

REGULATORY IMPACT STATEMENT

FOOD REGULATION 2015

A PROPOSED REGULATION UNDER THE
NSW FOOD ACT 2003

Food Regulation 2015

Regulatory Impact Statement

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Information sources

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Disclaimer

The information contained in this publication is based on knowledge and understanding at the time of writing (May 2015). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the NSW Food Authority or the user's independent advisor.

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Executive summary

The NSW Food Authority is Australia's first and only wholly integrated (through-chain) food regulatory agency, responsible for regulating and monitoring food safety across the entire food industry supply chain. The Food Authority is a statutory body that sits within the Department of Primary Industries.

Effective food safety and food quality management underpins confidence in Australia's food industry, and the Food Authority makes an important contribution to ensuring food safety in NSW. Foodborne illness is a significant health issue within Australia. Around 4.1 million cases are reported nationally each year¹, at a cost of approximately \$375 million in medical expenses and lost productivity to the NSW public health system and economy^{2,3}.

Food is big business in NSW:

- the gross value of production (GVP) for agriculture was \$12.1 billion in 2012-13, accounting for 25 per cent of Australia's total GVP⁴;
- the retail food turnover for supermarkets, grocery stores, liquor stores, cafes, restaurants and takeaway food services was \$45 billion in 2012-13⁵; and
- food exports amounted to \$5.1 billion in 2012-13, accounting for about 8 per cent of the state's total exports and 17 per cent of Australia's total exports. The majority (\$2.9 billion) of these food exports were processed food, while wheat (\$1.2 billion) and beef (\$832 million) were the two largest food exports⁶.

There are 55,000 food businesses in NSW, of which 40,000 are in the retail food service sector⁷. There are also 42,000 farm-based businesses in NSW⁸. The NSW agriculture and food sectors directly employ 150,000 people, whilst cafes, restaurants and takeaway businesses provide 128,000 jobs⁹.

The NSW Government takes a pro-active role in protecting consumers and the broader community against foodborne illness from food produced and sold in NSW. This is achieved through enabling provisions of the *NSW Food Act 2003* (the Act), and operational clarity and certainty is provided through the *Food Regulation 2010* (the 2010 Regulation). The Regulation, through the mandatory application of internationally recognised best practice food safety arrangements across high-risk supply chains, promotes the production of safe, reliable and high-quality food in NSW. The 2010 Regulation, as a subordinate instrument to the Act, is the chief operational regulatory tool in NSW, and allowing it to lapse would increase the risk and incidence of foodborne illness outbreaks in NSW.

The 2010 Regulation further provides businesses operating in high-risk sectors with assurance that all participants in these supply chains produce food to the same high level of safety. The NSW Government, through the 2010 Regulation, provides the means for the food safety arrangements of all market participants to be independently verified, thus providing a platform of certainty in the market with regard to food safety. This allows businesses in these supply chains to operate freely and innovate, as food safety of all market participants is a legal prerequisite to trade. Historically, major foodborne illness outbreaks commonly impact all businesses across the supply chain as consumers avoid the brand implicated as well as other products in the same category, irrespective of the supplier or cause. Allowing the 2010 Regulation to lapse may have repercussions on the sustainability of NSW food businesses operating in high-risk sectors as there would no longer be an independent mechanism for verifying the safety of food from all market participants.

A well-designed and effectively implemented regulatory framework delivers long-term benefits for industry, consumers and the broader community. Industry benefit from food regulation by fewer products recalls, which is a cost saving to businesses and helps to maintain the strong reputation of the NSW food industry. This lowers insurance premiums over the long term and increases the demand for NSW food products. It also offers market

protection by setting minimum food safety standards for businesses covered by the 2010 Regulation that results in premium prices in domestic and international markets, along with greater access to these markets.

Consumers and the broader community benefit from food regulation as fewer people get ill from eating food produced and sold in NSW. This increases consumer confidence in the NSW food supply chain, supporting the development of the state economy and contributing to healthy and productive communities.

The 2010 Regulation provides government with the operational legal machinery to effectively and safely manage food produced and sold in NSW. However, since it commenced, a number of amendments have been identified through consultation and review processes with Food Authority licence holders, industry committees, staff and regulatory food safety auditors that would benefit industry and government without impacting on the public health objectives of the 2010 Regulation.

Four regulatory options are canvassed in the Regulatory Impact Statement (RIS):

- Option 1: remake the 2010 Regulation without amendments (the status quo);
- Option 2: allow the 2010 Regulation to lapse;
- Option 3: government support for self-regulation; and
- Option 4: make the proposed Regulation.

The preferred option is to make the proposed Regulation (option 4), which repeals and remakes the 2010 Regulation with amendments. The proposed amendments are targeted at enhancing the effectiveness of the 2010 Regulation. The Regulation is essentially 'fit for purpose' in enabling the objects of the Act to be met and is broadly supported by regulated stakeholders. A survey completed by more than 1,000 food businesses licensed under the Regulation revealed that nine in ten respondents agreed that food safety regulations are necessary to ensure safe food production in NSW¹⁰.

The proposed amendments build on changes during 2010-14, that were targeted towards improving the effectiveness of the 2010 Regulation and removing unnecessary impost on business, allowing a net benefit to be realised. Over the last 5 years, there has been no representation made to government suggesting that there is no need for the 2010 Regulation. Option 4 protects public health and the reputation of the NSW food industry as being safe and well regulated which is crucial for business certainty and access to export markets.

Exhibition of the proposed Regulation and RIS and the process for submissions

Exhibition of the proposed Regulation and RIS provides interested stakeholders, including industry and members of the wider community, with an opportunity for direct input into the regulatory development process.

Public notice of the exhibition of the RIS and proposed Regulation will appear in the NSW Government Gazette, The Sydney Morning Herald, The Daily Telegraph, and The Land.

A number of stakeholder groups and government agencies will be directly advised that the proposed Regulation and RIS is available for comment (refer to Appendix A).

In accordance with government guidelines, the proposed Regulation and RIS will be available for comment for a minimum period of twenty eight days, from 29 May 2015 to 26 June 2015. Submissions received after this date will not be considered.

The proposed Regulation and RIS are accessible at: www.foodauthority.nsw.gov.au/industry/legislation/regulation-2010-review

Further technical information on the proposed Regulation and RIS is available by contacting the Food Authority on 1300 552 406.

How to make a submission

Interested parties are invited to submit written comments on the proposed Regulation and/or the RIS to the Food Authority in any of the following ways:

Post

RIS Submissions
Food Authority
PO Box 6682
Silverwater NSW 1811

Facsimile

RIS Submissions
(02) 9741 4888

Email

ris.submissions@foodauthority.nsw.gov.au

The closing date for submissions is 26 June 2015 at 5.00pm

What happens to submissions

The Food Authority will review all submissions received by the closing date and consider the issues raised. The proposed Regulation may be amended in light of comments made in submissions.

Use of submissions and confidentiality

The Minister for Primary Industries and Minister for Lands and Water, the Hon. Niall Blair MLC, will be advised of all submissions and actions arising from them. A copy of all submissions will be provided to the Legislation Review Committee of the NSW Parliament with the final version of the Regulation. A report on the outcomes of consultation detailing the issues raised in submissions, and the government's response, will be placed on the Food Authority's website.

The Food Authority generally places submissions, or summaries of them, on its website. Please advise us if you do not want your submission published, or if you want part or all of it to be kept confidential, for example your name and/or personal contact details. The Food Authority will respect your request, unless required by law to disclose information, for example under the provisions of the *Government Information (Public Access) Act 2009*.

1.0 Requirements under the *Subordinate Legislation Act 1989*

Under the *Subordinate Legislation Act 1989* (SL Act), all regulations are repealed on 1 September following the fifth anniversary of the date the regulation was published, unless an exemption provided under the SL Act applies to the regulation. It is the government's practice to review regulations prior to their repeal to examine the efficacy of the rules imposed under the regulation in order to determine whether the regulation should be remade (with or without amendments) or repealed.

The SL Act also provides that a RIS must be prepared in respect of the substantive matters dealt with in a proposed regulation, before a proposed regulation may be made. The SL Act sets out the specific matters that should be included in a RIS. These matters are:

- a) the objectives sought to be achieved by the proposed regulation and the reasons for these objectives;
- b) the alternative options by which those objectives can be achieved (whether wholly or substantially);
- c) the costs and benefits of the proposed regulation, including the costs and benefits relating to resource allocation, administration and compliance;
- d) an assessment of the costs and benefits of each alternative option to the making of the proposed regulation (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance;
- e) an assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community; and
- f) a statement of the consultation program to be undertaken.

NSW Government policy also requires that certain "better regulation" principles should be applied when designing and developing proposed regulations. These better regulation principles are:

1. the need for government action should be established;
2. the objective of government action should be clear;
3. the impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options;
4. government action should be effective and proportional;
5. consultation with business and the community should inform regulatory development;
6. the simplification, repeal, reform or consolidation of existing regulation should be considered;
7. regulations should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

Information about these better regulation principles is available from:

http://www.dpc.nsw.gov.au/programs_and_services/better_regulation

2.0 Outline of the regulatory proposal

2.1 Title of the proposed statutory rule and authority

The proposed Regulation is the Food Regulation 2015 which will be made under the Act.

2.2 Responsible Minister

The Minister for Primary Industries and Minister for Lands and Water, the Hon. Niall Blair MLC is the Minister responsible for administering the Act and regulations made under the Act.

2.3 Legislative background

The Act provides the legislative framework for the handling and sale of food, and the application of the Australia New Zealand Food Standards Code (the Code) in NSW.

In particular, section 3 sets out the objects of the Act, which include:

- a) to ensure food for sale is both safe and suitable for human consumption;
- b) to prevent misleading conduct in connection with the sale of food; and
- c) to provide for the application of the Code in NSW.

NSW is a signatory to a national Food Regulation Agreement (FRA). The FRA commits all Australian States and Territories to a national food regulatory system, including a single set of national standards – the Code.

The Code currently includes four food safety-related standards in Chapter 3 with mandatory requirements:

- Standard 3.1.1 *Interpretation and Application*;
- Standard 3.2.2 *Food Safety Practices and General Requirements*;
- Standard 3.2.3 *Food Premises and Equipment*; and
- Standard 3.3.1 *Food Safety Programs for Food Service to Vulnerable Persons*.

And six primary production and processing standards, in Chapter 4:

- Standard 4.2.1 *Primary Production and Processing Standard for Seafood*;
- Standard 4.2.2 *Primary Production and Processing Standard for Poultry Meat*;
- Standard 4.2.3 *Primary Production and Processing Standard for Meat*;
- Standard 4.2.4 *Primary Production and Processing Standard for Dairy Products*;
- Standard 4.2.5. *Primary Production and Processing Standard for Eggs and Egg Product*; and
- Standard 4.2.6 *Production and Processing Standard for Seed Sprouts*.

The scope of application and a brief summary of requirements under these standards are outlined in Table 1 below.

Table 1: Scope and summary of requirements of national food safety-related standards

Standard	Scope	Requirements
3.1.1 3.2.2 3.2.3	All NSW food businesses (except primary production food businesses)	Basic hygiene requirements that relate to food safety practices/equipment
3.3.1	Hospitals (acute care, psychiatric) Hospices Same day establishments for chemotherapy and renal dialysis Aged care services (nursing homes, respite care, same-day aged care and low-care aged care) Childcare centres ¹ (long day care, employer-sponsored childcare, occasional care) Delivered meals organisations	Documented and audited food safety program
4.2.1	Aquaculture Fishers (including shellfish harvesters) Seafood processors (including killing, gutting, filleting, brining and shucking of seafood and the depuration of shellfish; but not including canning, smoking or crumbing)	Basic hygiene requirements that relate to food safety practices/equipment For primary production and processing of bivalve molluscs only — documented and audited food safety program and compliance with the ASQAP (Australian Shellfish Quality Assurance Program) Operations Manual
4.2.2	Poultry primary production (farmers) Poultry transport (collection of birds from farms and transport to processor) Poultry processing	Documented and audited food safety management statement
4.2.3	Ready-to-eat meat (including poultry meat) manufacture (including cooked or uncooked fermented meat, pâté, dried meat, slow cured meat, luncheon meat, cooked muscle meat)	Documented and audited food safety program For uncooked comminuted fermented meat (UCFM) only — certain processing, monitoring and record keeping requirements
4.2.4	Dairy primary production (farmers) Dairy collection and transport (collection of milk from farms and transport to processor and transport of bulk product between dairy processors) Dairy processing (including manufacturing milk, colostrum, cream, butter, cheese, yoghurt, ice cream, powdered milk) Raw milk cheese (raw milk, transport and processing)	Documented and audited food safety program For dairy processing only — pasteurisation specifications
4.2.5	Egg primary production (farmers) Egg and egg pulp processing (including egg pulp, liquid egg yolk, liquid egg white)	Documented and audited food safety management statement For egg product processing only — processing specifications
4.2.6	Seed sprout processors	Documented and audited food safety management statement

¹ Not currently in force in NSW

In NSW Chapter 3 standards automatically apply (s. 21 of the Act). Chapter 4 standards automatically apply in part but not whole — provisions about primary production food businesses must be adopted using state-based regulation (s. 21(5) of the Act). This is achieved using Food Safety Schemes (FSSs) in the 2010 Regulation. Of the current Chapter 4 standards only four (4.2.1, 4.2.2, 4.2.4 and 4.2.5) include provisions about primary production food businesses. Standard 4.2.3 also includes provisions for meat primary production food businesses that will come into force on 31 July 2015.

Six NSW-only FSSs also apply

The Food Authority is the sole agency responsible for food regulation at the NSW State Government level. The Food Authority is established by Part 9 of the Act and s. 21 of the Act sets out the circumstances in which a person in NSW must comply with any relevant requirements imposed by the Code.

The Food Authority, in partnership with local councils, administers and enforces the Code as it applies in NSW.

The Act allows regulations to be made in relation to FSSs. Schemes are designed around the requirements of evidence based national primary production and processing standards and through-chain risk assessments conducted as part of the development process of these standards. Schemes have been implemented for NSW food industry sectors identified as higher risk (i.e. meat, dairy, seafood, shellfish, plant products, eggs and vulnerable persons). The scope of application and a brief overview of requirements under each scheme are outlined in Table 2 below. These schemes are administered and enforced by the Food Authority.

Generally, local councils administer and enforce food safety laws in food businesses that sell food directly to consumers (i.e. food service and retail outlets), except where a NSW FSS applies, and the Food Authority is responsible for non-licensed food manufacturing businesses.

Table 2: Scope and summary of requirements of NSW food safety schemes

Scheme	Scope	Requirements (in addition to national standards)
Dairy	Businesses subject to Standard 4.2.4 plus: Milk and dairy produce stores Milk vendors and other dairy transporters not covered in Standard 4.2.4	Licensed by the Food Authority
Meat	Businesses subject to Standards 4.2.2 and 4.2.3 plus Abattoirs (including poultry) Meat processing plants Game meat processing plants Meat vans Game meat vans Knackeries Rendering plants Animal food processing plants Animal food vans Meat retail premises	Licensed by the Food Authority except for small poultry farmers and live bird transporters Documented and audited food safety programs for all except certain (low risk) game meat processors and vans, meat vans, knackeries and animal food plants and vans For red meat abattoirs and some game meat processing plants only: carcass inspection, hygiene branding and lamb/hogget branding
Plant products	Processors of the following plant products: Fresh-cut fruit and vegetables Vegetables-in-oil Unpasteurised juice Seed sprouts (note subject to 4.2.6) plus Plant products stores Plant products transporters	Licensed by the Food Authority Documented and audited food safety programs for all plant products processors
Seafood	Businesses subject to Standard 4.2.1 plus: Seafood processors exempt from Standard 4.2.1 (e.g. canning, smoking, crumbing) Seafood stores Seafood transporters	Licensed by the Food Authority Documented and audited food safety programs for all seafood processors
Vulnerable persons	Businesses subject to Standard 3.3.1 ²	Licensed by the Food Authority
Eggs	Businesses subject to 4.2.5 plus: Egg storage and transport of (cracked eggs and unpasteurised egg products only)	Licensed by the Food Authority Documented and audited food safety programs for certain (high-risk) farms, all grading facilities and processors Record keeping about the sale, purchase, transport and storage of cracked eggs and unpasteurised egg products

² Not currently in force in NSW Child Care Centres

There is also close alignment between the business types regulated under NSW FSSs and the businesses identified in the National Risk Validation Project¹¹ and the Food Safety Risk priority Classification Framework¹² as high-risk/priority for government action. Periodic reviews¹³ of the detailed risk assessment¹⁴ by the Food Authority confirms that ongoing government intervention in the dairy, meat, plant products, seafood, vulnerable persons and egg industries is justified on public health and safety grounds.

Finally, most of the requirements imposed by current NSW FSSs align with requirements imposed by interstate state-based legislation.

The proposed Regulation is also similar to interstate legislation — in both general approach and the requirements it will impose:

- the agencies responsible for regulating food safety at the primary production and processing level in Queensland, South Australia and Tasmania have adopted the food safety scheme model developed by NSW;
- agencies in all Australian jurisdictions have been established to regulate dairy businesses; and
- all Australian jurisdictions have legislated the Australian (Meat) Standards and monitor and enforce industry compliance.

The main difference between NSW and interstate food regulatory requirements lies in the plant products FSS. To date no other state or territory has implemented requirements for plant products outside the scope of the national standard (i.e. seed sprouts) There is, however, a strong public health case for including fresh-cut fruit and vegetables, vegetables-in-oil and unpasteurised juice in the NSW plant products FSS (see section 3.3 and 4.2.2 for more information).

A number of sections of the Act provide for the making of regulations to support the Act including:

- s. 7(2)(c) prescribing food production activities that are not included in the definition of primary food production;
- s. 23A Beef labelling schemes;
- s. 102 Regulations relating to establishment of food safety schemes;
- s. 106B issuing of food safety supervisor certificates;
- s. 106H Approval of registered training organisations to issue food safety supervisor certificates;
- s. 106I Fees and charges payable under Division (*Requirements relating to food safety supervisors*);
- s. 106J Exemptions from operation of Division (*Requirements relating to food safety supervisors*);
- s. 106Q Exemptions from operation of Division (*Requirements relating to display of nutritional information for food*);
- s. 120 Penalty notices for certain offences
- s. 139 Regulations; and
- s. 141 Other regulations modifying the Code.

The 2010 Regulation is NSW's principal subordinate legislative instrument for ensuring that the objects of the Act are met. A part by part analysis of the 2010 Regulation is outlined in section 2.6.

2.4 Need for government action

Foodborne illness is a serious problem in Australia. It causes around:

- 4.1 million cases of foodborne gastroenteritis (e.g. norovirus, pathogenic *Escherichia coli*, *Campylobacter* spp., non-typhoidal *Salmonella* spp.);
- 5,140 cases of foodborne non-gastroenteritis (e.g. listeriosis); and
- 35,840 cases of long-term health effects from foodborne illness (e.g. reactive arthritis) per year¹.

There are estimated to be 31,920 hospitalisations and 86 deaths due to foodborne illness in Australia per year¹, and the total cost of foodborne illness in Australia was estimated at \$1.25 billion per year in 2006². NSW and its public health system bear roughly a third of these costs.

There are also a substantial number of outbreaks of foodborne disease in Australia per year. In 2012 there were 150 outbreaks nationally, of which 55 were in NSW¹⁵ (see Table 3 below).

Table 3: Outbreaks of foodborne or suspected foodborne disease by food preparation setting in Australia in 2012

Food preparation setting	National outbreaks	NSW outbreaks	% Attributed to NSW
Aged care	9	1	11
Bakery	4	1	25
Camp	2	0	0
Commercial caterer	13	5	39
Commercially manufactured	3	0	0
Community	1	1	100
Fair, festival, other temporary/mobile services	1	0	0
Institution/hospital	2	1	50
National franchised fast food	2	1	50
Primary production	1	0	0
Private residence	19	3	16
School	1	0	0
Restaurant	73	35	48
Takeaway venues	8	3	38
Unknown	7	2	29
Other	4	2	50
Total for 2012	150	55	37

All food businesses are required to comply with Standard 3.2.2 *Food Safety Practices and General Requirements* and Standard 3.2.3 *Food Premises and Equipment* of the Code. These standards set out minimum requirements for food handling (e.g. storage, processing, packaging, transport); handlers (e.g. skills and knowledge, health and hygiene) and businesses (e.g. notification); cleaning and sanitising; and the design and construction of the food premises and equipment used in the premises.

Certain food businesses covered by FSSs under the 2010 Regulation are also required to implement food safety programs which are internationally recognised as the most effective tool for managing and controlling food safety risks, and subsequently reducing the incidence of foodborne illness.

NSW has also introduced legislation for certain food businesses in the retail-hospitality sector to appoint a food safety supervisor, which aims to:

- improve the skills and knowledge of food handlers in the retail-hospitality sector by ensuring that one person per business is suitably trained in food safety and handling;
- decrease the incidence of foodborne illness outbreaks arising from these sectors;
- improve the food safety culture of this sector;
- increase compliance rates with Standards 3.2.2 and 3.2.3 of the Code; and
- increase customer confidence in eating out.

The regulatory framework for food safety in NSW contributes to the health and well-being of NSW and international consumers. Without such regulation, evidence suggests that food safety standards would likely decrease leading to a range of negative consequences including:

- increased incidence of foodborne illness;
- loss of NSW's national and international food industry reputation for safe, high quality products;
- consumers having less confidence in the safety of food produced and sold in NSW;
- loss of market protection as there would be no mechanism to set minimum food safety standards for high-risk food businesses (i.e. a level playing field) or to ensure compliance with such requirements can be independently verified; and
- increased costs to the NSW public health and judicial systems.

2.5 Objective of government action

The objectives of government action are: to reduce the number of people getting ill from eating food that is produced and sold in NSW; to support a reputable, safe and competitive NSW food industry; and to ensure that NSW food is correctly labelled so that consumers can make informed food choices.

Government policy requires that these objectives be achieved without imposing unnecessary costs (e.g. administrative, compliance, financial, restrictions on innovation, barriers to market entry) on business, government or the community.

2.6 The 2010 Regulation

The 2010 Regulation provides a regulatory framework for achieving the objects of the Act.

Part 1 of the 2010 Regulation deals with preliminary matters such as the name of the Regulation, the commencement date and definitions.

Part 2 deals with miscellaneous matters, including delegations, prescribed fees and the circumstances in which a breach of a provision of the Regulation may constitute an offence.

Part 2A establishes a regulatory framework for issuing food safety supervisor certificates. This part also outlines how registered training organisations are approved to issue food safety supervisor certificates and their conditions of approval, and the businesses that are exempt from the requirement to have a food safety supervisor.

Part 2B prescribes which retail businesses are required to display nutritional information, the type of information that needs to be displayed (i.e. kilojoules and the reference statement 'the average daily energy intake is 8,700 kJ'), and how it needs to be displayed. This part also outlines the businesses that are exempt from the requirement to display nutritional information.

Part 3 modifies the Code so that food handling operations at certain fundraising events are exempt from the requirement to notify in relation to the food business. The part also provides for the Food Authority to enter into arrangements with local councils to accept notifications under the Code on behalf of the Food Authority, and for charges that the Council may levy in connection with such notifications.

Part 4 sets out the general FSS requirements including licensing of food businesses, the content and certification of food safety programs and inspections and audits of food businesses by food safety auditors. This part also lists the types of decisions made by the Food Authority that may be subject to review by the Civil and Administrative Tribunal under the *Administrative Decisions Review Act 1997*.

Part 5 provides for the dairy FSS. This part identifies the types of dairy businesses that must be licensed with the Food Authority, the application of provisions of the Code in respect of dairy products, and control measures for *Salmonella* and *Listeria*. This part also prescribes testing requirements (i.e. sampling and analysis) for dairy products (including raw milk) and non-reticulated processing water, the establishment of the Dairy Industry Consultative Committee and identifies the activities for which dairy businesses must pay a licence fee.

Part 6 provides for the meat FSS. It contains definitions for terms used in the meat FSS and identifies meat businesses that need to hold a licence with the Food Authority.

This part prescribes the following Standards for the relevant meat businesses:

- Australian Standard 4464:2007 *Hygienic production of wild game meat for human consumption*;
- Australian Standard 4465:2006 *Construction of premises and hygienic production of poultry meat for human consumption*;
- Australian Standard 4466:1998 *Hygienic production of rabbit meat for human consumption*;
- Australian Standard 4467:1998 *Hygienic production of crocodile meat for human consumption*;
- Australian Standard 4696:2007 *Hygienic production and transportation of meat and meat products for human consumption*;
- Australian Standard 5008: 2007 *Hygienic rendering of animal products*;

- Australian Standard 5010:2001 *Hygienic production of ratite (emu/ostrich) meat for human consumption*;
- *Standard for the Hygienic Production of Pet Meat: PISC Technical Report 88* published by CSIRO (other than clauses 4.1 – 4.3 Approved Arrangement of that Standard); and
- *NSW Standard for Construction and Hygienic Operation of Retail Meat Premises* published by the Food Authority.

The part outlines specific requirements for businesses that brand abattoir and game meat, the sale and storage of meat, and the appointment and responsibility of meat safety inspectors. This part also prescribes testing requirements for meat, meat products, rendered animal by-products and non-reticulated processing water, the establishment of the Meat Industry Consultative Council, and the payment of licence fees by meat businesses.

Part 7 provides for the plant products FSS. This part identifies the plant product businesses that must be licenced with the Food Authority, prescribes testing requirements for plant products, seed sprouts, spent irrigation water and non-reticulated processing water, establishes industry consultation processes, and provides for the payment of licence fees by plant products businesses.

Part 8 provides for the seafood FSS. The part identifies the seafood and shellfish businesses that must be licenced with the Food Authority, prescribes testing requirements for seafood and non-reticulated processing water, shellfish, wet storage water for shellfish, depuration water for shellfish, and the environment in which shellfish are grown and harvested. Specific requirements for shellfish businesses (e.g. maintaining traceability records, information on packaged product labels, minimum depuration times) are included under this part. This part also establishes the NSW Shellfish Program to ensure NSW shellfish harvested or collected for sale for human consumption meets food safety requirements. The part provides for the establishment of local shellfish programs for all areas where shellfish are harvested or collected. These programs are overseen by local shellfish committees. The structure and management of local shellfish committees is set out in Schedule 9, however this part (part 8) prescribes the funding arrangements for the committees to operate the Program (i.e. shellfish area service levy). This part also establishes the NSW Shellfish Committee and the NSW Seafood Industry Forum, and provides for the payment of licence fees by seafood businesses and shellfish businesses.

Part 9 provides for the vulnerable persons FSS. The part identifies the businesses that must be licenced with the Food Authority because they provide food services to vulnerable persons. This part also prescribes testing requirements appropriate to licensees under the Scheme and provides for the establishment of the NSW Vulnerable Persons Food Safety Scheme Consultative Committee and for the payment of licence fees by vulnerable persons food businesses.

Part 10 provides for the egg FSS. The part identifies the egg businesses that must be licenced with the Food Authority and sets out requirements for egg producers, processors, wholesalers and retailers (e.g. use of feed and pesticides on farm, the sale and use of cracked, broken and dirty eggs and egg products, pasteurisation, maintaining traceability records for cracked eggs and egg products). This part also prescribes testing requirements for egg products and non-reticulated processing water, the establishment of the NSW Egg Industry Consultative Committee, and payment of licence fees by egg businesses.

Schedule 1 prescribes the form to be used by a food safety auditor to report the results of any audit or assessment carried out by the auditor.

Schedule 2 sets out the offences under the Act and regulation in relation to which a penalty notice may be given and relevant penalty amounts payable.

Schedule 3 contains savings and transitional provisions.

Schedule 4 sets out the licence fee amounts for food businesses required to hold a licence with the Food Authority under the 2010 Regulation.

Schedule 5 sets out the standards for animal food processing plants that must be met in order to comply with clause 72 of the 2010 Regulation.

Schedule 6 prescribes the branding requirements for abattoir meat (lamb, hogget, and other meat for human consumption) for the purposes of clause 77 of the 2010 Regulation.

Schedule 7 prescribes the brand for game meat for the purpose of clause 82 of the 2010 Regulation.

Schedule 8 (Repealed)

Schedule 9 sets out the provisions relation to members and procedure of the local shellfish committees as required by clause 131 of the 2010 Regulation.

2.7 The proposed Regulation

The proposed Regulation includes amendments that aim to improve the efficiency, effectiveness and consistency of the 2010 Regulation. These amendments will:

- prescribe local councils as the appropriate enforcement agencies for the purposes of retail/food service business notification under s. 100 of the Act;
- remove the application fee to become approved analyst;
- align food safety supervisor trainer and assessor requirements with the national Standards for Registered Training Organisations made under the *National Vocational Education and Training Regulator Act 2011* (Cth);
- reset the baseline for annual licence fees to reflect the annual application of the CPI (consumer price index) which has been applied over 2010-15;
- remove reference to the out of date publications *Australian Manual for Control of Salmonella in the Dairy Industry* and *Australian Manual for Control of Listeria in the Dairy Industry*;
- align the dairy FSS with national Standard 4.2.4 of the Code by removing the prohibition on the manufacture of raw milk cheese;
- remove the requirement for aquaculture and spat businesses to be licensed with the Food Authority;
- allow a former holder of a shellfish licence to also be eligible to be a member of a local shellfish committee;
- align the egg FSS with national Standard 4.2.5 of the Code by removing the definition of broken egg, and associated references, and cl. 155 of the 2010 Regulation in relation to stock food for layer hens, both of which duplicate what is in the national Standard; and
- reset the baseline for annual inspection and audit charges for licensed and non-licensed businesses to reflect the annual application of the CPI (consumer price index) which has been applied over 2010-15.

Appendix B contains a comparative table showing all the amendments being proposed to the 2010 regulation by the proposed 2015 Regulation.

2.8 Machinery clauses

The proposed Regulation will remake a number of provisions that relate to administrative processes rather than substantive policy matters. Such provisions are known as “machinery” provisions.

Machinery provisions in the proposed Regulation include, by way of example:

- cl. 1 Name of Regulation;
- cl. 2 Commencement;
- cl. 3 Definitions;
- cl. 4 Enforcement agencies;
- cl. 5 AUS-MEAT Manual;
- cl. 6 Food safety auditor reports;
- cl. 7 Delegations;
- cl. 8 Offences;
- cl. 9 Penalty notice offences and penalties;
- cl. 10 Savings and transitional provisions
- cl. 16 Payment of penalties and fines into Food Authority Fund – determination of maximum amount;
- cl. 21 Form of food safety supervisor certificates;
- cl. 28 Definition of “pre-packaged food”;
- cl. 29 Exemptions from Division 3 of Part 8 of the Act (*Requirements relating to food safety supervisors*); and
- cl. 38 Modification of Food Standards Code.

The SL Act provides that machinery provisions are not required to be included in a RIS, therefore machinery provisions of the proposed Regulation have not been reviewed as part of this RIS. However, comment on the machinery provisions may be included in submissions and will be considered.

3.0 Options

3.1 Options to achieve the objects of the Act

Four options were considered. Option 1, to remake the 2010 Regulation without amendments, or in other words maintaining the *status quo*, is the option against which the other three options were examined and compared.

These options are:

- Option 2: allow the 2010 Regulation to lapse;
- Option 3: government support for self-regulation; and
- Option 4: make the proposed Regulation.

3.2 Option 1: remake the 2010 Regulation without amendments

This RIS considers remaking the 2010 Regulation without amendments, or in other words maintaining the *status quo*. Other options will be examined and compared against this scenario.

The benefits from remaking the 2010 Regulation without amendment include no net increase in administrative and implementation costs, and in most cases the 2010 Regulation provides an adequate and cost effective framework for achieving the objects of the Act. However, the review of the 2010 Regulation identified amendments to some provisions that would benefit stakeholders. These amendments are outlined under option 4.

Therefore, it is not considered that option 1 would provide the best regulatory framework for the NSW food industry or outcome for the community.

3.3 Option 2: allow the 2010 Regulation to lapse

The second option is to allow the 2010 Regulation to lapse on 1 September 2015, with no new regulation to take its place. As the Regulation is intended to assist in achieving the objects of the Act by prescribing matters relevant to production and sale of food in NSW, allowing it to lapse without replacement would result in the Act being only partially effective in achieving this essential public health outcome.

Fewer minimum standards

- Food safety programs provide clarity and certainty for businesses operating in high-risk food sectors in how the requirements of outcomes based, through-chain national standards may be consistently achieved and independently verified by government. This provides a consistent food safety management platform for all businesses operating in these sectors to achieve and maintain. Should the Regulation be repealed, it is argued that business certainty would be reduced as there would be no government oversight of the food safety management arrangements of these high-risk businesses.

Repeal of the Regulation would also reduce compliance tools available to the Food Authority as the specific application of FSSs to high-risk business sectors would be lost.

Collectively, the loss of government oversight of the food safety management arrangements of regulated high-risk businesses and the loss of compliance tools would make the Food Authority more reliant on response measures in the Act as enforcement tools to ensure industry compliance with outcomes based, through-chain national standards. This may create circumstances with a greater incidence of market failure (e.g. foodborne illness outbreaks), as government intervention will be limited to punitive reactions (i.e. after the event) rather

than preventative. Government plays a crucial role in maintaining a stable business environment for high-risk food businesses by independently verifying, and monitoring on an on-going basis, the food safety arrangements of all regulated high-risk businesses.

For example, high-risk food businesses covered by the 2010 Regulation are required to be licensed with the Food Authority and comply with certain requirements as a condition of their operation (e.g. food safety programs). Licences may be modified, suspended or revoked for non-compliance with these conditions (if necessary) and this regulatory tool would no longer apply under this option.

- NSW-specific requirements currently imposed on certain high-risk businesses operating in the plant products sector would no longer apply. These products are recognised as high-risk in national risk assessments, however have not been included in through-chain, national standards under the Code.

For example, the 2010 Regulation covers food businesses that process, store, transport and package unpasteurised juice. The Regulation requires these businesses to maintain a food safety program, which is internationally recognised as the most effective tool for monitoring and controlling food safety risks, particularly for processing and traceability. Unpasteurised juice was identified as high-risk in an independent Australian study in 2002¹⁶ and has also caused foodborne illness outbreaks in Australia. In 1999 there was an outbreak of *Salmonella* in South Australia that affected 533 people due to the consumption of unpasteurised orange juice¹⁷. Under this option the risk of foodborne illness outbreaks in NSW associated with these high-risk products would likely increase as they are not covered by national standards.

- NSW would no longer be able to apply the eight Australian Meat Standards for slaughtering and meat processing establishments to high-risk meat processing businesses. These standards are recognised as national benchmarks in the meat processing industry and by the meat industry as essential food safety management tools. Further, these standards are referenced in Standard 4.2.3 *Production and Processing Standard for Meat* of the Code for governing the slaughter and processing of animals under state and territory laws. Allowing the 2010 Regulation to lapse would result in NSW no longer being capable of giving effect to recognised national standards and having a lower safety standard in this high-risk sector than other jurisdictions.
- National primary production and processing standards would not apply in full in NSW which would create serious gaps in the regulatory framework for certain high-risk businesses. For example, minimum food safety standards for shellfish harvesters are critical in preventing foodborne illness and past failures have resulted in serious outbreaks. In 1997 oysters harvested from Wallis Lake (NSW) caused a large outbreak of hepatitis A. More than 400 people were infected and one 77-year-old man died. The outbreak was due to contamination of the waterway with human sewage¹⁸. The outbreak precipitated stronger regulatory oversight of the NSW shellfish industry — including controls related to harvest timing. Under this option current regulatory controls that prohibit the harvest of shellfish at times when there is a high-risk of environmental contamination would no longer apply in NSW.

Reduced legislative underpinning

- Maintaining current access to domestic and international markets would be at risk under this option. Foreign jurisdictions conduct reviews of exporting countries regulatory arrangements as part of reviewing access to their markets. Currently NSW has a very strong reputation as a producer of clean, green and safe food, oversights and verified by government. Should the 2010 Regulation be repealed, maintaining current access to some foreign markets may be at best problematic and come at increased cost, or at worst be lost altogether

as some countries may claim that NSW cannot demonstrate equivalence to what is required of their own producers.

For example, the US Food and Drug Administration reviewed Australia's food safety regulatory systems in October 2014 to determine whether they provide the same food safety outcomes as the US. This review included export and domestic food safety systems in NSW, and resulted in the US reducing inspection requirements for imported Australian food. A similar process has been undertaken with China and the European Union and resulted in the same outcome. Australia has also recently signed a free-trade agreement with China, which is already seeing investment in new farms and processing with local companies that have dependable growth. Without the 2010 Regulation, costs for industry to independently verify their food safety systems would increase and foreign jurisdictions may impose technical requirements to trade and investment for new businesses.

- The certainty provided by the Food Regulation Partnership (FRP) between local government and the Food Authority would be at risk under this option. The FRP aims to ensure that food surveillance activities are consistently undertaken in the retail sector by the relevant local government areas. These activities include routine inspections, complaints investigations and emergency response management. The 2010 Regulation provides the funding required to support the outcomes of the FRP between local government and the Food Authority by allowing enforcement agencies to apply an annual administration charge to food businesses. This charge is intended to recover the indirect costs associated with food surveillance functions such as the maintenance of administration systems and activities that can't readily be cost recovered for. Without the provision of the annual administration charge under the 2010 Regulation, there may be a decline in food surveillance activities undertaken by councils in the retail sector should they withdraw or reduce services as enforcement agencies under the partnership.

Additionally, local government and the Food Authority would only be able to issue penalty notices for offences against the Act. Currently penalty notices may be issued for less serious offences under the 2010 Regulation as a means of efficiently correcting inappropriate food safety business practices. If councils and the Food Authority could no longer issue penalty notices against the Regulation, higher costs may be imposed on business and government as a greater number of breaches would have to be addressed through the court system or through other more onerous enforcement tools available under the Act such as prohibition orders and product seizures.

Less government oversight

Under Option 2 there would be a shift from proactive to reactive regulatory activity by councils and the Food Authority as the current funding base would be compromised.

The licensing scheme under the 2010 Regulation is necessary to ensure the safety of food as it provides the cost recovery mechanisms (administration and licence fees; inspection and audit charges) needed to secure funding:

- to support the compliance activities of the partnership between councils and the Food Authority so that retail food businesses are routinely inspected against the Code in all NSW local government areas;
- for the Food Authority to properly administer national food safety standards that require food safety programs (Standards 3.3.1, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5 and 4.2.6 – see section 2.3);

- for the Food Authority to conduct an audit verification program to ensure consistency and integrity of regulatory audits provided by commercial food safety auditors for the Food Authority to inspect non-licensed food businesses captured under the Manufacturer Wholesaler Food Inspection Program;
- to support export market access as many importing countries demand government oversight as a market access requirement, particularly for high-risk commodities such as shellfish;
- for the Food Authority to facilitate the provision of business support services that are readily used by small businesses, whom make up 94% of all licensees¹⁹, and without such services food safety costs would likely increase for these businesses; and
- to ensure that government has a comprehensive and up-to-date database of NSW dairy, egg and poultry farms, fishers and abattoirs which is crucial for controlling and successfully managing animal disease outbreaks (e.g. Foot and Mouth Disease; Avian Influenza; *Salmonella enteritidis* in poultry).

The Food Authority uses the principles of the Kerin Funding Model²⁰ to financially support food regulatory activities in NSW. Under this model, the Food Authority funds its direct regulatory activities in the food industry through cost recovery, principally by licence fees and charges for audits and inspections. Government funding is provided to support other activities including education, policy and standards development, business support, Ministerial and Parliamentary support, and some aspects of law enforcement.

Over time less government oversight would likely lead to lower rates of industry compliance with food safety requirements. Councils involvement in food regulation would also likely decline because the Regulation provides the funding required to support the outcomes of the FRP between local government and the Food Authority.

No consumer and business support by the Food Authority

Under Option 2 the Food Authority would need to seek alternative funding to continue to provide consumer and business support services. The Food Authority currently:

- provides a toll-free telephone helpline;
- publishes consumer factsheets and materials on food safety and allergies;
- promotes consumer food safety awareness;
- maintains industry and consumer information on its website;
- publishes a quarterly industry newsletter (called 'Foodwise');
- publishes guidance material and specific food safety program templates for the dairy, meat, egg, seafood, plant products, shellfish and vulnerable persons FSSs which reduce the costs to industry associated with complying with the 2010 Regulation (where applicable);
- provides training for Environmental Health Officers and industry; and
- provides scientific/technical advice for stakeholders.

These services aim to increase consumer and industry awareness, understanding, and compliance with food safety requirements. These services are currently funded from fees and charges payable to the Food Authority. If alternative funding could not be found, these services would have to be reduced or cancelled. This would lead to an increased cost to Government.

Summary

Allowing the 2010 Regulation to lapse would result in the Food Authority being unable to effectively administer the objects of the Act. However, the benefits to government and industry would be outweighed by the costs associated with lower food safety standards in NSW and an increase in foodborne illness, with serious implications on the public health system. It is likely that the current estimated total annual cost of foodborne illness in Australia of \$1.25 billion, or \$375 million in NSW, would increase^{2,3}. It would also restrict NSW enforcement agencies from effectively administering the Act, essentially preventing its objects from being efficiently achieved.

Option 2 would also negatively impact on the safety and reputation of the NSW food industry, business confidence, and the state's access to national and international food export markets which are valued at \$5.1 billion (i.e. 8% of the State's total exports)⁶.

3.4 Option 3: government support for self-regulation

The third option is a voluntary market driven approach in the absence of any regulation. It is dependent on businesses voluntarily implementing industry codes of practice and the community being well educated in food safety.

Education of key stakeholders and the broader community would be essential in a self-regulated, voluntary environment. This option assumes that the Food Authority would be entirely funded from consolidated revenue to provide an education campaign and support the development of business support tools (i.e. industry codes of practice) that would be available to all high-risk businesses. The education campaign would need to focus on the real risks to public health, and domestic and international trade. It would also need to target the high-risk sectors subject to FSSs under the 2010 Regulation and the retail food service sector (e.g. restaurants, takeaway outlets, caterers). This totals approximately 55,000 food businesses in NSW.

An education program would likely provide businesses and the community with the knowledge needed to source, handle, store and process/manufacture or prepare food safely, and give all industry stakeholders access (e-based, hardcopy) to these materials. Education materials for the retail food service sector would need to be translated into major language groups in the NSW community to ensure that non-english speaking people may access this information. Currently, the Food Authority translates key food safety resources into 9 different languages.

An education campaign on its own would not effectively ensure business and consumer confidence in food produced and sold in NSW. Therefore, industry codes of practice that outline best practice principles for food safety management would also be required. However, adoption of industry codes of practice by food businesses would only be voluntary and there would be no penalties for non-compliance. The licensing requirement for high-risk food businesses under the 2010 Regulation has the legal effect of prohibiting these businesses from operating for repeated food safety breaches (e.g. by suspending or cancelling their licence). This serves an important public health benefit as it allows the Food Authority to prevent continually non-compliant high-risk food businesses from trading, and gives compliant businesses assurance that food safety is a legal prerequisite to trade. It is common for consumers to avoid an entire product category following a foodborne illness outbreak (e.g. Hepatitis A contamination of oysters in Wallis Lake).

This option would suit businesses that already participate in industry programs for reasons of commercial benefit (e.g. Australian Pork Industry Quality Assurance Program - APIQ[√]®). These programs require businesses to comply with industry codes of practice that integrate food safety and food quality requirements for the purposes of market segregation, rather than just food safety. However, there may be the risk of limited market participation as

uptake of these programs would likely require membership with industry associations, in order to obtain access to the relevant resources. Further, compliance with the requirements of these programs may be assessed on the entire content of the program rather than just the food safety elements. This may add unnecessary costs to some businesses, especially small businesses.

There are also many businesses that choose not to participate in industry programs (e.g. small businesses supplying to markets or independent retail outlets) or who do not need to (e.g. businesses supplying to large retailers that have their own programs). Consequently, the adoption of the voluntary codes of practice would be market driven so it is unlikely they would be universally adopted. This would likely leave a portion of industry with no food safety resources. This is not desirable from a public health perspective as it may increase the potential for exposure to foodborne illness outbreaks.

Under this option businesses would be reliant on industry associations ensuring that resources are readily available (in not just English), and that their websites are easy to navigate and contain current versions of these documents. A review of existing industry associations' websites in February 2015 identified this is not currently the case.

Both voluntary codes of practice and education programs rely on individuals acting for the common good rather than out of self-interest, which could not be guaranteed. Some business owners may not be aware of the potential consequences of not meeting the minimum food safety standards. Others, particularly small businesses who make up approximately 94% of all licensed businesses, may not voluntarily meet the costs and demands associated with implementing effective food safety management. Small businesses heavily rely on the support services currently provided by the Food Authority to minimise the costs associated with complying with food safety standards.

Some food businesses subject to FSSs under the 2010 Regulation also participate in industry- or government-run quality assurance programs that include food safety requirements (see Table 4 below). These programs would be an inadequate substitute for FSSs because:

- in many cases the food safety requirements are less than the requirements imposed by the 2010 Regulation;
- often the scope is narrower than that of the corresponding FSS;
- some rely on regulatory food safety audit or inspection reports to provide the evidence that minimum food safety standards have been met — because quality assurance program auditors do not have the expertise to assess food safety programs; and
- in the case of industry-run systems, participation is voluntary, providing incomplete industry coverage (and often those businesses that choose not to participate in voluntary, industry-run programs have the worst food safety practices).

While these programs cannot replace the 2010 Regulation, certain businesses that participate in programs that require food safety programs have the opportunity to combine regulatory and quality assurance program audits conducted by appropriately qualified food safety auditors.

Table 4: Current quality assurance programs relevant to FSS businesses

Quality assurance system	Managed by	Scope	Gaps compared to the 2010 Regulation
ISO 22000 food safety management system certification	JAS-ANZ	Any food business	Participation is voluntary with limited uptake
Safe Quality Food 1000 and 2000 product certification	JAS-ANZ, under licence to the (international) Safe Quality Food Institute	Any food business	Participation is voluntary with limited uptake
Freshcare Food Safety Program	Freshcare	Fresh produce farmers	Participation is voluntary
Code of Practice for the Fruit Juice Industry	Australian Fruit Juice Association	Fruit juice manufacturers	Focus is on truth in labelling and fair trade (not food safety)
ACHS Evaluation and Quality Improvement Program	Australian Council on Healthcare Standards	Health care providers (including acute or long term hospital services, day procedure services and specialist care services (e.g. palliative care and mental health))	ACHS auditors are not qualified to audit food safety programs
Aged Care Accreditation Standards	Aged Care Standards and Accreditation Agency Ltd (on behalf of the Australian Government)	Residential aged care	ACSAA auditors are not qualified to audit food safety programs
Australian Pork Industry Quality Assurance Program - APIQ [®]	Australian Pork Limited	On-farm management practices, animal welfare, food safety. Biosecurity and traceability	Participation is voluntary
RSPCA Approved Farming Scheme (RSPCA Standards – Layer Hens, Meat Chickens, Pigs, & Turkey) and Better Beef Cattle Welfare	Royal Society for the Prevention of Cruelty to Animals - RSPCA	Animal welfare improvement across the supply chain – from farm to processing.	Participation is voluntary
Woolworths Quality Assurance (WQA)	Woolworth Quality Assurance	Applicability across supply chain from primary production to transportation and wholesaling excluding food manufacturers	Applies to all businesses who wish to supply into Woolworths
Woolworths Quality Assurance Standard (WQA) Manufactured Food – V8	Woolworth Quality Assurance	Applicable to all manufacturers who supplies to Woolworths	Applies to all businesses who manufactures Woolworth Brands

Quality assurance system	Managed by	Scope	Gaps compared to the 2010 Regulation
Coles Supplier Requirements – Food, Supplier Standard – CSR-FV3, May 2011	Coles supplier management team	Manufacturers of Coles brand products, fresh produce and bulk produce	Applies to all suppliers of Coles branded products
British Retail Consortium (BRC) Global Standard for Food Safety– Issue 7 – January 2015	BRC Global	Food safety and best practices in food manufacturing, storage and distribution, packaging.	Applies to food manufacturers and suppliers to major supermarket chains such as Woolworths and Coles.

The community expects government to effectively manage the safety of food produced and sold in NSW. Under this option, the ability for government to maintain critical food safety controls prescribed under the 2010 Regulation would no longer apply (e.g. prohibiting the sale of animal food for human consumption). This would likely increase the risk of foodborne illness in NSW, damage the reputation of the NSW food industry and prevent the state from meeting its national obligations. Further it may provide an environment that fosters substitution practices. Over time, it is also likely that industry compliance with the Code would decrease resulting in higher enforcement costs for government. Therefore, self-regulation is not considered an appropriate approach. It would not support business certainty and consumer confidence in foods produced and sold in NSW or meet the objects of the Act.

3.5 Option 4: make the proposed Regulation

The final option is the making of the proposed Regulation, which repeals and remakes, with amendments, the 2010 Regulation. This is the preferred option.

The Regulation is essentially 'fit for purpose' in enabling the objects of the Act to be met and is broadly supported by regulated stakeholders. A survey completed by more than 1,000 food businesses licensed under the Regulation revealed that nine in ten respondents agreed that food safety regulations are necessary to ensure safe food production in NSW.

During 2010-14 the Regulation was modified and adapted to increase relevance and flexibility for industry, whilst maintaining consumer confidence in the NSW food supply chain. The proposed Regulation includes amendments aimed at improving the efficiency, effectiveness and consistency of the 2010 Regulation, consistent with the objectives of the staged repeal process.

Recent changes to bilateral trade arrangements have enhanced the need for the Regulation, as a market access assurance tool in addition to its primary role of protecting the health and wellbeing of the NSW population from foodborne illness. Protecting the reputation of Australian food as being safe and well regulated is crucial for ensuring market access to the export industry and creating a strong demand for NSW as being the preferred supplier to export markets.

While most provisions of the 2010 Regulation will remain unchanged the proposed amendments to the Regulation are outlined in detail in Appendix B.

4.0 Cost benefit analysis

4.1 Methodology

The SL Act requires that an assessment of the costs and benefits of the proposed changes to the Regulation be undertaken.

The Food Authority has carried out a cost benefit analysis (CBA) through which a Net Present Value (NPV) is derived as a means of identifying the preferred option.

A five year analysis period has been used as the SL Act requires staged repeal of regulations every five years. As the value of a dollar today is worth more than a dollar tomorrow, benefits and costs occurring over different time periods need to be discounted to give a NPV. Consistent with the NSW Treasury Guidelines, a discount rate of 7% was adopted in this analysis so these costs are relevant to today's dollars.

The methodology used for analysing the options and the impact of the proposed Regulation is based on the procedure set out in Schedules 1 and 2 of the SL Act as well as the following guidelines:

- New South Wales Treasury, *NSW Government Guidelines for economic appraisal* (July 2007);
- Better Regulation Office, *Guide to Better Regulation* (November 2009); and
- Better Regulation Office, *Measuring the Cost of Regulation* (June 2008).

This RIS assesses the impacts of the proposed Regulation by considering the costs and benefits of Options 2- 4 compared to Option 1 (the status quo).

Details and analysis of costs and benefits are included section 4.2 (see below). Where the impacts of an option cannot be accurately assessed in monetary terms, qualitative values have been provided.

In considering costs and benefits, a number of qualitative terms are used in place of dollar values. These terms are considered commensurate to the NPV of the following monetary ranges:

Term used	Dollar range
Very small	\$5,000 – 49,999
Small	\$50,000 – 999,999
Large	\$1,000,000 – 9,999,999
Very large	\$10,000,000 – 99,999,999
Extremely large	\$100,000,000 – 1,000,000,000

4.2 Identification of the costs and benefits of each option

4.2.1 Costs and benefits of option 1: remake the 2010 Regulation without amendments

Maintaining the status quo is continuing the 2010 Regulation without making any amendments. The costs and benefits of the alternative options will be compared to the status quo.

To allow a relative comparison with the other options, all the costs and benefits attributable to the status quo have been given a value of \$0. This is not to say the status quo does not provide a net benefit to government, business, consumers, and the community and the environment, but rather this value is a benchmark to compare the other options against.

Thus, if the NPV of any of the options achieves a value greater than \$0, it represents an improvement on the current arrangements. Conversely, if the NPV of any of the options achieves a value less than \$0, it indicates a less desirable outcome than the current arrangements. If all of the options achieve a negative NPV, then the status quo would be the preferred option. If more than one of the options achieves a positive NPV, the option with the highest NPV would be the preferred option.

4.2.2 Costs and benefits of option 2: allow the 2010 Regulation to lapse

Option 2 – Costs

Costs for businesses

- Reduced market protection for food businesses

The 2010 Regulation is an enabler of business confidence in high-risk sectors. It provides legislative certainty to all high-risk businesses that food produced from these sectors will meet the same safety standards, providing a clear benchmark and level playing field for all participants entering and conducting business in these sectors. This provides a degree of market protection and confidence for these businesses. The Regulation also provides the means for high-risk food businesses to meet the outcomes based requirements of national standards. This allows NSW businesses to promote their products as high-quality, safe and reliable, in both domestic and international markets.

Allowing the 2010 Regulation to lapse would remove this market confidence and certainty as an environment enabling any food business to engage in high-risk activities would be created, irrespective of their food safety knowledge or any verification of their food safety practices. This would create a risk of driving down economic profits from these markets, firstly due to increased competition, and secondly due to the increased risk to public health arising from the unverified food safety practices of new participants. History has shown that foodborne illness outbreaks impact an entire market segment, not just the business or specific product implicated. Further risks to current market participants would likely arise from lower unit prices driving supplier and purchasing decisions to be made purely on cost, instead of also considering food safety as a fundamental prerequisite to purchase. These factors combined may have a negative impact on the quality and safety of NSW products and business confidence, decrease access to export markets and increase the likelihood of market failure.

These costs cannot be quantified but are anticipated to be very large.

- Reduced market confidence in food produced and sold in NSW

The 2010 Regulation provides food businesses with a substantial level of confidence and certainty in the safety of their products and the stability of their market sector as all participants must meet the same safety standards. The key role of government is to act as an independent verifier of food safety practice, both initially and on an on-going basis. This provides businesses in high-risk sectors with confidence to plan for capital investment expenses to facilitate business growth, and encourages businesses to provide ongoing professional development for employees to maintain a high standard of food production and safe food handling processes. It also gives businesses the freedom to innovate in their market sectors, with assurance that food safety remains a legal prerequisite to commercial trade. It further offers all businesses dependent on the NSW food supply chain with the confidence that businesses covered by the 2010 Regulation will produce safe food and that any complaints concerning business food safety practices will be dealt with efficiently and effectively.

The absence of the 2010 Regulation would lead to more conservative business decisions, reduced market confidence, higher business disruption costs due to food safety recalls (approximately \$14 million a year²), and higher financial liability costs and personal indemnity insurance due to increased risk of foodborne illness outbreaks.

Large scale outbreaks have significant impacts on the markets they affect. In September 2008, the Chinese government ordered the nation's biggest milk powder manufacturer to cease production after confirmation that their infant formula was contaminated with potentially lethal quantities of the chemical melamine. The contaminated milk formula was linked to at least six deaths, 51,900 hospitalisations and an estimated 294,000 illnesses in China, Taiwan, Macau, and Hong Kong. Despite government efforts to contain the milk crisis, Chinese consumers have lost confidence in dairy products made in China. Sales of dairy products have dropped by 30-40% with an estimated, by the Chinese Dairy Association, financial loss of at least \$2.8 billion to the industry. A shift in the market has occurred with more demand for imported milk and dairy products. Internationally, the US recalled products suspected of being contaminated with melamine and 68 countries banned or recalled goods suspected to contain melamine²¹.

Higher financial liability costs to businesses are highlighted by the Garibaldi foodborne illness outbreak in 1995 that led to more than 23 personal claims against the smallgoods company. Salami produced by this company was contaminated with *E.coli*. More than 20 people, mainly children, became ill and there was 1 fatality. This was one of South Australia's longest running court cases lasting 14 years and although each personal damages claim was settled for undisclosed amounts, court records show one payment was more than \$1.8 million^{22,23}. Another example is the Bonsoy soy milk class action taken against the manufacturer, exporter and distributor of the product. Nearly 500 people joined the class action after becoming ill from high levels of iodine in the product during 2004-2009. This was Australia's biggest food safety class action, and the defendants agreed to pay \$25 million into a shared settlement fund in 2015^{24,25}.

These costs cannot be quantified but are anticipated to be very large.

- Increased incidence of foodborne illness

Allowing the 2010 Regulation to lapse would increase the incidence of foodborne illness, as there would be fewer minimum food safety standards in certain sectors of the NSW food industry (e.g. high-risk meat processing and plant products sectors).

NSW uses the Food Regulation to legislate Australian Standards developed by the Meat Standards Committee for the slaughtering and processing of meat in NSW on meat processing businesses. Standard 4.2.3 *Primary Production and Processing for Meat* of the Code refers to the fact that states and territories govern the slaughter and processing of animals for human consumption through introducing laws that require persons involved in such activities to comply with appropriate Australian standards. These are listed in section 2.6 of this RIS, and are given legal effect in NSW through the Food Regulation. Allowing the 2010 Regulation to lapse would result in NSW being inconsistent with other jurisdictions. These Standards are adopted in the 2010 Regulation and under this option there would be no mechanism to mandate them in NSW unless the Act is amended. Amendment to the Act, whilst possible, would be an administratively inefficient way to manage these standards as any changes in their content would require an amendment to the Act. These Standards further underpin export requirements so access to these markets would also be compromised. This would have an economic impact on the NSW meat industry (i.e. processed meat and poultry, and bacon, ham and smallgoods) which had an export value of \$1.3 billion in 2012-13²⁶.

The 2010 Regulation requires food businesses that process fresh cut fruits and vegetables, unpasteurised juice, vegetables in oil and seed sprouts to hold a licence with the Authority. In 2002 an independent Australian study identified these plant products as high-risk¹⁶, and in April 2005 the plant products FSS commenced to reduce the risk of foodborne illness associated with these foods. Plant products covered by the 2010 Regulation have caused outbreaks of foodborne illness in Australia (see Table 5 below). Internationally, there have been many examples of outbreaks that have been attributed to plant products. In the USA there were 190 produce-associated outbreaks from 1993 to 1997, resulting in 16,058 illnesses, 598 hospitalisations and eight deaths²⁷. These outbreaks were attributed to an increasing proportion of all reported foodborne outbreaks with a known food cause, rising from 0.7% in the 1970s to 6% in the 1990s. Salad, lettuce, juice, melon, sprouts, and berries were the fresh produce most frequently implicated. These products are captured by the plant products FSS and allowing the 2010 Regulation to lapse would likely reduce business certainty.

Table 5: Foodborne illness outbreaks due to plant products in Australia from 2009 to 2013²⁸

Year	State	Setting	Sick	Admitted to hospital	Died	Pathogen	Food vehicle involved
2009	Multi-state	Community	392	165	1	Hepatitis A	semi-dried tomatoes
2009	WA	Community	17	3	0	<i>Salmonella saintpaul</i>	pawpaw
2010	Multi-state	Community	9	9	2	<i>L. monocytogenes</i>	Melons and/or melons contained within fruit salads
2010	WA	airplane/ cruise	314	0	0	cyclospora	Cantaloupe, mint, lettuce
2011	VIC	Restaurant	15	0	0	Norovirus	Fruit platter
2011	WA	Restaurant	53	0	0	Norovirus	Salad
2013	NSW	Restaurant	3	3	0	Norovirus	Salad
2013	VIC	Restaurant	7	0	0	Norovirus	Salad

Whilst NSW has been implicated in one of these foodborne illness outbreaks, it was small in comparison to other outbreaks in this sector. Many of the plant products associated with large outbreaks in other jurisdictions are covered by the NSW plant products FSS. Therefore, without the 2010 Regulation it is likely that the number and size of foodborne illness outbreaks in NSW associated with this sector would increase.

National Standard 4.2.6 *Production and Processing Standard for Seed Sprouts* of the Code commenced in 2013. This is an outcomes based national standard that requires sprout processors to implement a food safety management system to control risks. Outbreaks of foodborne illness have been associated with the consumption of seed sprouts in Australia and overseas. A large foodborne illness outbreak that began in Germany in May 2011 resulted in 3,910 people becoming ill with *E.coli* poisoning and causing 46 fatalities²⁹ was initially associated with

cucumbers imported from Spain. Further investigation revealed imported fenugreek seeds to be the cause. The initial targeting of Spanish fresh produce led to the temporary rejection of Spanish fresh produce by EU markets. The total estimated economic impact of this incident was €1 billion, resulting in compensation packages paid out to Spanish farmers.

There are no equivalent national requirements for the other high-risk plant products covered by the 2010 Regulation, notwithstanding these foods being associated with foodborne illness outbreaks. Consequently, under this option the FSS currently in place for high-risk plant products would no longer operate. All that would remain is the offence provision under the Act for non-compliance with Standard 4.2.6 of the Code, which would apply to seed sprouts only. This option would remove a compliance framework for these high-risk businesses and drive the government's influence on these businesses to respond (i.e. intervention following market failure from foodborne illness). With these foods especially, international incidents reveal that foodborne illness outbreaks can have severe public health and market sustainability consequences.

An increased incidence of foodborne illness may arise from a higher number of unregulated businesses carrying out previously regulated high-risk food activities. This would increase costs associated with business liability, loss of public confidence, access to export markets, and the ability for the Food Authority to provide certification against national export requirements.

These costs cannot be quantified but are anticipated to be very large.

- Reduced assistance for industry to help them comply with food safety standards

Based on 2013-14 figures, approximately \$8,079,897 million (refer to the total costs for licensing and audits and inspections in Table 1 of Appendix C) was payable to the Food Authority in licence fees, and audit and inspection charges. These fees and charges would no longer be payable to the Food Authority if the 2010 Regulation lapses. This would impact on the Food Authority's ability to partner with industry to provide certain administrative, management and support services by suitably qualified persons, including compliance staff undertaking routine audits and inspections, to assist businesses comply with their legislative requirements and to provide practical education on key food safety matters to licensed businesses. The Food Authority would need to seek Government funding to continue these activities.

In 2013 a User review survey¹⁰ was sent to all licensed businesses and other key stakeholders. Respondents were asked what regulatory support services they utilised to help them comply with their food safety requirements. Fifteen options were provided and the resources used most by respondents were:

- Food Authority auditors/staff (70%);
- Food Authority manuals/guidelines (44%);
- Industry manuals and guidelines (38%);
- Food Authority website (32%); and
- Food Authority factsheets (30%).

The current services provided by the Food Authority include a toll-free telephone helpline, industry-focussed pages on its website, a quarterly newsletter (called 'Foodwise'), guidance material and food safety program templates, training, and scientific/technical advice. Many food businesses that have the requirement to develop a food safety program under the Code use template documents developed by the Food Authority. Under this option, these businesses would have to either develop a food safety program themselves, or with a consultant, which is an

added cost and burden. Additionally, the Food Authority would no longer provide inspections or audits to ensure primary producers and food manufacturers comply with the Code.

These costs cannot be quantified but are anticipated to be very large.

- Increased court costs for offenders

Without the 2010 Regulation and its prescribed penalty notice offences and the establishment of FSSs as compliance tools, the Food Authority would be reliant on breaches under the Act to enforce compliance. This would likely create increased pressures on the court system, as the Regulation provides the means for less serious offences to be enforced outside the court process (e.g. establishing penalties under FSSs with prescribed penalty units). This would likely lead to increased reliance on the court process and increased costs for alleged offenders as they would be required to attend court, and be subject to potentially higher fines and associated costs. Repeal of the Regulation would remove an efficient and effective compliance framework to rapidly manage non-compliance issues. From August 2010 to September 2014 there were 22 convictions involving 17 food businesses and one individual³⁰, and for 2013-2014 financial year 147 penalty notices were issued⁷.

These costs cannot be quantified but are anticipated to be large as the number of prosecutions may increase due to the withdrawal of penalty notice offences prescribed by the 2010 Regulation.

- Loss of economic activity and employment

Allowing the 2010 Regulation to lapse increases the risk of foodborne illness, which will adversely impact workplace productivity, disrupt household activity, and result in the employment of carers for short and long-term illness, especially for immuno-compromised people (e.g. elderly, aged care) who are more susceptible to foodborne illness.

In 2006, the cost of lost workplace productivity due to foodborne illness was valued at \$175 per day, based on the average daily earnings, as was the cost of employing carers (if included in work time). The cost of disruption to the household associated with foodborne illness was valued at 50% of the average daily earning (i.e. \$87.50)². With the number of foodborne gastroenteritis cases in Australia each year estimated at 4.1 million, and assuming that each of these people would have at least one day off work, the cost to the NSW economy from lost productivity may be as high as approximately \$230 million.

This would have long-term impacts on the economic activity and employment in domestic and international food markets, as well as in tourism.

These costs, which would have flow-on effects to the community, cannot be quantified but are anticipated to be very large.

Costs for government

- Increased difficulty administering the *Food Act 2003*

Without the 2010 Regulation and its prescribed penalty notice offences, a number of offences specifically relevant to each FSS would be removed. Consequently, similar offences under the Act would need to be identified, where available. It would also not be possible to establish FSSs in high-risk sectors as this is a function of the Regulation. In the absence of an equivalent alternative to a FSS under the Act, the ability of the Food Authority to effectively administer the Act in high-risk food sectors would be substantially compromised.

Reliance on the Act alone as a regulatory instrument would also increase costs to government for maintaining the currency of its regulatory framework for matters outside FSSs. Any change, irrespective of its nature, would require an amendment to the Act. An example is provided below.

The 2010 Regulation provides the detail for the operation of the kilojoule labelling requirements. This legislation was introduced as one of many public health initiatives to address the increasing levels of overweight people and obesity in the NSW community. It requires large restaurant chains and supermarkets to display the kilojoules for certain food items as well as a reference statement for the average adult daily kilojoule intake (i.e. 8700kJ) with the intention of assisting people make healthier food choices, and over the long term reducing public health care costs³¹. The Regulation includes a definition of pre-packaged food that is an essential prerequisite to defining the types of foods that fall within scope of this legislation. Should the Regulation be repealed, the primary provisions under the Act for kilojoule labelling would remain. However, increased cost and uncertainty would be added to government whom would be reliant on a common law definition of this term, when the intention of the legislation is to apply a specific definition for this term.

Regulation under the Act may also likely lead to increased costs on government as alleged offenders may more frequently challenge the nature and appropriateness of identified offences, leading to more frequent use of the court system, even for minor offences. There is also the risk that a corresponding offence under the Act may not be capable of being constructed, leaving the Food Authority to rely on more severe enforcement measures (e.g. prohibition orders, product seizures) in order to maintain operational effectiveness of the Act.

These costs cannot be quantified but are anticipated to be very large as the number of prosecutions by the Food Authority may increase due to the withdrawal of penalty notice offences prescribed by the 2010 Regulation.

- Increased health care costs relating to foodborne illness

Food contaminated with harmful bacteria and viruses is a serious problem. Each year, Australia wide it causes around 4.1 million cases of gastroenteritis, 5,140 non-gastrointestinal illnesses (e.g. listeriosis) and 35,840 episodes of long-term health effects (e.g. reactive arthritis). The total cost of foodborne illness in Australia was estimated at \$1.25 billion per year in 2006, of which \$375 million would be incurred by NSW and its public health system.

The 2010 Regulation also enhances NSW's capacity to respond to critical foodborne illness outbreaks. The licensing requirement for businesses covered by the Regulation ensures that government has a comprehensive and current database to provide an effective and efficient tool for identifying relevant businesses in the event of a foodborne illness outbreak. Should the Regulation be repealed the ability of the Food Authority to rapidly and accurately contribute to the speedy identification of businesses in the event of an emergency would substantially decrease. Speed and accuracy in data collection is essential to managing and limiting the impacts of a foodborne illness outbreak. An example where inefficient data collection systems lengthened the exposure period of a food borne disease outbreak was the EU fenugreek seed outbreak described earlier. Table 3 outlines details of the confirmed outbreaks of foodborne illness in NSW and nationally from 2011-12. In 2013, there was a *Salmonella* outbreak in the Australian Capital Territory in the retail sector. This outbreak affected 286 people, of which 17 were hospitalised, and was associated with the consumption of raw egg mayonnaise^{15,32}. The threats in terms of increased foodborne illnesses from allowing the 2010 Regulation to lapse would be high, and potentially catastrophic, with substantial public health care costs. These costs are estimated at \$63,866,931 for 2013-14 or an equivalent PV for the five year analysis period of \$261,867,028.

- Inability to efficiently respond to emergency response incidents

The 2010 Regulation enhances Australia's capacity to respond to a critical food safety or biosecurity emergency incident (e.g. Foot and Mouth Disease; Avian Influenza). The licensing requirement for businesses covered the 2010 Regulation ensures that the Government has a comprehensive and current database. This database includes NSW dairy, poultry and egg farms, fishers and abattoirs and is crucial to the effective management of an emergency response incident. The Authority's licensing database has successfully assisted with the management of past animal disease outbreaks (e.g. by facilitating the rapid eradication of poultry birds from the source and surrounding farms due to a H7 Avian Influenza outbreak in 2013 and providing technical and consumer advice on food safety issues during the outbreak). The absence of the 2010 Regulation would lead to loss of the ability for the government to efficiently respond in possible future emergencies, adding time and cost to investigations needed for these incidents.

Without the 2010 Regulation, there would be no mechanism to maintain the currency of this information, increasing the cost and impact of managing such incidents for government. For example, the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) estimated the cost of a small scale three month outbreak of Foot and Mouth Disease at \$7.1 billion, while a 12 month duration large scale outbreak was estimated to cost \$16 billion. The UK outbreak in 2001 is estimated to have cost the UK economy about \$10 billion while the outbreak in South Korea in 2012 resulted in destruction of 25% of the national cow and swine herd³³. With the gross value of the Australian meat industry estimated at \$7.8 billion, and NSW producing 21% of the national meat market⁴, the impact of a Foot and Mouth Disease outbreak in Australia would be significant. In the event of a large scale *Salmonella enteritidis* outbreak in the NSW egg industry, whereby all flocks needed to be destroyed, the estimated cost to the NSW industry may be as high as \$567 million. This is based on the national gross value of egg production (grocery equivalent) relative to the size of the NSW flock^{34,35}.

These costs cannot be quantified but are anticipated to be extremely large.

- Failure to meet national and international obligations

The NSW Government is a signatory to the FRA (see section 2.3 for more information), which supports Australia's commitment to service domestic and international export markets with safe food.

The export market plays a significant role in the NSW economy. In 2012-13, \$5.1 billion worth of food and agriculture products were exported from NSW, including \$1.3 billion from the meat sector. Without the 2010 Regulation, the ability to meet these obligations would be at best compromised and achieved at greater cost as industry would need to obtain independent certification of their systems, or at worst lost as customers may lose confidence in NSW food. This may also run the risk of some overseas markets closing to NSW food exports.

The 2010 Regulation requires high-risk businesses to have a through chain (from primary production to the final consumer) food safety program. These programs must be HACCP-based or comply with Standard 3.2.1 *Food Safety Programs* of the Code (which achieves the same outcomes as HACCP). The Codex Alimentarius Commission (CAC) recognises through-chain (from primary production through to the final consumer), risk and HACCP (Hazard Analysis Critical Control Point) as important principles underpinning the development of contemporary and effective food regulatory systems. The CAC's *Recommended International Code of Practice; General Principles of Food Hygiene*³⁶ recommends a HACCP-based approach where possible. HACCP is an internationally recognised system for controlling food-related hazards that relies on the implementation of through chain risk management systems, based on scientific risk analysis. The US Food Safety Modernization Act 2011 and the legislation of the European Union recognise food safety programs as the most effective tools to manage

and control food safety risks. With the introduction of the US Food Safety Modernization Act 2011, all importing products to the US must meet the Acts provisions. Therefore, without the 2010 Regulation and the requirement for high-risk businesses to have a food safety program, export opportunities to the US would be restricted.

These costs cannot be quantified however based on the high value of exports from the NSW meat sector, they are anticipated to be extremely large.

- No licence fees and inspection and audit charges payable to the Food Authority

The 2010 Regulation enables the Food Authority to impose fees for direct regulatory activities provided to the food industry. In the absence of the 2010 Regulation, there would be no government revenue from the provision of these activities by the Food Authority. This revenue comes from licence fees and inspection and audit charges, and for 2013-14 was approximately \$8,079,897 (refer to the total cost for licensing, and audits and inspections in Table 1 of Appendix C) or an equivalent PV for the five year analysis period of \$33,129,174.

- Increased court costs for government

Without the 2010 Regulation and its prescribed penalty notice offences, a number of offences specifically relevant to each FSS would be removed. Consequently, compliance and enforcement activities would be limited to offences prescribed under the Act. This will likely lead to increased costs for enforcement agencies as more matters would likely be taken to court, increasing costs to government associated with compliance and enforcement activities being managed through the court system. From August 2010 to September 2014 there were 22 convictions involving 17 food businesses and one individual, and for 2013-2014 financial year 147 penalty notices were issued.

These costs cannot be quantified but are anticipated to be large as the number of prosecutions by the Food Authority may increase.

- No administrative charges payable to local government

The 2010 Regulation enables local government to collect an annual administration charge from food businesses. This charge provides the funding required to support the outcomes of the FRP between local government and the Food Authority and is intended to recover the indirect costs associated with food surveillance functions such as the maintenance of administration systems required to support inspection activities. The FRP aims to ensure that food surveillance activities are consistently undertaken in the retail sector by the relevant local government areas. These activities include routine inspections, complaints investigations and assisting in emergency response management. Local Councils across NSW are appointed by the Food Authority to conduct inspections in the 40,000 medium-high-risk retail/food service businesses across NSW. Without the provision of the annual administration charge under the Regulation, there may be a decline in food surveillance activities undertaken by councils in the retail sector should they withdraw or reduce services as enforcement agencies under the partnership.

The impact of repealing the Regulation to Local Government's ability to conduct inspections would be cost neutral as they would not routinely inspect food businesses. Therefore, any costs under this option are negligible. However, there are broader financial impacts on food businesses and local government under this option. Without the financial support for routine compliance activities (e.g. inspections, business food safety education and training), local government would be restricted to using the enforcement tools in the Act (e.g. improvement notice, penalty notice, prohibition order, seizure of product) to ensure food businesses comply with the Code. It is a more effective public health measure, and ultimately less damaging to the reputation and viability of businesses, to undertake routine inspections to ensure compliance rather than to take enforcement action as a result of complaints or foodborne illness outbreaks. This approach is proactive, rather than reactive, and reduces the risk to public health.

Costs for consumers

- Reduced consumer confidence in food produced and sold in NSW

There are approximately 7.54 million³⁷ consumers and approximately 55,000 food businesses in NSW and the overall impact of the 2010 Regulation on NSW food prices is small (e.g. 0.65% of costs to the consumer in the dairy industry and 0.11% of costs to the consumer in the egg industry²¹). However, allowing foods covered by the 2010 Regulation to be produced in an unregulated market is likely to reduce consumer confidence in the NSW food industry.

Biosecurity protocols limit the importation of many foods covered by the 2010 Regulation (e.g. fresh meat, eggs, sprouts, shellfish) into NSW. Therefore, without the 2010 Regulation, these foods would have to be supplied by other jurisdictions that have regulations in place to control the integrity of the food supply chain and maintain consumer confidence. The supply of these products to consumers would also be destabilised due to a loss of confidence in food safety and foodborne illness management.

The costs cannot be quantified but are anticipated to be very large.

Costs for community and the environment

There will be no expected costs for the community and the environment from allowing the 2010 Regulation to lapse.

Option 2: Benefits

Benefits for businesses

- No fees, charges and testing costs payable by industry

The 2010 Regulation imposes fees and charges for direct regulatory activities provided to the food industry. This includes annual licence fees for food businesses covered by FSSs in the 2010 Regulation, and fees for Registered Training Organisations and third party auditors. Based on 2013-14 figures, the estimated annual cost of these fees for industry is \$6,172,571 (refer to the licensing cost in Table 1 of Appendix C).

Food businesses subject to audits and inspections under the 2010 Regulation are also charged for this activity based on a prescribed hourly rate. Based on 2013-14 figures, the estimated annual cost of these charges for industry is \$1,907,326 (refer to the audits and inspections cost in Table 1 of Appendix C).

Additionally, certain food businesses covered by the 2010 Regulation are required to undertake routine product, water and/or environmental testing in accordance with the NSW Food Safety Schemes Manual. Based on 2014 figures, the estimated annual cost of this testing for industry is \$1,808,013 (refer to the testing cost in Table 1 of Appendix C).

In the absence of the 2010 Regulation, the payment of these fees, charges and testing costs would no longer be needed. The total of these costs is estimated at \$9,887,910 per annum (refer to the total cost for licensing, audits and inspections, and testing in Table 1 of Appendix C) or an equivalent PV for the five year analysis period of \$40,542,385.

- Reduced market entry barriers for new food businesses

The 2010 Regulation is an enabler of business certainty in high-risk sectors. It delivers a consistent, legislative platform for high-risk food businesses to meet their obligations to produce safe food. This provides a level playing field for participants entering and conducting business in these sectors, protecting the market by ensuring that businesses must factor in food safety as a legal prerequisite to trade. This allows NSW food businesses to market their products as high-quality, safe and reliable, and at premium prices to export markets.

Allowing the 2010 Regulation to lapse would remove this platform as there would be no means of ensuring that high-risk sectors consider food safety as paramount in their pre-market actions (i.e. a system of prevention would be lost). The overall requirement under the Act to provide safe food would remain, however business would lose the certainty that all participants are pro-actively considering food safety at all stages of production. This may lead to increased risk taking by businesses to cut costs in a competitive market. It would also increase marketplace competition, reduce the quality and safety of NSW products, impact business confidence, and increase the risk of market failure.

These costs cannot be quantified but are anticipated to be very large.

- Reduced food safety management and kilojoule display costs

Certain businesses are required to maintain a food safety program under the 2010 Regulation. These programs must be HACCP-based or comply with Standard 3.2.1 *Food Safety Programs* of the Code (which achieves the same outcomes as HACCP). The Regulation also prescribes charges payable by registered training organisations to the Food Authority for each food safety supervisor certificate that the organisation issues. This amount is \$30 per certificate. The total estimated annual cost of maintaining food safety programs and issuing food safety supervisor certificates for industry is \$12,324,021 (refer to the food safety management cost in Table 1 of Appendix C).

The 2010 Regulation also requires certain retail food businesses to display the kilojoule content of their products and the reference statement 'the average adult daily energy intake is 8,700kJ' on menus (in-store, drive-through, on-line, takeaway), posters and display cabinets. The estimated annual cost of displaying nutritional information on menus for industry is \$621,071 (refer to the compliance cost in Table 1 of Appendix C).

In the absence of the 2010 Regulation, certain businesses would save the costs associated maintaining a food safety program (e.g. updating procedures, completing records, internal audits), issuing food safety supervisor certificates and displaying nutritional information (i.e. kilojoule content, reference statement) on menu boards, posters and display cabinets. The total of these costs is estimated at \$12,945,092 per annum (refer to the total costs for food safety management and compliance in Table 1 of Appendix C) or an equivalent PV for the five year analysis period of \$53,077,435.

Benefits for government

- No costs associated with remaking the 2010 Regulation

There would be a financial benefit to government in not having to remake the 2010 Regulation. However, the staged repeal process is a statutory requirement under the SL Act thus any cost savings from not having to remake the 2010 Regulation have not been considered in this CBA.

- Reduced compliance costs

To effectively administer the requirements of the 2010 Regulation, the government is required to undertake compliance activities. The costs for these activities are employee related expenses, operating expenses, and the depreciation and amortisation of vehicles and other equipment. Based on 2013-14 figures, these compliance costs were estimated at \$7,681,358 or an equivalent PV for the five year analysis period of \$31,495,083.

Benefits for consumers

- Reduced retail food prices

Allowing the 2010 Regulation to lapse would reduce costs for licensed food businesses. It would also increase competition as there would be fewer barriers for new businesses to enter the market. However, allowing the 2010 Regulation to lapse is unlikely to have an impact on consumers as it only makes up a small component of retail food prices (e.g. 0.65% of costs to the consumer in the dairy industry and 0.11% of costs to the consumer in the egg industry²¹).

Benefits for community and the environment

There are no expected benefits for the community and the environment from allowing the 2010 Regulation to lapse.

Table 6: Summary of costs and benefits of Option 2 – allowing the 2010 Regulation to lapse

Costs	Present Values (\$)
Costs for businesses	
Reduced market protection for food businesses	Very large: 10,000,000 – 99,999,999
Reduced market confidence in food produced and sold in NSW	Very large: 10,000,000 – 99,999,999
Increased incidence of foodborne illness	Very large: 10,000,000 – 99,999,999
Reduced assistance for industry to help them comply with food safety standards	Very large: 10,000,000 – 99,999,999
Increased court costs for offenders	Large: 1,000,000 – 9,999,999
Loss of economic activity and employment	Very large: 10,000,000 – 99,999,999
Costs for government	
Increased difficulty in administering the <i>Food Act 2003</i>	Very large: 10,000,000 – 99,999,999
Increased health care costs relating to foodborne illness	261,867,028
Inability to efficiently respond to emergency response incidents	Extremely large: 100,000,000 – 1,000,000,000
Failure to meet national and international obligations	Extremely large:

Costs	Present Values (\$)
No licence fees and audit and inspection charges payable to the Food Authority	33,129,174
Increased court costs for government	Large: 1,000,000 – 9,999,999
No administrative charges payable to local government	Negligible
Costs for consumers	
Reduced consumer confidence in food produced and sold in NSW	Very large: 10,000,000 – 99,999,999
Costs for community and the environment	
	None identified
Total costs	567 – 3,015 million
Benefits	Present Values (\$)
Benefits for businesses	
No fees, charges and testing costs payable by industry	40,542,385
Reduced market entry barriers for new food businesses	Very large: 10,000,000 - 99,999,999
Reduced food safety management and kilojoule display	53,077,435
Benefits for government	
No costs associated with re-making the 2010 Regulation	Not considered
Reduced compliance costs	31,495,083
Benefits for consumers	
Reduced retail food prices	Negligible
Benefits for community and the environment	
	None identified
Total benefits	135 – 225 million
Net benefit (NPV)	- 432 to – 2,790 million Extremely large costs in the multiple millions of dollars incurred

4.2.3 Costs and benefits of Option 3: government support for self-regulation

Option 3 – Costs

Costs for businesses

- Reduced market protection for food businesses

See under Option 2 above.

- Reduced market confidence in food produced and sold in NSW

See under Option 2 above.

- Increased incidence of foodborne illness

See under Option 2 above.

- Reduced assistance for industry to help them comply with food safety standards

See under Option 2 above.

- Increased court costs for offenders

See under Option 2 above.

- Loss of economic activity and employment

See under Option 2 above.

Costs for government

- Voluntary industry codes of practice and education campaigns

Under this option it is assumed that government would make a financial contribution towards education campaigns. The cost associated with effective education campaigns is substantial. For example, between November 2010 and October 2012, the Food Authority and the NSW Ministry of Health worked together on the '8700' nutrition education campaign. This campaign was targeted at consumers increasing their understanding of kilojoules, with the aim of making healthier food choices. The cost of the education campaign was \$1.2 million³⁸ and it included the development of a website, smart phone app., and media broadcasting.

The costs of government education campaigns for the high-risk sectors covered by the 2010 Regulation and consumers cannot be quantified but based on the cost of the '8700' campaign they are anticipated to be very large. If the 2010 Regulation lapses and the same level of support is expected by stakeholders, funding would need to come from consolidated revenue.

The 2010 Regulation provides the community with confidence that food safety risks are effectively managed by NSW food businesses. Voluntary industry codes of practice are one tool that could be used to assist in providing the community with confidence in the absence of the 2010 Regulation, however it is not known how effective they would be as enforcement action is unable to be taken against for non-compliance.

Voluntary codes of practice are often developed by industry associations, tailored to their membership (e.g. the processes and activities undertaken by large commercial businesses) and generally made available to their members at cost (i.e. by directly implementing the program or indirectly as part of the membership). There will be some sectors of the market that may not have access to these documents as they are not members. This is

particularly the case for small businesses that make up 94% of all licensed businesses and who rely heavily on the support services currently provided by the Food Authority.

It is anticipated that the financial implications of not having the 2010 Regulation and relying on voluntary industry codes of practice would be very large. The Food Authority would have continuing obligations under the Act to regulate NSW food businesses and ensure that they produce safe food, however the regulatory tool provided by FSSs would no longer be available.

- Increased difficulty in administering the *Food Act 2003*

See under Option 2 above.

- Increased health care costs relating to foodborne illness

See under Option 2 above.

- Inability to effectively respond to emergency response incidents

See under Option 2 above.

- Failure to meet national and international obligations

See under Option 2 above.

- No licence fees and inspection and audit charges payable to the Food Authority

See under Option 2 above.

- Increased court costs for Government

See under Option 2 above.

- No administrative charges payable to local government

See under option 2 above.

Costs for consumers

- Reduced consumer confidence in food produced and sold in NSW

See under Option 2 above.

Costs for community and the environment

There will be no expected costs for the community and the environment for government support for self-regulation.

Option 3 – Benefits

Benefits for businesses

- No fees, charges and testing costs payable by industry

See under Option 2 above.

- Reduced market entry barriers for new food businesses

See under Option 2 above.

- Reduced compliance costs associated with food safety programs and displaying nutritional information

See under Option 2 above.

Benefits for government

- No costs associated with re-making the Regulation

See under Option 2 above.

- Reduced compliance costs

See under Option 2 above.

Benefits for consumers

- Reduced retail food prices

See under Option 2 above.

Benefits for community and the environment

There will be no expected benefits for the community and the environment for government support for self-regulation.

Table 7: Summary of costs and benefits of Option 3 – government support for self-regulation

Costs	Present Values (\$)
Costs for businesses	
Reduced market protection for food businesses	Very large: 10,000,000 – 99,999,999
Reduced market confidence in food produced and sold in NSW	Very large: 10,000,000 – 99,999,999
Increased incidence of foodborne illness	Very large: 10,000,000 – 99,999,999
Reduced assistance for industry to help them comply with food safety standards	Very large: 10,000,000 – 99,999,999
Increased court costs for offenders	Large: 1,000,000 – 9,999,999
Loss of economic activity and employment	Very large: 10,000,000 – 99,999,999
Costs for government	
Voluntary industry codes of practice and education campaigns	Very large: 10,000,000 – 99,999,999
Increased difficulty in administering the <i>Food Act 2003</i>	Very large: 10,000,000 – 99,999,999
Increased health care costs relating to foodborne illness	261,867,028
Inability to efficiently respond to emergency response incidents	Extremely large: 100,000,000 – 1,000,000,000

Costs	Present Values (\$)
Failure to meet national and international obligations	Extremely large: 100,000,000 – 1,000,000,000
No licence fees and inspection and audit charges payable to the Food Authority	33,129,174
Increased court costs for Government	Large: 1,000,000 – 9,999,999
No administration charges payable to Local Government	Negligible
Costs for consumers	
Reduced consumer confidence in food produced and sold in NSW	Very large: 10,000,000 – 99,999,999
Costs for community and the environment	
	None identified
Total costs	577 – 3,115 million
Benefits	Present Values (\$)
Benefits for businesses	
No fees, charges and testing costs payable by industry	40,542,385
Reduced market entry barriers for new food businesses	Very large: 10,000,000 – 99,999,999
Reduced food safety management and kilojoule display costs	53,077,435
Benefits for government	
No costs associated with re-making the 2010 Regulation	Not considered
Reduced compliance costs	31,495,083
Benefits for consumers	
Reduced retail food prices	Negligible
Benefits for community and the environment	
	None identified
Total benefits	135 – 225 million
Net benefit (NPV)	- 442 to – 2,890 million Extremely large costs in the multiple millions of dollars incurred

4.2.4 Costs and benefits of Option 4: make the proposed Regulation

Option 4 – Costs

Costs for businesses

- Minimal increase to licence fees (CPI)

The proposed Regulation will reset the baseline for annual licence fees to reflect the annual application of the CPI which has been applied over 2010-15. CPI will be applied to licence fees annually over the five year period 2016-20 through the Regulation.

- Minimal increase to inspection and audit charges (CPI)

The proposed Regulation will reset the baseline for inspection and audit charges to reflect the annual application of the CPI which has been applied over 2010-15. Inspection and audit charges will continue to increase annually by CPI over next five year period 2016-20 through the Regulation.

- Increased local levies for shellfish harvesters

The proposed Regulation will remove the requirement for spat businesses to hold a licence with the Food Authority. This will result in an increase to the annual local shellfish program levies for harvest areas that currently include licensed spat businesses. These harvest areas are Port Stephens, Hastings River, Wallis Lake, Brisbane Waters and Camden Haven. The increase in local levies in these areas is dependent on a variety of factors including the number of licensees remaining in the harvest area, the number of sample testing sites, operating periods and recent environmental history (e.g. high rainfall events, algae blooms). Based on 2014 figures, the total increase to local levies for impacted shellfish harvest areas would be \$12,950 per annum or a PV equivalent for the five year analysis period of \$53,098.

Costs for government

- Removal of aquaculture and spat businesses from the 2010 Regulation

NSW aquaculture businesses are required to hold a licence with the Food Authority under the 2010 Regulation. It is proposed that this requirement be removed on the basis that aquaculture businesses do not supply food for human consumption. These businesses grow, harvest and supply live seafood. However, an aquaculture business that also processes fish for human consumption would still be required to hold a licence with the Authority, maintain a food safety program and be subject to routine audits. Based on 2013-14 figures, the impact of this amendment on the Food Authority would be a reduction in licence revenue of \$15,660 per annum.

NSW spat businesses are also required to hold a licence with the Food Authority, and similarly it is proposed that this requirement be removed for spat businesses. Spat are immature oysters that are sold to shellfish harvesters for further growth and development prior to sale for human consumption. There are currently 10 licensed spat growers in NSW who are located in the Port Stephens, Hastings River, Wallis Lakes, Brisbane Waters and Camden Haven harvest areas. This proposed amendment is in response to the IPART (*Reforming licensing in NSW*) review³⁹ that recommended the Food Authority evaluate spat licensing. This review was undertaken as part of the staged repeal process with the conclusion that spat businesses should be removed from the 2010 Regulation on the basis that spat is not food for sale, and that NSW shellfish growers and harvesters are already licensed with the Food Authority. Based on 2013-14 figures, the impact of this amendment on the Food Authority and local shellfish programs would be a reduction in revenue of \$18,000 per annum.

These two amendments translate to an equivalent PV for the five year analysis period of \$138,013.

Costs for consumers

In comparison to the status quo, no costs to consumers have been identified. It is not expected that consumers will incur any additional costs in relation to the new requirements of the proposed Regulation.

Costs for community and the environment

In comparison to the status quo, no costs for community and the environment have been identified. It is not expected that community and the environment will incur any additional costs in relation to the new requirements proposed.

Option 4 – Benefits

Benefits for businesses

- No licence fees payable by aquaculture and spat businesses

Based on 2013-14 figures, the proposed amendment to remove the licensing requirement for aquaculture and spat businesses is estimated to save industry \$15,660 and \$18,000 each year, respectively, or an equivalent PV for the five year analysis period of \$138,013.

- Reduced market entry barriers for new businesses

Removal of the licensing requirement for aquaculture businesses would reduce barriers (i.e. costs) for new businesses to enter these markets. It is not possible to estimate the cost of this benefit without knowing how many stakeholders would enter this market however it is anticipated to be large as aquaculture is a growth industry.

- Increased alignment for food safety supervisors and the egg FSS with national standards

The 2010 Regulation prescribes that a food safety supervisor trainer must be approved by the Food Authority and have at least 3 years work experience as a food handler of potentially hazardous food in the retail sector, an authorised officer performing functions of the Act at retail businesses, or as a trainer for a registered training organisation delivering an accredited course in food safety or a training package. The proposed Regulation would align NSW with national trainer and assessor requirements outlined in the Standards for Registered Training Organisations 2015 under the *National Vocational Education and Training Regulator Act 2011* (Cth).

The Food Authority introduced the egg FSS in 2010. Since then, Standard 4.2.5 of the Code has been introduced. The proposed Regulation would align NSW with the national Standard. For example, cl. 155 (Food for birds not to introduce risk of contamination of eggs) in the 2010 Regulation would be removed as it is picked up in cl.4 (Inputs) of Standard 4.2.5. Additionally, the definition for a broken egg in cl. 149 of the 2010 Regulation would be removed as it is picked up under cl.3 Definitions of Standard 4.2.5 (see Appendix B for more detail).

These changes would provide businesses with a clearer understanding of their legal requirements and a reduction in administrative burden, thus an increase in efficiency. These benefits cannot be quantified but are anticipated to be large.

- Reduced notification costs for retail food businesses

The Act requires all food businesses, with the exception of licence holders and some primary production businesses, to notify the appropriate enforcement agency of their contact details (including the locations of all their premises) and the nature of their business. The Regulation prescribes the Food Authority as the enforcement agency for the purposes of notification under section 100 of the Act. Under certain circumstances, the Regulation allows the Food Authority to make arrangements with local council to accept notifications.

The Independent Pricing and Regulatory Tribunal (*Local Government and Compliance*) review⁴⁰ recommended that the Food Authority consider options to reduce the potential for duplication in businesses notifying the Food Authority under this requirement. The proposed Regulation would allow retail food business to supply notification information to local councils, as appropriate enforcement agencies. The Food Authority would still receive notification information for all other food businesses (e.g. small egg farms; non-licensed food manufacturers). IPART estimated that this would be a one-off total cost saving of \$800,000 across all NSW food businesses.

Benefits for government

- CPI increase to licence fees

The proposed Regulation will reset the baseline for annual licence fees to reflect the annual application of the CPI which has been applied over 2010-15. Licence fees will continue to increase annually by CPI over the five year period 2016-20 through the Regulation.

- CPI increases to inspection and audit charges

The proposed Regulation will reset the baseline for inspection and audit charges to reflect the annual application of the CPI which has been applied over 2010-15. Inspection and audit charges will continue to increase annually by CPI over the five year period 2016-20 through the Regulation.

- Reduced administration costs for food safety supervisors, the egg FSS and notification

Aligning the food safety supervisor trainer requirements with the national trainer requirements, outlined in the *Standards for Registered Training Organisations 2015* (Cth), and the egg FSS of the 2010 Regulation and Standard 4.2.5 of Code in the proposed Regulation would improve transparency and consistency, and reduce administration costs for government

Additionally, allowing local councils as appropriate enforcement agencies to receive notification information for retail food businesses would reduce administration costs for the Food Authority. These benefits cannot be quantified but are anticipated to be large.

Benefits for consumers

- Reduced retail price of aquaculture products

By removing the licensing requirement for aquaculture businesses there would be fewer barriers (i.e. costs) for new businesses to enter this market. This has the potential to reduce production costs and increase competition in this sector with the benefit of lower retail prices for aquaculture products. However, these benefits are anticipated to be very small.

Benefits for community and the environment

There will be no expected benefits for the community and the environment from the proposed Regulation.

Table 8: Summary of costs and benefits of Option 4 – make the proposed Regulation

Costs	Present Values (\$)
<i>Costs for businesses</i>	
Minimal increase to licence fees (CPI)	None identified
Minimal increase to inspection and audit charges (CPI)	None identified
Increased local levies for shellfish harvesters	53,098
<i>Costs for government</i>	
Removal of aquaculture and spat businesses from the 2010 Regulation	138,013
<i>Costs for consumers</i>	None identified
<i>Costs for community and the environment</i>	None identified
Total costs	191,111
Benefits	Present Values (\$)
<i>Benefits for businesses</i>	
No licence fees payable by aquaculture and spat businesses	138,013
Reduced market entry barriers for new businesses	Large: 1,000,000 – 9,999,999
Increased alignment for food safety supervisors and the egg FSS with national standards	Large: 1,000,000 – 9,999,999
Reduced notification costs for retail food businesses	800,000
<i>Benefits for government</i>	
CPI increase to licence fees	None identified
CPI increase to inspection and audit charges	None identified
Reduced administrative costs for food safety supervisors, the egg FSS and notification	Large: 1,000,000 – 9,999,999
<i>Benefits for consumers</i>	
Reduced retail price of aquaculture products	Very small: 5,000-49,999
<i>Benefits for community and the environment</i>	None identified
Total benefits	3.9 – 31.0 million
Net benefit (NPV)	3.8 – 30.8 million Large to Very large net benefits incurred

5.0 The preferred option

Table 9 below contains a summary of the CBA findings for each of the options.

Table 9: Summary of the findings of the CBA options

Options	Net Present Value (\$)
Option 1: remake the 2010 Regulation without amendments (the status quo)	0
Option 2: allow the 2010 Regulation to lapse	Less than 0 (Extremely Large net cost)
Option 3: government support for self-regulation	Less than 0 (Extremely Large net cost)
Option 4: make the proposed Regulation	Greater than 0 (Large to Very Large net benefit)

Option 1 would for the most part achieve the objectives of the Act, but a number of amendments to the 2010 Regulation have been identified that would reduce regulatory burden without increasing public health risks associated with food produced and sold in NSW.

Option 2 would provide quantifiable benefits of \$135 - \$225 million to businesses and government but would create public health and safety risks arising from an unregulated food industry. Consequently, there is an extremely large broadly quantifiable net cost ranging from \$432 - \$2,790 million (the NPV is less than \$0) associated with option 2. Damage to the reputation of the NSW food industry and the impact of limiting access to domestic and international export markets is likely under this option.

The costs and benefits of option 3 are similar to option 2 although the quantifiable benefits are slightly lower due to the assumed government costs associated with ongoing education campaigns. As for Option 2, there is an extremely large quantifiable net cost ranging from \$442 - \$2,890 million (the NPV is less than \$0).

The benefits to food businesses, government and consumers from option 4 provides a broadly quantifiable large benefit ranging from \$3.9 - \$31.0 million over five years (the NPV is greater than \$0). Option 4 allows the benefits of the 2010 Regulation to be retained. There are costs to government from option 4 (e.g. licence fees from spat and aquaculture businesses), nonetheless the benefits to industry justify these costs. There will be no licence fee, or audit and inspection charge increases under option 4, however shellfish harvesters may be subject to a small increase in their annual licence fees and local program levies if spat businesses are no longer required to financially contribute to local shellfish programs. This option would not result in any additional cost to consumers, and the community and the environment.

The 2010 Regulation no longer provides the best regulatory framework for the production and sale of safe food in NSW. For the reasons identified in section 3 of this document, it is not considered to provide optimum benefits to all stakeholders. The proposed Regulation is considered the most appropriate regulatory framework and, of the four options, provides the greatest net benefit. It is also the most effective means of achieving the objects of the Act.

6.0 Consultation

6.1 Consultation during the development of the proposed Regulation

User Review Survey

In July 2013, all Food Authority licence holders and Industry Consultative Committee (ICC) members were invited to participate in a *User Review Survey* to inform the staged repeal process for the 2010 Regulation. The objective of the survey was to gather stakeholder information that could be used as part of the internal review of the 2010 Regulation, to assist policy decisions and support the development of the RIS. The survey was completed by 1016 businesses representing 15% of the total number of stakeholders.

Feedback from the User review Survey and general information on the staged repeal process was provided at ICC meetings or as out-of-sessions papers on the following dates:

- NSW Seafood Industry Forum – 16 October 2013
- NSW Egg Industry Consultative Committee – 23 October 2013
- NSW Shellfish Committee – 20 November 2013
- NSW Vulnerable Persons Food Safety Scheme Consultative Committee – 13 November 2013
- Meat Industry Consultative Council – 2 December 2013 (out-of-session paper)
- NSW Dairy Food Safety Consultative Committee – 24 November 2014 (inaugural meeting)

Officer Survey

In October 2013, all Food Authority appointed food safety officers (FSOs) and Food Authority approved regulatory third party auditors (TPAs) were invited to participate in an *Officer Survey* to inform the staged repeal process for the 2010 Regulation. The objectives of this survey were the same as those for the User review Survey. The survey was completed by 53 Officer representing a 63% of the total number of stakeholders.

NSW Independent Pricing and Regulatory Tribunal (IPART) Review (2013): *Reforming licensing in NSW, Review of licence rationale and design*

The NSW Shellfish Committee was given the opportunity to comment on this review.

6.2 Consultation on the proposed Regulation

A range of stakeholders will be directly advised of the consultation process, and of where they can obtain copies of the proposed Regulation and RIS. See Appendix A for the list of these stakeholders.

In addition, the community is invited to make submissions on the proposed Regulation and RIS.

7.0 Evaluation and review

The proposed Regulation, once made, will be the subject of periodic review under the requirements of the *Subordinate Legislation Act 1989*. The Act provides for most regulations to be subject to repeal every five years if not reviewed and re-made.

Appendix A: List of stakeholders to be advised of the proposed Regulation and RIS

Registered Training Organisations and Food Safety Supervisor Trainers approved with the Food Authority

Third Party Auditors approved with the Food Authority

Fast Choices and Nutrition Labelling Reference Group, including representation from:

- NSW Health
- Department of Premier & Cabinet
- Choice
- National Heart Foundation (NSW)
- Boden Institute of Obesity, Nutrition, Exercise & Eating Disorders
- George Institute for Global Health
- Australian Food and Grocery Council
- Australian National Retailers Association
- Industry.

NSW Dairy Food Safety Consultative Committee, including representation from:

- Industry – Dairy Producers; Dairy Processors; Dairy Retailers; and Dairy Researcher
- NSW Department of Primary Industries.

Meat Industry Consultative Council, including representation from:

- Australian Meat Industry Council
- Australian Meat Processor Corporation
- Australian Game Meat Producers Association
- NSW Farmers' Association
- Australian Chicken Meat Federation
- Industry
- NSW Department of Primary Industries.

NSW Seafood Industry Forum, including representation from:

- Sydney Fish Market Pty Ltd
- Association of Fisherman's Co-operatives
- Seafood Importers Association of Australasia
- NSW Aquaculture Association Inc.
- Professional Fisherman's Association

- Industry – Seafood Wholesale/Processing Sector
- Master Fish Merchants Association of Australia
- NSW Department of Primary Industries.

NSW Shellfish Committee, including representation from:

- NSW Department of Primary Industries (Fisheries)
- Industry – South Coast Oyster Farmer; Mid North Coast Oyster Farmer; South Coast Oyster Farmer; North Coast Oyster Farmer; and Wild Harvester.

NSW Vulnerable Persons Food Safety Scheme Consultative Committee, including representation from:

- Aged & Community Services Association of NSW & ACT Inc.
- NSW Meals on Wheels Association
- Private Hospitals Association of NSW Inc.
- HealthShare NSW
- Institute of Hospitality in Healthcare
- Leading Age Services Australia NSW-ACT
- Council on the Ageing (NSW) Inc.

NSW Egg Industry Consultative Committee, including representation from:

- NSW Farmers' Association
- Free Range Egg Producers Association of NSW
- Australian Egg Corporation Ltd
- Industry – Small and large egg producers and processors
- NSW Department of Primary Industries.

Food Regulation Forum, including representation from:

- Local Government NSW
- Environmental Health Australia (NSW) Inc.
- The Development and Environmental Professionals' Association
- Local Government Professionals Australia
- NSW Small Business Commissioner (Independent).

Local Governments within NSW

Appendix B: Comparison table of the 2010 and the proposed 2015 Regulation

This table compares the main proposed amendments to the 2010 Regulation, it does not include minor changes such as updating the names of legislation and removing reference to past dates.

2010 Regulation reference	2010 Regulation	Proposed 2015 Regulation	Proposed Regulation reference
Part 1 Preliminary			
Cl. 3(1)	Cl. 3(1) provides a definition for a food safety program, as being a program certified under cl. 34 Certification of food safety program.	The definition of a food safety program is repealed to align with the repeal of the requirement for the Food Authority to certify a food safety program.	Not applicable
Part 2 Miscellaneous			
Cl. 4(2)	Cl. 4(2) prescribes the Food Authority as the appropriate enforcement agency for the purposes of s. 100 Notification of conduct of food businesses of the Act.	Local councils and Kosciusko National Park are prescribed as appropriate enforcement agencies to receive food business notification for the purposes of s. 100 of the Act. The Food Authority is also prescribed as an appropriate enforcement agency for the purposes of s. 100 of the Act.	Part 2 Miscellaneous Cl. 4 (2)(3)(4) and (5)
Cl. 8	Cl. 8 prescribes an application fee of \$150 to become an approved analyst for the purposes of s. 81 Approval of persons to carry out analyses of the Act.	This fee is repealed as the Food Authority has always waived it.	Not applicable
Cl. 11(1)	Cl. 11(1) prescribes the charge for inspections of non-licensed food businesses as \$250 per hour with a minimum charge of half an hour (excluding travel time). Cl. 11(2) allows this charge to increase annually in accordance with the CPI. As such, the 2015-16 inspection charge is to be \$284 per hour.	The baseline for inspection charges for non-licensed food businesses is reset to reflect the annual application of CPI since the making of 2010 Regulation. The fee baseline in Food Regulation 2015 will be \$284 per hour. The Food Regulation 2015 will further permit the annual application of CPI to inspection charges over the period 2016-20.	Part 3 Fees and charges Cl. 14 (1) and (2)

2010 Regulation reference	2010 Regulation	Proposed 2015 Regulation	Proposed Regulation reference
Part 2A Food safety supervisors			
Cl. 16(G)(2)(3b) and 16H	Cl. 16(G)(2)(3b) and 16(H) prescribes the training requirements for persons conducting food safety supervisor training on behalf of registered training organisations.	The requirements for trainers and assessors for the Food Safety Supervisor program are amended to align NSW with the national Standards for Registered Training Organisations 2015 (Cth) made under the <i>National Vocational Education and Training Regulator Act 2011</i> .	Part 4 Food safety supervisors Division 3 Approval of registered training organisations to issue food safety supervisor certificates Cl. 24(2)(3a) and (3b) Cl. 25
Cl. 16H(a)	Cl. 16H(a) prescribes the qualifications for food safety supervisor trainers. Specifically, they must be approved by the Food Authority and have at least 3 years work experience in one or more of the following: as a food handler of ready-to-eat potentially hazardous food in a retail business, as an authorised officer performing functions of the Act at retail businesses, or as a trainer for a registered training organisation delivering an accredited course in food safety or a training package.	The requirement is amended so that the Food Authority is not to agree to a person carrying out training and assessment on behalf on approved Registered Training Organisation for the purpose of issuing a Food Safety Supervisor certificate unless the person has met training requirements of the Standards for Registered Training Organisations made under the <i>National Vocational Education and Training Regulator Act 2011</i> .	Part 4 Food safety supervisors Division 3 Approval of registered training organisations to issue food safety supervisor certificates Cl. 25
Part 3 Provisions relating to Food Standards Code			
Cl. 18(2)(3)	Cl. 18(2) permits the Food Authority to make an arrangement with a local council to receive notifications and then forward those notifications to the Food Authority. Where the Food Authority provides for a local council to provide this service Cl. 18(3) provides that the council may charge a fee.	The requirement is superseded by clause 4(3) of Food Regulation 2015 by direct provision of retail food business notification information to Local Councils.	Part 2 Miscellaneous Cl. 4(3)

2010 Regulation reference	2010 Regulation	Proposed 2015 Regulation	Proposed Regulation reference
Part 4 Food safety schemes – general provisions			
Cl. 22(2)	Cl. 22(2) prescribes that the Food Authority may refuse to issue a licence if a food business is required to have a food safety program, and there is no program.	The requirement is amended so that the Food Authority may refuse to grant a licence if they consider that the food business's food safety program does not comply with the requirements of the Code or the Regulation.	Part 7 Food safety schemes – general provisions Division 2 Licensing of food businesses Cl. 43(2)(b)
Cl. 37(1)	Cl. 37(1) prescribes the charge for inspections and audits of licensed food businesses as \$250 per hour with a minimum charge of half an hour (excluding travel time). Cl. 37(2) allows this charge to increase annually in accordance with the CPI. As such, the 2015-16 inspection and audit charge is to be \$284 per hour.	The baseline for inspection and audit charges for licensed food businesses is reset to reflect the annual application of CPI since the making of 2010 Regulation. The fee baseline in Food Regulation 2015 will be \$284 per hour. The Food Regulation 2015 will further permit the annual application of CPI to inspection and audit charges over the period 2016-20.	Part 7 Food safety schemes – general provisions Division 4 Inspections and audits Cl. 57(1) and (2)
Cl. 34	Cl. 34 prescribes must certify a food safety program for a licensed food business meets the requirements of the Code and the Regulation.	This clause is repealed as it is no longer relevant.	Not applicable
Part 5 Dairy food safety scheme			
Cl. 43	Cl. 43 prescribes the provisions of the Code that apply to dairy primary production businesses.	This requirement is amended to require dairy primary production businesses that produce raw milk cheese to comply with cl. 17-30 of Standard 4.2.4 of the Code. These specific clauses relate to additional requirements for the primary production and transportation of milk for raw milk cheeses. Amendments to Standard 4.2.4 of the Code for the production of raw milk cheese commenced on 26 February 2015.	Part 8 Dairy food safety scheme Division 1 Preliminary Cl. 63(c)

2010 Regulation reference	2010 Regulation	Proposed 2015 Regulation	Proposed Regulation reference
Cl. 45(2)	Cl. 45(2) prescribes those businesses and products that are exempt from processing dairy products as per Standard 4.2.4 of the Code.	The requirement is amended to allow for the production of raw milk cheese if a person complies with clauses 31-35 of Standard 4.2.4 of the Code.	Part 8 Dairy food safety scheme Division 2 Requirements in relation to dairy products Clause 65(1)(b)
Cl. 49 and 50	Cl. 49 prescribes the <i>Australian Manual for Control of Salmonella in the Dairy Industry</i> , published by the Australian Dairy Authorities' Standards Committee (ADASC), for dried milk products at dairy processing facilities. Cl. 50 prescribes the <i>Australian Manual for Control of Listeria in the Dairy Industry</i> , also published by ADASC, for dairy processing facilities.	The requirements are repealed as the publications are now obsolete.	Not applicable
Part 8 Seafood food safety scheme			
Cl. 116 (1)(d) and Item 2 of Part 4 in Schedule 4	Cl. 116 defines a seafood business for the purposes of the 2010 Regulation and includes aquaculture (1)(d). Cl. 20 of the 2010 Regulation requires all food businesses, including seafood businesses, to hold a licence with the Food Authority. As such, aquaculture businesses are currently licensed with the Food Authority.	The requirement for aquaculture licenses (no processing) is repealed. These businesses do not supply food for human consumption. These businesses grow, harvest and supply live seafood. However, an aquaculture business that also processes fish for human consumption will still be required to hold a licence with the Food Authority.	Not applicable
Cl. 116 (1)(c), 129(3), 129(4)(a), 130(1)(b), 134 heading, 134(1), 137(1)(b), 138(2), 138(3), 138(4)(a)(i) and	Cl.116 defines a seafood business for the purposes of the 2010 Regulation and includes the cultivating of spat (1)(c). Spat are immature oysters that are sold to shellfish harvesters for further growth and development prior to sale for human consumption. Cl. 20 of the 2010 Regulation requires all food	The requirement for spat businesses to be licensed with the Food Authority is repealed. There are currently 10 spat licences in NSW, spread over 5 harvest areas, from a total of 250 shellfish industry licences in NSW. This amendment is in response to the Independent Pricing and Regulatory Tribunal (<i>Reforming licensing in NSW</i>) review that recommended the Food	Not applicable

2010 Regulation reference	2010 Regulation	Proposed 2015 Regulation	Proposed Regulation reference
138(4)(b)	businesses, including seafood businesses, to hold a licence with the Food Authority. As such, spat businesses are currently licensed with the Food Authority.	Authority review spat licensing. The Food Authority, following this review, concluded that spat licensing be repealed as spat is not food for sale and shellfish growers and harvesters are already licensed with the Food Authority.	
Cl. 129(4)(a)	Cl. 129(4)(a) prescribes that local shellfish committee members must be licensed with the Food Authority as a shellfish business.	The requirement is amended to allow a shellfish licensee to nominate a person as a member of a local shellfish committee. This would enable skilled retirees to volunteer their time to assist industry in running the local shellfish program. A nominee must have previously held a shellfish licence with the Food Authority and have previously complied with the NSW Shellfish Program.	Part 11 Seafood safety scheme Division 4 New South Wales Shellfish program Cl. 147(4)(a) and (b)
Part 10 Egg food safety scheme			
Cl. 149	Cl. 149 prescribes the definitions for the purposes of the egg FSS. It defines a broken egg as 'an egg with a cracked shell and a broken shell membrane'. It defines a cracked egg as 'an egg with a cracked shell, where a crack is visible or visible by candling, and an unbroken shell membrane'.	The definition for broken egg and the reference to an unbroken shell membrane from the definition for cracked egg is repealed. These amendments align definitions used in the NSW egg FSS with Standard 4.2.5 of the Code.	Part 13 Egg food safety scheme Division 1 Preliminary Cl.165
Cl. 155	Cl. 155 prescribes that layer hens must not be fed stock food that is likely to contaminate eggs sold for human consumption.	This requirement is repealed as it duplicates an existing requirement of Standard 4.2.5. of the Code. Standard 4.2.5 already applies to egg primary producers in the NSW egg FSS.	Not applicable
Cl. 160	Cl. 160 prescribes that broken eggs must not be sold for human consumption, broken eggs can only be used during food preparation (i.e. whisking whole eggs that are used in food).	This requirement is repealed as it relates to a broken egg.	Not applicable

2010 Regulation reference	2010 Regulation	Proposed 2015 Regulation	Proposed Regulation reference
Schedule 4 Licence fees			
<p>Cl. 57, 101, 110, 133, 148 and 170</p>	<p>Schedule 4 prescribes the annual licence fees for food businesses as per cl. 57, 101, 110, 133, 148 and 170 of the 2010 Regulation.</p> <p>Licence fees are based on a business' number of full time equivalent (FTE) food handlers.</p> <p>For dairy, meat, plant products, seafood and egg businesses the following annual licence fees are prescribed:</p> <p>0 to 5 FTE \$390 5 to 50 FTE \$800 More than 50 FTE \$3,500</p> <p>For vulnerable persons businesses the following annual licence fees are prescribed:</p> <p>0 to 3 FTE \$244 3 to 10 \$313 10 to 30 \$578 30 to 50 \$839 More than 50 FTE \$1,102</p> <p>Transport vehicles (including fishing vessels), animal food field depots and poultry farms are charged a set annual fee of \$290, and game meat field depots are charged a set annual fee of \$390.</p> <p>Cl. 57(2), 101(2), 110(2), 133(2), 148(2) and 170(2) allow these fees to increase annually in accordance with the CPI.</p>	<p>Reset annual licence fees to respond to CPI increases from 2010-15.</p> <p>For dairy, meat, plant products, seafood and egg businesses the following annual licence fees will be prescribed for 2015-16:</p> <p>0 to 5 FTE \$441 5 to 50 FTE \$910 More than 50 FTE \$3,988</p> <p>For vulnerable persons businesses the following annual licence fees will be prescribed:</p> <p>0 to 3 FTE \$276 3 to 10 \$355 10 to 30 \$657 30 to 50 \$954 More than 50 FTE \$1,254</p> <p>For transport vehicles (including fishing vessels), animal food field depots and poultry farms an annual licence fee of \$328 will be prescribed for 2015-16, and for game meat field depots the fee will be \$441.</p>	<p>Schedule 3 Licence fees</p> <p>Cl. 75(2), 119(2), 128(2), 152(2), 164(3) and 183(2) allow these fees to increase annually in accordance with the CPI.</p>

Appendix C: Costings

The tables below provide estimated and actual industry and government costs for Option 2 (Allow the 2010 Regulation to lapse) and Option 3 (Not having a regulation and allowing self-regulation to meet the objectives of the Act) in section 4.0 Cost benefit analysis of the Regulatory Impact Statement.

Table 1: Estimated 2013-14 cost to industry incurred by the 2010 Regulation

Type of industry cost	Estimated 2013-14 cost (\$)	Explanatory notes
Testing	1,808,013	The 2010 Regulation requires certain businesses to comply with testing requirements outlined in the NSW Food Safety Schemes Manual. This includes product testing, water testing and environmental testing charges payable to a third party.
Licensing	6,172,571	Includes the fees and charges payable to the Food Authority by licensed businesses, Registered Training Organisations (RTOs), and Third Party Auditors.
Food safety management	12,324,021	Includes the issuing of Food Safety Supervisor certificates by RTOs (approximately \$250,000) and the on-going costs to industry associated with maintaining food safety programs ⁴¹ . The food safety management cost for the vulnerable persons sector is excluded because food safety programs for these businesses are a requirement of the Act. As such, food safety programs would still be required by this sector under options 2 and 3.
Audits and inspections	1,907,326	Includes the fees and charges payable to the Food Authority for audits and inspections of licensed businesses and non-licensed businesses covered by the Food Authority's Wholesaler Manufacturer Food Inspection Program.
Compliance	621,072	Includes the on-going compliance costs to industry associated with displaying nutrition (i.e. kilojoules) information.
Estimated total 2013-14 cost to industry	\$ 22,833,003	

Table 2: Estimated 2013-14 industry cost payable to the Food Authority

Estimated total 2013-14 cost to industry	\$22,833,003
Less	
• testing cost,	(1,808,013)
• food safety management cost, and	(12,324,021)
• compliance cost	(621,072)
Estimated total 2013-14 industry cost payable to the Food Authority	\$8,079,897

Appendix D: *Food Act 2003* (s103) requirements

Proposed Food Regulation 2015 will remake six FSSs. The requirements of section 103 of the *Food Act 2003* are therefore relevant to this proposal. Each of those requirements has been fulfilled as indicated in the following table.

Section	Requirement	Comment
s103(3)(a)	An assessment of food safety risks in the industries or sectors of industry to which FSSs relate.	The full assessment ¹⁴ , was published by the Food Authority in March 2009. Periodic review of each FSS assessment was undertaken between 2012 and 2014, which are available on the Food Authority's website at: http://www.foodauthority.nsw.gov.au/science/risk-framework-and-studies/risk-assessments-of-food-safety-schemes . Parts of these assessments are summarised or referenced throughout this RIS. See also Section 2.3.
s103(3)(b)	Statement of whether FSSs are based on national standards or supplements national standards.	The FSSs adopt and/or facilitate implementation of various national standards. See also Sections 2.3 and 2.6.
s103(3)(c)	An explanation as to whether FSSs are performance-based or prescriptive, or a combination of both, and the rationale for the approach adopted. This takes into account the assessed food safety risks in the relevant sectors of industry and the capacity of the people involved in those sectors to deal adequately with the risks.	FSSs are largely performance based. FSSs are through-chain (from primary production through to the final consumer), risk and HACCP-based (or equivalent). See also Table 2 and 4.2.2.
s103(3)(d)	An explanation of the scope of FSSs, including the persons who have responsibilities under the Schemes.	Provided at Section 2.3.
s103(3)(e)	An explanation of agreements involving the NSW Food Authority and other government agencies as to the regulation of food business or activity carried out to which the FSSs relate.	Key agreements are with: Department of Agriculture (Cth) – who recognize Food Authority audits of export-registered dairy and shellfish businesses. Conversely, the Food Authority recognises Department of Agriculture (Cth) audits of export-registered meat and poultry businesses. Local Government – who are excluded from providing food regulatory services for any business subject to a NSW FSS.
s103(3)(f)	An explanation of why the licensing scheme is necessary to ensure the safety of food.	Provided at Sections 3.3 and 4.2.2
s103(3)(g)	An assessment of quality assurance schemes operating in the industries or industry sectors to which FSSs relate, including an assessment of the extent to which that scheme satisfies the requirements of any relevant national standard.	Provided at Section 3.4

Appendix E: References

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