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# New South Wales Auditor-General's Report

## Performance Audit

### Monitoring food safety practices in retail food businesses

NSW Food Authority

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Our major responsibility is to conduct financial or 'attest' audits of State public sector agencies' financial statements. We also audit the Total State Sector Accounts, a consolidation of all agencies' accounts.

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In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Monitoring food safety practices in retail food businesses: NSW Food Authority**.

A handwritten signature in dark ink, appearing to read 'Margaret Crawford'.

**Margaret Crawford**  
Auditor-General  
15 September 2016

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# Executive summary

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Under the *Food Act 2003* (the Act), the NSW Food Authority (the Authority) is responsible for ensuring that food sold in New South Wales is safe and fit for human consumption. Its responsibilities cover all sectors of the food industry, including primary production, manufacturing, transport and retail food businesses, such as restaurants, cafes, bakeries and takeaways.

In this audit, we focused on the Authority's responsibility to ensure that retail food businesses comply with national food safety standards.

To meet this responsibility, the Authority appoints enforcement agencies, which are primarily local councils, to inspect and monitor around 40,000 retail food businesses across the State. Councils assess whether retail food businesses in their area comply with food safety standards.

If retail food businesses do not comply with these standards, they risk incurring enforcement action, such as fines or closure. There is also the potential for people to suffer from a range of foodborne illnesses, such as gastroenteritis caused by salmonella.

The Authority has established a risk-based approach for assessing compliance, which has two elements.

- a risk-based model that provides a framework to classify, inspect and assess retail food businesses' compliance with food safety standards
- a service delivery model that outsources inspection and enforcement activities to councils to monitor all retail food businesses across the State.

This audit assessed the effectiveness of the Authority in ensuring retail food businesses comply with food safety standards. To assist us in making this assessment, we asked:

1. Does the Authority have an effective risk-based approach to ensure compliance with food safety standards?
2. Does it effectively monitor compliance with food safety standards?

We assessed the Authority's risk-based approach against the Department of Premier and Cabinet's good regulatory practice guidelines (DPC's guidelines).

## Conclusion

**While the Authority consistently reports a high rate of compliance by retail food businesses with food safety standards, it does not obtain sufficient data from councils, or have effective controls, to provide assurance that the reported rate is accurate.**

**New South Wales has a lower rate of foodborne illness than the national average. This result reflects some good practices in the Authority's risk-based approach and councils' commitment to ensuring retail food businesses meet food safety standards.**

**To ensure New South Wales continues to have a low rate of foodborne illness, the Authority needs to be more effective in providing assurance that retail food businesses comply with food safety standards. It also needs to better monitor councils' activities to ensure they meet the Authority's requirements, and clarify roles and responsibilities between it and councils.**

### Low rates of foodborne illness reflect the Authority's good practices

The Authority has some good practices to ensure that food sold in New South Wales is safe and fit for human consumption. The Authority focuses on providing guidance and training to councils and retail food businesses to improve compliance with food safety standards. This is

consistent with DPC's guidelines, which advocate education and training to encourage compliance in the first instance, rather than punitive enforcement action.

The Authority also has a hierarchy of compliance tools, including an escalation of enforcement actions depending on the risks to human health. This is also consistent with DPC's guidelines.

The Authority provides guidance to councils on the risk classification and monitoring of retail food businesses. This is supported by a standard food safety inspection checklist and guidelines that councils can use to identify instances of non-compliance with food safety standards. The checklist is available online, so retail food businesses can self-assess their compliance with food safety standards. To encourage consistent application of the checklist across the State, the Authority provides training to council inspectors on its use.

The Authority also facilitates regular networking meetings across the State to provide guidance and training to councils and retail food businesses. The meetings are designed to improve councils' and retail food businesses' knowledge of, and compliance with, food safety standards. The meetings also enable the Authority, councils and retail food businesses to identify and discuss food safety issues.

### **Some improvements will help ensure foodborne illness rates continue to be low**

While the Authority has implemented most aspects of DPC's good regulatory practice guidelines, there are two important areas for improvement. The Authority currently does not effectively monitor council activities, nor has it clarified roles and responsibilities in its service delivery model.

The Authority has not implemented sufficient controls to monitor the consistency and quality of regulatory activities conducted by councils. Consequently, the Authority cannot provide assurance that councils apply food safety inspection and enforcement activities in accordance with its requirements consistently across the State.

The Authority has not clearly defined all roles and responsibilities between it and councils. For example, it is unclear what corrective action the Authority would take if a council's inspection and monitoring practices are deficient. According to DPC's guidelines, clearly defined roles and responsibilities are an important control, particularly where functions are delegated.

Even though the Authority appointed councils to conduct inspection and monitoring activities in relation to retail food businesses, the Act does not allow the Authority to delegate its core responsibility for food safety.

We identified other gaps in the Authority's approach that limit its ability to provide assurance that retail food businesses comply with food safety standards. For example:

- the data it collects from councils is not sufficient or timely to allow it to identify the extent and impact of non-compliance
- its guidelines for applying the risk-based model need updating
- its current performance indicators are not sufficient to monitor the consistency and quality of the regulatory activities
- its networking meetings and training programs are not always well attended by councils.

There are practical reasons to address these gaps. For example, the Authority relies on annual food regulatory activity data from councils to monitor the compliance rates of retail food businesses with food safety standards. The Authority reported an annual compliance rate of more than 90 per cent for retail food businesses in each of the last three years. The Authority does not validate the data provided by councils, and therefore cannot provide assurance that the reported compliance rate is accurate.

## Recommendations

We recommend that the NSW Food Authority should, by June 2017:

1. improve its risk-based approach by:
  - a) monitoring the consistency and quality of regulatory activities undertaken by councils and other enforcement agencies
  - b) clarifying the roles and responsibilities between it, councils and other enforcement agencies
  - c) updating its guidelines to councils, including defining distinct monitoring requirements for medium and high risk retail food businesses
  - d) developing additional detailed performance indicators, with baseline data, to assess the effectiveness of regulatory activities undertaken by councils and other enforcement agencies.
2. improve its monitoring and oversight of food safety inspection and enforcement activities, conducted by councils on its behalf, by:
  - a) ensuring it receives and promptly analyses sufficient and timely information from councils
  - b) improving the availability of training and guidance material for council inspectors.



# Key findings

## 1. Risk-based approach

**The NSW Food Authority has established a risk-based approach, which includes a risk-based model and a service delivery model. The Authority's risk-based model provides the structure to classify and inspect retail food businesses according to their risk to human health. Under its service delivery model, the Authority has appointed councils to conduct inspection and enforcement activities for retail food businesses. Overall, the Authority has a reasonable risk based approach. We have identified areas for improvement in both its risk-based model and service delivery model.**

We assessed the Authority's risk-based approach against good regulatory practice guidelines, and identified that it meets most aspects of good regulatory practice. We found two aspects of the Authority's regulatory practices that need improvement. First, the Authority does not monitor the consistency and quality of regulatory activities conducted by councils to ensure they meet the Authority's requirements. This means that it cannot provide reasonable assurance that councils apply food safety inspection and enforcement activities consistently across the State. Second, the Authority does not currently collect timely data from councils in sufficient detail to enable it to identify systemic issues of non-compliance with food safety standards. Better data will enable the Authority to more effectively identify and address food safety concerns.

Councils apply the risk-based model to classify retail food businesses as low, medium, or high risk. The risk classification defines the minimum number of inspections a council should conduct on a retail food business each year. Overall, the model provides a reasonable framework to assess the compliance of retail food businesses against food safety standards. The Authority can improve the model by specifying the circumstances in which councils should review a retail food business' risk classification, and define distinct monitoring requirements for medium risk and high risk retail food businesses. These improvements would further minimise the risks to human health posed by retail food businesses.

The service delivery model outsources inspection and enforcement activities to councils to monitor retail food businesses across the State. This model is underpinned by a Food Regulation Partnership (FRP) and an Instrument of Appointment (Instruments) for each council. The FRP is an agreement between the Authority and councils to ensure all retail food businesses are inspected to assess compliance with food safety standards. The Instruments give councils authority to monitor, and take enforcement action against, retail food businesses. The Instruments, issued by the Authority, have no end date or scheduled review date. Neither the FRP, nor the Instruments, specify roles, responsibilities, accountabilities and monitoring arrangements between the Authority and councils. These gaps limit the Authority's ability to improve council inspection and monitoring practices.

The Authority has published three high-level food safety performance indicators. It could improve these by developing additional performance indicators at a greater level of detail, with baseline data to assess the effectiveness of regulatory activities. For example, one current performance indicator is reducing foodborne illnesses by 30 per cent. While this is a good indicator, it does not enable the Authority to assess changes in the type or location of foodborne illnesses. This level of detail would enable the Authority to assess all aspects of its performance.

## Recommendations

NSW Food Authority should, by June 2017:

1. improve its risk-based approach by:
  - a) monitoring the consistency and quality of regulatory activities undertaken by councils and other enforcement agencies
  - b) clarifying the roles and responsibilities between it, councils and other enforcement agencies
  - c) updating its guidelines to councils, including defining distinct monitoring requirements for medium and high risk retail food businesses
  - d) developing additional detailed performance indicators, with baseline data, to assess the effectiveness of regulatory activities undertaken by councils and other enforcement agencies.

New South Wales has a lower rate of foodborne illness compared to other Australian States. In 2014, 4,616 cases of foodborne illness were reported within New South Wales, representing only 0.61 foodborne illnesses per 100,000 residents. See Appendix 3 for a summary of the rate of foodborne illnesses reported in each State and Territory. New South Wales is the only Australian State that has a single food regulatory authority responsible for regulating and monitoring the food industry 'from paddock to plate'.

To meet its responsibility for monitoring retail food businesses' compliance with food safety national standards, the NSW Food Authority has established a risk-based approach. The risk-based approach includes a risk-based model, described in section 1.1, and a service delivery model, described in section 1.2.

### 1.1 NSW Food Authority's risk-based model

The first element of the risk-based approach is the Authority's risk-based model. The risk-based model provides a structure to classify and inspect retail food businesses to assess compliance with food safety standards. The risk-based model comprises:

- the risk classification of retail food businesses
- the inspection rate of retail food businesses
- a standard inspection checklist (the Food Premises Assessment Report (FPAR))
- enforcement action that escalates depending on the level of non-compliance of retail food businesses.

Councils use the risk-based model to decide which retail food businesses need to be inspected, and the frequency of inspections.

#### The risk-based model classifies retail food businesses according to the risk they pose to human health

Retail food businesses register with their council when they commence trading. The council classifies each retail food business as having a high, medium or low risk to human health. Factors that affect the risk classification include:

- the types of food sold
- the amount of handling and processing of food
- if the customer base is a vulnerable population.

Low risk businesses, such as newsagents, mainly sell pre-packaged, ready-to-eat foods. High and medium risk retail food businesses, such as cafes, use raw ingredients, and produce and sell their own products. This classification method is based on Food Standards Australia and New Zealand (FSANZ) Priority Classification System For Food Retail Businesses (formally known as the Australia New Zealand Food Authority). The Authority has issued a guideline to assist councils to apply this classification.



The risk classification defines the minimum number of inspections councils should undertake of each retail food business each year. The current minimum inspection frequency is a legacy of guidelines and reporting requirements established prior to the creation of the Authority. Low risk retail food businesses only require an inspection in response to an incident or complaint. Medium and high risk businesses require at least one inspection every year. The Authority advises that it is reviewing the inspection frequency requirements.

### **The risk-based model provides a reasonable structure for councils, but there is room for improvement**

Overall, the risk-based model provides a reasonable structure to assess the compliance of retail food businesses against food safety standards. The Authority can improve this model by refining the risk classification and inspection frequency requirements.

The Authority does not verify that councils classify retail food businesses correctly. If councils do not classify businesses correctly, they may not inspect the businesses as regularly as needed. The Authority also does not check whether all councils apply the same risk classification to similar retail food businesses across the State. Without this, the Authority cannot ensure the consistency of risk classifications.

The Authority does not provide guidance to councils about the circumstances in which they should review the risk classification of a retail food business. Retail food businesses may change their operations over time. For example, a service station, previously classified as a low-risk business, may decide to sell freshly cooked food, which should increase its risk classification and monitoring by councils. Currently, councils are alerted to these changes through development applications and should reassess the risk classification. The Authority's guidance to councils should remind councils of the need to reassess the risk classification if a retail food business changes its practices.

The FSANZ classification method defines clear differences between medium and high risk retail food businesses. The Authority's guideline on applying the classification has the same inspection frequency for both medium and high risk retail food businesses, which may not reflect the risk that different retail food businesses pose to human health. Additionally, the guideline provides criteria for circumstances in which a council could increase or reduce minimum inspection frequencies of individual retail food businesses. For example, in cases where a retail food business has received more than three consecutive satisfactory inspection results, councils are advised they can reduce inspection frequency, even though this conflicts with the minimum annual inspection requirements.

### **The Authority developed a checklist to assess compliance with food safety requirements**

As part of the risk-based model, the Authority developed the Food Premises Assessment Report (FPAR) in 2010, and updated it in 2013 (see Appendix 4). The FPAR is a checklist that covers all relevant requirements of the FSANZ food safety standards. The Authority assigned weightings to each requirement according to the degree of risk that non-compliance poses to human health, and the likelihood of a foodborne illness. The Authority conducted research to identify key contributors to foodborne illness to assign these weightings. These are:

- incorrect storage of food
- poor hygiene practices
- inadequate cleaning and sanitising practices.

The FPAR is an important part of the risk-based model because:

- the checklist is used by councils to systematically assess compliance with each food safety requirement
- non-compliance against any requirement is assigned a score according to the risk weighting
- an overall score is calculated which then determines if any further action is required against the retail food business

- it identifies critical food safety failures, with a single failure resulting in the retail food business failing the inspection.

## 1.2 NSW Food Authority's service delivery model

The Authority has appointed councils to conduct inspection and enforcement activities in its service delivery model. The service delivery model comprises:

- a Food Regulation Partnership (FRP) between the Authority and each council
- the appointment of councils to monitor and enforce compliance by retail food businesses with food safety standards
- councils using the risk-based model when inspecting retail food businesses to check their compliance with food safety standards
- annual reporting from councils on food safety activities conducted throughout the year.

Prior to the creation of the NSW Food Authority in 2004, councils had primary responsibility for monitoring all aspects of food safety in retail food businesses in their area. Following the establishment of the Authority, it developed the service delivery model to create a more consistent and coordinated approach across the State.

### The Authority has a Food Regulation Partnership with each council, however, roles remain unclear

The Authority established a Food Regulation Partnership (FRP) with each council in 2008. The FRP is an agreement to work together to ensure all retail food businesses are inspected to assess compliance with food safety standards. The Authority and councils consider the FRP to be an effective model to improve the efficiency, effectiveness and consistency of inspections of retail food businesses. We found that neither the FRP, nor the Instruments and associated guidelines, specify roles, accountabilities, responsibilities and monitoring arrangements between the Authority and councils. Neither do they describe corrective action the Authority should take to improve council inspection and monitoring practices. As a result, there is a lack of clarity in the Authority's and councils' respective roles and responsibilities under the FRP. This is not consistent with good regulatory practice, as discussed in section 1.3.

In 2011-12, the Authority evaluated the FRP. The evaluation recommended that it:

- improve consistency in inspection and enforcement action
- strengthen its role in assisting councils to resolve food regulation issues
- communicate with retail food businesses to improve their compliance
- review how it supports, assists and monitors councils acting on its behalf
- address situations where regulatory functions were duplicated.

The Authority took action to address all recommendations, except the recommendation to review how it monitors councils acting on its behalf. The Authority reports that it has improved its communication practices with councils and retail food businesses, primarily through its regular networking meetings as described below. Councils across the State are now using the Food Premises Assessment Report (FPAR) to improve consistency of food safety inspections. The Authority provides training and guidelines to apply the FPAR.

### The Authority has issued Instruments of Appointment to all councils, but they should be reviewed

The Act, which was passed in 2003, provides the mechanism for the Authority to appoint councils as enforcement agencies via Instruments. Instruments have been in place for all councils since 2008. The Instruments give councils the authority to monitor and enforce compliance of retail food businesses with food safety standards. The Instruments, issued by the Authority, have no end date or scheduled review date.

Prior to issuing the Instruments, the Authority assessed each council's capability and willingness to conduct inspection and enforcement activities. Over time, councils'

management and administration arrangements have changed. The Authority has not yet reviewed each council's capability to continue conducting food safety inspection and enforcement activities. The Authority is working with councils to address the effect the recent council amalgamations may have on food regulatory activities, which includes updating the Instruments. The Authority should review the Instruments for all councils, not only those created by the recent amalgamations.

### **The Authority encourages open communication with councils and retail food businesses**

The Authority considers the Food Regulation Partnership (FRP) to be an important mechanism for managing its relationship with councils. The Authority holds regular networking meetings with councils and retail food businesses throughout the year, which support the FRP. These networking meetings are:

- Regional Food Groups – the Authority has mapped the State into 15 regions, with each region holding a meeting three times a year. Council and NSW Food Authority representatives attend each Regional Food Group meeting. The Authority uses these meetings to deliver training to council inspectors and to encourage consistent inspection practices
- State Liaison Group - the Authority hosts a State Liaison Group meeting three times a year where representatives from each of the Regional Food Groups discuss and address current State-wide food safety issues
- Food Regulation Forum – the Authority hosts the Forum three times a year where the Authority, council representatives and retail food business representatives meet to share information on food safety issues and trends to inform the future direction of the FRP.

Participating councils rely on the Authority and these meetings for strategic advice and leadership. The Authority uses the issues identified in these meetings to create guidelines to assist councils. In the networking meetings, councils stated that they benefit from the assistance provided by the Authority. Further information is included in section 2.1.

The audit team attended several of these networking meetings. We observed that the Authority encourages open communication, which supports council participation in the FRP.

### **Increasing use of the Food Premises Assessment Report (FPAR) supports consistent food safety inspections**

In 2014-15, there were 474 council inspectors conducting food safety inspections across the State. Council inspectors choose whether to use the FPAR, or their own checklists, when inspecting retail food businesses to assess their compliance with food safety standards.

Since 2011, the Authority has encouraged councils to use the FPAR to support consistency in food safety inspections. As a result, the voluntary use of the FPAR by councils has increased steadily over time. Few councils used the FPAR during the trial period between 2010 and 2013. In 2013-14, 127 councils (82 per cent) used the FPAR to inspect retail food businesses. The Authority advised that all councils agreed to use the FPAR for 2015-16 inspections.

The increasing use of the FPAR indicates that councils value it as a tool to assist them conduct food safety inspections.

## **1.3 NSW Food Authority's regulatory function**

### **The Authority meets most, but not all, aspects of good regulatory practice**

The NSW Department of Premier and Cabinet (DPC) has released two guidelines to assist government agencies with regulatory functions: Guide to Better Regulation and Guidance for Regulators to Implement Outcomes and Risk-Based Regulation. These guidelines outline ways to improve regulatory practices, including developing a compliance strategy. We assessed the Authority's risk-based approach against these guidelines and identified that it has addressed most elements of good regulatory practice.

**Exhibit 1: Assessment of NSW Food Authority's application of good regulatory practice in its risk-based approach in regulating retail food businesses**

Good regulatory practice	Application by NSW Food Authority
Has a detailed implementation and compliance strategy	Yes
Has a structured approach to monitoring, reporting and continual improvement of outcomes and risk-based regulation embedded within corporate planning	Partial There is a structured approach for monitoring and reporting on retail food businesses compliance with food safety standards, which details method and frequency of inspections. The Authority has no criteria, goals or measures to assess the effectiveness of its approach
Has defined roles and responsibilities, including resources required and sources of funding	Partial Roles and responsibilities are not clearly documented. The Authority assesses the resources of councils prior to issuing an Instrument of Appointment. Under Food Regulation 2015, and the Local Government Act, councils are entitled to recover inspection-related expenses from retail food businesses
Has published a compliance and enforcement policy in accordance with the minimum standards outlined in Guidance for Regulators to Implement Outcomes and Risk-Based Regulation	Yes
Has established program priorities, using a risk-based approach	Yes Although there is no difference in monitoring requirements between high- and medium-risk retail food businesses
Has implemented appropriate internal controls to monitor its regulatory activity's consistency and quality	No The Authority has not implemented sufficient controls to monitor the consistency and quality of regulatory activities conducted by councils
Collects data that helps identify and target problems or non-compliance, and can assist with ensuring a more proportionate regulatory and compliance response	Partial This is applied when a foodborne illness outbreak is identified. The regular collection of data is not sufficiently detailed to allow the Authority to identify reasons for systemic issues of non-compliance
Has implemented and documented a process that examines data timeliness, and potential strategies to increase timeliness	No
Promotes compliance, including providing assistance such as guidance and working with co-regulators	Yes The Independent Pricing and Regulatory Tribunal identified this as a better practice element
Has a hierarchy of compliance tools from information, education and guidelines through to enforcement action such as fines, orders, notices and prosecutions to tailor compliance activities to the risks involved	Yes

Good regulatory practice	Application by NSW Food Authority
Has developed, and reports on, performance indicators based on the objectives of regulations. The indicators should be outcomes, outputs, and process based	<p>Partial</p> <p>The Authority has three high-level performance indicators – one each for outcome, output and process based</p> <p>These performance indicators do not allow the Authority to measure the effectiveness of the regulatory activities undertaken by councils and other enforcement agencies</p>
Routinely monitors regulatory performance by collating and analysing queries or complaints	Yes

Source: NSW Audit Office research 2016.

Based on the assessment above, the Authority should improve two aspects of its regulatory practice. The Authority has yet to implement:

1. controls to monitor the consistency and quality of regulatory activities to ensure they meet the Authority's requirements. This would enable it to monitor councils and gain assurance that food safety standards are applied consistently across the State. This is discussed in section 2.2.
2. a process that examines the completeness and timeliness of data the Authority receives. Currently, the Authority does not collect data from councils in sufficient detail to allow it to identify systemic issues of non-compliance with food safety standards. The Authority should collect sufficient and timely data on the results of each council's inspection and enforcement activities, to enable it to more effectively identify and address food safety concerns.

### The Authority should improve its food safety performance indicators

The Guide to Better Regulation advises that performance indicators should be developed based on the objectives of regulations. The Act requires the Authority to ensure food is safe for human consumption, and to minimise food safety risks. The Authority has produced a Food Safety Strategy for 2015 to 2021.

The Food Safety Strategy includes three high level performance indicators. Two of these are specific to retail food businesses:

- reduce foodborne illnesses by 30 per cent
- 75 per cent participation rate of retail food businesses in the 'Scores on Doors' program.

The third performance indicator is to increase the compliance of all food related businesses (primary production, manufacturing and retail food businesses) with food safety requirements to 95 per cent.

The Authority could develop and report on additional performance indicators that provide a greater level of detail. This would enable the Authority to assess its performance in regulating retail food businesses and identify trends in compliance rates with food safety requirements. The Authority should consider other indicators that may be relevant, such as specifying:

- a reduction in foodborne illnesses by the type of the illness
- separate performance indicators for different council areas, retail food business types, emerging food types or foodborne illness risks.

The Food Safety Strategy does not include baseline data for meeting all the performance indicators. Without sufficient baseline data, the Authority cannot assess progress in achieving all high level performance indicators, and take necessary corrective action.

## 2. Monitoring compliance with food safety standards

**The NSW Food Authority reported an annual compliance rate of more than 90 per cent for retail food businesses in each of the last three years. The Authority does not receive sufficient data from councils, nor does it have controls, to provide assurance that the reported compliance rate is accurate. The Authority has developed guidance and training programs on food safety standards to assist council inspectors and retail food businesses. However, it does not monitor food regulatory activities conducted by councils on its behalf.**

Good regulatory practice requires the Authority to monitor the consistency and quality of activities councils conduct on its behalf, and take action if these are not met. Overall, the Authority's ability to conduct this monitoring function is restricted because monitoring arrangements and accountability requirements for the Authority and councils have not been documented.

The Authority has not specified roles, expectations, responsibilities or accountabilities within the Instrument of Appointment or its associated guidelines. The Authority has not documented how it will hold councils accountable for the quality of food safety inspections. Consequently, there is a risk that a council's inspection may not accurately assess a retail food businesses' compliance with food safety standards. The lack of clarity in responsibilities and accountabilities limits the corrective action the Authority can take against councils.

The Authority collects data from each council on their inspection and enforcement activities. It conducts some analysis of this information, but does not verify the validity of the data. The information the Authority collects is not timely and sufficient to monitor the compliance of retail food businesses with food safety standards. The level of detail is also insufficient to allow the Authority to effectively monitor the regulatory activities councils conduct on its behalf.

One of the Authority's good practices is the regular networking meetings it holds for council inspectors to encourage consistency in food safety inspections across the State. However, poor council representation at these networking meetings means that councils and the Authority are not receiving the benefit from knowledge sharing that should happen at these networking meetings.

### Recommendations

NSW Food Authority should, by June 2017:

1. improve its risk-based approach by:
  - a) monitoring the consistency and quality of regulatory activities undertaken by councils and other enforcement agencies
  - b) clarifying the roles and responsibilities between it, councils and other enforcement agencies.
2. improve its monitoring and oversight of food safety inspection and enforcement activities, conducted by councils on its behalf, by:
  - a) ensuring it receives and promptly analyses sufficient and timely information from councils
  - b) improving the availability of training and guidance material for council inspectors.

Good regulatory practice includes a hierarchy of compliance tools, from information and education to enforcement actions. It also requires regulatory agencies to monitor processes and outcomes. In section 2.1, we examine the Authority's education role. In section 2.2, we examine how well the Authority monitors council activities to provide assurance of retail food businesses' compliance with food safety standards.



## 2.1 Education

The Act requires the Authority to assist retail food businesses to comply with food safety standards. The Authority has developed training material and guidelines to promote compliance with food safety standards. As part of the service delivery model, the Authority provides training and support to council inspectors to promote consistency in inspection and enforcement activities.

### The Authority assists retail food businesses to comply with food safety requirements

The Act requires all retail food businesses that process and sell food to appoint a Food Safety Supervisor at each of its premises. This requirement has been in place since 2009, and councils monitor this through their regular inspections. The Food Safety Supervisor is responsible for ensuring that all staff who handle food on the premise are adequately trained in safe food handling practices.

The Authority developed the training courses for Food Safety Supervisors. To attain a Food Safety Supervisor certificate, an individual must complete a course on safe food handling practices. Food Safety Supervisor certificates have been issued since 2010. The certificate is valid for five years, after which the individual must attend a refresher course to renew their certificate. Registered training organisations deliver all Food Safety Supervisor courses. The Authority updates both courses to address emerging food safety risks and required changes in practices, such as cleaning and sanitising practices.

Since the commencement of the Food Safety Supervisor scheme, over 89,000 Food Safety Supervisor certificates have been issued.

#### Exhibit 2: Number of valid Food Safety Supervisor certificates 2010 to 2016

Year	Number of Food Safety Supervisor certificates issued each calendar year	Cumulative number of valid Food Safety Supervisor certificates<
2010	2,307 <sup>#</sup>	2,307
2011	32,039	34,346
2012	13,238	47,584
2013	11,580	59,164
2014	11,054	70,218
2015	12,154	80,065
2016 <sup>^</sup>	6,909	81,135
<b>Total</b>	<b>89,281</b>	<b>--</b>

<sup>#</sup> Food Safety Supervisor certificates first issued in September 2010. Number issued is for four months.

<sup>^</sup> data to the end of May 2016.

< cumulative number is the number of certificates issued each year less the number of certificates that expired in the year.

Source: NSW Food Authority 2016.

Retail food businesses are required to display their Food Safety Supervisor's certificate at each premise. The Food Premises Assessment Report (FPAR) prompts councils to check that each premise has its Food Safety Supervisor's certificate displayed, but it does not prompt council inspectors to record certificate details. This information would allow the Authority and councils to confirm that each premise has a different Food Safety Supervisor, as required by the Act. The Authority has advised that it will explore options and potential funding sources that would be needed to develop and operate a centralised recording system for all councils' FPAR information, including Food Safety Supervisor certificate details for each premise.

The Authority has also developed guidelines to address common food safety concerns identified at its regular networking meetings with councils and business groups. For example, many councils and the public had concerns about the correct use, cleaning and sanitising of wooden chopping boards used to serve meals. In response, the Authority produced a fact sheet for retail food businesses. Councils distribute these fact sheets during food safety inspections. Fact sheets are also available on the Authority's website for public access. The Authority has also made the FPAR available online for retail food businesses to self-assess

their compliance with food safety standards. The Authority provides all fact sheets and guidelines on its website to assist retail food businesses to understand and apply food safety requirements.

### The Authority trains council inspectors to conduct inspections

The Authority developed the FPAR (described in section 1.2) as a tool for consistent risk-based food safety inspections. The Authority conducts FPAR training to:

- educate council inspectors to conduct food safety inspections in line with food safety standards
- educate council inspectors on how to identify food safety hazards
- advise council inspectors of ways to improve compliance by retail food businesses with food safety standards, and enforcement action options available.

The FPAR and the training initiatives provide guidance to councils to promote consistent food safety inspections, and to ensure retail food businesses comply with food safety standards.

### The Authority trains council inspectors and retail food businesses to improve their skills and knowledge

The Authority identifies common food safety issues through its regular networking meetings, and from its investigations of foodborne illness outbreaks. For example, at recent networking meetings, the Authority identified that some council inspectors and retail food businesses did not have adequate knowledge of safe food handling practices. As a result, it developed training for council inspectors and Food Safety Supervisors to improve their skills and knowledge in safe food handling practices. The Authority should continually address this issue, given staff turnover in councils and changes in retail food businesses.

The Authority developed additional training programs to improve the skills of council inspectors to assess safe food handling practices. The Authority delivers this training prior to every Regional Food Group meeting. However, not all council inspectors receive this training because of low attendance at these meetings (see Exhibit 3). This means that the Authority cannot ensure consistency in assessments across the State. The Authority should improve the availability of these training initiatives in order to improve the consistency of council inspections.

### Poor council attendance at the regular networking meetings limits their value

In section 1.2, we discussed the importance of the NSW Food Authority's regular networking meetings with councils.

Attendance records for the Regional Food Groups show around a third of all councils do not attend these networking meetings. Consequently, councils and the Authority are not receiving the benefit of knowledge sharing that should happen at networking meetings. The Authority has reinforced the importance of networking meetings by contacting all councils to encourage attendance. The Authority has advised that it is looking at further strategies to encourage council engagement to keep council inspectors' knowledge up-to-date.

#### Exhibit 3: Numbers of councils represented at Regional Food Group meetings

	Round 1 2016	Round 3 2015	Round 2 2015	Round 1 2015	Round 3 2014	Round 2 2014	Round 1 2014
Present	90	98	90	86	88	99	97
Absent	52	54	58	49	65	54	53
No meetings scheduled*	--	--	--	3	--	--	3
Not available #	11	--	5	15	--	--	--
<b>Total</b>	<b>153</b>	<b>153</b>	<b>153</b>	<b>153</b>	<b>153</b>	<b>153</b>	<b>153</b>

\* Far West RFG meets only twice a year.

# Attendance data not recorded.

Source: NSW Food Authority 2016.

The Authority uses the networking meetings to identify food safety issues and trends across the State, and to encourage consistent food safety inspections. Poor council attendance at these meetings means that the Authority is not receiving comprehensive information to identify food safety issues. Due to the low council attendance, learnings from one council are not shared with all others.

The Authority incorporates training into the networking meetings to keep council inspectors across the State up-to-date on food safety issues and trends. As not all councils attend the networking meetings, any knowledge shared and gained from these training programs is limited to those who attend. The Authority should improve the availability of these training sessions and resources to increase engagement with council inspectors as part of the Food Regulation Partnership. For example, it could make the networking meetings, training and resources available online.

## 2.2 Monitoring

As a regulatory agency, the NSW Food Authority is responsible for ensuring retail food businesses comply with food safety standards. Good regulatory practice requires the Authority to monitor the activities of the councils acting on its behalf, and take action when they do not meet its requirements. While the Authority has delegated the task of inspecting retail food businesses to councils, it cannot delegate its core responsibility for food safety.

### The Authority does not monitor food regulatory activities conducted by councils

According to the Independent Pricing and Regulatory Tribunal, when delegating any function, a key element of good regulatory practice involves the delegator monitoring the performance of the delegated function against pre-determined objectives. Neither the Instruments, nor the Food Regulation Partnership, specify how the Authority will monitor council's food regulatory activities. This poses a risk that the Authority is relying on inconsistent monitoring and reporting practices to make decisions on future food safety initiatives.

The Authority has not specified roles, expectations, responsibilities or accountabilities within the Instrument or its associated guidelines. The guidelines aim to assist councils in their monitoring and inspection of retail food businesses. The Authority has not documented how it will hold councils accountable for the quality of food safety inspections. Consequently, there is a risk that a council's inspection may not accurately assess a retail food businesses' compliance with food safety standards. The lack of clarity in responsibilities and accountabilities limits the corrective action the Authority can take against councils.

Examples of poor council inspection practices may come to the Authority's attention when it investigates a foodborne illness outbreak. In one example, the Authority found a range of significant food safety breaches in a retail food business including handwashing facilities positioned a significant distance from food preparation and service areas.

According to the food safety standards, businesses are required to have dedicated handwashing facilities in close proximity to all food preparation and service areas. Failure to comply with this requirement could result in a retail food business failing the food safety inspection.

The Authority advised that previous food safety inspections conducted by the council on this retail food business did not record any breaches that should have been evident, such as the location of the handwash basin. While food safety inspections are 'point in time' assessments, these findings raise legitimate questions about the effectiveness of the earlier inspections. The Authority advised that it has raised these matters informally with the council, including the council's capacity to effectively perform its food safety regulatory role. However, the Authority did not take any formal action against the council.

The Authority needs to improve and clearly document its process for dealing with these situations as the lack of more formal action against this council undermines its other good regulatory practices and potentially risks public health.

### **The Authority collects annual information on council food safety activities**

Since 2009, the Authority has required each council to complete and submit an Annual Activity Report. The Report contains data from councils on food safety activities they have conducted throughout the year. The data includes the number of:

- high, medium and low risk retail food businesses
- council inspectors
- inspections and re-inspections conducted
- retail food businesses, on each rating level, for the Scores on Doors program (the food safety scoring program that displays the results of regular inspections of retail food businesses)
- complaints investigated by type (hygiene and handling, foreign matter, food quality, labelling, foodborne illness)
- enforcement actions by type (warnings, improvement notices, penalty notices, seizure notices, prohibition orders, prosecutions).

The Authority reported an annual compliance rate of more than 90 per cent for retail food businesses in each of the last three years. The Authority relies on each council to report accurate data. It conducts limited analysis of the data, such as comparing the number of retail food businesses registered to the number of businesses inspected in each council area. It, therefore, cannot provide assurance that the reported compliance rate is accurate.

### **The Authority identifies councils not conducting sufficient inspections on retail food businesses**

The Authority expects councils to inspect at least 80 per cent of high-risk and medium-risk retail food businesses within their area each year. The Authority reviews the Annual Activity Reports and asks councils to explain if they report an inspection rate lower than this. The Authority does not confirm the validity of a council's explanation for not meeting the target. It also does not seek assurance from the council that it will inspect the remaining 20 per cent of businesses in the near future. As a result, the Authority cannot be sure that all retail food businesses receive regular inspections in line with food safety standards.

### **Insufficient information is collected to monitor the compliance of retail food businesses**

The Annual Activity Reports do not contain detailed information about individual retail food businesses, which means that the Authority cannot:

- ensure all retail food businesses in an area are inspected according to the risk-based approach
- check that councils apply follow-up and enforcement actions as necessary
- identify the number, and locations, of retail food businesses failing to comply with specific parts of the food safety standards
- identify common areas of non-compliance so it can target specific training programs to retail food business types or regions.

The information the Authority collects is not timely and sufficient to monitor the compliance of retail food businesses with food safety standards. The level of detail is also insufficient to enable the Authority to effectively monitor the regulatory activities councils conduct on its behalf.

The Authority has developed an enforcement policy and guidelines for councils to promote consistent enforcement practices across the State. The Authority collects data on the number of enforcement actions by type issued by each council, in the Annual Activity Report. The information collected is not detailed enough for the Authority to ensure councils have taken adequate, correct and consistent follow-up and enforcement actions. This information is also inadequate for the Authority to ensure retail food businesses are assessed in line with food safety standards.

The Authority does not receive other documentation on a regular basis to assess whether retail food businesses comply with food safety standards. It should request more detailed data in the Annual Activity Report to help it monitor council food regulatory activities, and the compliance of retail food businesses' with food safety standards. Without such information, the Authority cannot adapt its programs and initiatives to ensure all retail food businesses comply with food safety standards.



# Appendices

## Appendix 1: Response from NSW Food Authority



Department of  
Primary Industries  
Food Authority

22 August 2016

Our ref INT16/102940

Ms Margaret Crawford  
Auditor-General of NSW  
GPO Box 12  
SYDNEY NSW 2001

Dear Ms Crawford

Thank you for undertaking the performance audit in relation to food safety practices in retail businesses and for the opportunity to respond to your report. I also thank your review team and the NSW Food Authority (Food Authority) staff who assisted them.

Please find attached a copy of the Food Authority's formal response for inclusion in your final report.

The Food Authority operates as part of the Biosecurity and Food Safety Branch of the NSW Department of Primary Industries within the NSW Department of Industry, Skills and Regional Development.

The context for the Food Authority's engagement with local government reflects councils' long standing responsibility for food safety in the retail food service sector. It can sometimes be taken for granted, but arrangements which ensure the safety of our food supply are fundamental to the orderly and harmonious function of our society. In the past, each local council had separate and in many cases inconsistent food safety inspection and compliance regimes. The Food Regulation Partnership was formalised in 2008 to bring these disparate regimes together under a single consistent system overseen and coordinated by the Food Authority under the *Food Act 2003*. The Food Authority places a very high value on this Partnership and supports the Partnership with a dedicated local government unit to provide council and other enforcement agency staff with food safety leadership, training and technical support.

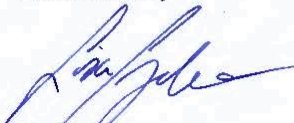
The Partnership has been recognised as best regulatory practice by the Independent Pricing and Regulatory Tribunal (IPART) but was nevertheless formally evaluated in 2012 as part of the Food Authority's commitment to continuous improvement. The Food Authority welcomes your Performance Audit as a further opportunity for external evaluation of arrangements that underpin food safety in the retail food service sector. The Food Authority also welcomes your assessment of areas where these arrangements are operating effectively and others where they can be improved. In particular, your audit provides independent verification of the progress the Food Authority has already made to address emerging retail food business issues and the importance of its aspirations to better understand retail food business compliance by collecting more timely and precise data from enforcement agencies.

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ABN: 47 080 404 416



I am pleased to advise that the Food Authority accepts your recommendations for improvement noting that delivery of recommendations with cost and resource implications will hinge on the success of a business case. The Food Authority will also consult and require agreement of key stakeholders to progress recommendations affecting the operation of the Partnership. Further, the formal response notes complexities that will prevent some recommendations being delivered by June 2017, with June 2018 suggested as more realistic albeit still a very ambitious target for most recommendations and 2019 as a similarly ambitious target for recommendation 1.4.

Yours sincerely



**Lisa Szabo**

**CEO NSW Food Authority**

**Food Authority response to recommendations by the Auditor-General of NSW  
in relation to monitoring food safety practices in retail food businesses.**

The Auditor-General recommended that the Food Authority should by June 2017:

1. improve its risk-based approach by:
  - 1.1 monitoring the consistency and quality of regulatory activities undertaken by councils and other enforcement agencies
  - 1.2 clarifying the roles and responsibilities between it, councils and other enforcement agencies
  - 1.3 updating its guidelines to councils, including defining distinct monitoring requirements for medium and high risk retail food businesses
  - 1.4 developing additional detailed performance indicators, with baseline data, to assess the effectiveness of regulatory activities undertaken by councils and other enforcement agencies.
2. improve its monitoring and oversight of food safety inspection and enforcement activities, conducted by councils on its behalf, by:
  - 2.1 ensuring it receives and promptly analyses sufficient and timely information from councils
  - 2.2 improving the availability of training and guidance material for council inspectors.

The Food Authority notes that recommendations 1.1, 1.4 and 2.1 each rely on improving the collection, analysis and use of information generated during retail food business inspections. Their implementation requires consultation and a successful business case but even so cannot be completed by June 2017.

Recommendations 1.2, 1.3 and 2.2 each relate to the roles, responsibilities and activities of enforcement agencies. They require consultation and should be achievable within the June 2017 timeframe subject to their acceptance by enforcement agencies.

The Food Authority's response to each recommendation is listed in the table below.

Recommendation	Response	Comments
1.1 improve its risk-based approach by monitoring the consistency and quality of regulatory activities undertaken by councils and other enforcement agencies.	Support and note that this is best realised by use of technology, which cannot be implemented by June 2017  June 2018 is a possible and ambitious target subject to a successful business case	The Food Authority has already recognised the need to move beyond the current reliance on aggregated annual data and has commenced exploring options for more timely and precise reporting. Improving the Food Authority's capability in relation to recommendations 1.1, 1.4 and 2.1 will require regular access to the Food Premises Assessment Reports (FPAR) generated during retail food business inspections. This will require new arrangements to collect, store, analyse and use this information.  The Board of Local Government NSW also has advocated for reforms of this nature to promote broader adoption of the voluntary Scores on Doors initiative by proposing the development of a centralised database.

Recommendation	Response	Comments
		<p>These arrangements will also provide a pathway to deal with the inefficiencies and duplication of inspections that arise when temporary and mobile food vendors trade across multiple council areas; an area of concern raised by both IPART and the Food Regulation Forum which provides advice on oversight of the Partnership.</p> <p>The Food Authority will develop a business case for a single electronic platform to regularly capture FPAR data. Time will be needed to consult with enforcement agencies, to develop and identify critical design and usability elements to inform a funding business case and, if successful, implement the platform. It will not be possible to complete this by June 2017.</p> <p>Once operational, the platform will allow monitoring of FPAR data to assess the consistency and quality of food regulatory activities undertaken by enforcement agencies.</p>
1.2 improve its risk-based approach by clarifying the roles and responsibilities between it, councils and other enforcement agencies	Support	<p>The Food Authority has already earmarked the enforcement agency instruments of appointment for review and re-issue due to council amalgamations and the length of time since they were originally issued (2008). Further issues may be identified for consideration by a current Food Authority project to understand trends emerging from the collaborative economy such as food produced from home kitchens and also food sold via food apps.</p> <p>Revised guidelines will also be provided to more clearly explain enforcement agency roles and responsibilities. The Food Authority will consult with enforcement agencies on the revision of the instruments of appointment and guidelines.</p>
1.3 improve its risk-based approach by updating its guidelines to councils, including defining distinct monitoring requirements for medium and high risk retail food businesses	Support	<p>The Food Authority has already commenced a review of the rationale underpinning the inspection frequency of retail food businesses following IPART's report on <i>Local Government Compliance and Enforcement</i>. This review includes the risk based classification that applies to medium and high risk retail food businesses.</p> <p>This information will be included in the Food Authority's enforcement agency guidelines when these are revised and re-issued as per 1.2 above.</p>



Recommendation	Response	Comments
1.4 improve its risk-based approach by developing additional detailed performance indicators, with baseline data, to assess the effectiveness of regulatory activities undertaken by councils and other enforcement agencies.	Support and note that this is not achievable by June 2017  June 2019 is a possible and ambitious target based on collection of a full year's data and subject to successful implementation of the platform in 2018	See 1.1 The realisation of a single electronic platform to regularly capture FPAR data will facilitate the establishment of baseline data. Using this information, the Food Authority will consult with our food regulatory partners to establish performance indicators that readily identify inconsistencies in regulatory activities and provide additional intelligence to help deal with emerging foodborne illness trends or novel food types that may be associated with emerging foodborne illness risks.  In practice, this information will improve compliance with enforcement agency performance targets but is unlikely to identify different performance targets for individual enforcement agencies.
2.1 improve its monitoring and oversight of food safety inspection and enforcement activities, conducted by councils on its behalf by ensuring it receives and promptly analyses sufficient and timely information from councils.	June 2018 is a possible and ambitious target subject to a successful business case	See 1.1 and 1.4
2.2 improve its monitoring and oversight of food safety inspection and enforcement activities, conducted by councils on its behalf by improving the availability of training and guidance material for council inspectors.	Support	The Food Authority will provide training materials and resources online and develop options for food inspectors to have remote access to training and networking.  The Food Authority will seek to further improve access to training and development opportunities by including in the new instruments of appointment, a commitment from enforcement agencies that staff undertake regular professional development training and participate in regular networking meetings.  The Food Authority notes that the NSW food legislation which underpins the Partnership prevents it from subjecting enforcement agencies to new conditions against their will.

## Appendix 2: New South Wales food industry regulation framework



Source: NSW Food Authority NSW Government Food Safety Strategy 2015-2021 Safe food from paddock to plate.

### Appendix 3: Reported rates of foodborne illness 2014

Type		NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Salmonellosis	No.	4,314	3,695	4,937	1,220	1,261	249	457	225
	Rate*	0.57	0.628	1.039	0.721	0.489	0.483	1.871	0.58
Shigellosis	No.	198	463	176	36	68	2	99	9
	Rate*	0.026	0.079	0.037	0.021	0.026	0.004	0.405	0.023
Listeriosis	No.	23	22	17	6	5	4	2	1
	Rate*	0.003	0.004	0.004	0.004	0.002	0.008	0.008	0.003
Typhoid fever	No.	45	29	19	9	14	1	1	1
	Rate*	0.006	0.005	0.004	0.005	0.005	0.002	0.004	0.003
STEC Infection	No.	30	10	28	45	2	--	--	--
	Rate*	0.004	0.002	0.006	0.027	0.001	--	--	--
Haemolytic uraemic syndrome	No.	6	5	3	3	1	1	1	--
	Rate*	0.001	0.001	0.001	0.002	--	0.002	0.004	--
Total	No.	4,616	4,224	5,180	1,319	1,351	257	560	236
	Rate*	0.61	0.718	1.09	0.78	0.523	0.499	2.293	0.609

\*Rate = No. of occurrences per 100,000 population.

STEC Shiga toxin-producing Escherichia coli.

Source: NSW Audit Office Research, 2016.





## Explanatory notes and definitions

### (Food Standards Code Ch.3, Standards 3.2.2 and 3.2.3)

This assessment report is based on guidance in the Safe Food Australia (2001) publication: A Guide to the Food Safety Standards. The Guide should be consulted if assistance with interpretation of the food safety standards is required. The assessment is set up as a checklist. It might not be possible to observe all the areas in a single inspection. Despite the presence of a list each item is a single issue of compliance. The assessment focuses on the foodborne illness risk factors identified by the US Centres for Disease Control. The key targets for inspection are: inadequate cooling and cold holding temperatures; food prepared ahead of planned service; inadequate hot holding temperatures; poor personal hygiene and infected food handlers; inadequate reheating and inadequate cleaning of equipment.

#### Food handling controls

5. Protection from the possibility of contamination includes appropriately covering food so that it is protected from potential contamination sources and includes keeping ready to eat foods separated from raw foods.
7. 'Potentially hazardous food' is food that has to be kept at certain temperatures to minimise the growth of any pathogenic microorganisms that may be present in the food or to prevent the formation of toxins in the food. Examples of potentially hazardous food include meat, seafood, dairy and foods such as salads and some cut fruits.
7. Temperature control means maintaining potentially hazardous food at a temperature of:
  - (a) 5°C or below, or
  - (b) 60°C or above, or
  - (c) another temperature if the food business demonstrates that maintenance of the food at this temperature for the period of time for which it will be maintained, will not adversely affect the microbiological safety of the food.
9. A food business must when cooling cooked potentially hazardous food, cool the food:
  - (a) within two hours – from 60°C to 21°C, and
  - (b) within a further four hours – from 21°C to 5°C.
10. A food business must when reheating previously cooked and cooled potentially hazardous food to hold it hot, use a process that rapidly heats the food to a temperature of 60°C or above, e.g. heating in an oven, microwave or on a stove top.
11. A food business must, when displaying unpackaged ready to eat food for self service:
  - (a) ensure the display of food is effectively supervised so that any food that is contaminated by a customer or is likely to have been contaminated is removed from display without delay,
  - (b) provide separate serving utensils for each food or other dispensing methods that minimise the likelihood of the food being contaminated, and
  - (c) provide protective barriers that minimise the likelihood of contamination by customers.

#### Health and hygiene requirements

14. Thorough hand washing includes using the designated hand washing facility to wash hands, fingers and wrists using warm water and soap for a recommended 15 seconds, thorough rinsing of hands under warm water and drying thoroughly on single use towel.
18. A food handler must wash his or her hands whenever their hands are likely to be a source of contamination of food. This includes:

- before working with ready to eat food after handling raw food,
- immediately after using the toilet,
- before commencing or recommencing handling food,
- immediately after smoking, coughing, sneezing, using a handkerchief or tissue, eating, drinking or using tobacco, and
- after touching his or her hair, scalp or a body opening.

19. A food business must ensure the following persons do not engage in the handling of food for the food business where there is a reasonable likelihood of food contamination:
  - (a) a person known to be suffering from a foodborne disease, or who is a carrier of a foodborne disease, and
  - (b) a person known or reasonably suspected to have a symptom that may indicate he or she is suffering from a foodborne disease.

#### Cleaning and sanitising

22. Food premises and fixtures, fittings and equipment must be maintained to a standard of cleanliness where there is no accumulation of:
  - (a) garbage, except in garbage containers;
  - (b) recycled matter, except in containers;
  - (c) food waste;
  - (d) dirt;
  - (e) grease; or
  - (f) other visible matter
23. Clean and sanitary condition means a food contact surface or utensil is:
  - (a) clean; and
  - (b) has had applied to it heat and/or chemicals or other process so that the number of microorganisms has been reduced to a safe level.

#### Design and construction

30. General requirements for design and construction of food premises must:
  - (a) be appropriate for the activities for which the premises are used;
  - (b) provide adequate space;
  - (c) permit effective cleaning and, if necessary, sanitising and
  - (d) to the extent that is practicable exclude dirt, dust, fumes, smoke, not permit the entry or harbourage of pests.
31. Adequate supply of potable water means water that is acceptable for human consumption and available at an adequate volume, pressure and temperature for hand washing, cleaning and food processing requirements.
33. Adequate storage facilities for garbage and recyclable matter means facilities that will contain the volume and types of garbage and recyclable material produced by the food business and not provide a breeding ground for pests and be capable of being easily and effectively cleaned.
34. Lighting must be sufficient to enable food handlers to readily see whether areas or equipment are clean, to detect signs of pests and to clearly see food and equipment they are handling.
38. Adequate ventilation (natural or mechanical) must be provided to remove fumes, smoke, steam and vapours from the food premise.

## Appendix 5: About the audit

### Audit objective

This audit assessed the effectiveness of NSW Food Authority (the Authority) in ensuring retail food businesses comply with food safety standards.

### Audit criteria

We addressed the audit objective by examining whether:

1. the Authority has an effective risk-based approach to ensure compliance with food safety standards
2. the Authority effectively monitors compliance with food safety standards.

### Audit scope and focus

In assessing the criteria, we checked the following aspects:

1. the Authority has an effective risk-based approach to ensure compliance with food safety standards
  - a) the Authority has an appropriate risk-based methodology to check compliance with the food safety standards by retail food businesses
  - b) the Authority's risk-based approach is supported by up-to-date and accurate information
  - c) the Authority receives regular updates/reports from local councils on their inspection activities and/or emerging issues
    - the risk profiles of retail food businesses are regularly reviewed and updated
  - d) the Authority has appropriate criteria to measure the effectiveness of its approach
  - e) the Authority updates its approach based on this evaluation and better practices identified in other jurisdictions
2. the Authority effectively monitors compliance with food safety standards
  - a) the Authority ensures food safety inspections and follow-up action conducted on its behalf comply with regulations and standards
  - b) the Authority has a process to ensure food safety inspections and follow-up actions are consistently applied throughout the State
  - c) the Authority has a quality assurance process to validate the quality and completeness of data received
  - d) the Authority regularly receives information on action taken by councils following inspections, enforcement action, and in response to consumer complaints
  - e) the Authority analyses reports to determine if further action is required.

This audit focused on the Authority's responsibility to ensure that retail food businesses comply with national food safety standards. Currently, 91 per cent of all reported foodborne illnesses in New South Wales originate from retail food businesses.

The audit looked at the Authority's management of its arrangements with local councils through the Food Regulation Partnerships between July 2012 and December 2015 to ensure retail food businesses comply with food safety standards. We looked at agreements, policies and procedures established by the NSW Food Authority to ensure that these functions are effectively and consistently fulfilled.

## Audit Exclusions

The audit did not:

- examine the effectiveness, efficiency, economy or compliance of local councils in ensuring retail food businesses comply with food safety standards
- examine the Authority's effectiveness in ensuring compliance to food safety standards for other food related businesses. These include:
  - supermarkets and grocery stores
  - mobile food outlets (e.g. food trucks)
  - temporary food stalls
  - food transportation businesses
  - primary production
  - businesses directly licenced through the Authority.

## Audit approach

Our procedures included:

1. Interviewing
  - Authority staff responsible for communicating with councils and retail food businesses
  - Authority staff responsible for providing training and guidance to local councils
  - Authority staff responsible for receiving, recording, analysing and reporting on information received from local councils.

We also spoke with some local council representatives whilst attending networking meetings, forums and training provided by the Authority.

2. Examining
  - New South Wales Food Act, and relevant food safety regulations and standards
  - documentation for the risk-based methodology policy and procedures
  - the Authority's documentation and guidance provided to local councils
  - food safety related reports and information the Authority receives from local councils
  - relevant Authority documentation related to ensuring retail food business' comply with standards
  - the Authority's follow-up processes and documentation, when issues identified
  - the Authority's internal management reports analysing the effectiveness of its arrangements with councils and compliance of retail food businesses to food safety standards.

We also examined:

- documentation from other stakeholders obtained throughout the audit such as research, studies, statistical data and analysis
- information from other jurisdictions for comparison.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

## Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standards ASAE 3500 on performance auditing. The Standard requires the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with the auditing requirements specified in the *Public Finance and Audit Act 1983*.

## **Acknowledgements**

We gratefully acknowledge the co-operation and assistance provided by the NSW Food Authority. In particular we would like to thank our liaison officer, and the staff who participated in interviews and provided material relevant to the audit.

## **Audit team**

Sandra Tomasi and Huntley Evans conducted the performance audit. Giulia Vitetta provided direction and quality assurance.

## **Audit cost**

Including staff costs, printing costs and overheads, the estimated cost of the audit is \$258,000.



# Performance auditing

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## **What are performance audits?**

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of a government agency or consider particular issues which affect the whole public sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in the *Public Finance and Audit Act 1983*.

## **Why do we conduct performance audits?**

Performance audits provide independent assurance to parliament and the public.

Through their recommendations, performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also focus on assisting accountability processes by holding managers to account for agency performance.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, the public, agencies and Audit Office research.

## **What happens during the phases of a performance audit?**

Performance audits have three key phases: planning, fieldwork and report writing. They can take up to nine months to complete, depending on the audit's scope.

During the planning phase the audit team develops an understanding of agency activities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the agency or program activities are assessed. Criteria may be based on best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork the audit team meets with agency management to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with agency management to check that facts presented in the draft report are accurate and that recommendations are practical and appropriate.

A final report is then provided to the CEO for comment. The relevant minister and the Treasurer are also provided with a copy of the final report. The report tabled in parliament includes a response from the CEO on the report's conclusion and recommendations. In multiple agency performance audits there may be responses from more than one agency or from a nominated coordinating agency.

## **Do we check to see if recommendations have been implemented?**

Following the tabling of the report in parliament, agencies are requested to advise the Audit Office on action taken, or proposed, against each of the report's recommendations. It is usual for agency audit committees to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee (PAC) to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report is tabled. These reports are available on the parliamentary website.

## **Who audits the auditors?**

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

Internal quality control review of each audit ensures compliance with Australian assurance standards. Periodic review by other Audit Offices tests our activities against best practice.

The PAC is also responsible for overseeing the performance of the Audit Office and conducts a review of our operations every four years. The review's report is tabled in parliament and available on its website.

## **Who pays for performance audits?**

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

## **Further information and copies of reports**

For further information, including copies of performance audit reports and a list of audits currently in progress, please see our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au) or contact us on 9275 7100.

## Our vision

Making a difference through audit excellence.

## Our mission

To help parliament hold government accountable for its use of public resources.

## Our values

**Purpose** – we have an impact, are accountable, and work as a team.

**People** – we trust and respect others and have a balanced approach to work.

**Professionalism** – we are recognised for our independence and integrity and the value we deliver.

**Professional people with purpose**

Making a difference through audit excellence.

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