safety culture'.

The *Primary Produce (Food Safety Schemes) (Dairy) Regulations 2017* provides the head of power for the dairy food safety scheme and Dairysafe as an incorporated entity. The Dairysafe Board consists of three members appointed by the Governor, one of which is also appointed as the presiding member. The procedures, functions and powers of the Authority are provided in the regulations.

The administrative and operational framework includes enforcement and compliance as effectively delivering 'lag' outcomes, whilst the building of relationships with industry through well governed 'engagement' and a diverse board leadership allows for the enabling environment of Dairysafe to effect a vigilant and responsive food safety climate which delivers highly favourable food safety performance results.

The business model of a statutory authority is in effect therefore able to achieve greater 'impact' in a manner which 'central' Government, by its very nature, is unable.

Dairysafe receives no recurrent government funding and is supported solely by regulated fees.

Further detail on Dairysafe's organisational and operational functions can be found in the Annual Report at [Dairysafe Annual Reports](#).

## Food safety regulation in Australia and in South Australia

There are a number of established arrangements in place to simplify the food regulatory system in Australia and South Australia, and to, as far as practicable, account for consistency of regulation and regulated standards.

At a national level:

- Australia's food regulation policies are developed by the Australia and New Zealand Ministerial Forum on Food Regulation. Members include a Minister from New Zealand, Ministers from the Australian Government, health Ministers from the Australian states and territories, and Ministers from related portfolios where nominated by their jurisdictions. The Ministerial Forum receives advice from the Food Regulation Standing Committee (FRSC).

FRSC membership closely mirrors the Ministers represented at the Forum and includes senior officials of relevant government Departments (i.e; Health, Primary Industries,

Consumer Affairs) responsible for developing food policy and the Australian Local Government Association (ALGA) participating as a full member of FRSC. The Chief Executive of Food Standards Australia New Zealand (FSANZ) participates as an observer.

- National food safety standards to protect the health and safety of consumers are developed in line with these regulatory policies by FSANZ and published in the Australia New Zealand Food Standards Code.
- The states and territories are responsible for administering the requirements of the Food Standards Code in accordance with Australia's Food Regulation Agreement<sup>1</sup> (FRA).

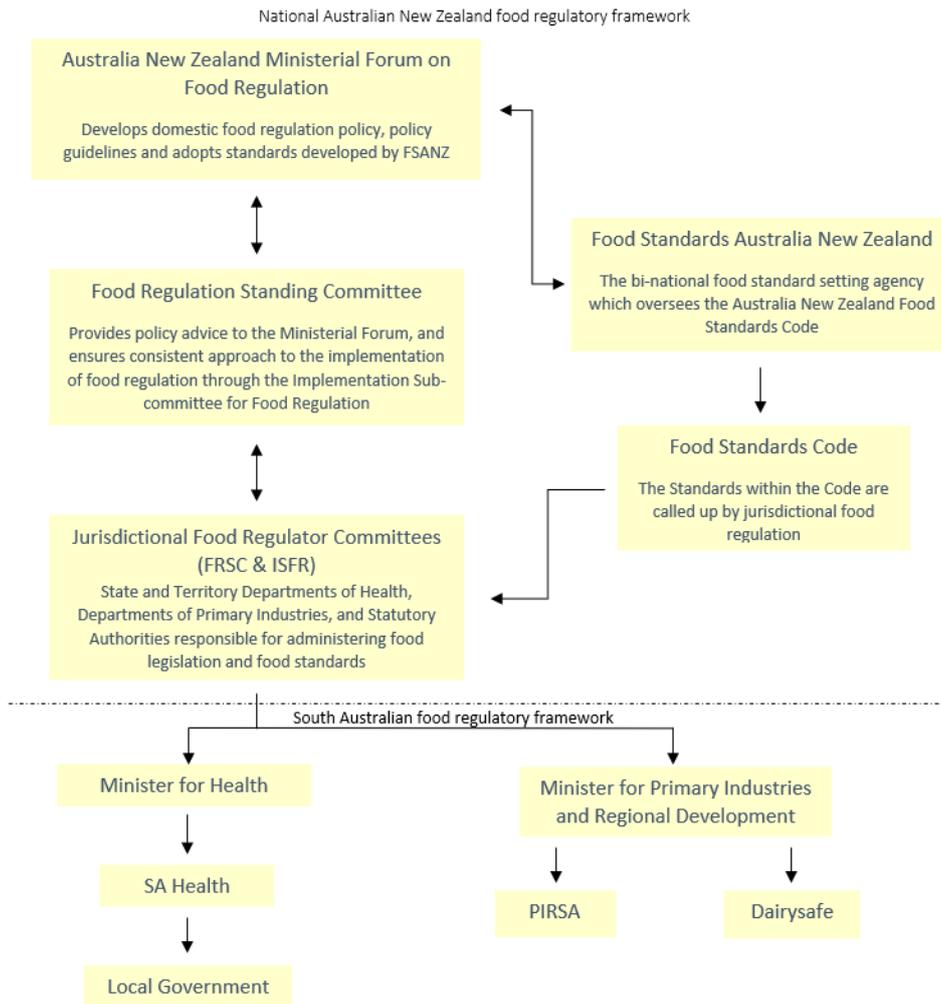
At a state level, the South Australian food regulatory system implements Australia's national food safety policies, including the FRA. Responsibility is split between:

- The Minister for Health and Wellbeing is responsible for setting food policy and the effective administration of the *Food Act 2001*, via the Department for Health and Wellbeing (SA Health). Other responsibilities contained in the Food Act and Food Regulations are delegated to enforcement agencies including municipal and district councils and relevant subsidiaries.
- The Minister for Primary Industries and Regional Development who sets primary production food policy under the *Primary Produce (Food Safety Schemes) Act 2004*, the *Livestock Act 1997*, and the *Agricultural and Veterinary Chemicals (Control of Use) Act 2002*.
- SA Health, which regulates businesses which are required to implement food safety programs for food service to vulnerable persons.
- The Department of Primary Industries and Regions (PIRSA), which regulates businesses (eg meat, eggs, shellfish and seed sprouts) under the *Primary Produce (Food Safety Schemes) Act 2004* and the associated regulations.
- Dairysafe, which regulates dairy businesses under the *Primary Produce (Food Safety Schemes) (Dairy) Regulations 2017*.
- Local government, regulate food safety matters within local government areas under the Food Act and the *Public Health Act 2011*.
- Commonwealth Department of Agriculture, Water and the Environment (DAWE), which regulates businesses that export food from Australia under the *Export Control Act 2020* and associated Export Control Rules 2021.

The diagram below depicts both the national and South Australian food regulatory frameworks.

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<sup>1</sup> [https://www.coag.gov.au/sites/default/files/agreements/food\\_regulation\\_IGA.pdf](https://www.coag.gov.au/sites/default/files/agreements/food_regulation_IGA.pdf)



At the national level, State and Territory Food Acts are based on Model Food Act provisions to facilitate consistency. In South Australia, primary producers are not captured by the State’s Food Act unless they are contract packing or substantially transforming primary produce.

To facilitate consistent food safety regulation of primary food production, Chapter 4 of the national Food Standards Code includes nationally agreed Primary Production and Processing Standards (PPPS) for sectors that pose a high food safety risk.

The *Primary Produce (Food Safety Schemes Act) 2004* was introduced in South Australia to manage identified food safety risks associated with primary production and processing.

The Food Standards Code, including PPPS, are called up in SA by both the Food Act and the Primary Produce Act and supported by a memoranda’s of understanding between regulators to ensure consistent application of food safety regulation with minimum regulatory burden.

## Current regulatory reviews

Dairysafe is aware that Australia’s food regulatory system is currently progressing through a modernisation process which aims to provide a revised legislative and institutional basis for the ‘System’, striving for international best-practice regulation and operation.

In November 2019, the Australia and New Zealand Ministerial Forum on Food Regulation endorsed an ambitious plan to reform the bi-national Food Regulation System to ensure it remains strong,

robust and agile into the future. The modernisation process includes the following individual reform projects:

- **Review of the Food Regulation Agreement**
  - Stage 1: Describe a vision for the future of the food regulatory system to provide strategic direction for reform and feed into Stage 2.
  - Stage 2: Review the Food Regulation Agreement (FRA) to create a new foundational document to underpin the food regulatory system.
- **Jurisdictional Consistency** – Identify key areas of inconsistency in food regulatory approaches based on the impacts on industry and government.
- **Operations Review** – Develop and implement new operational processes to support the system’s governance.
- **FSANZ Act Review**
  - Review the effectiveness of the FSANZ Act and the operations and responsibilities of FSANZ.
  - The Terms of Reference for the FSANZ Act Review were agreed to in July 2020.

The details of the review are provided at [Modernisation of the food regulation system](#).

The review is particularly concerned with the way the current System works and will consider pursuing new institutional and legislative foundations for the System. One recommendation of a paper commissioned to support the modernisation process suggests, *‘policymakers and regulators in every jurisdiction should also explore the possible application of alternate governance models that account for human/organisational behaviours and enable trust-based relationships between the various actors in the system’*.

It is anticipated the work being completed will provide valuable insight into contemporary food safety regulation models, and therefore could be considered by the SAPC in their inquiry into reform of SA’s regulatory framework.

## Dairysafe's response to the Terms of Reference

The following comments are provided in response to each of the terms of reference and are based on Dairysafe's specific experience under the current regulatory framework:

### 1. ToR #1

The Commission is asked to report on reform of SA's institutional framework for making and administering regulations to better enable investment, employment and productivity growth. In doing so, the Commission is asked to consider the lessons learnt from the pandemic and better practice thinking and principles to ensure that regulatory design and practice remain fit-for-purpose and responsive to emerging technologies and other trends.

#### a. Lessons learned from the pandemic

- Dairysafe comment – The regulatory provisions that support Dairysafe's regulatory activities proved to be sufficiently flexible to deal with the impacts of the pandemic and the necessary modification to how Dairysafe verifies compliance at regulated businesses, for example, the ability to conduct remote compliance audits.

Covid-19 restrictions initially meant face-to-face audit and verification activities ceased. Arrangements for remote, or virtual, audits were subsequently developed to ensure regulatory responsibilities were maintained, there was interaction with regulated businesses, and industry compliance with food standards could continue to be verified.

The remote audit protocols were further refined in consultation with Australia's dairy regulators to facilitate consistency and good regulatory practice.

#### b. Better practice thinking

- Dairysafe comment – The development and introduction of tools that promote good regulatory practice should always be a consideration.

Dairysafe is aware of jurisdictions that have adopted statements prescribing government's expectations of the regulator. These Statements of Expectation (SOE's) are aimed at fostering better practice in regulation and reducing regulatory burden. For example, Agriculture Victoria applies a 'Ministerial Statement of Expectations' (SOE's) to each of the respective food safety regulatory agencies reporting to the Minister, to which the agencies must respond. The SOE's focuses on key elements of good regulatory practice:

- risk-based strategies,
- role clarity,
- timeliness,
- compliance-related assistance and advice,
- small business regulatory burden
- clear and consistent regulatory activities,
- stakeholder consultation and engagement,
- accountability and transparency, and
- reporting

The SOE's are subject to an evaluation process carried out by the Department to assess performance and stimulate continuous improvement.

Dairysafe is not aware of administrative instruments, such as SOE's, applied within SA's regulatory framework, but is of the view that such instruments could contribute to better practice thinking and continuous improvement in making and administering regulations.

**c. Principles to ensure that regulatory design and practice remain fit-for-purpose**

- Dairysafe comment – Dairysafe is involved in both regulatory design and practice, particularly in terms of providing advice to the Minister on matters relating to the administration of the dairy food safety scheme, as well as administering the scheme. Dairysafe considers the following principles are essential to regulatory design and practice remaining fit for purpose:
  - Clearly defined regulatory outcomes, ie. a transparent process between government and/or policy makers and the regulator that clearly defines expected outcomes and allows monitoring and reporting progress of the collective efforts which leads to the agreed outcome/s (eg. key action – explanation – example).
  - Established and agreed regulatory practice principles, ie. in order to achieve the expectations and outcomes, the regulators' approach to their regulatory roles is informed by regulatory practice principles.
  - Clear and agreed expectations between the regulator and each regulated business.
  - A transparent process of developing regulatory interventions, ie. establishing the range of risk-based regulatory responses available to the regulator, the compliance posture of the regulated entity and the likely impact of the regulatory intervention on a business.
  - Establishment of compliance tools, eg. transparent development of a suite of instruments, from guidance and support to 'full force of the law', and the availability of those instruments applicable or commensurate with the level of risk.

Dairysafe's suite of instruments includes:

- **Accreditation Handbook** for applicants and potential applicants - outlines what is required to obtain accreditation and operate as an accredited dairy business, where to find additional resources to assist you, and clearly detail your legal obligations to produce safe dairy products. The Handbook can be found at [Dairysafe Accreditation Handbook](#).
- **Guidelines for the Safe Manufacture of Dairy Products** – these are provided to dairy processors to detail hazards and risks in the products manufactured; suggest ways to reduce risk to customers; provide scientific backing for Food Safety Plans; provide background information to assist processors to meet the regulatory and customer requirements for the

safe manufacture of dairy products. The Guidelines can be found at [Guidelines for the Safe Manufacture of Dairy Products](#).

- Workshops on specific food safety issues – used to inform and assist businesses in understanding and applying food safety protocols.
  - **Audits** – are used not only to verify compliance but are also used as an engagement opportunity to inform, assist and provide guidance.
  - **Corrective Action Requests** – are a specific compliance tool requesting action be taken to correct and prevent recurrence of non-conformance within a specific timeframe.
  - **Verbal warnings**
  - **Increased audit frequency** – where there is a pattern of non-compliance, increasing the frequency of regulatory audits, at the expense of the business, is applied to monitor risk and act as a deterrent.
  - **Compliance Order** – a legal direction, enforceable in law.
  - **Expiation** – immediate penalty
  - **Show-cause notice** – a request to a business as an opportunity to explain why the regulator should not consider further action, eg cancellation of accreditation.
  - **Suspension or revocation of accreditation** – a legal action, enforceable in law.
  - **Prosecution**
- Performance measurement, ie. the use of measures to understand the relationship between actions and outcomes, establish feedback with stakeholders to assess effectiveness, and measures that contribute to continuous improvement over time.

Dairysafe applies a number of measures to monitor its regulatory performance as well as performance against its strategic directions:

- 
- **Peer review audit** – Dairysafe is audited by the Commonwealth (DAWE) for compliance with the specifications within the Memorandum of Understanding
- **Certification to the ISO 9001:2015 quality standard** – Dairysafe is exposed to an annual external audit of its regulatory management system.
- **Stakeholder survey** – conducted every 2 years to measure performance against the following outcomes:
  - Quality of communications
  - Reliable source of food safety advice
  - Website informative and useful
  - Value of technical support provided
  - Frequency of audits sufficient to verify food safety standards
  - Audit process adds value

- Confidence in Dairysafe as the regulator
- Informing and working with stakeholders, ie. open and active two-way communication with policy makers, external co-regulators and regulated businesses to design and determine appropriate regulation and in identifying and considering continual improvement opportunities.

The following list includes examples of the approach to open and active two-way communication contained in Dairysafe’s 2021-2024 Strategic Directions – found at [Dairysafe 2021-2024 Strategic Directions](#)

- Comprehensive **Communication plan** – endorsed by Dairysafe Board May 2021
- **Industry information platform** – available via an industry portal for accredited businesses and tailored to industry information needs
- **Audit rating of accredited businesses** – providing businesses with a visual rating against specific compliance parameters – commenced May 2021
- **Audit rating by customers**
- **Risk and trends program**
- **Advisory program**
- **Co-ownership model** – to progress ‘food safety culture’
- **Education and support program**
- **Regulator workforce development program** – being developed in partnership with SA Health and PIRSA

**d. Regulations are responsive to emerging technological and other trends**

- [Dairysafe comment](#) – The application of a ‘Statement of Expectations’ by a government or Minister, as explained above (pages 7 & 8), could provide an authorising environment to consider changes to improve regulatory approach and/or take up contemporary regulatory approaches/models. Clearly, regulation must be sufficiently flexible to enable new approaches to be taken up and implemented.

In the case of Dairy Food Safety Victoria (DFSV), and in responding to the SOE by their Minister, the DFSV CEO commented that improving digitisation and food safety culture were noted as necessary to develop incentive-based regulation and encourage voluntary compliance. This represents an example of regulation being responsive to innovation and emerging trends.

Further details are provided at [DFSV SOE Evaluation Report](#)

2. ToR #2

The Commission is asked to make recommendations to improve the efficiency and effectiveness of regulators in the administration and enforcement of regulations and institutionalise ongoing improvement and better practice; and improve the architecture, including systems and processes for designing, making, reviewing and sunseting of regulations.

**a. Improve the efficiency and effectiveness of regulators in the administration and enforcement of regulations and institutionalise ongoing improvement and better practice**

- Dairysafe comment – See also Dairysafe’s comment against ‘1. b’ above (pages 7 & 8).

Dairysafe’s strategic intent, conveyed through its ‘2021-2024 Strategic Directions’, details how the organisation delivers value to dairy businesses in terms of efficiency and effectiveness, by:

- Keeping consumers safe by setting, monitoring and regulating local and national standards
- Creating a more knowledgeable and interconnected industry through technology and data
- Leading the South Australian dairy community to embrace a food safety culture
- Building industry and business confidence that will translate into consumer confidence
- Investing in the capabilities of the organisation to ensure it can deliver

The organisation maintains a specific focus on positive business outcomes through regulation, articulated as outcomes in the ‘2021-2024 Strategic Directions’:

- ‘Delivering value to businesses through consistent food safety regulation and minimal regulatory burden’
- ‘Supporting businesses to be resilient, sustainable and growing’

Dairysafe is also motivated by ongoing improvement and better practice through certification of the organisation’s regulatory management system to the ISO 9001:2015 quality standard. Dairysafe maintains a continuous improvement program and routinely measures organisational and regulatory performance.

Nationally, the Implementation Subcommittee for Food Regulation (ISFR) aims to ensure food standards are implemented and enforced consistently. ISFR determines common approaches to implementing food standards which are then agreed and produced as guidelines. ISFR is a subcommittee of FRSC and is made up of representatives from food regulation authorities in Australia and New Zealand.

ISFR produces Industry guidelines and the necessary tools to help jurisdictions achieve consistency in implementing food standards. ISFR's role applies equally to imported, exported and domestic food. To provide industry with greater clarity around interpreting and complying with food standards ISFR uses the process that is set out in the integrated model to support standards development and promote consistent implementation of Primary Production and Processing Standards.

**b. Improve the architecture, including systems and processes for designing, making, reviewing and sunseting of regulations**

- Dairysafe comment – Dairysafe agrees that these processes should constantly be considered and reviewed to identify if simpler and more efficient processes exist. Consideration should also be given to routinely assessing interstate regulatory systems.

Ensuring arrangements allow for simple and straightforward changes to legislation should be considered in maintaining the stock of regulation. Previously, ‘Simplify Day’ was a useful tool for making simple and straightforward changes on an annual basis.

Whilst the management of the stock of regulation is important, government must be mindful not to create a system that is driven by timeframes alone and results in government resources and industry/stakeholder time being used to review regulations that are operating well.

**3. ToR #3**

The Commission is asked to identify significant instances of regulatory overlap, duplication, or inconsistency between regulators within the state or between South Australia and other jurisdictions, and specific areas for potential deregulation including the removal of redundant regulations, the simplification and streamlining of regulatory processes and the harmonisation or coordination of different areas of regulation.

- Dairysafe comment – There has been a concerted effort over many years, both within SA and nationally, to reduce overlap, duplication and inconsistency of regulation amongst food regulators.

In South Australia, SA Health, PIRSA and Dairysafe have established memoranda of understanding (MoU’s) to ensure there is clarity around responsibility for food regulation, to minimise duplication, to recognise auditing services conducted by one organisation on behalf of the other, to provide support and to ensure there is capacity, administration and servicing levels required by the legislation. The MoU’s are in place to avoid duplication and regulatory gaps and to ensure food safety risks are managed without unnecessary burden on businesses.

A similar MoU, between Dairysafe and the Commonwealth Department of Agriculture, Water and the Environment, has recently been established with the same intent, to ensure clarity of responsibility and to minimise duplication.

In terms of what is in place nationally, Australia maintains a joint food regulation system dating back to around 2000. These arrangements are currently undergoing a review (as of March 2020) which aims to reduce burden, ensure a harmonised regulatory approach, and provide consistent regulation.

**Australia’s Joint Food Regulation System** - A number of important documents underpin the joint Food Regulation System such as the Joint Food Standards Treaty between Australia and New Zealand, the Food Regulation Agreement (Australia), the *Food Standards Australia New Zealand Act 1991*, Food Standards Code and the Trans-Tasman Mutual Recognition Arrangement. Below you will find a brief explanation of each document.

The Food Regulation Agreement (see also page 4) is an inter-governmental document signed by all Australian governments in November 2000 committing to a national system of food regulation. Importantly for this SAPC inquiry, the objectives of the system as set out in the FRA include:

- reducing the regulatory burden on the food sector
- facilitating the harmonisation of Australia's domestic and export food standards and their harmonisation with international food standards
- providing cost effective compliance and enforcement arrangements for industry, government and consumers
- providing a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures
- supporting the joint Australia and New Zealand efforts to harmonise food standards.

**Consistency of food regulatory approaches** – In March 2020, the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum) endorsed an implementation plan for an ambitious reform agenda for the Food Regulation System (the System) aimed at ensuring the System remains strong, robust and agile into the future. The reform agenda is being progressed through a number of interconnected projects:

- **Review of the Food Regulation Agreement** – Stage 1 of this project is to describe a vision for the future of the food regulatory system to provide strategic direction for reform and feed into Stage 2. Stage 2 is a review of the Food Regulation Agreement (FRA) to create a new foundational document to underpin the System.
- **Jurisdictional Consistency** – this project will identify key areas of inconsistency in food regulatory approaches based on the impacts on industry and government.
- **Operations Review** – this project will develop and implement new operational processes to support the System's governance.

## Dairysafe response to the Issues Paper:

### Preliminary comments

#### The Dairysafe Model

Dairysafe is a cost effective and efficient model for food safety regulation of SA's dairy industry. Dairysafe's focus is solely on milk production, dairy transport and processing, to ensure all dairy products are of an acceptable standard for human consumption. The relationship between producers and Dairysafe is critical as advice, interactions and audits assist businesses in avoiding or mitigating food safety issues that may significantly impact on their businesses.

The administrative and operational framework includes enforcement and compliance as effectively delivering 'lag' outcomes, whilst the building of relationships with industry through well governed 'engagement' and a diverse board leadership allows for the enabling environment of Dairysafe to effect a vigilant and responsive food safety climate which delivers highly favourable food safety performance results.

The business model of a statutory authority is in effect therefore able to achieve greater 'impact' in a manner which 'central' Government, by its very nature, is unable.

Dairysafe receives no recurrent government funding and is supported solely by regulated fees, which are not being increased for the coming 2021-2022 year and have not increased over the past 3 financial years.

#### Minimising duplication and reducing burden

Dairysafe maintains memoranda of understanding with each of SA Health, PIRSA and the Australian Government to avoid duplication and regulatory gaps and to ensure food safety risks are managed without unnecessary burden on businesses. The arrangement with the Commonwealth reduces regulatory burden where a business may be captured under Dairysafe's remit but also falls within export legislation. The arrangement ensures only one regulator is responsible for food safety regulation at those particular businesses.

#### Consistency of regulation

In terms of inconsistency between SA and other jurisdictions, the Food Standards Code is considered to be a key document that contributes to consistent regulation, particularly in the primary food production sectors. Chapter 4 of the Code includes nationally agreed Primary Production and Processing Standards (PPPSs) for sectors that pose a high food safety risk. These include seafood, poultry, meat, dairy, eggs, sprouts and, soon to be, horticultural products.

These standards are incorporated into state and territory Primary (food) Production legislation by each jurisdiction developing its own regulations. In SA, farming or agriculture activities are captured by the Primary Produce Act where it is identified that a food safety risk that must be managed such as in the PPPS of the Code.

Both SA's Food Act and the Primary Produce Act call up the standards within the Food Standards Code through regulation.

#### Regulatory Impact Assessment

Each new or varied PPPS undergoes a risk based assessment including a regulatory impact statement by Food Standards Australia New Zealand (FSANZ) on behalf of the states and territories. In addition, one or more rounds of public consultation are conducted, and the

draft regulation is endorsed by the Australia and New Zealand Ministerial on Forum Food Regulation (comprising representatives of all Australian jurisdiction and New Zealand). This process takes into account the costs and benefits of the proposed standard, the impacts on trade as well as public health issues.

Some of the PPPSs also cover parts of the supply chain, such as transportation, supplying and processing, when these activities are considered to pose a high food safety risk.

For example:

- the seafood PPPS covers holding, transportation, and processing
- the meat PPPS covers the production of ready to eat meat products
- the dairy PPPS covers the production of milk and other dairy products

The majority of businesses along the supply chain – such as suppliers, transporters, wholesalers, retailers and food service businesses (restaurants, cafes and delis) – are not covered by the PPPS but are food businesses captured by the Food Act. Chapter 3 of the Code applies to these businesses, with the requirements also based on risk.

### Outcomes-based risk assessed standards

In summary, food safety standards are proportionate to the risks they are designed to address. The Australia New Zealand Food Standards Code process is a professional and rigorous framework for assessing food safety risks. Standards are now largely outcome-based, allowing a risk assessment based approach which can be tailored to individual sectors and businesses.

### Best or better practice

In terms of what may be considered to be best practice or better practice for each stage of the regulatory life-cycle, some of the following principles may be applicable to a transformed food regulatory system:

- **building trust** – eg through transparency, measurement, and two-way consultation/engagement
- **transforming mindsets** – eg through evidence, measures and two-way consultation/engagement
- **enabling social licence** – eg through licence, registration or accreditation
- **changing policies and regulations** – clear evidence or science-based support; balance of prescription and outcomes-based, eg sufficient prescription to support SME's, particularly those that may lack some capacity, ie availability of 'deemed to comply provisions'
- **market incentives** – eg through cost/benefit assessment; regulatory systems recognised by markets; not inconsistent with other Australian jurisdictions
- **safeguarding against undesirable effects** – through two-way consultation/engagement; ensuring low-cost/burden regulation doesn't negatively influence access to markets (for example); sufficiently flexible to enable application of regulatory tools and supported by guidance materials
- **stable finance** – eg through cost/benefit assessment, ensuring regulation is cost beneficial and affordable for both the stakeholder and the regulator

- **market failure** – to address or consider elements of market failure, eg in circumstances where audit is required to verify compliance, the cost to service regulated businesses in remote areas can be prohibitive for both the business and a service provider (ie 3<sup>rd</sup> party auditor)

The development and implementation of regulation needs to cater for potential market failure and consider any necessary policy adjustments such as government service, amortising service costs, alternative compliance or verification tools (eg ‘declaration of compliance’ provided by the operator, particularly where compliance rates are high and/or risk is low and/or where travel or tech is an issue).

## Developing Regulation

Dairysafe is of the view that several processes are critical in developing regulations:

- In terms of stakeholder engagement being critical, one aspect when developing or reforming regulation is the importance of linkages between enforcement officers and policy to ensure policy and ultimately regulations can be implemented and enforced.
- Balanced impact assessments need to be clearly articulated during the regulation development process to demonstrate benefits outweigh costs. Existing regulatory impact assessments undertaken in other jurisdictions should be considered and utilised. For example, FSANZ undertakes comprehensive assessments when developing food standards, which are subsequently called up by jurisdictions in Food Acts or Primary Produce legislation, and so can assist in the development of the local legislation without necessarily undertaking another full regulatory assessment.
- Ensuring wherever possible, to be consistent with allied regulation in other jurisdictions, utilising national standards or codes of practice where practicable.
- Regulation must have clear intent, it must be evidence or science-based, and regulatory equivalence needs to be considered to allow for innovation. Where ‘should’ is used it must be supported with a clearly articulated outcome, otherwise there may be difficulties in both compliance and enforcement. Otherwise, utilise ‘must’, whilst also allowing for an equivalent ‘evidence or science-based’ outcome.
- Conditions of Accreditation, permitted by the *Primary Produce (Food Safety Schemes) Act 2004* may be an example of using quasi-legislation in SA. The Act allows for conditions to be imposed by the accreditation body that are of a kind allowed under the food safety scheme applicable to the class of activities for which the accreditation is required. This arrangement provides the flexibility that allows the regulator to be responsive to innovation and emerging trends.

## Administration and enforcement of regulation

### Governance models and regulatory structure

Capability and capacity is essential in order to support good regulator practice and performance and is also critical for those that are regulated.

- **Traditional versus supported regulation**

The traditional regulatory compliance system, used to ensure safe food, is supported by audits that help inform a food business operator of what is, and is not, compliant. The system is based on outcomes-based national food standards, where food safety regulators do not respond to questions from a business such as “tell me what I have

to do to comply”, rather the regulator will ask the business to “show me how you comply” and “provide me with the evidence that supports your level of compliance”. In many cases, particularly involving SME’s, the capacity and capability to fully appreciate outcomes-based standards does not exist. Governance models and regulatory structures should accommodate and support SME’s in these instances.

- **Guidelines**

To assist the South Australian dairy industry better understand their food safety requirements, Dairysafe commissioned the “*Guidelines for the safe manufacture of dairy products*” in 2019. These guidelines were accompanied by a series of workshops around South Australia in late 2019, during which it was identified that dairy manufacturing businesses vary in terms of their understanding and approach to risk management, preparedness for managing crises, and exposure to the potential for business continuity breakdown. In particular, SME’s, which are part of the South Australian government focus on developing the state’s food industry, are more pre-disposed to continuity risk through a lack of capability and resources.

- **Business continuity and resilience**

Around the same time of the workshops mentioned above, Queensland and South Australian food safety regulators speculated about potential links between business resilience and food safety outcomes. The question that arose is whether a resilient business has a greater chance of delivering consistent and positive food safety outcomes, assurance in managing crises and business growth, particularly as the relationship between positive food safety outcomes and business resilience and continuity has not been considered previously.

Dairysafe’s view is that strong and vibrant businesses have a better opportunity to deliver positive food safety outcomes. In contributing to strong and vibrant businesses, Dairysafe (supported by PIRSA funding) developed a business continuity tool for dairy processors to use to identify where their business may be exposed to business continuity breakdown.

The tool is soon to be available as an application on the Dairysafe website which will allow businesses to measure performance over time.

Dairysafe has received a small amount of grant funding from the SADA Dairy Fund to develop a similar tool for dairy farmers.

- **Business continuity tool**

The business continuity tool is a framework for the dairy or broader food manufacturing industry that can be used to assess a business’ resilience to crises and emergency situations, especially as they relate to food safety

The value proposition is that businesses self-assess their exposure to business continuity breakdown which will assist in delivering resilient businesses, consistent food safety outcomes, assurance in managing crises and, with that, potential growth.

The tool is designed for self-assessment, to help with short and long-term strategic planning, and to assist a business to identify opportunities that will enhance

resilience. There is no need for businesses to share the results with the regulator, Dairysafe, although businesses are encouraged to discuss their results and explore the opportunities for improvement with Dairysafe.

The tool consists of a framework that maps a dairy business in relation to their food safety risk and business maturity, and it identifies potential improvements that may reduce the risk of business disruption. The tool includes a “matrix” as a visual representation of risk, split into nine sectors, consisting of:

- inherent product risk – assessed as low, medium, or high
- business maturity – assessed as opportunistic, managed, and optimised

The self-assessment covers thirteen 13 questions, with the answers positioning the business on the matrix and delivering a list of options for potential improvement.

The process delivers a simple report identifying opportunities that will potentially reduce business risk, which then allows owners or executives to take action, prioritise resources and assess improvement over time through subsequent self-assessment.

The tool is not intended to help manage food safety risk per se, as that process is predominantly set up by Australia’s suite of food safety standards. The notion behind the tool is that regulatory requirements are in place at the business but that a range of other factors influence food safety related outcomes. These factors are related to the intrinsic characteristics of the products produced as well as the maturity of the business systems and processes in place.

- **Co-regulation**

Dairysafe believes the business continuity tool represents one example of a co-regulatory arrangement and has the potential to influence both ‘food safety culture’ and food safety outcomes within a business.

## Regulator practice

Relationships with allied regulators either through committee structure, memoranda of understanding or a combination, assists in consistency of regulatory delivery and also in determining whole of government positions on regulatory systems.

- Dairysafe has established arrangements and meets quarterly with allied food safety regulatory agencies.
- SA Health, PIRSA and Dairysafe work collaboratively to ensure whole-of-government policy positions are delivered.
- Dairysafe maintains memoranda’s of understanding with a number of agencies (PIRSA, SA Health, and the Commonwealth Department of Agriculture, Water and the Environment) to ensure duplication of regulatory activities is eliminated or minimised, and to reduce red tape and cost burdens on industry.

Having established robust systems is essential for a government regulator to ensure regulation is applied consistently and also to make sure the regulator’s administration and management systems can withstand scrutiny. Dairysafe’s regulatory management system is certified to the ISO 9001:2015 quality standard which delivers a number of organisational benefits:

- Certification requires development and maintenance of a robust management system with a focus on consistency, performance measurement and continuous improvement.
- The system is clearly described and audited against clearly documented policies, processes and work instructions.
- Certification involves a serious level of independent scrutiny and external review.

## Co-regulation

In terms of regulatory models, a paper presented to assist the current food regulation modernisation process ([Modernisation of the food regulation system](#)) discusses alternative regulatory structures, which includes co-regulation models. The paper states *'the basic issues are to grasp a simplified structure, and a structure that supports public and private actors to work together to achieve common aims. The structure would facilitate greater cooperative engagement between all actors, through mutual trust, based on consistent evidence from all parties that can be generated by digital systems'*.

A key recommendation of the paper addresses governance models, in that *'policymakers and regulators in every jurisdiction should also explore the possible application of alternate governance models (e.g., primary authority model) that account for human/organizational behaviours and enable trust-based relationships between the various actors in the system. The functioning of a regulatory system for complex sectors such as food chains is dependent on effective governance structures that delineate the roles and accountabilities of the stakeholders and their relationships. More importantly, the governance structures should be built to support relationships that drive a culture of trust and cooperation amongst regulators and especially between regulators and the regulated. This would lead to consistency in decision-making and enhance credibility with consumers and society. While the current governance structure in Australia/New Zealand is well developed and mature, it will greatly benefit from modern behavioural science-based approaches such as Ethical Business Regulation (EBR) to deal with current and future challenges posed by evolving business models and expectations. One such structure that assists application of an EBR based approach is the UK's Primary Authority Model which provides a legal mandate to a single regulator to establish acceptable regulatory compliance framework with a business and for other regulators to adopt the agreed principles. This model drives consistency amongst regulators, provides a platform for agile responses to changes, increases a trust-based relationship amongst stakeholders among other benefits. Canada's delegated authority model, on the other hand, provides a framework for the creation of regulatory authorities completely independent from government (with government oversight). These authorities, operating on fee-based models, are provided with the necessary tools that allow them to focus on regulatory outcomes without typical constraints in government such as budgetary limitations and are able to build partnerships with businesses and other similar regulators, increasing efficiencies and reducing bureaucracy. Both the described models do come with challenges including the need for major regulatory amendments, perceptions of industry capture, change management etc'*.

Dairysafe is of the view that its regulatory model reflects the Canadian 'delegated authority model' in that it exists as a not-for-profit organisation managed by an independent board. Dairysafe is at arm's length and not considered an agency of government. Despite being designated by legislation it is self-financed and operates independently to a large extent, therefore having the flexibility to increase efficiencies and reduce bureaucracy.