

ACT Auditor-General's Office

Performance Audit Report

**Management of Food Safety in the
Australian Capital Territory**

Report No. 6 / 2011



ACT AUDITOR-GENERAL'S OFFICE



PA10/11

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

I am pleased to forward to you a Performance Audit Report titled 'Management of Food Safety in the Australian Capital Territory', pursuant to Section 17(5) of the *Auditor-General Act 1996*.

Yours sincerely

Dr Maxine Cooper
Auditor-General
21 December 2011

CONTENTS

List of abbreviations and glossary	2
1. Summary and conclusions	3
Introduction	3
Audit objective	4
Audit conclusions	4
Key findings	6
Recommendations with Directorate's response	9
2. The legislative and administrative framework for managing food safety	15
Summary	15
Legislation - <i>three levels of government</i>	16
ACT food safety – <i>regulated by ACT Health Directorate, Health Protection Service</i>	17
Procedures, training and quality audits – <i>supports the implementation of legislation</i>	18
Operational financial and performance reporting – <i>important for transparency and accountability</i>	19
Staffing – <i>an on-going challenge</i>	21
Public information – <i>important to ensure it is comprehensive and multi-lingual</i>	23
3. Managing the registration of food businesses	25
Summary	25
Registration – <i>all food businesses must be registered unless exempted</i>	26
Record-keeping – <i>an important business process</i>	28
Registration renewals – <i>inspections support this process</i>	30
Notifications – <i>food businesses exempt from registration</i>	32
4. Monitoring compliance of food businesses with regulations	33
Summary	33
Inspections – <i>need to be routinely undertaken</i>	34
Complaints management – <i>maintaining complete data is fundamental</i>	38
Food safety surveys – <i>regularly used to monitor food safety</i>	41
Food safety programs – <i>mandatory for some high risk businesses</i>	42
5. Managing compliance	45
Summary	45
Graduated approach – <i>provides flexibility in implementing legislation</i>	46
Enforcement activities – <i>increasing and varied</i>	49
Enforcing compliance – <i>resource-intensive</i>	53
Strategies in other jurisdictions – <i>broader than those in the ACT</i>	55
New strategies for the ACT - <i>a food rating scheme is proposed</i>	58
6. Responding to food-borne illness outbreaks	61
Summary	61
Food-borne illness outbreaks – <i>affects are significant</i>	61
Policies and procedures – <i>needed to guide the implementation of legislation</i>	64
Responses - <i>outbreaks need to be contained quickly</i>	65
Appendix A: Audit objective, criteria and approach.....	67

LIST OF ABBREVIATIONS AND GLOSSARY

ACT	Australian Capital Territory
ANAO	Australian National Audit Office
Food Standards Code	Australia New Zealand Food Standards Code
FSANZ	Food Standards Australia New Zealand
HPS	Health Protection Service
NSW	New South Wales

1. SUMMARY AND CONCLUSIONS

INTRODUCTION

- 1.1 This report presents the results of a performance audit on the regulatory framework for managing food safety and its implementation in the ACT.
- 1.2 Australia has a reputation both domestically and internationally for producing high quality food. The *Food Safety Performance World Ranking Report* of May 2008 ranked Australia fourth in the world for food safety performance.¹ Consumers can reasonably expect this standard to be maintained and be assured the food they consume is safe. The consequences of unsafe food include illness, hospitalisation and in extreme events fatalities.
- 1.3 Food-borne illness constitutes a major threat to public health. One factor affecting the transmission of food-borne illness is food preparation by food businesses for sale or delivery to the public.
- 1.4 Food regulation is an important government function aimed at protecting public health and involves all three levels of government. The Commonwealth develops uniform food standards, and has committed to the Australia-wide implementation of the Australia New Zealand Food Standards Code, developed by Food Standards Australia New Zealand (FSANZ).² The States and Territories are constitutionally responsible for food regulation, although monitoring and enforcement of food safety legislation and regulations is often conducted by local governments. The ACT Government is responsible for administering and enforcing food safety legislation in the ACT.
- 1.5 In the ACT, food safety is governed by the *Food Act 2001*, the *Food Regulation 2002*, and the *Public Health Act 1997*. The Food Act is based on the Model Food Act,³ which was enacted following a decision of the Council of Australian Governments. The Food Act and its associated regulations incorporate the Food Standards Code.⁴ The Food Act, Regulation and Standards Code together provide a regulatory framework to administer, monitor and enforce compliance with food safety standards by food businesses in the ACT.
- 1.6 The ACT Health Directorate, through the Health Protection Service (a branch of the Directorate), is responsible for regulating food safety and monitoring food safety compliance in the ACT.

¹ *Food Safety Performance World Ranking May 2008*, Dr Sylvain Charleboir, Dr Chris Yost, p 15

² Food Standards Australia and New Zealand website refer <http://www.foodstandards.gov.au/>

³ The Model Food Act is available at Food Standards website <http://www.foodstandards.gov.au/>

⁴ Section 3 of the *Food Act 2001* and Section 7 of the *Food Regulation 2002*.

AUDIT OBJECTIVE

- 1.7 The objective of this Audit is to provide an independent opinion to the Legislative Assembly on whether the ACT Health Directorate has a sound regulatory framework for the management of food safety in the ACT, and is implementing this effectively.
- 1.8 The scope of the audit covered the legislative and administrative framework for managing food safety, and how effectively the Health Protection Service plans, administers and monitors its food safety activities including:
- managing the registration of food businesses;
 - monitoring compliance of food businesses with regulations;
 - managing enforcement activities; and
 - responding to food-borne illness outbreaks.
- 1.9 The audit scope did not include work by the Health Protection Service to develop general food standards, coordinate food recalls, or regulate activities concerning primary production and processing of food such as meat or dairy products. Nor did it include non-food related activities of the Health Protection Service, such as the inspection of boarding houses or swimming pools and spas.
- 1.10 **Appendix A** presents the audit objective, criteria and approach.

AUDIT CONCLUSIONS

- 1.11 The audit conclusions are set out below.

Responsibility for food safety in the ACT is shared between the ACT Government, food businesses and consumers. The ACT Government, through the ACT Health Directorate (and specifically, the Health Protection Service) is responsible for establishing and administering a sound legislative and administrative framework to regulate food safety. Food businesses have a responsibility to comply with the framework and provide food that is both safe and suitable for human consumption. However, consumers also have a responsibility to make sound judgements about the food businesses they support, and to inform appropriate authorities if they encounter food businesses that do not meet expected food safety standards.

The ACT has, so far, experienced few food-borne illness outbreaks, with the number of complaints regarding alleged food poisoning and poor food preparation and handling decreasing in recent years. While this is the case, there are shortcomings in the regulation and administration of food safety that need to be addressed to provide the community with assurance that the food they buy and eat is safe.

The legislative and administrative framework for managing food safety (Chapter 2)

The Health Protection Service has had its ability to effectively fulfil all of its food safety functions constrained due to recruitment difficulties in filling vacant staff positions, staff being tasked to undertake urgent non-food related activities, and an increase in complexity and number of prosecutions. This however, should not affect the Health Protection

Service's record keeping which was found to be inadequate. Furthermore, specific operational information on its food safety financial and performance management was not readily available. This information and sound record keeping is needed for the Service to demonstrate it is effectively and efficiently fulfilling its food safety responsibilities.

Flowcharts, some of which are complex, are used to guide staff in implementing food safety regulatory responsibilities. Guidance to staff could be enhanced if these were supported by other documentation.

Compliance with legislation can be enhanced by more comprehensive information on food safety being provided for food businesses and consumers in targeted languages as well as in English on the Government's website.

Managing the registration of food businesses (Chapter 3)

Poor documentation and record-keeping practices by the Health Protection Service prevents Audit from reaching a conclusion that the Health Protection Service is effectively managing the registration and renewal of more than 2 500 food businesses in the ACT. There was inadequate documentation to support the registration of food businesses that did not comply with technical requirements.

The Health Protection Service has often been unable to inspect food premises within its targeted timeframes. This increases risks to consumers.

Although registration processes were found to be problematic, the notification processes used by the Health Protection Service were implemented effectively.

Monitoring compliance of food businesses with regulations (Chapter 4)

The Health Protection Service has adopted a system for monitoring compliance with food safety, that classifies each business based on the risks it presents to public health and safety and uses this to guide the frequency of inspections. The effectiveness of this approach is compromised by a decrease in scheduled inspections of food premises. This appears to be due to a lack of operational staff, whether because of difficulty in recruitment, staff being assigned to other higher priority activities or prosecutions demanding more staff time. The Health Protection Service has a reactive approach to monitoring non-compliance and in the longer-term this may compromise food safety.

Compliance is also hindered by insufficient information being available in the *Public Health Complaints* database and in the *Health Manager* database, as Health Protection Service staff rely on this information to support their activities.

Managing compliance (Chapter 5)

At the time of Audit, the Health Protection Service had not developed formal policies and procedures to guide staff in implementing enforcement actions. This contributed to staff adopting different work practices. A process improvement project is underway.

Enforcement documentation on files and in the *Health Manager* database was incomplete or inaccurate. For example, key documentary evidence to support decisions regarding the imposition of enforcement notices was missing from some files. Poor record-keeping practices raise doubts about the reliability of the *Health Manager* database as a management tool, and the effective management of enforcement activities by the Health Protection Service. In the absence of full and appropriate documentation, Audit is unable

to form a view on whether the food businesses identified as non-compliant have acted to fully meet the food safety requirements specified in the notices. Nor can Audit form a view on whether the Health Protection Service has implemented correct procedures to ensure compliance by the businesses. For transparency and accountability purposes, important decisions and the reasons for a particular action should always be fully documented.

Current enforcement actions are resource-intensive and other options need to be pursued.

Responding to food-borne illness outbreaks (Chapter 6)

The Health Protection Service has responded to, and investigated, food-borne illness outbreaks promptly. Since August 2011, the Health Protection Service has implemented standard operating procedures for responding to food-borne illness outbreaks.

KEY FINDINGS

1.12 The audit conclusions are supported by the following findings:

The legislative and administrative framework for managing food safety (Chapter 2)

- Guidelines and/or checklists for staff, supported by training, are required to ensure the staff of the Health Protection Service consistently and effectively implement its food safety procedures. This would complement the Health Protection Service's existing business process flowcharts.
- Although the Health Protection Service is responsible for a range of diverse operational functions and activities, these are not separately recognised in its public financial and performance reporting. A higher degree of transparency could be achieved if specific information on operational food safety finances and performance was publicly available. Without this it is difficult to draw conclusions regarding the effectiveness of food safety regulatory activities.
- The Health Protection Service has experienced a high average annual staff turnover of 25 percent in recent years. Unfilled staff positions have adversely affected its ability to perform its functions effectively. Recruitment efforts have been unsuccessful. Furthermore, at times staff have been diverted from routine food safety regulatory activities to other non-food priority matters. The Health Protection Service engaged contractors in early 2011 to conduct inspections of food businesses. There is a need to address staff shortages and manage the associated risk.
- The Health Directorate's website compared to those of other councils or state authorities is not as comprehensive with respect to food safety standards, guidelines and good practices that would assist businesses in understanding food safety requirements. Improving access to comprehensive information, in languages other than English, could enhance the ability of businesses to comply with legislation.

Managing the registration of food businesses (Chapter 3)

- Registration and renewal files were frequently incomplete and registration data within the *Health Manager* database was inaccurate. In the absence of complete documentation, Audit cannot reach a conclusion that the Health Protection Service is effectively managing the registration process.
- Registration files reviewed by Audit held no evidence of review and approval by appropriately delegated officers between 2003 and 2009. That is, the businesses appear to have had their annual renewals processed without review during that period. Although there have been some changes to the licensing procedures in recent years, under the risk classification adopted by the Health Protection Service, all food businesses should be inspected at least once every 24 months.
- As at 29 March 2011, the *Health Manager* database recorded that 38 food businesses had expired registrations, for periods between two and eight months. Registration renewals for these businesses have been neither timely nor effective.
- Food business notifications were satisfactorily assessed in accordance with documented procedures and within the required timeframe.

Monitoring compliance of food businesses with regulations (Chapter 4)

- Inspections were conducted professionally and in compliance with national standards and Health Protection Service inspection procedures.
- There has been a sharp decline (almost 30 percent) in the number and proportion of scheduled inspections of registered food businesses, and an increase in inspections triggered by complaints or following-up enforcement actions. This is a reactive approach to monitoring non-compliance and minimising health risks to the ACT community.
- The Health Protection Service has been unable to achieve its own targets for the number of inspections conducted or inspection frequency. This partially reflects a lack of suitably qualified staff in the Health Protection Service.
- Complaints overall were managed in accordance with internal policies and procedures but not always promptly.
- Information in the *Public Health Complaints* database was not accurate. Furthermore, the database contains insufficient information (such as the nature of complaints and the status of actions taken) to assist management and staff in effectively monitoring performance.
- It is mandatory for some food businesses to have a Food Safety Program. The Health Protection Service expected that about 150 businesses would need to implement a Food Safety Program, of which most (about 100) were businesses that serve food to vulnerable populations. The *Health Manager* database does not contain sufficient information to facilitate effective management of Food Safety Programs such as whether a business is required to implement a plan, date of receipt or date of audit. Consequently, the Health Protection Service has manually identified relevant businesses. Having sufficient information in the database should make the management

of the Food Safety Program by the Service more efficient. Furthermore, the Health Protection Service has not yet developed its audit procedures for Food Safety Programs.

Managing compliance (Chapter 5)

- At the time of audit, the Health Protection Service had not developed formal policies and procedures to guide staff in implementing and managing enforcement actions. Current practices are complex and require a sound understanding of relevant legislation. The lack of agreed policy and procedural guidelines contributed to staff adopting different work practices. This is undesirable in a work environment focused on legislative compliance. Recently developed procedural flowcharts will provide staff with an overview of requirements, but more comprehensive guidance is needed.
- Documentation on enforcement files and data in the *Health Manager* database was incomplete or inaccurate. For example, some enforcement files did not contain key documentation to support decisions regarding the imposition of enforcement notices. Furthermore, database records showed, incorrectly, that many Improvement Notices and Prohibition Orders issued from 2007 to 2010 were not cleared for 'compliance' or revoked, as required by the Food Act.
- The Health Protection Service has adopted, since 2010, a more stringent approach to enforcement, which has led to an increase in the number of Improvement Notices and Prohibition Orders issued, and the first issuing of Seizure and Suspension Notices. The Service's responses to non-compliance with the Food Act have largely been reactive.
- The Health Protection Service does not use enforcement mechanisms used by other jurisdictions such as on-the-spot fines, 'naming and shaming' of businesses. These mechanisms may assist the Service in its enforcement activities.
- The Health Protection Service has engaged a consultant to undertake public consultation on the proposal to introduce a food business rating scheme. The Health Directorate needs to progress this quickly given its potential benefits.
- As an interim measure, the Health Protection Service could encourage food businesses to immediately voluntarily display their current registrations. This would assist consumers in being able to support food businesses that comply with registration requirements.

Responding to food-borne illness outbreaks (Chapter 6)

- Between 2005 and 2009 the ACT recorded an average of four outbreaks annually (or an average of 1.07 per 100 000 population). On average the outbreaks affected 47 people (less than 3 percent of the Australian average of 1 875), with two people hospitalised per year (1 percent of the Australian average).

- At the time of audit fieldwork, the ACT did not have policies or procedures in place to respond to food-borne illness outbreaks. The Health Protection Service informally adopted the New South Wales Food Safety Protocols, supplemented by other national food-borne disease outbreak response guidelines.
- The Health Protection Service's responses to outbreaks were generally managed in a timely manner and the documentation was adequate for external reporting.

RECOMMENDATIONS WITH DIRECTORATE'S RESPONSE

1.13 The report includes ten recommendations.

1.14 In accordance with Section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to the Director-General, Health Directorate for consideration and comments. The Director-General's overall response is shown below:

The Health Directorate welcomes the Report which is the result of the audit into food safety regulation in the ACT. The Report's findings and recommendations are a valuable addition to the Health Protection Service's ongoing food reforms.

The Health Directorate has a strong commitment to redeveloping current food safety regulatory practices in the ACT. This work, that I hope will ultimately align with world best practice, will ensure the ACT is seen a national leader in this important area of public health.

The Health Protection Service has also been working on some significant strategic projects around food safety regulation and transparency. The Health Directorate is proposing to address emerging knowledge gaps in food safety through the introduction of a requirement for food businesses to have suitability trained food safety supervisors. Other proposed initiatives would require the display of food business registration certificates and the display of a closure notice at the entrance of a food business served with a prohibition order.

It is further proposed that the names of food businesses convicted of an offence against the Food Act 2001 be placed on a publicly available register. These initiatives, if passed by the Legislative Assembly, will come into force in 2012.

The Health Protection Service has also developed a business case for the implementation of a fully transparent food business grading scheme, commonly known as 'Scores on Doors'. This work has been conducted on the back of an extensive review of similar systems around the world, which included an international study tour.

Food reform and regulation are an ongoing issue for the Health Protection Service and we will use this Report to inform our ongoing work regarding the implementation and the effective administration of food safety in the ACT.

The Health Protection Service is committed to continuous improvement through the use of QA processes. Prior to the audit the Health Protection Service had identified a number of the issues related to its regulatory functions that have since been raised in this Report. The Health Protection Service continues to work on ways to improve the management of its regulatory and non-regulatory functions.

The Health Protection Service has developed an ongoing internal audit program and trained a number of staff in internal auditing processes. The annual audit plan outlines procedures and process to be audited.

Additionally, the Environmental Health Section within the Health Protection Service is currently in the final stages of implementing a restructure. This will see the creation of a food inspectorate within the Environmental Health Operations Team. This is expected to provide more efficiency in administering food laws and assist in addressing a number of issues that have been raised in the Report.

I am therefore very pleased to receive the Report as it will be a valuable addition to the reform process that the Health Protection Service is leading with respect to food safety in the ACT.

- 1.15 In addition, the Director-General, Health Directorate provided responses to each recommendation, as shown below.

Recommendation 1

The legislative and administrative framework for managing food safety (Chapter 2)

The ACT Health Directorate should provide guidelines and/or checklists, and training, to ensure staff effectively implement the legislative and administrative framework for food regulation in the ACT.

ACT Health Directorate response:

Agreed

Recommendation 2

The legislative and administrative framework for managing food safety (Chapter 2)

The Health Protection Service's food safety operational financial and performance information should be reported separately by the ACT Health Directorate.

ACT Health Directorate response:

Agreed

Recommendation 3

The legislative and administrative framework for managing food safety (Chapter 2)

The ACT Health Directorate should pursue options to address the shortage of skilled environmental health officers. This could include encouraging a local university to provide a degree in Applied Science, Environmental Health or equivalent, and/or the needed services being provided by people skilled in other related disciplines and supported by supplementary training, if necessary.

ACT Health Directorate response:

Agreed in part

Qualified and skilled staff shortages are a national issue. It is not a specific issue for the ACT. The Health Directorate is looking at options to address this matter now and into the future.

Recommendation 4

The legislative and administrative framework for managing food safety (Chapter 2)

The ACT Health Directorate should update the Health Protection Service's risk management plan to include strategies to specifically address risks to food safety resulting from inadequate staffing levels in its operational areas. This could include engaging contractors and using other service providers on a regular basis.

ACT Health Directorate response:

Agreed

Recommendation 5

The legislative and administrative framework for managing food safety (Chapter 2)

The ACT Health Directorate should update its website to provide comprehensive information, in targeted languages as well as in English, on food safety standards, guidelines and good practices.

ACT Health Directorate response:

Agreed

Recommendation 6

Managing the registration of food businesses (Chapter 3)

The ACT Health Directorate should ensure that the Health Protection Service's record management practices comply with the *Territory Records Act 2002* and Regulations; and that all files and databases contain accurate, complete and up-to-date information.

ACT Health Directorate response:

Agreed

New record management processes and procedures have already been developed and implemented at the Health Protection Service.

Recommendation 7

Managing the registration of food businesses (Chapter 3)

Registration of food businesses should be improved by the ACT Health Directorate:

- a) ensuring timely follow-up of overdue registrations (within two months); and
- b) ensuring that a delegated manager formally reviews and approves re-registrations where a business has not complied with requirements. The delegated manager should document reasons for their decision.

ACT Health Directorate response:

Agreed

Proposed amendments to the Food Act 2001 that are currently before the ACT Legislative Assembly would also require food businesses to publicly display their food business registration.

Recommendation 8

Monitoring compliance of food businesses with regulation (Chapter 4)

Complaint management should be improved by the ACT Health Directorate:

- a) conducting complaint investigations in a timely manner (within seven days);
- b) including in the *Public Health Complaints* database additional information such as the nature of the complaint, progress towards managing it and whether the complaint has been closed; and
- c) ensuring that the complaints database is accurate and complete.

ACT Health Directorate response:

Agreed

Recommendation 9

Monitoring compliance of food businesses with regulation (Chapter 4)

Implementation of Food Safety Programs by food businesses should be improved by the ACT Health Directorate:

- a) updating the *Health Manager* database to ensure that it captures sufficient information to facilitate effective management of the food businesses Food Safety Programs;
- b) preparing a list of food businesses that require a Food Safety Program; and
- c) ensuring that key activities such as determining the audit frequency for a registered business, under Section 12 of the Food Regulation 2002, and the supporting audit program, are completed and implemented.

ACT Health Directorate response:

Agreed

Standard 3.2.1 of the Food Standard Code enables the ACT to require certain high risk food businesses to implement food safety programs. The food safety program is to be implemented and reviewed by the food business, and is subject to periodic audit by a suitably qualified food safety auditor.

Recommendation 10

Managing compliance (Chapter 5)

Compliance with food safety legislation should be improved by the ACT Health Directorate:

- a) considering the effectiveness of enforcement activities used in other jurisdictions such as on-the-spot fines, and ‘naming and shaming’ of businesses;
- b) promptly completing its public consultation and impact assessment of the proposed food business rating scheme; and
- c) encouraging food businesses to immediately voluntarily display current food business registrations pending any amendments to food safety legislation.

ACT Health Directorate response:

Agreed

The Health Directorate has already commenced implementation of many aspects of this recommendation. This reflected in the Food Amendment Bill 2011, which proposes that closure notices and registration certificates be mandatory displayed; the introduction of a requirement to have a trained Food Safety Supervisor; and a register of businesses convicted of an offence against the Food Act 2001 be created.

2. THE LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK FOR MANAGING FOOD SAFETY

The ACT Health Directorate, through the Health Protection Service, is responsible for regulating food safety and monitoring food safety compliance in the ACT. The *Food Act 2001*, the *Food Regulation 2002* and the Food Standards Code, together provide a regulatory framework for the Health Protection Service to monitor and enforce compliance with food safety standards by food businesses in the ACT. In this chapter the legislative and administrative framework implemented by the Health Protection Service for managing food safety is considered.

SUMMARY

Conclusion

The Health Protection Service has had its ability to effectively fulfil all of its food safety functions constrained due to recruitment difficulties in filling vacant staff positions, staff being tasked to undertake urgent non-food related activities, and an increase in complexity and number of prosecutions. This however, should not affect the Health Protection Service's record keeping which was found to be inadequate. Furthermore, specific operational information on its food safety financial and performance management was not readily available. This information and sound record keeping is needed for the Service to demonstrate it is effectively and efficiently fulfilling its food safety responsibilities.

Flowcharts, some of which are complex, are used to guide staff in implementing food safety regulatory responsibilities. Guidance to staff could be enhanced if these were supported by other documentation.

Compliance with legislation can be enhanced by more comprehensive information on food safety being provided for food businesses and consumers in targeted languages as well as in English on the Government's website.

Key findings

- Guidelines and/or checklists for staff, supported by training, are required to ensure the staff of the Health Protection Service consistently and effectively implement its food safety procedures. This would complement the Health Protection Service's existing business process flowcharts.
- Although the Health Protection Service is responsible for a range of diverse operational functions and activities, these are not separately recognised in its public financial and performance reporting. A higher degree of transparency could be achieved if specific information on operational food safety finances and performance was publicly available. Without this it is difficult to draw conclusions regarding the effectiveness of food safety regulatory activities.
- The Health Protection Service has experienced a high average annual turnover of 25 percent in recent years. Unfilled staff positions have adversely affected its ability to perform its functions effectively. Recruitment efforts have been unsuccessful. Furthermore, at times staff have been diverted from routine food safety regulatory activities to other non-food priority matters. The Health Protection Service engaged contractors in early 2011 to conduct inspections of

food businesses. There is a need to address staff shortages and manage the associated risk.

- The Health Directorate's website compared to those of other councils or state authorities is not as comprehensive with respect to food safety standards, guidelines and good practices that would assist businesses in understanding food safety requirements. Improving access to comprehensive information, in languages other than English, could enhance the ability of businesses to comply with legislation.

LEGISLATION - THREE LEVELS OF GOVERNMENT

- 2.1 Food regulation in Australia involves all three levels of government. Governments have established a framework for the regulation of food safety through legislation and standards. The framework begins at an international level; Food Standards Australia New Zealand (FSANZ) has developed the *Australia New Zealand Food Standards Code* (the Food Standards Code) to provide a framework for the management of food safety.
- 2.2 The Australian Government develops uniform food standards to:
 - set requirements of what food products and related businesses must achieve;
 - monitor the safety of imported food; and
 - coordinate food recalls and surveillance.
- 2.3 The Australian Government has endorsed the Food Standards Code for application to all foods produced or imported for sale in Australia and New Zealand. It has been adopted for use in the ACT.
- 2.4 The States and Territories are constitutionally responsible for food regulation. Food safety legislation and regulations are typically enacted by the States and Territories, whereas monitoring and enforcement of food safety regulations are generally undertaken by local governments, primarily through testing and inspection. The ACT Government both administers and enforces food safety legislation.
- 2.5 In the ACT, food safety is governed by the *Food Act 2001*, the *Food Regulation 2002*, and the *Public Health Act 1997*. The ACT's Food Act is based on the Model Food Act,⁵ which was enacted following a decision of the Council of Australian Governments. The Food Act and its associated regulations incorporate the Food Standards Code.⁶ The Food Act, Regulation and Standards Code together provide a regulatory framework to administer, monitor and enforce compliance with food safety standards by food businesses in the ACT.
- 2.6 The legislative framework clearly defines the authority and responsibilities of the Health Protection Service to perform its regulatory role.

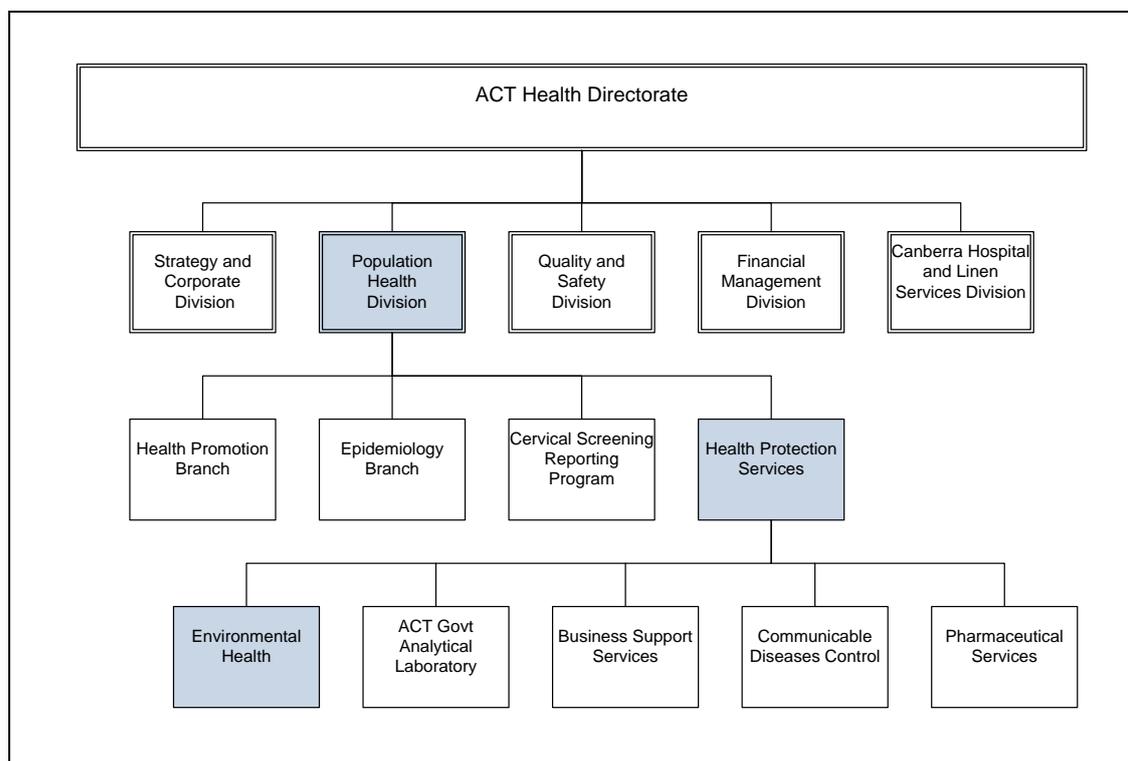
⁵ The Model Food Act is available at Food Standards website <http://www.foodstandards.gov.au/>

⁶ Section 3 of the *Food Act 2001* and Section 7 of the *Food Regulation 2002*.

**ACT FOOD SAFETY – REGULATED BY ACT HEALTH DIRECTORATE,
HEALTH PROTECTION SERVICE**

- 2.7 It is important to note that the ACT Health Directorate is responsible for both the administration and enforcement of food safety legislation. It combines government functions that are often handled separately by state and local governments in other jurisdictions. The Health Protection Service, one of four branches within the Population Health Division, manages health risks (including food safety) and implements strategies and timely responses to public health events, through a range of regulatory and policy activities.⁷
- 2.8 Regulation of food businesses is a main function of the Environmental Health Section, one of five sections in the Health Protection Service. The Environmental Health Section is also responsible for a range of other compliance activities such as boarding houses; swimming pools and spas; drinking water quality; and residential premises (overcrowding and unsanitary conditions).

Figure 2.1: ACT Health Organisation Chart, showing food safety responsibilities



Source: Audit Office, extracted from ACT Health Directorate organisation chart

⁷ ACT Health Directorate, *Strategic Framework for the Population Health Division 2010-2015*. Available from <http://www.health.act.gov.au/c/health?a=sendfile&ft=p&fid=1300426377&sid=->. Accessed 25 October 2011.

PROCEDURES, TRAINING AND QUALITY AUDITS – SUPPORTS THE IMPLEMENTATION OF LEGISLATION

- 2.9 The Health Protection Service developed several flowcharts in consultation with staff over the period June 2009 to May 2011 to guide staff in how to meet their food safety regulatory responsibilities. The flowcharts, which have been revised as needed, outline the activities and procedures for:
- registration and renewal of food businesses;
 - public health inspections;
 - complaints management;
 - notifications; and
 - routine notifiable diseases.
- 2.10 The flowcharts are the main source of guidance for staff in the Health Protection Service. The Service does not have comprehensive documentation of its procedures, in the form of a procedural manual, guidelines and / or checklists. The Service prefers the use of the flowcharts, rather than having detailed documentation as it considers that the charts are a stronger visual representation of the required processes. Audit reviewed the flowcharts and found that they incorporate the major procedures in accordance with relevant legislative requirements. However, some are complex.
- 2.11 Reviews by the Health Protection Service and Audit suggest that further guidance and / or training for staff is required to ensure procedures are consistently and effectively implemented. This could take the form of guidelines and/or checklists to complement the existing business process flowcharts. Implementation of procedures should be routinely tested. In this regard, Audit notes that the Health Protection Service issued Standard Operating Procedures in April 2011 for an internal audit program to cover all policies and procedures documented in the Service's management system. The Health Protection Service expects to complete 'a minimum of eight audits' in the first year of the program's operation.
- 2.12 There have been some difficulties in implementing procedures. For example, a review of licensing / registration renewal procedures completed by the Health Protection Service in September 2010, concluded that implementation was not fully effective. The review examined 80 applications for renewal of licence / registration for the period from July 2009 to August 2010, of which 66 percent related to the renewal of food businesses, cooling towers and boarding houses. The review identified procedural shortcomings, including the application of inconsistent practices, incomplete documentation, failure to follow-up warning letters within the required timeframe, and a lack of documentation to support approvals by appropriate delegates. Many of the files reviewed demonstrated poor record-keeping and file management practices. Consequently, the Health Protection Service commenced in-service staff training to ensure a consistent approach in procedures and practices.

- 2.13 The Audit Office’s testing of the regulatory activities of the Health Protection Service produced similar results and also identified inconsistent work practices. The results of the testing are discussed in Chapters 3 and 4.

Recommendation 1

The legislative and administrative framework for managing food safety (Chapter 2)

The ACT Health Directorate should provide guidelines and/or checklists, and training, to ensure staff effectively implement the legislative and administrative framework for food regulation in the ACT.

**OPERATIONAL FINANCIAL AND PERFORMANCE REPORTING –
IMPORTANT FOR TRANSPARENCY AND ACCOUNTABILITY**

- 2.14 ACT Government expenditure on food safety regulation is not separately identified in the Health Directorate’s annual budget or financial reports. A proxy measure is the annual funding of the Environmental Health Section, which averaged \$2.25 million per annum for the years 2006-07 to 2011-12 (14.48 percent of the average total funding of the Health Protection Service). However, as noted at paragraph 2.8, the Environmental Health Section is responsible for a range of activities, in addition to food safety regulation. Expenditure by the Health Protection Service and the Environmental Health Section is shown in Table 2.1. Overall, there has been an upwards trend in funding for the Environmental Health Section.

Table 2.1: Environmental Health Section expenditure 2006-07 to 2011-12

	HPS ACT Government funding \$ million	HPS Federal Government funding \$ million	HPS Total funding \$ million	Environmental Health Section funding \$ million	Proportion of HPS total funding
2006-2007	8.28	3.51	11.80	2.08	17.63%
2007-2008	8.64	9.68	18.32	2.14	11.68%
2008-2009	9.14	7.70	16.84	1.99	11.83%
2009-2010	9.36	5.48	14.84	2.07	13.95%
2010-2011	10.53	4.86	15.39	2.53	16.43%
2011-2012	11.63	6.07	17.70	2.72	15.37%
Average	9.60	6.22	15.82	2.25	14.48%

Source: ACT Health directorate, Health Protection Service

- 2.15 The Health Directorate reports its performance in the Statement of Performance in its annual report. The Health Protection Service reports against Output 1.4 Public Health Service accountability indicators, which include:

- the number of specimens provided to the Health Protection Service Analytical Laboratory for analysis in connection with legislation

- enforcement, other services to ACT Government agencies and private activity (accountability indicator 1.4a);
- inspection compliance of licensable, registrable and non-licensable activities (accountability indicator 1.4b); and
 - response time to environmental health hazards, communicable disease hazards relating to measles and meningococcal infections and food poisoning is less than 24 hours (accountability indicator 1.4c).⁸
- 2.16 The key performance indicator of the regulatory activities of the Health Protection Service is accountability indicator 1.4b. In 2009-10, the Health Directorate reported that it had achieved 91 percent against a target of 85 percent for this accountability indicator. However, the indicator covers the full range of regulatory activities (as outlined in paragraph 2.8) and does not distinguish the separate regulatory responsibilities of the Health Protection Service.
- 2.17 Performance indicators 1.4a and 1.4c similarly report on a range of activities, not all of which relate to food safety. Further, indicator 1.4a is a measure of ‘throughput’, driven by demand for testing specimens and offers little information on the efficiency or effectiveness of regulatory activities.
- 2.18 The lack of disaggregation in the activities reported against the indicators diminishes their benefit as publicly reported indicators of performance of food safety regulation, as performance and financial data is not transparent.
- 2.19 The Environmental Health Section internally reports achievements against targets for its food safety activities. Key performance targets are the number of food businesses inspected over a year and the percentage of high-risk food business inspected; for 2010-11 the targets were 1 600 and 95 percent, respectively.
- 2.20 Internal performance measures for food safety used by the Health Protection Service need further work to provide more relevant and useful operational performance information to management. At present, they are largely activity measures, which offer some indication of the relative efficiency of specific food safety activities. While useful, these indicators do not facilitate an assessment of the effectiveness of food safety regulation. The Health Protection Service has advised that a Key Performance Indicators Report has been developed for the 2011-12 financial year to provide monthly performance data such as the number of registered food businesses inspected by the Health Protection Service.
- 2.21 The Health Protection Service has a robust process to collect feedback on its regulatory activities, including from food businesses. Inspected businesses are surveyed each year for comments on the contacts they have had with the Health Protection Service. Survey results are reported to the Health Protection Service management, together with recommended actions.
- 2.22 The latest survey (the 2010 Environmental Health Customer Survey) was sent to over 300 businesses, and achieved a 25 percent response rate. Two thirds of

⁸ ACT Government, *2009-10 Budget Paper No. 4*, ACT Health’s Accountability Indicators page 209.

respondents were food businesses, most of which were satisfied with the services received from the Health Protection Service staff. Nevertheless, there is an opportunity for the Health Protection Service to explore ways to encourage a higher response rate to obtain a more representative view on its performance.

Recommendation 2

The legislative and administrative framework for managing food safety (Chapter 2)

The Health Protection Service's food safety operational financial and performance information should be reported separately by the ACT Health Directorate.

STAFFING – AN ON-GOING CHALLENGE

- 2.23 In recent years the Health Protection Service Environmental Health Section has experienced high staff turnover and difficulties in recruiting appropriate staff. The Section had a planned staffing level of twelve Environmental Health Officers, who require a degree in Applied Science (Environmental Health) or an equivalent qualification. Recruitment difficulties have led to an ongoing shortage of staff; at the time of audit fieldwork, three of the twelve positions were unfilled.
- 2.24 The Health Protection Service has used several strategies to deal with ongoing staff shortages, including:
- recruitment exercises conducted in late 2010;
 - engaging cadet health officers;
 - engaging contractors in early 2011 to conduct inspections of food businesses; and
 - liaising with local universities to generate interest in providing environmental health studies.
- 2.25 Audit understands there may be potential for a local university to provide studies and qualifications in environmental health.
- 2.26 If the limited opportunities to secure staff with the currently required qualification (a degree in Applied Science, Environmental Health or equivalent) continue, the Health Protection Service should consider whether the services provided by Environmental Health Officers can be satisfactorily delivered by staff with other related qualifications that were given supplementary training, if needed. The ACT Health Directorate could promote the development of an accredited course at a local university and investigate options for securing skilled staff with related skills that could be given further training.

Recommendation 3

The legislative and administrative framework for managing food safety (Chapter 2)

The ACT Health Directorate should pursue options to address the shortage of skilled environmental health officers. This could include encouraging a local university to provide a degree in Applied Science, Environmental Health or equivalent, and/or the needed services being provided by people skilled in other related disciplines and supported by supplementary training, if necessary.

- 2.27 The Health Protection Service Risk Register (updated in June 2010) identified inadequate staffing levels to operational areas of the Service as a key factor contributing to a high risk that the Health Protection Service has a ‘significantly reduced capacity to provide public health responses across the ACT.’ The Health Protection Service has identified a series of controls and risk treatments including recruitment, management of staff leave and the development of an improved workplace culture to increase staff retention, but acknowledges that even after the implementation of these measures the risk remains high.
- 2.28 The Health Protection Service confirmed that unfilled staff positions have adversely affected its ability to perform its functions effectively. Other factors have also affected its capacity to undertake ‘core’ business. For example, staff have been diverted to respond to major health events such as the influenza pandemic in 2009 and residential overcrowding in 2010. Further, a more formalised approach to enforcement has seen an increase in the number of prosecutions for breaches of the food safety legislation. This, too, has diverted staff from routine food safety regulatory activities.
- 2.29 The Health Protection Service has advised that several factors have affected its capacity to conduct scheduled inspections. These include the increasing complexity and number of activities associated with prosecuting businesses for breaches of the food safety legislation, the need to reassign staff to deal with other priorities such as responding to the influenza pandemic in 2009 and residential overcrowding in 2010.
- 2.30 It is important, therefore, that the Health Protection Service ensures its risk management plan recognises these issues and the adverse affect on its food safety operations. This may require the Service to thoroughly and systematically review its current level of activity, assess the regulatory and operational risks, and prepare strategies to mitigate those risks, including reallocating resources where necessary.

Recommendation 4

The legislative and administrative framework for managing food safety (Chapter 2)

The ACT Health Directorate should update the Health Protection Service’s risk management plan to include strategies to specifically address risks to food safety resulting from inadequate staffing levels in its operational areas. This could include engaging contractors and using other service providers on a regular basis.

PUBLIC INFORMATION – IMPORTANT TO ENSURE IT IS COMPREHENSIVE AND MULTI-LINGUAL

- 2.31 The Health Protection Service has recognised that an important step in encouraging compliance with the regulatory framework is to keep food businesses informed about food safety, including changes to the Food Standards Code. The Health Protection Service prepares and distributes information sheets and posters, and a quarterly newsletter, *Act on Food Safety* to inform and educate businesses and the community about food safety.
- 2.32 Compared to the websites of other councils or state authorities (for example the Melbourne City⁹ and Hobart City Councils¹⁰) reviewed by Audit, the Health Directorate's website (www.health.act.gov.au) contained limited information on food safety standards, guidelines and good practices that would assist businesses in understanding food safety requirements. Information available on the ACT Health Directorate's website should be more comprehensive so that it provides detailed guidance on the registration requirements for food businesses.
- 2.33 Although public information, such as that provided on fact sheets, typically includes a notice that interpreting / translating services are available, it is not provided in languages other than English. Cultural differences may mean there is a different understanding and expectation of food handling procedures or requirements. It is therefore important that information on food safety be given in languages that reflect the cultural diversity of food businesses in the ACT.
- 2.34 The Health Protection Service advised that it has worked with multicultural community groups to explore options for providing food safety information and training in languages other than English. Audit understands that the Health Protection Service has not undertaken any further work in this area due to other priorities.

Recommendation 5

The legislative and administrative framework for managing food safety (Chapter 2)

The ACT Health Directorate should update its website to provide comprehensive information, in targeted languages as well as in English, on food safety standards, guidelines and good practices.

⁹ <http://www.melbourne.vic.gov.au/CommunityServices/Health/Pages/Foodsafety.aspx>

¹⁰ http://www.hobartcity.com.au/Environment/Public_Health_and_Food/Food

3. MANAGING THE REGISTRATION OF FOOD BUSINESSES

Food businesses in the ACT must be registered with the Chief Health Officer¹¹ unless exempted. Registration must be renewed annually. In this chapter the registration of food businesses in the ACT and related activities are examined. The effective regulation of food business registrations and renewals by the Health Protection Service is an important way to manage regulatory risk and enhance the achievement of policy objectives.

SUMMARY

Conclusion

Poor documentation and record-keeping practices by the Health Protection Service prevents Audit from reaching a conclusion that the Health Protection Service is effectively managing the registration and renewal of more than 2 500 food businesses in the ACT. There was inadequate documentation to support the registration of food businesses that did not comply with technical requirements.

The Health Protection Service has often been unable to inspect food premises within its targeted timeframes. This increases risks to consumers.

Although registration processes were found to be problematic, the notification processes used by the Health Protection Service were implemented effectively.

Key findings

- Registration and renewal files were frequently incomplete and registration data within the *Health Manager* database was inaccurate. In the absence of complete documentation, Audit cannot reach a conclusion that the Health Protection Service is effectively managing the registration process.
- Registration files reviewed by Audit held no evidence of review and approval by appropriately delegated officers between 2003 and 2009. That is, the businesses appear to have had their annual renewals processed without review during that period. Although there have been some changes to the licensing procedures in recent years, under the risk classification adopted by the Health Protection Service, all food businesses should be inspected at least once every 24 months.
- As at 29 March 2011, the *Health Manager* database recorded that 38 food businesses had expired registrations, for periods between two and eight months. Registration renewals for these businesses have been neither timely nor effective.
- Food business notifications were satisfactorily assessed in accordance with documented procedures and within the required timeframe.

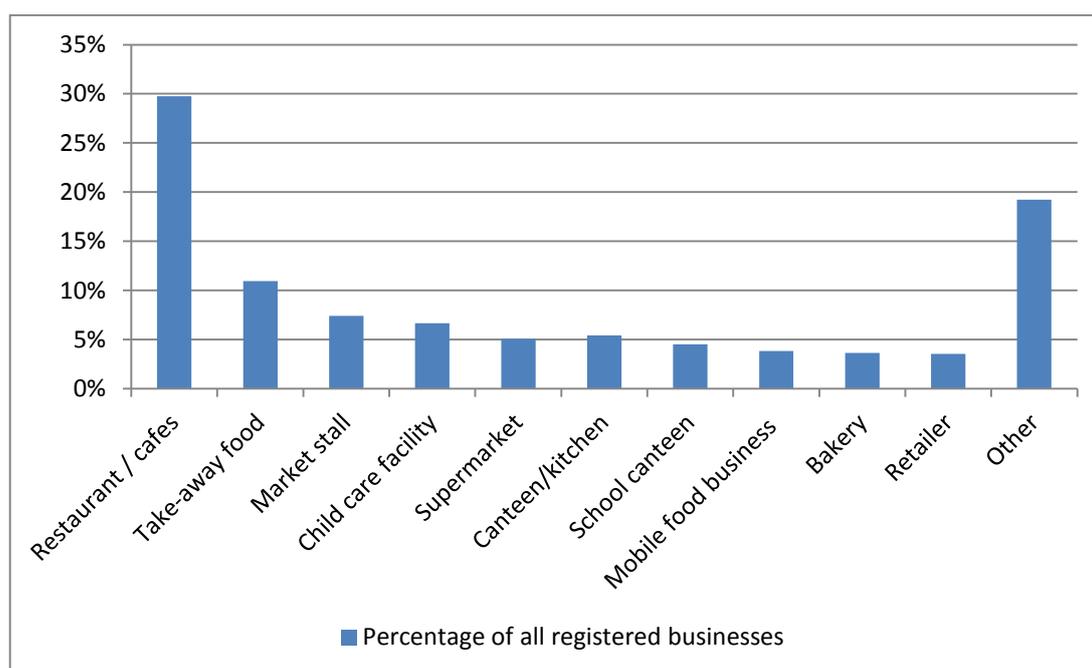
¹¹ The Chief Health Officer is a public servant in the ACT Health Directorate who is appointed by the Minister under the *Public Health Act 1997*.

REGISTRATION – ALL FOOD BUSINESSES MUST BE REGISTERED UNLESS EXEMPTED

- 3.1 Section 10 of the Food Act defines a *food business* as:
- a business, enterprise or activity (other than a business, enterprise or activity that is primary food production) that involves:
- the handling of food intended for sale; or
 - the sale of food
- whether or not the business, enterprise or activity is of a commercial, charitable or community nature or whether it involves the handling or sale of food on a single occasion only.
- 3.2 The definition of ‘food business’ captures a variety of businesses such as restaurants, cafes, bakeries, caterers, and milk vendors (see Figure 3.1).
- 3.3 Sections 91 and 92 of the Food Act require all food businesses to apply for registration with the ACT Chief Health Officer. In practice the Chief Health Officer delegates responsibility for registering food businesses to the Director of the Health Protection Service. Registration is for one year.
- 3.4 Under Sections 89 and 90 of the Food Act, some food businesses are exempt from registration, although these businesses are still required to submit a *notification* to the Chief Health Officer. Notifications typically cover businesses handling food that is not ‘potentially hazardous’.¹² Many notifications are for a temporary permit for handling or selling food for immediate consumption over a short period such as food stalls operating at the ACT Multicultural Festival or school festivals.
- 3.5 In August 2011, the Health Directorate database (*Health Manager* database) recorded 2 541 registered businesses. Most food businesses are in the restaurants / cafes category (refer to Figure 3.1). There were a further 456 notified food businesses on the database.

¹² ‘Non-potentially hazardous’ food is defined in the *Food Regulation 2002* as ‘food that does not require to be stored at certain temperature to minimise the growth of micro-organisms or prevent the formation of toxins in the food’.

Figure 3.1: Registered food businesses in the ACT (August 2011)



Source: Audit Office from ACT Health directorate database

The Health Protection Service classifies food businesses based on the risks to public health and safety

3.6 The Health Protection Service classifies food businesses into priority ratings based on the risks that a business presents to public health and safety (refer to Figure 3.2). The risk-based system (developed by the Australia New Zealand Food Authority) is used to classify food businesses into low, medium or high risk categories based on the type of food, activity of the business, method of processing and customer base.¹³

3.7 The Health Protection Service uses the risk classifications to guide the frequency of inspections for food businesses (refer to Table 3.1). Registration fees for food businesses vary according to the risk classification; high risk businesses have higher registration fees than low risk businesses.

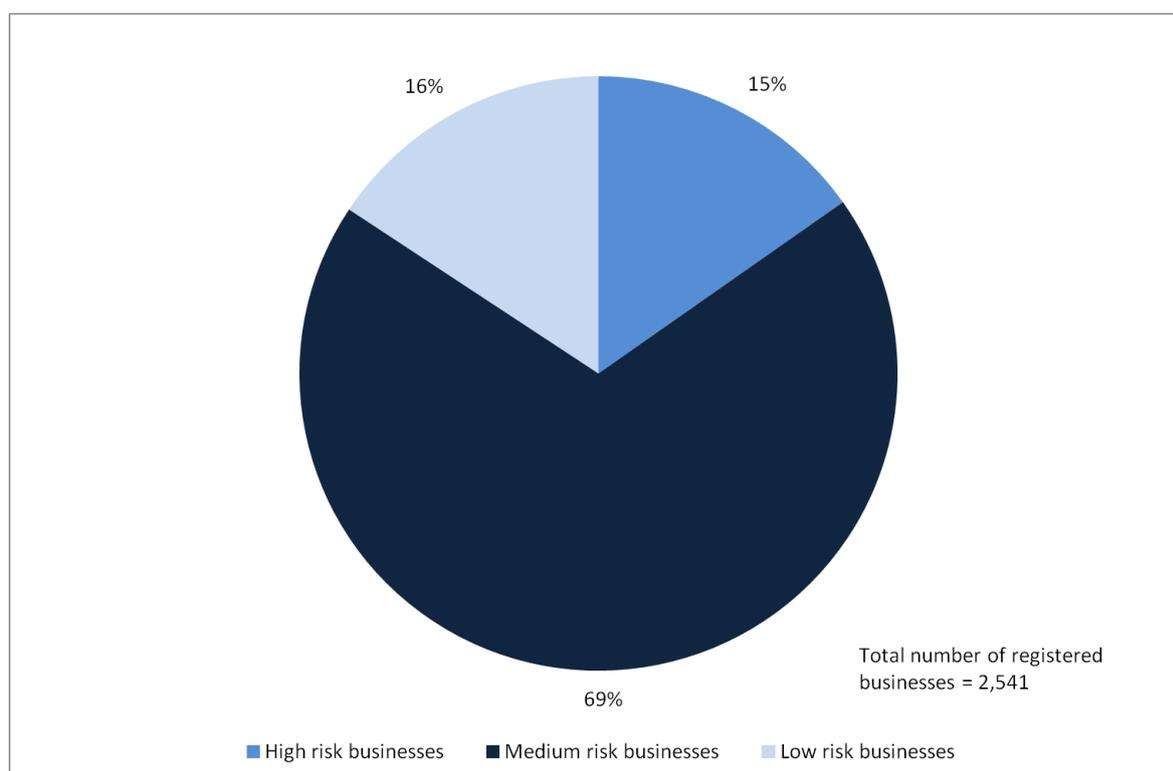
Table 3.1: Inspection/audit frequency under the Australia New Zealand Food Authority risk-based model

Risk classification	Audit frequencies (every x months)		
	Starting point	Maximum	Minimum
Low	18	12	24
Medium	12	6	18
High	6	3	12

Source: Food Safety: The priority classification system for food businesses, Australia New Zealand Food Authority 2001

¹³ ANZFA 2001, Food Safety: The priority classification system for food businesses. Refer ANZ Food Standards website at www.foodstandards.gov.au

Figure 3.2: Registered food businesses by risk classification (August 2011)



Source: Audit Office from ACT Health Directorate database

RECORD-KEEPING – AN IMPORTANT BUSINESS PROCESS

3.8 The Environmental Health Section of the Health Protection Service has the primary responsibility for assessing and approving the registration of food businesses. Environmental Health Section staff assess applications against criteria outlined in section 92 of the Food Act, including whether the proposed premises are fit for their intended use, and whether the applicant has previously contravened the Act.¹⁴ In practice, several assessments are made to ascertain whether:

- the details of the registered business are correct;
- the proposed premises met the minimum statutory requirements for the particular business, public health risk activity or procedures under the *Building Act 2004*;
- a Food Safety Program has been submitted (when required); and
- an appropriate risk classification has been assigned and the correct payment made in accordance with the classification.

3.9 Audit randomly selected 42 files from the database of registered food businesses to test the initial registration process. The tests could not be completed for 31 of the files (74 percent); original registration documentation for 21 files had been destroyed in the 2003 bushfires, and the Health Protection Service was unable to

¹⁴ Section 92 of the *Food Act 2001*.

locate a further 10. The latter is a concern as the failure to maintain acceptable record management practices is a risk to good business management and impairs the effective performance of regulatory functions. It also highlights a failure to comply with the Territory's *Standard for Record Management* (No. 7: Physical Storage of Records) and have adequate control over the management of files.

- 3.10 As noted elsewhere in this report (refer paragraphs 3.19 and 5.23), poor file management and record-keeping practices were common. Files reviewed by Audit were often incomplete, had incorrect file references and contained unsigned or draft documents (as opposed to final versions). Similar observations have been made in an internal audit in March 2010¹⁵ and an internal review of licensing and registration renewal procedures conducted by the Health Protection Service in September 2010.
- 3.11 Further, in March 2011, the Health Protection Service established a special task force to review all files relating to the registration of food businesses when significant discrepancies between the food businesses database and hard copy information were identified. This exercise involved 14 staff, and identified 2 524 files. The review team was unable to locate 32 files. The review identified poor record-keeping practices, a lack of documented procedures, and inconsistent application by staff.
- 3.12 Audit testing of the 11 selected registration files that could be located identified three applications that did not have evidence of approval and review by the appropriate delegate, and one instance where the date of assessment and approval was not recorded. Although most of the files available for review indicated that the Health Protection Service had complied with its policies and procedures in processing the new applications for registration, in the absence of complete documentation (evidenced by incomplete and missing files), Audit cannot reach a conclusion that the Health Protection Service is effectively managing the registration process.

Recommendation 6

Managing the registration of food businesses (Chapter 3)

The ACT Health Directorate should ensure that the Health Protection Service's record management practices comply with the *Territory Records Act 2002* and Regulations; and that all files and databases contain accurate, complete and up-to-date information.

- 3.13 In reviewing the registration files, Audit noted that one food business had operated for more than a year without registration; although the cafe had been operating since February 2002, it was first registered in January 2004. Documentation on file indicated that the Health Protection Service had inspected the premises in February 2002 and had discussions some months later with the proprietor, advising that the business could not trade until it was registered. The Health Protection Service next became aware of the food business when it submitted a registration form in January 2004.

¹⁵ Internal audit, *Review of Licensing Process – Health Protection Service* conducted by the Health Directorate's contracted auditors. Reported in March 2010.

- 3.14 Audit suggested that improved surveillance activities could minimise the incidence of unregistered food businesses operating in the ACT. However, the Health Protection Service advised that the level of surveillance needed to detect unregistered (illegal) food businesses would be prohibitively expensive. Audit was advised that other approaches, such as the introduction of a food grading system, would be more effective means of minimising unregistered businesses. This is discussed further in Chapter 5.

REGISTRATION RENEWALS – INSPECTIONS SUPPORT THIS PROCESS

- 3.15 Under Section 93 of the Food Act:

The chief health officer must renew the registration of a food business if, before the expiry of the registration, the proprietor of the food business gives the chief health officer a properly completed application form for the renewal of the registration.

- 3.16 In practice, the Health Protection Service issues a renewal notice to registered businesses 30 days before registration expires. Upon receipt of a completed application for renewal, the Health Protection Service staff review the application for completeness and assess whether it meets several technical requirements including if:

- it has been inspected recently (within the relevant timeframe, which varies depending on the risk assessment for the business);
- the risk classification remains appropriate;
- there are any outstanding notices issued to the applicant or outstanding complaints; and
- correct payment was received.

- 3.17 Applications for renewal that meet all requirements may be approved by a public health officer within the line area. Where a business does not meet all requirements, the renewal application is referred to a manager. The Health Protection Service procedures required the manager's considerations to be documented in a statement of reasons for approval or non-approval.

- 3.18 If a renewal application is not received, the Health Protection Service will issue a warning letter, or if necessary a 'show cause' letter (requiring the business to show cause why registration should not be suspended or cancelled). If a business continues to trade when registration has expired enforcement action may be initiated by the Health Protection Service.

Renewal processes require improvement

- 3.19 Audit examined the most recent renewal applications for a selection of food businesses, using the same files mentioned in paragraph 3.9. This selection included 30 renewal applications. Audit found that:
- fourteen renewal applications (47 percent) complied fully with renewal requirements and were approved by the public health officers;
 - sixteen renewal applications (53 percent) did not comply with renewal requirements; according to the procedures documented in the *Registration*

Renewal Flow Diagram these renewal applications should have been reviewed and approved by a delegated manager. Only eight of these sixteen applications were reviewed and approved by the delegated manager.

- The most common compliance exception was a failure to undertake an inspection of the food premises in accordance with the timeframe for the applicant's relevant risk classification. Five of the renewal registrations were food businesses assessed as 'high risk', such as child care centres and aged care facilities. High risk businesses should be inspected within 12 months prior to renewal. One child care centre had not been inspected for three years at the time of renewal.
- None of the sixteen renewal applications that were required, under the Health Protection Service's procedures, to be referred to a manager for approval, contained a statement of reasons documenting why the application was approved notwithstanding that it did not comply with technical requirements.

3.20 In reviewing the selected files, Audit noted that for fifteen (50 percent) of the food businesses there was no evidence of review and approval by appropriately delegated officers between 2003 and 2009. That is, the businesses appear to have had their annual renewals processed without review during that period. Although there have been some changes to the licensing procedures in recent years, under the risk classification adopted by the Health Protection Service, all food businesses should be inspected at least once every 24 months.

3.21 As at 29 March 2011, the *Health Manager* database recorded that 38 food businesses had expired registrations, for periods between two and eight months. The Health Protection Service has a process in place to remind businesses of renewal requirements before the expiry date and to follow up overdue registration. These processes allow around six weeks to comply before enforcement action is considered. Audit considers that, given the Health Protection Service's processes, a failure to take action to ensure a food business is registered for any period in excess of two months following the expiry of their registration is unreasonable.

3.22 Further, the approval of the annual renewal of food business registrations without formal assessment and review undermines a fundamental component of the regulatory framework, that is, effective compliance activities. The lack of documented reasons to support a decision by the line manager was not consistent with the Health Protection Service's procedures or the requirements of the *Territory Records Act 2002*, which requires that an agency 'must make and keep full records of its activities.'¹⁶ Inadequate file and database management is the subject of Audit Recommendation 6 (Chapter 3).

¹⁶ Section 14 of the *Territory Records Act 2002*.

Recommendation 7

Managing the registration of food businesses (Chapter 3)

Registration of food businesses should be improved by the ACT Health Directorate:

- a) ensuring timely follow-up of overdue registrations (within two months); and
- b) ensuring that a delegated manager formally reviews and approves re-registrations where a business has not complied with requirements. The delegated manager should document reasons for their decision.

NOTIFICATIONS – *FOOD BUSINESSES EXEMPT FROM REGISTRATION*

3.23 A *prescribed* food business is exempted from registration under section 89 of the Food Act. The Food Regulation (Section 6) provides definitions of the prescribed food businesses that may be exempted from registration for reasons such as:

- they do not prepare ‘potentially hazardous’ food or goods for immediate consumption
- they handle or sell food in or from a food transport vehicle that is registered under food law in other jurisdiction (e.g. a food van registered under New South Wales food legislation)
- they operate in the ACT on five or fewer occasions (of up to three days trade on each occasion).

3.24 Businesses meeting this criterion are required to *notify* the Chief Health Officer. In processing the notification of a food business, the Health Protection Service reviews the application for correctness and completeness of information provided. The food businesses will then be advised of the outcome of the application, usually within two business days if the notification was accepted.

3.25 Audit examined 17 notifications processed during 2010 and 2011 (ten percent of all notifications), of which eight related to the ACT Multicultural Festival held in February 2011. The notifications examined were satisfactorily assessed in accordance with procedures documented in the registration/notification flowchart prepared by the Health Protection Service, and within the required timeframe. However, most files examined (13 out of 17) were incomplete in that they did not have a copy of the letter on files advising the applicants of the outcome of their applications.

4. MONITORING COMPLIANCE OF FOOD BUSINESSES WITH REGULATIONS

In this chapter the activities of the Health Protection Service in monitoring compliance with food safety regulations by food businesses are examined. A systematic risk-based approach should provide a cost-effective mechanism for managing food safety regulations. It should allow the Health Protection Service to target resources at the highest regulatory risks and respond accordingly.

SUMMARY

Conclusion

The Health Protection Service has adopted a system for monitoring compliance with food safety, that classifies each business based on the risks it presents to public health and safety and uses this to guide the frequency of inspections. The effectiveness of this approach is compromised by a decrease in scheduled inspections of food premises. This appears to be due to a lack of operational staff, whether because of difficulty in recruitment, staff being assigned to other higher priority activities or prosecutions demanding more staff time. The Health Protection Service has a reactive approach to monitoring non-compliance and in the longer-term this may compromise food safety.

Compliance is also hindered by insufficient information being available in the *Public Health Complaints* database and in the *Health Manager* database, as Health Protection Service staff rely on this information to support their activities.

Key findings

- Inspections were conducted professionally and in compliance with national standards and Health Protection Service inspection procedures.
- There has been a sharp decline (almost 30 percent) in the number and proportion of scheduled inspections of registered food businesses, and an increase in inspections triggered by complaints or following-up enforcement actions. This is a reactive approach to monitoring non-compliance and minimising health risks to the ACT community.
- The Health Protection Service has been unable to achieve its own targets for the number of inspections conducted or inspection frequency. This partially reflects a lack of suitably qualified staff in the Health Protection Service.
- Complaints overall were managed in accordance with internal policies and procedures but not always promptly.
- Information in the *Public Health Complaints* database was not accurate. Furthermore, the database contains insufficient information (such as the nature of complaints and the status of actions taken) to assist management and staff in effectively monitoring performance.
- It is mandatory for some food businesses to have a Food Safety Program. The Health Protection Service expected that about 150 businesses would need to implement a Food Safety Program, of which most (about 100) were businesses that serve food to vulnerable populations. The *Health Manager* database does not

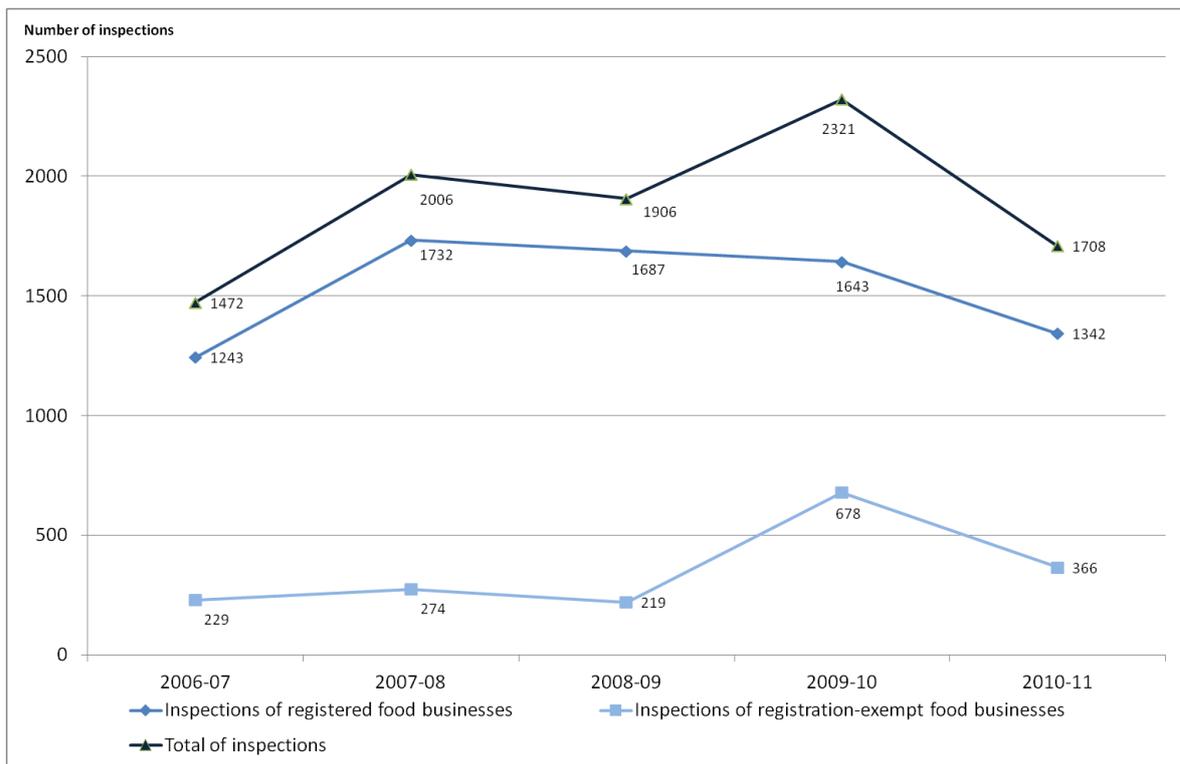
contain sufficient information to facilitate effective management of Food Safety Programs such as whether a business is required to implement a plan, date of receipt or date of audit. Consequently, the Health Protection Service has manually identified relevant businesses. Having sufficient information in the database should make the management of the Food Safety Program by the Service more efficient. Furthermore, the Health Protection Service has not yet developed its audit procedures for Food Safety Programs.

INSPECTIONS – NEED TO BE ROUTINELY UNDERTAKEN

- 4.1 Parts 5 and 6 of the Food Act provide public health officers appointed under the *Public Health Act 1997* with wide-ranging powers to inspect food premises and to seize items (for example, food for sampling) from the premises to assess compliance with the Food Standards Code.¹⁷
- 4.2 The Health Protection Service has adopted a priority classification system that classifies food businesses based on the risks they present to public health and safety, and uses the risk classification to guide the frequency of inspections. Inspection frequency increases with risk; high risk businesses are programmed for annual inspection, and low risk business will be inspected every two years.
- 4.3 Figure 4.1 presents information on the total number of inspections of food businesses for the period 2006-07 to 2010-11. The Health Protection Service inspects both registered and registration-exempt food businesses. Many of the food businesses that are exempt (discussed at paragraph 3.4) are temporary businesses operating over a short period. These include food stalls at events such as the Hall Markets, Floriade, Summernats, the ACT Multicultural Festival and school festivals. The Health Protection Service considers that temporary food businesses pose a risk to the public and hence gives priority to inspections of these businesses. The substantial increase in inspections of registration-exempt businesses in 2009-10 was the result of an increased focus by the Health Protection Service on temporary food businesses at markets. This had been prompted by concerns about standards and the failure of businesses to lodge notifications with the Health Protection Service.

¹⁷ Part 5 of the *Food Act 2001* deals with inspection and seizure powers, including powers of authorised officers generally.

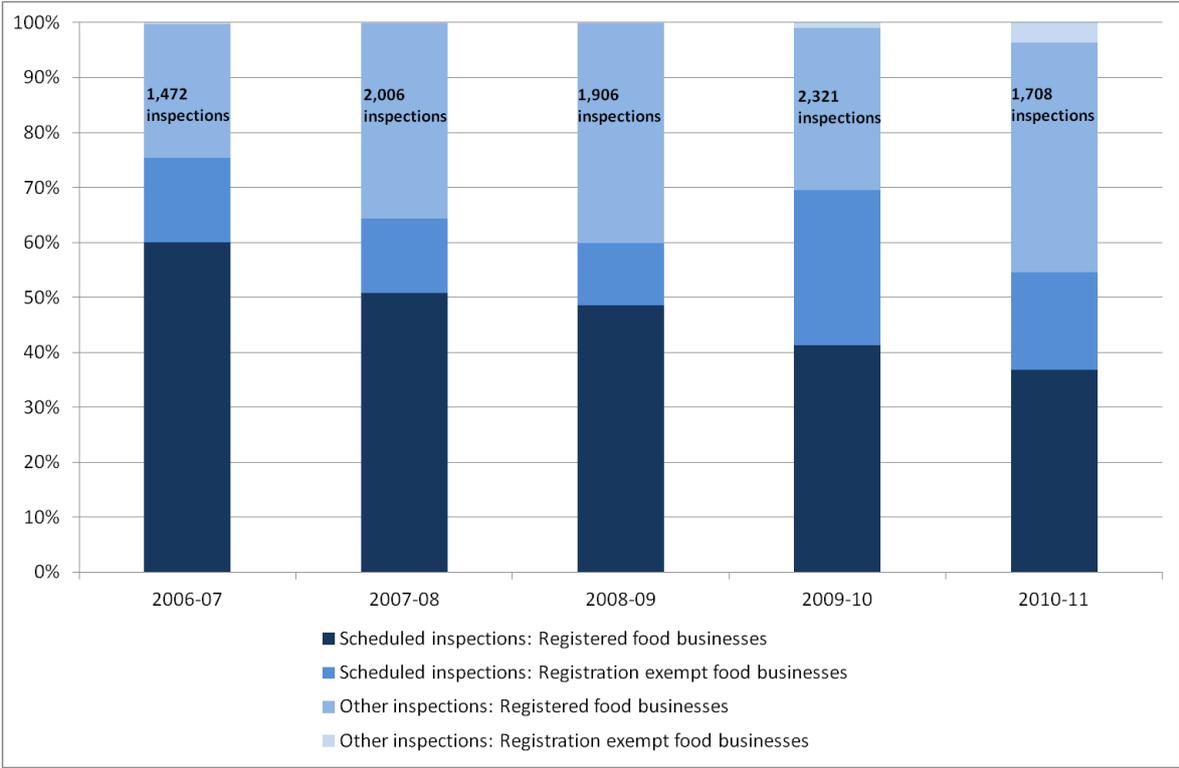
Figure 4.1: All inspections of food businesses 2006-07 to 2010-11



Source: ACT Health Directorate, Health Protection Service *Health Manager* Database

- 4.4 Inspections may be scheduled (routine) or unscheduled. As noted above (paragraph 4.2) a risk rating is used to guide and schedule the frequency of inspections. The Health Protection Service may undertake ‘unscheduled’ inspections as a result of complaints, follow-up of enforcement actions (such as Improvement Notices or Prohibition Orders), inspection of premises on initial registration of new food businesses, or inspection of refurbished premises.
- 4.5 The Environmental Health Section’s 2010-11 Business Plan includes a performance target of inspecting 1 600 food businesses. Although overall the Health Protection Service exceeded this target in 2010-11, and in each of the previous three years, scheduled inspections for registered food businesses and registration-exempt food businesses have decreased significantly since 2006-07. In 2006-07, 75 percent of inspections were scheduled; in 2010-11 this had decreased to 55 percent. For registered food businesses, fewer than 37 percent were subject to a scheduled inspection in 2010-11 (refer to Figure 4.2).

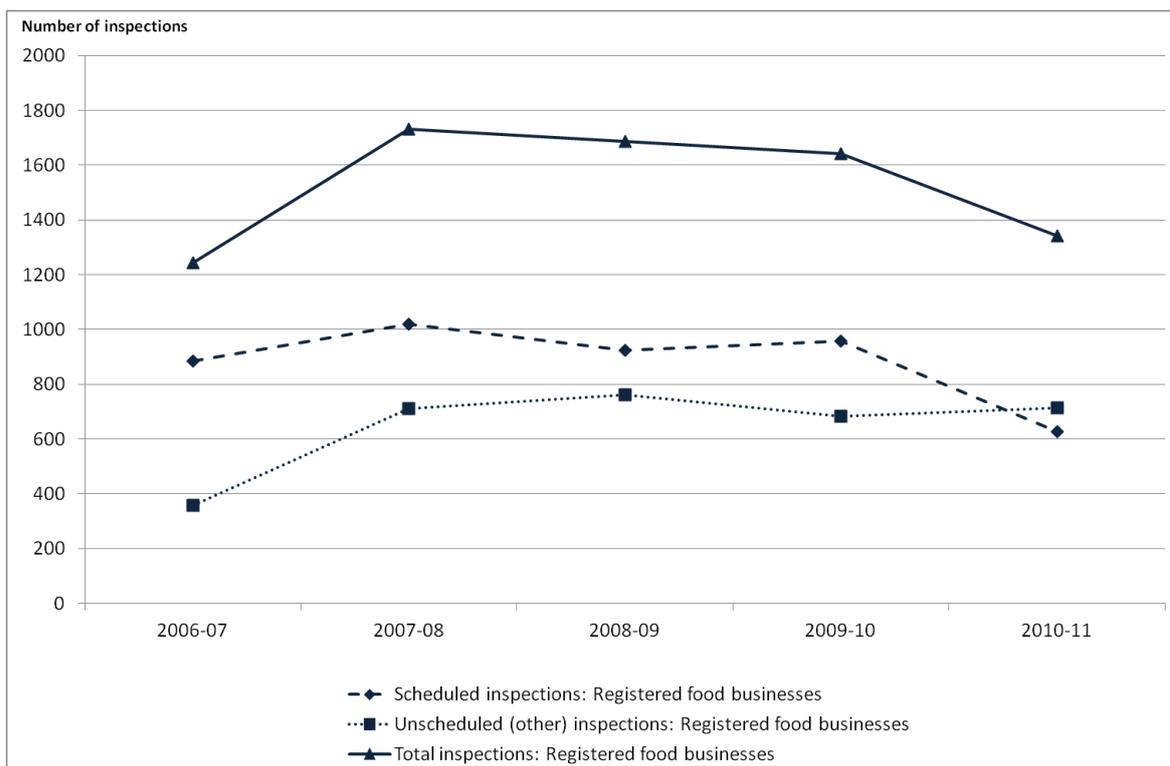
Figure 4.2: Scheduled and other inspections of food businesses 2006-07 to 2010-11



Source: Audit Office from ACT Health Directorate *Health Manager* Database

4.6 Figure 4.3 presents inspection information on registered food businesses. There are around 2 500 registered food businesses in the ACT (refer to paragraph 3.5) and inspections of these have declined from 1 732 in 2007-08 to 1 342 in 2010-11. Scheduled inspections have declined by almost 30 percent since 2006-07, whereas ‘unscheduled’ inspections (as described in paragraph 4.4) have almost doubled in the same period. These unscheduled inspections are, by their nature, often reactive to particular circumstances such as a complaint.

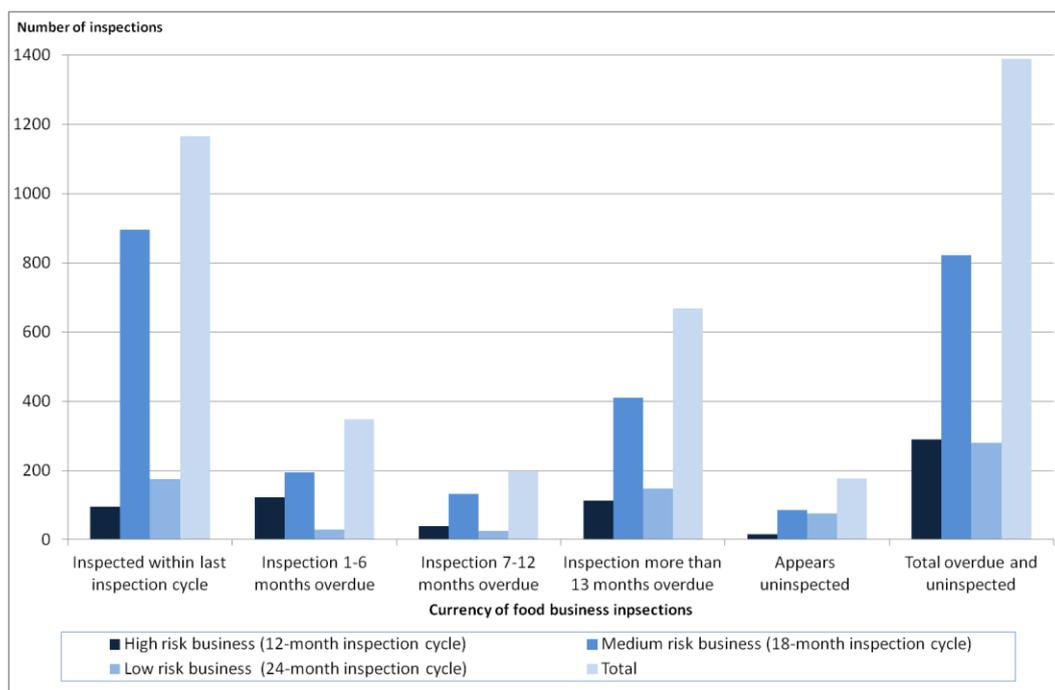
Figure 4.3: Inspection of registered food businesses 2006-07 to 2010-11



Source: Audit Office from ACT Health Directorate *Health Manager* Database

4.7 The Health Protection Service had a performance target of inspecting 95 percent of all high risk food businesses in 2010-11. An internal report prepared by the Health Protection Service as at 30 June 2011 noted that 265 of the 379 high-risk food businesses (70 percent) were overdue for inspection.

Figure 4.4 Inspections of registered food businesses by risk categorisation



Source: Audit Office from ACT Health Directorate *Health Manager* Database – data at 2 September 2011

- 4.8 The Health Protection Service also did not achieve the intended inspection frequency. The *Health Manager* database reported that, as at 2 September 2011, 1 390 registered food businesses (54 percent of total registered businesses) were overdue for inspection and uninspected (refer to Figure 4.4).
- 4.9 The Health Protection Service did not have a documented approach to managing the increased risks that arise because scheduled routine inspections could not be implemented. There is no evidence that the Health Protection Service had systematically reviewed its activities to address, in an explicit and structured way, the increased regulatory and operational risks, and prepare strategies to mitigate those risks, including necessary resource allocations.
- 4.10 Further, Audit notes advice from some staff of the Health Protection Service that from mid-2010, many inspections were initiated in response to public complaints. Combined with the sharp decline in the number and proportion of scheduled inspections, this suggests the Health Protection Service has adopted a reactive approach to food safety regulation. Such an approach is inconsistent with the nationally recognised priority classification system for food businesses, which provides for scheduled inspections of food businesses based on an assessment of the relative health risks to the community. The lack of scheduled inspections, particularly for high and medium risk businesses, does not provide assurance regarding compliance with food standards and relevant legislation.
- 4.11 The Health Protection Service has advised that several factors have affected its capacity to conduct scheduled inspections. These include the increasing complexity and number of activities associated with prosecuting businesses for breaches of the food safety legislation, the need to assign staff to deal with other priorities such as responding to the influenza pandemic in 2009 and residential overcrowding in 2010.
- 4.12 Audit has recommended in Chapter 2 (Recommendation 4) that the ACT Health Directorate should review the Health Protection Service risk management plan and implement measures to effectively manage its regulatory risks and activities. This includes risks arising from inadequate operational staff resources, however caused, to undertake scheduled compliance inspections and surveillance of food businesses.

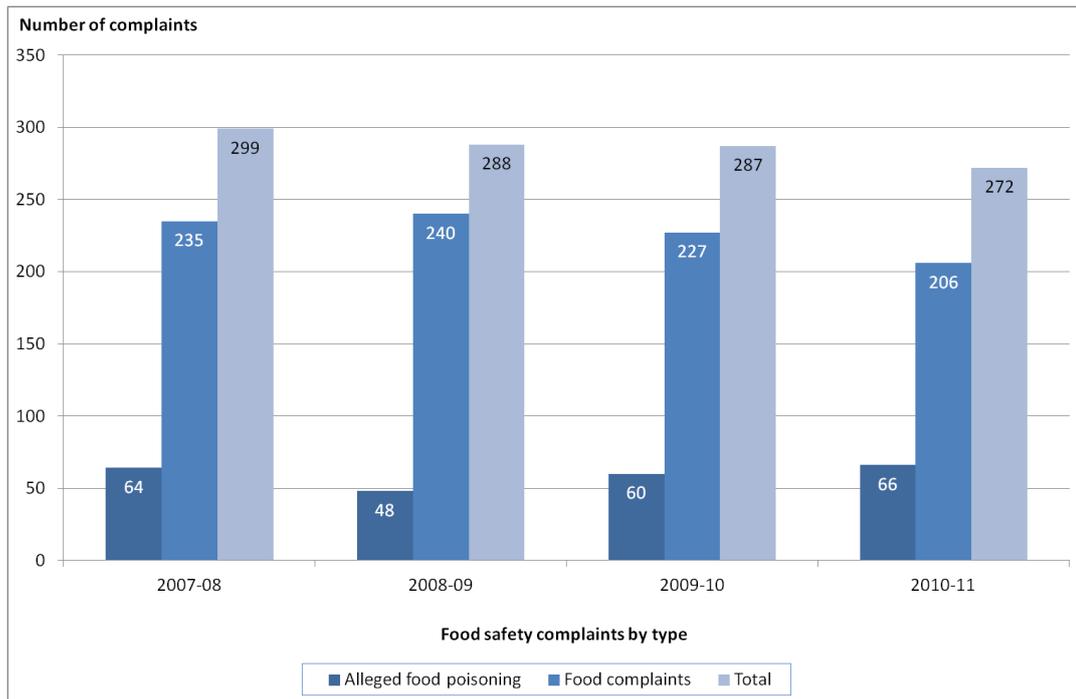
Inspections were conducted professionally by the Health Protection Service

- 4.13 Audit accompanied the Health Protection Service staff on some inspections. The inspections were conducted professionally and in compliance with national standards and the Service's inspection procedures. Where non-compliant issues were identified, these were explained to business owners or managers at the time of inspection.

COMPLAINTS MANAGEMENT – MAINTAINING COMPLETE DATA IS FUNDAMENTAL

- 4.14 Over each of the last four years, the Health Protection Service has received just under 300 complaints related to food safety, as shown in Figure 4.5. There is a slight downwards trend.

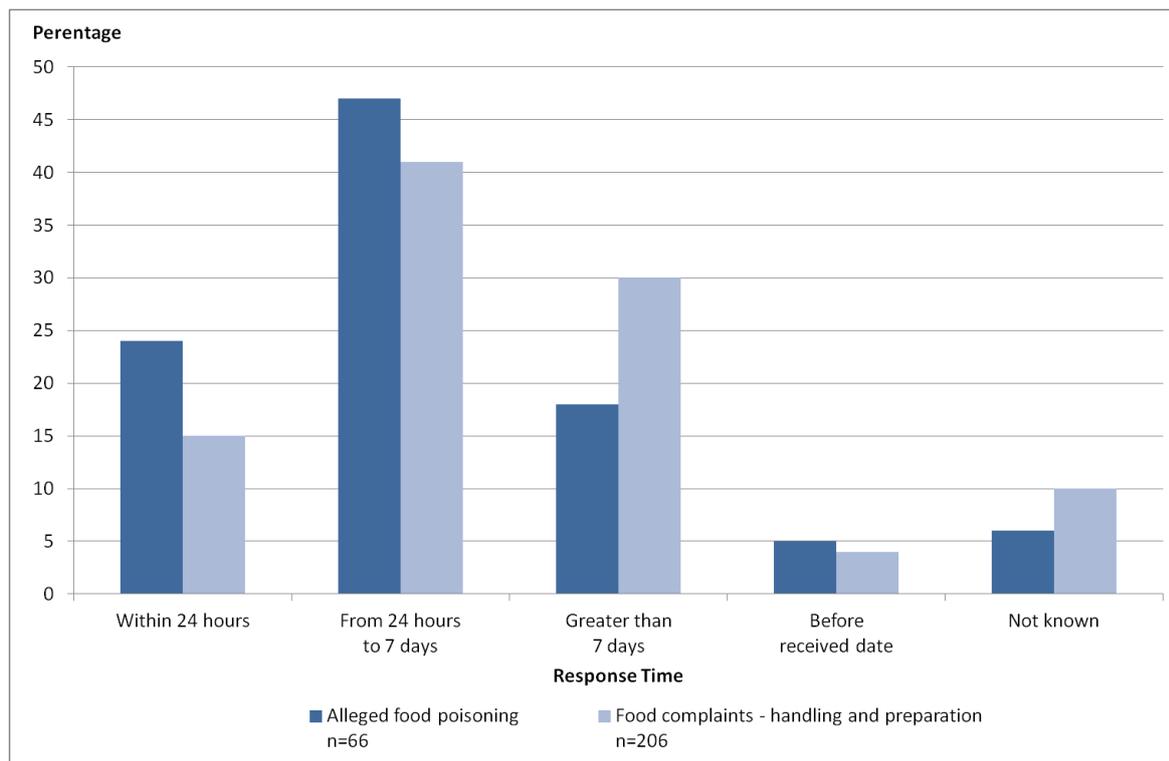
Figure 4.5: Complaints relating to alleged food poisoning and food handling



Source: Audit Office from ACT Health Directorate – HPS Public Health Complaints database

- 4.15 In June 2010 the Health Protection Service developed and implemented Standard Operating Procedures for the receipt and management of complaints about food businesses. Complaints are usually received by email or phone by the Health Protection Service directly or through Canberra Connect, and information is recorded on a Public Health Complaint Form. Complaints are referred to an environmental health officer for investigation within a day of receipt. The Health Protection Service has targets for complaints handling; staff should investigate 70 percent of complaints within two business days, and respond to 70 percent of complaints within five business days (that is, provide feedback to the complainant on the outcome of the investigation).
- 4.16 Based on information on the Complaint Form, details of complaints are entered in the Health Protection Service’s *Public Health Complaints* database by administrative staff in the Health Protection Service. The database records indicate that the Health Protection Service received 66 complaints alleging food poisoning and 206 other food complaints during 2010-11. The response rate for handling complaints is presented in Figure 4.6.

Figure 4.6: Response rate for handling complaints relating to alleged food poisoning and food handling and preparation in 2010-11



Source: Audit Office from ACT Health Directorate – HPS *Public Health Complaints* database

- 4.17 The database is not accurate. The response rate cannot be calculated for around ten percent of all complaints received in 2010-11 because there was no recorded date of receipt. For a further four percent, the data showed the complaints were actioned before they were received.
- 4.18 Audit selected thirteen complaint files for review covering 27 separate complaints. The Standard Operating Procedures were followed, but not always within the timeframe specified; 31 percent of food complaints and 18 percent of alleged food poisoning complaints were not responded to within the Health Protection Service target of seven days (27 percent of all complaints). Further, as mentioned in paragraph 4.17, for 14 percent of all complaints the database does not provide sufficient information to determine whether the required timeframe was met. It is likely therefore that the Health Protection Service did not meet its internal performance measure of responding to 70 percent of food complaints within seven days.
- 4.19 Reports from the *Public Health Complaints* database provide information to management on the number of complaints, and response times. However, an internal review project initiated by the Health Protection Service noted there was ‘no automated or routine report available to senior management that outlines the nature of the complaint, progress towards managing it or whether the complaint had been closed-off’. Further, data is not readily available to assist officers of the Health Protection Service to identify any non-compliance by the food businesses during the assessment or renewal of registrations, or to consider whether there are consistent patterns regarding the nature of complaints.

- 4.20 It is a fundamental feature of good administration to maintain relevant, reliable and complete data in a way that supports an efficient operation and shows the accountability of the area performing the function. The availability of adequate management information, through an effective complaints database, would better support the Health Protection Service management and staff to achieve an efficient regulatory function and enhance performance efficiency.

Recommendation 8

Monitoring compliance of food businesses with regulation (Chapter 4)

Complaint management should be improved by the ACT Health Directorate:

- a) conducting complaint investigations in a timely manner (within seven days);
- b) including in the *Public Health Complaints* database additional information such as the nature of the complaint, progress towards managing it and whether the complaint has been closed; and
- c) ensuring that the complaints database is accurate and complete.

FOOD SAFETY SURVEYS – REGULARLY USED TO MONITOR FOOD SAFETY

- 4.21 The Health Protection Service conducts regular food surveys to monitor public health risks in a selected target area, focussing on current national interests or issues that have emerged through inspections or public complaints.
- 4.22 During the past few years, the Health Protection Service's Environmental Health Section undertook surveys, on a regular basis, of ready-to-eat food, small goods, soft cheese and nuts as ongoing surveys to provide data to respond to food-borne illness outbreaks. The results of these surveys are posted on the Health Directorate's website. The latest report on the website is the 2007-08 Cooked Prawns Survey.¹⁸
- 4.23 Proposed food surveys for 2010-11 included:
- small-goods;
 - soft cheeses;
 - kebabs;
 - ready-to-eat food; and
 - pre-packed chilled ready-to-eat food.
- 4.24 The program of food surveys is well planned and documented. Food sampling surveys results were well documented and survey results were publicly reported. The 2010-11 food survey program was in progress at the time of audit fieldwork.

¹⁸ Health Directorate's website refer <<http://health.act.gov.au/health-services/public-health/health-protection-service/food-survey-reports/food-survey-reports-2007-08/food-survey-reports-2007-08>>

FOOD SAFETY PROGRAMS – MANDATORY FOR SOME HIGH RISK BUSINESSES

- 4.25 Certain businesses working in the highest risk food sectors are required under the Food Act to introduce a Food Safety Program. A Food Safety Program is a process where food businesses identify hazards that might occur in the business and how they will be controlled. This information guides the business in managing the safety of food it prepares, serves, manufactures or sells.¹⁹ Food Safety Programs are an initiative of Food Standards Australia New Zealand, and requirements (such as documentation and auditing) are detailed in Food Standard 3.2.1.²⁰
- 4.26 In December 2003 all jurisdictions in Australia agreed to implement mandatory Food Safety Programs in the following sectors:
- food service businesses, which serve potentially hazardous food to vulnerable populations;
 - businesses involved in the production, harvesting, processing and distribution of raw oysters and other bivalves;
 - catering operations serving food to the general public; and
 - producers of manufactured and fermented meat.²¹
- 4.27 In 2007 the ACT *Food Regulation 2002* was amended to facilitate the implementation of Food Safety Programs in the ACT. The Health Protection Service prepared a plan to implement the Food Safety Program system in March 2010. The Health Protection Service intended to have Food Safety Programs fully implemented by October 2011. In preparing for the introduction of Food Safety Programs, the Health Protection Service has:
- prepared templates for food businesses and published the templates on the ACT Health Directorate website;²²
 - updated business registration forms to help identify businesses required to implement Food Safety Programs;
 - distributed information packs to relevant food businesses, and published the information on the ACT Health Directorate website;
 - trained several public health officers under the National Food Safety Auditor Training program and registered the trained staff as food safety auditors; and

¹⁹ Productivity Commission 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, pages 103-105. The national standard for catering operations has not been completed and as a result they are not currently subject to food safety program requirements.

²⁰ Food Standards Australia New Zealand, Standard 3.2.1 Food Safety Programs refer website <http://www.foodstandards.gov.au/foodstandards/foodsafetystandardsaustraliaonly/standard321.cfm>

²¹ Commonwealth Department of Health and Ageing (DHOA), *National Food Safety Audit Policy*, refer DHOA website <http://www.health.gov.au/internet/main/publishing.nsf/Content/nat-food-safety-aud-pol-nfsap-intro>

²² Health Directorate (formerly ACT Health), Information on *Food Safety Programs* refer <http://health.act.gov.au/health-services/public-health/health-protection-service/food-safety/businesses/>

- recruited a senior Food Safety Auditor to manage Food Safety Program auditing activities.
- 4.28 Audits of Food Safety Programs have been included in a draft Business Plan for the Environmental Health Section for 2011-12. The Health Protection Service has set a performance target of auditing 33 Food Safety Programs by June 2012.
- 4.29 The Health Protection Service expected that about 150 businesses would need to implement a Food Safety Program, of which most (about 100) were businesses that serve potentially hazardous food to vulnerable populations (that is, persons such as children under the age of five, the elderly, pregnant women and those with an illness). An assessment of whether a food business would require a Food Safety Program was based on information supplied by the food business and further investigations and inspections, when needed. It is possible that a decision by a business could affect whether a Food Safety Program was required; for example, a decision by a butcher to produce (or stop producing) a fermented meat product such as salami could determine whether it was necessary for the business to prepare a Food Safety Program.
- 4.30 The *Health Manager* database does not currently have provision for recording information on Food Safety Programs, such as whether a business is required to implement a plan, date of receipt of a plan, date of audit and any follow-up or enforcement action. Therefore, the Health Protection Service has manually identified relevant businesses using information from inspections and the registration renewal forms, which is then recorded on registration files. The Health Protection Service advised that all registered food businesses have recently been assessed and notified if they are required to have a Food Safety Program. Businesses that needed a Food Safety Program but had not yet submitted one to the Health Protection Service were inspected and issued an Improvement Notice requiring the submission of a Food Safety Program. The Health Protection Service was considering updating the database to include information on Food Safety Programs.
- 4.31 The Health Protection Service could not readily provide Audit with an up-to-date list of food businesses that would require the implementation of a Food Safety Program. Audit considers that such a list is important to facilitate the effective implementation, and monitoring of the Food Safety Program requirements.
- 4.32 Audit's review of business files found that a high risk child care centre (a business that would require a Food Safety Program and annual inspections) had not been inspected since March 2007. Its annual registration had been renewed despite it neither being inspected nor having submitted a Food Safety Program.
- 4.33 Audits of Food Safety Programs are an important means of testing compliance with the Food Standards. In this regard, under Section 12 of the Food Regulation, the Chief Health Officer may determine the audit frequency for food businesses that require Food Safety Programs. A determination is a notifiable instrument. The Chief Health Officer has not yet made a determination.

Recommendation 9

Monitoring compliance of food businesses with regulation (Chapter 4)

Implementation of Food Safety Programs by food businesses should be improved by the ACT Health Directorate:

- a) updating the *Health Manager* database to ensure that it captures sufficient information to facilitate effective management of the food businesses Food Safety Programs;
- b) preparing a list of food businesses that require a Food Safety Program; and
- c) ensuring that key activities such as determining the audit frequency for a registered business, under Section 12 of the Food Regulation 2002, and the supporting audit program, are completed and implemented.

5. MANAGING COMPLIANCE

In this chapter the enforcement activities of the Health Protection Service to address food safety breaches are examined. An effective and efficient enforcement strategy should encourage compliance through incentives and sanctions while providing the Health Protection Service with flexibility to respond to public safety risks posed by non-compliance.

SUMMARY

Conclusion

At the time of Audit, the Health Protection Service had not developed formal policies and procedures to guide staff in implementing enforcement actions. This contributed to staff adopting different work practices. A process improvement project is underway.

Enforcement documentation on files and in the *Health Manager* database was incomplete or inaccurate. For example, key documentary evidence to support decisions regarding the imposition of enforcement notices was missing from some files. Poor record-keeping practices raise doubts about the reliability of the *Health Manager* database as a management tool, and the effective management of enforcement activities by the Health Protection Service. In the absence of full and appropriate documentation, Audit is unable to form a view on whether the food businesses identified as non-compliant have acted to fully meet the food safety requirements specified in the notices. Nor can Audit form a view on whether the Health Protection Service has implemented correct procedures to ensure compliance by the businesses. For transparency and accountability purposes, important decisions and the reasons for a particular action should always be fully documented.

Current enforcement actions are resource-intensive and other options need to be pursued.

Key findings

- At the time of audit, the Health Protection Service had not developed formal policies and procedures to guide staff in implementing and managing enforcement actions. Current practices are complex and require a sound understanding of relevant legislation. The lack of agreed policy and procedural guidelines contributed to staff adopting different work practices. This is undesirable in a work environment focused on legislative compliance. Recently developed procedural flowcharts will provide staff with an overview of requirements, but more comprehensive guidance is needed.
- Documentation on enforcement files and data in the *Health Manager* database was incomplete or inaccurate. For example, some enforcement files did not contain key documentation to support decisions regarding the imposition of enforcement notices. Furthermore, database records showed, incorrectly, that many Improvement Notices and Prohibition Orders issued from 2007 to 2010 were not cleared for 'compliance' or revoked, as required by the Food Act.

- The Health Protection Service has adopted, since 2010, a more stringent approach to enforcement, which has led to an increase in the number of Improvement Notices and Prohibition Orders issued, and the first issuing of Seizure and Suspension Notices. The Service's responses to non-compliance with the Food Act have largely been reactive.
- The Health Protection Service does not use enforcement mechanisms used by other jurisdictions such as on-the-spot fines, 'naming and shaming' of businesses. These mechanisms may assist the Service in its enforcement activities.
- The Health Protection Service has engaged a consultant to undertake public consultation on the proposal to introduce a food business rating scheme. The Health Directorate needs to progress this quickly given its potential benefits.
- As an interim measure, the Health Protection Service could encourage food businesses to voluntarily display their current registrations. This would assist consumers in being able to support food businesses that comply with registration requirements.

GRADUATED APPROACH – PROVIDES FLEXIBILITY IN IMPLEMENTING LEGISLATION

- 5.1 The Food Act empowers the Health Directorate (the Health Protection Service) to determine the most appropriate actions to enforce compliance based on evidence of an alleged breach of the legislation.
- 5.2 Under the Food Act, the Health Protection Service has flexibility in exercising its enforcement actions (refer to Figure 5.1 on the following page).
- 5.3 The ACT Health Directorate has stated that it:

...practices a philosophy of educating food business operators. The first warning may be verbal or written before formalised notice provisions are activated. It is considered better to encourage compliance with legislative and standards requirements. Enforcement actions such as prosecution are considered a last resort.²³
- 5.4 At the time of the audit formal policies and procedures had not been developed to guide enforcement actions, although the Health Protection Service had drafted Enforcement Procedure flowcharts.

²³ Productivity Commission 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, page 134.

Figure 5.1: Overview of enforcement actions used by the ACT Health Directorate

Source: ACT Audit Office based on the Health Protection Service's enforcement framework

Advice and warnings

- 5.5 Officers of the Health Protection Service during their inspection of food premises typically provide advice on compliance. This verbal advice is generally related to basic principles of food safety. Verbal warnings may be given to food businesses relating to minor offences, where the offence is only of a technical nature and not sufficiently serious to justify a warning letter. Verbal warnings can be included on the inspection report or documented on the file for the food business.
- 5.6 Warning letters may be issued by the Health Protection Service where there is evidence that minor breaches of the Food Act have occurred. The warning letters will detail the exact nature of the offence, the required remedial action and possible action that the Health Protection Service will consider if the required actions have not been undertaken by the food business.
- 5.7 The Health Protection Service does not maintain statistics of advice and warnings given to food businesses.

Improvement Notices

- 5.8 Where the Health Protection Service determines that a food business has failed to comply with acceptable food standards, section 79 of the Food Act allows the Health Protection Service to issue an Improvement Notice to the proprietor of the food business. The proprietor must remedy the situation within a specific period of time (although this may be extended at the request of the proprietor).

- 5.9 Timely action by the Health Protection Service, usually including a follow-up inspection, is required to ensure any non-compliance with food safety practices is rectified and the proprietor is made fully aware of proper practice when handling food. If a Health Protection Service officer determines the Improvement Notice has been complied with, the officer is required to note the date of compliance on a copy of the notice (the ‘compliance copy’) and provide it to the proprietor as soon as practicable.

Prohibition Orders

- 5.10 The Health Protection Service may issue a Prohibition Order to the proprietor of a food business where there has been a failure to comply with an Improvement Notice. A Prohibition Order may also be issued where any identified non-compliance gives rise to a serious threat to public health (for example, unclean premises or equipment, unhygienic practices of food handlers).²⁴
- 5.11 A Prohibition Order will prohibit the handling of food on specified food premises or equipment, or specify that food is not to be handled in a particular way or for a specified purpose. A breach of a Prohibition Order will generally result in prosecution.
- 5.12 A Prohibition Order will remain in place until a clearance certificate is issued by the Health Protection Service. A clearance certificate is to advise the proprietor that the Prohibition Order has been revoked or cleared.²⁵ If a food business proprietor makes a written request for reinspection by the Health Protection Service and this is not done within 48 hours, a clearance certificate for the Prohibition Order is deemed to have been granted.

Cancellation or suspension of registrations

- 5.13 The Food Act allows the Health Protection Service to cancel or suspend the registration of a food business.
- 5.14 The Health Protection Service advised that all registration suspensions undertaken in the past twelve months followed the issue of Prohibition Orders, and involved serious concerns about proprietors’ food handling skills and knowledge.

Emergency Orders

- 5.15 Under section 38 of the Food Act, the Minister may make an emergency order to prevent or reduce the possibility of a significant threat to public health associated with food. An emergency order may require a food business to perform one or more actions outlined in section 39 of the Act, such as the publication of warnings or prohibition of the advertisement or sale of certain food.
- 5.16 The Health Protection Service advised that an emergency order is intended for use in extreme situations; no such orders have yet been issued in the ACT.

²⁴ Section 82 of the *Food Act 2001*.

²⁵ Section 85 of the *Food Act 2001*.

Prosecutions

5.17 The Health Protection Service may prosecute business owners for more serious breaches of the Food Act. Prosecutions are time consuming as the Health Protection Service must prepare briefs of evidence that prove each element of the alleged offence. All evidence will be submitted to the Director of Public Prosecutions for review and preparation for a court hearing.

Other statutory powers

5.18 Authorised officers have the power to seize items (such as food and equipment) from the food premises if the authorised officer reasonably believes the items do not comply with the Food Act or relevant regulations. Under Sections 52 and 53 of the *Food Act 2001*, the authorised officer may remove seized items to another place, send the items to a laboratory for analysis, or destroy them.

5.19 The Chief Health Officer may publish in a newspaper the names of businesses that have been successfully prosecuted. The Health Protection Service advised that this statutory power (Section 146 of the *Food Act 2001*) has not been used.

ENFORCEMENT ACTIVITIES – *INCREASING AND VARIED*

5.20 The Health Protection Service has issued an increased number of formal enforcement notices (including Improvement Notices, Prohibition Orders, Seizure Notices and Suspension Notices) in recent years (refer to Table 5.1).

5.21 The number of Improvement Notices and Prohibition Orders issued by the Health Protection Service increased from 18 in 2009 to 56 in 2010 (an increase of more than 210 percent). For the first six months of 2011, the Health Protection Service issued 81 Improvement Notices and Prohibition Orders (an increase of 45 percent compared to the same period in 2010). Eleven other enforcement notices (including Seizure and Suspension Notices) were also issued.

Table 5.1: Number of formal enforcement notices issued from 2008 to 2011 (January to June 2011)

Enforcement Notices	2008	2009	2010	2011 (Six months)
Improvement Notices	12	17	46	58
Prohibition Orders	1	1	10	23
Seizure Notices	-	-	-	7
Suspension Notices	-	-	-	3
Suspension	-	-	-	1
Total	13	18	56	92

NOTE: The Health Protection Service does not keep statistics on verbal warnings or warning letters issued.

Source: Health Protection Service

5.22 The Health Protection Service advised that the increase is attributed to its implementation of a more formalised approach to enforcement, involving a greater use of Improvement Notices. The increase in the number of Improvement Notices and Prohibition Orders was primarily due to serious breaches of food safety in Asian restaurants and take-away shops.

Poor record-keeping practices raise concerns about the effective management of enforcement actions

5.23 Audit's review of a selection of Improvement Notices and Prohibition Orders noted they were issued in accordance with the provisions of the Food Act. However, in several cases, documentation on file or within the *Health Manager* database was incomplete. Audit tested twelve Improvement Notices and ten Prohibition Orders issued from January 2007 to February 2011 and found:

- six instances where there was no documentation of follow-up inspection by the Health Protection Service staff, and the 'date revoked' was not recorded in the *Health Manager* database;
- five Prohibition Orders where there was no documentation showing that the required clearance certificate had been issued, and the 'date revoked' was not recorded in the *Health Manager* database;
- ten Improvement Notices where there was no documentation that the relevant 'compliance copy' was provided to the proprietor of the business, thereby indicating the date of compliance;
- several Prohibition Orders were purportedly 'revoked' by the inspector's notation on a follow-up inspection form; it was not clear whether the revocations were approved by an appropriately delegated officer; and
- several examples where records on the database were not updated promptly (for example, the database was updated almost 12 months after an Improvement Notice was issued), or where relevant inspection reports or complaint forms were missing from the files examined.

5.24 A further review of the *Health Manager* database revealed that many Improvement Notices and Prohibition Orders issued from 2007 to 2010 were not recorded as either cleared for 'compliance' or revoked, as required by the Food Act. There was no record on the *Health Manager* database of follow-up actions by the Health Protection Service in relation to several of these formal notices. Table 5.2 shows that 28 Improvement Notices (38 percent) and three Prohibition Orders (19 percent) were not recorded for 'compliance' or revoked respectively.

Table 5.2: Number of Improvement Notices and Prohibition Orders issued and not recorded for compliance or revoked (2007 to 2010)

Year	Improvement Notices		Prohibition Orders	
	Number issued in a year	Number not recorded for compliance	Number issued in a year	Number not revoked
2007	5	2	4	2
2008	12	3	1	0
2009	17	5	1	0
2010	40	18	10	1
Total	74	28	16	3

Source: ACT Health Directorate, *Health Manager* database

5.25 The poor record-keeping practices raise concerns about the reliability of the *Health Manager* database as a management tool and the effective management of enforcement activities by the Health Protection Service. At best, there are indications of poor documentation and record-keeping practices. At worst, the Health Protection Service has failed to comply with legislative requirements and undertake timely follow-up actions. Either situation may jeopardise the effectiveness of the enforcement actions used by the Health Protection Service to manage food businesses non-compliance.

5.26 In the absence of full and appropriate documentation, Audit is unable to form a view on whether the food businesses identified as non-compliant have acted to fully meet the food safety requirements specified in the notices. Nor can Audit form a view on whether the Health Protection Service has implemented correct procedures to ensure compliance by businesses.

Inconsistent practices and a lack of documented support for decisions increase risks to good management

5.27 The lack of agreed policy and procedural guidelines has contributed to the Health Protection Service staff adopting different work practices in implementing and managing enforcement actions. This is undesirable in a work environment focused on legislative compliance, and especially when initiating actions against food businesses that have the potential, if escalated, to lead to action in the courts. The nature of the work, combined with the high turnover of staff in recent years, reinforces the need for well documented procedures, including the use of pro-forma checklists and reports to support the decision making and reporting processes, rather than relying on the skills and knowledge of individual staff. This should be in addition to the recently developed procedural flowcharts.

5.28 The Health Protection Service advised Audit that in-service training for staff undertaking enforcement actions was recently conducted to foster consistency in practice.

- 5.29 The Health Protection Service advised that actions to monitor non-compliant food businesses are usually based on consideration of several factors associated with the seriousness of the offence (such as the risk to public health, the consequences of non-compliance, and whether previous non-compliance had been identified). Public Health Officers discuss proposed enforcement responses with, and seek the approval of, an appropriate delegate. From Audit's examination of the enforcement files, key information necessary to adequately support decisions regarding the imposition of enforcement notices, was missing from many files. Missing documents included complaints forms and inspection reports. This adds an unnecessary level of risk to the enforcement actions initiated by the Health Protection Service.
- 5.30 The Australian National Audit Office, in its Better Practice Guide on Administering Regulation, notes:
- For transparency and accountability purposes, decisions regarding the imposition of sanctions and subsequent decisions to vary sanctions, should be fully documented.²⁶
- 5.31 The message is simple; important decisions and the reasons for a particular action should be fully documented.
- 5.32 Audit notes that the New South Wales Food Authority has published its compliance and enforcement framework on its website, for the information of food businesses and consumers.²⁷ Audit considers this is a useful practice to enhance accountability and transparency, and there is merit in the ACT Health Directorate adopting this practice. This can be addressed by implementing Recommendation 5 in Chapter 2 of this report.
- 5.33 Audit has recommended (Recommendation 1 in Chapter 2) that the ACT Health Directorate prioritise the development of procedures (including guidelines and/or checklists) to complement the existing business process flowcharts. Combined with in-house training, this will minimise the risk of the Health Protection Service implementing inconsistent work practices.
- 5.34 Audit has also recommended (Recommendation 6 in Chapter 3) that the ACT Health Directorate takes steps to improve record-keeping practices in the Health Protection Service. This should include documenting key decisions to explain why a particular action was taken.
- 5.35 The Health Protection Service advised that various documents support decisions regarding the imposition of enforcement notices. For example:
- Improvement Notices are supported by inspection reports, and photographs and the notice itself gives an account of the decision making process. Staff are encouraged to use these notices as the primary means of communicating non-critical (that is, relatively minor) food safety breaches to businesses.

²⁶ Australian National Audit Office (ANAO) Better Practice Guide, *Administering regulation*, March 2007, page 65.

²⁷ New South Wales Food Authority, *Compliance and Enforcement Policy*, refer http://www.foodauthority.nsw.gov.au/Documents/industry_pdf/compliance-enforcement-policy.pdf

An overly burdensome approach to this regulatory tool is likely to have a significant impact on resources and staff motivation;

- Prohibition Orders must be authorised by the Director Health Protection Service, the Director Environmental Health or the Manager Environmental Health Operations. Most are issued by the Manager Environmental Health Operations. These orders are often time-critical, and must be issued without delay, usually within an hour or two. The decision to issue the order must be documented, but this information is not contained in a single summary document. The enforcement process improvement team has recognised that documentation can be improved, and is developing a simple standard template for use in the enforcement procedure; and
- Suspension/Cancellation orders can only be approved by the Director Health Protection Service. A formal minute from the Environmental Health Section must be approved by the Director before a formal notice can be prepared, signed and served.

ENFORCING COMPLIANCE – *RESOURCE-INTENSIVE*

5.36 The graduated approach to addressing non-compliance by food businesses is time-consuming and resource-intensive. Several follow-up inspections were typically required by the Health Protection Service after issuing an enforcement notice before a food business was deemed to be compliant.

5.37 Audit's review of enforcement files indicated that food businesses usually responded promptly in undertaking actions required when the Health Protection Service issued a notice for temporary closure of their business. However, further monitoring is needed to ensure non-compliant businesses maintain the required standard in food safety or have acceptable food handling practices. In an audit of the management of food safety in Victoria, the Victorian Auditor-General's Office observed that:

The failure of most councils to monitor and properly follow-up non-compliant businesses is not conducive to an effective regulatory framework as proprietors may not feel compelled to rectify any non-compliance.²⁸

5.38 Case study 5.1 illustrates the limitations of the existing enforcement approaches. In this particularly difficult case, the food business proprietor did not fully comply with the Food Act or the Food Standards Code, notwithstanding repeated Improvement Notices. The Health Protection Service conducted several follow-up inspections. Enforcement action eventually required a temporary closure of the business under a Disciplinary Notice and an Immediate Suspension Notice, due to a serious threat to public health.

²⁸ Auditor-General of Victoria, *Management of food safety in Victoria*, October 2002, page 52

Case study 5.1: Enforcing compliance can be a protracted exercise

Health Protection Service staff inspected a restaurant after receiving two complaints from the public (on 31 January and 1 February 2011) regarding foreign objects in food served and the cleanliness of the premises. Public Health Officers noted that the business was not registered although it had been trading for around six months.

The Health Protection Service undertook the following enforcement actions:

- A Prohibition Order was issued to the proprietor of the food business on 2 February 2011, after an inspection identified serious non-compliance with the Food Act and Food Standards Code. The proprietor was directed to comply with food safety standards including a requirement to register the business. The proprietor was advised not to operate or use the premises to handle food until the requirements of the Prohibition Order were met. A Clearance Certificate was issued following the Prohibition Order.
- An Improvement Notice was issued on 7 February 2011 requiring the proprietor to address some matters related to the premises within a week and other matters, including pest control, within 30 days.
- Follow-up inspections were conducted on 16 February and 4 March 2011. The food business was still non-compliant. An extension for outstanding items was granted until 7 March 2011.
- A follow-up inspection was made on 7 March 2011 where further critical matters of non-compliance were found.
- On 9 March 2011, the Health Protection Service issued another Prohibition Order, on the grounds that the food business did not comply with the Improvement Order issued on 7 February 2011. The Health Protection Service found the premises were in such a condition that the protection of food from contamination could not be reasonably achieved in accordance with the Food Standards Code.
- Follow-up inspections were made on 9 and 10 March 2011. The Health Protection Service continued to identify non-compliance with the Food Standards Code.
- On 11 March 2011, a Disciplinary Notice and an Immediate Suspension Notice were issued to the proprietor under sections 101 and 102 of the Food Act. The Health Protection Service considered that, as part of the conditions for the Immediate Suspension Order to be revoked, it was necessary for the food business proprietor to acquire appropriate skills and knowledge in food safety and handling through formal training. The suspension of registration would remain in place until the proprietor had satisfactorily completed a food safety training course.

On 14 March 2011, the food business' legal representative wrote to the Health Protection Service requesting immediate uplift of the notices, on the grounds that the matters raised in the inspection reports did not justify such harsh action by the Health Protection Service. It was suggested that the food business might seek compensation due to loss of business, spoilage of food and loss of goodwill.

The suspension of registration was lifted when the proprietor of the food business completed the training course and complied with the food standards.

The Health Protection Service advised that it was the first time it had issued a Disciplinary Notice and an Immediate Suspension Notice to suspend registration of a food business under the Food Act.

- 5.39 The graduated approach to enforcing compliance begins with education and advice on food safety matters. The Health Protection Service has prepared a variety of notices, newsletters and advices encouraging greater awareness of food safety requirements (legislation and standards) and safe food handling practices.

- 5.40 The Health Protection Service has advised that some non-compliance issues suggest that food business proprietors may lack the necessary skills and knowledge of food safety and hygiene to maintain safe food handling practices as is required in the ACT. Food safety training courses are available from the Canberra Institute of Technology as well as Technical and Further Education institutions in Queanbeyan or Yass. The Health Protection Service can also arrange training courses for food businesses on a fee-for-service basis and provide interpreting services for non-English speaking proprietors of food businesses if required.
- 5.41 The Health Protection Service has advised that three Disciplinary Notices had been issued by the Chief Health Officer (or delegate) since the disciplinary action taken outlined in Case study 5.1. In these three cases the food businesses elected to use the training course developed and delivered by the Health Protection Service. As part of its proposed enforcement strategies (discussed later in this chapter), the Health Protection Service is currently working on a new policy for food business operators requiring training in food safety and handling.
- 5.42 Prosecution is typically used as a last resort by the Health Protection Service. However, Audit notes that the Health Protection Service has recently shifted towards a more stringent enforcement approach in response to continuing non-compliance by some businesses. As at 14 January 2011, the Health Protection Service was undertaking ten prosecutions of food businesses.
- 5.43 Prosecution and the resultant penalty and fine imposed by the courts may not necessarily act as a deterrent for non-compliant businesses. For example, Audit notes that in one instance a business was fined only \$500 for each of three offences that were prosecuted (although this was later increased on appeal initiated by the Health Protection Service). The time and resource cost involved in prosecuting non-compliant food businesses will inevitably exceed the value of fines issued.
- 5.44 Other jurisdictions including Victorian and New Zealand councils have noted that litigation was too expensive to be a cost-effective enforcement tool.²⁹

STRATEGIES IN OTHER JURISDICTIONS – *BROADER THAN THOSE IN THE ACT*

- 5.45 The Productivity Commission's food safety benchmarking study in 2009 identified a range of different approaches in other jurisdictions to influence the culture of compliance and to address food safety breaches including:
- education or training programs for food safety supervisors (a person employed in food business to supervise food handling has competent with skills and knowledge relating to food safety and food hygiene);
 - on-the-spot fines for legislative breaches;

²⁹ Productivity Commission 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, pages 136-140.

- adverse publicity such as ‘naming and shaming’ businesses convicted of significant food safety breaches; and
- imposing fees or charges for notification, inspection, or re-inspection activities.³⁰

Education and training courses

- 5.46 The Productivity Commission reported that Victoria and Queensland have required certain food businesses to employ a Food Safety Supervisor since 2009. In both States, the competency standards for a Food Safety Supervisor were dependent on the industry sector in which the Food Safety Supervisor was working, and generally obtained through formal training. The estimated cost of attending a training course was around \$700 per supervisor.³¹
- 5.47 In Victoria, only Class 1 and 2 food premises are required to have a Food Safety Supervisor. Class 1 food premises include those businesses that handle or sell ‘high-risk’ foods, typically food handled prior to sale and consumed predominantly by vulnerable people. Class 2 food premises exclude those businesses where only pre-packaged low-risk food is sold.
- 5.48 Since October 2010, most New South Wales food businesses, such as restaurants, takeaways, bakeries, clubs and supermarkets selling hot food, have been required to have a trained and notifiable Food Safety Supervisor working in the business. The NSW Food Authority has issued detailed guidelines, in eight languages, to assist businesses implement the Food Safety Supervisor program.³²
- 5.49 The Health Protection Service does not have a mandatory training requirement for food business operators to acquire appropriate skills and knowledge in food safety and handling, although it is currently working on such a policy.

On-the-spot fines

- 5.50 New South Wales has a legislative power to impose on-the-spot fines for food safety breaches.³³ Other jurisdictions, including the ACT, do not have a similar power.
- 5.51 In the Productivity Commission’s 2009 report, some regulators commented that on-the-spot fines would be easy to administer, and act as a credible deterrent particularly for repeated or serious offenders. They were considered most appropriate when some form of financial penalty was justified, but the delays and costs of court action have rendered that avenue less effective.³⁴

³⁰ Productivity Commission 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, Chapters 6 and 7.

³¹ Productivity Commission 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, pages 97-102.

³² New South Wales Food Authority, *Food Safety Supervisor Program*, May 2011. refer <<http://www.foodauthority.nsw.gov.au/industry/food-standards-and-requirements>>

³³ New South Wales Food Authority, *Compliance and Enforcement Policy*, page 14.

³⁴ Productivity Commission 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, page 136.

- 5.52 Introduction of on-the-spot fines or penalty infringement notices in the ACT would require an amendment of the Food Act and associated regulations.

‘Naming and shaming’ businesses

- 5.53 The Productivity Commission reported that three jurisdictions (New South Wales, Queensland and Western Australia) provided formal avenues to publicly name businesses for breaching food safety regulations. The Commission considered that such a power could provide a potentially effective deterrent at relatively little cost to the regulator.
- 5.54 In the ACT, the Food Act does not provide for the ‘naming and shaming’ of food businesses. The Health Protection Service advised that implementing this enforcement tool would require an amendment to the Food Act as well as additional resources for its inspection regime.

Inspection disclosure systems

- 5.55 Some local councils in Australia are implementing a food business inspection disclosure system, sometimes known as a ‘star rating’ or ‘scores on doors’ scheme. The scheme publicly recognises local food businesses for their level of compliance with the food safety standards, based on an assessment of routine inspections conducted by council officers.
- 5.56 The City of Canada Bay in Sydney introduced a ‘star rating’ scheme to ensure that only the safest businesses receive star ratings in accordance with the Council’s food safety criteria. Businesses such as restaurants, cafes, takeaways and clubs/pubs serving food are awarded three to five stars depending on their level of compliance. Businesses that successfully achieve a star rating are listed on the council’s ‘Food Star Rated Premises’ webpage and awarded with certificates. Display of the certificate is voluntary and food businesses that do not meet the criteria are not rated.³⁵ A similar scheme was implemented by the Brisbane City Council in early 2010.³⁶
- 5.57 Some overseas regulators in the United Kingdom, the United States of America and Canada have also adopted various food safety grading schemes. These regulators found a reduction in incidences of food-borne illnesses after implementation of the schemes. For example, a review of the restaurant inspection and disclosure program introduced by the City of Toronto (Ontario, Canada)³⁷ identified that the scheme lead to a noticeable increase in compliance with food safety regulations among Toronto’s food establishments. The review revealed that the food safety program may have contributed to a 30 percent reduction in reported food-borne illnesses since its introduction in 2002.³⁸

³⁵ City of Canada Bay Council, *Food Safety Star Rating Scheme*, refer its website at <http://www.canadabay.nsw.gov.au>

³⁶ Brisbane City Council, *Star Rating Information*, refer its website at <http://www.brisbane.qld.gov.au/community-support>

³⁷ City of Toronto, Canada, *Food premises inspection and disclosure system* refer <<http://app.toronto.ca/food2/index.jsp>>

³⁸ Toronto Public Health, Canada, Staff Reports, *Food Safety and Forborne Illness in Toronto*, April 2009.

Other enforcement tools

- 5.58 Some regulators in New South Wales, South Australia, Tasmania and New Zealand charged for inspections. Some regulators only charged for initial inspections, while others only charged for follow-up inspections when a compliance breach was detected.
- 5.59 The Productivity Commission stated that a fee regime based on detection of compliance breaches alone might be viewed by businesses as a form of fine and hence it would encourage greater compliance. However, there was no evidence from its study that this reduced the incidence of food safety breaches.³⁹

NEW STRATEGIES FOR THE ACT - A FOOD RATING SCHEME IS PROPOSED

- 5.60 The Health Protection Service advised that several initiatives to improve food safety in the ACT were being considered by the ACT Government.
- 5.61 On 22 August 2011, the Government announced proposed changes to the Food Act to enhance food safety regulation in the ACT and provide greater regulatory transparency. The proposed initiatives include:
- implementation of a food business rating scheme;
 - a requirement for every food business to have a trained food safety supervisor;
 - a proposal that the names of food businesses convicted of an offence against the Food Act be placed on a publicly available register;
 - a requirement for a food business that has received a Prohibition Order to display a closure notice at the entrance of the food business; and
 - a requirement that the registration certificate of a business be displayed at the food premises.⁴⁰
- 5.62 The Health Protection Service has engaged a consultant to undertake public consultation and prepare a regulatory impact statement for the proposal to introduce a food business rating scheme. The impact statement will assess potential costs and benefits to relevant stakeholders, including food businesses, the community and the Government.
- 5.63 The development and implementation of any new enforcement schemes will take time. As an interim measure, Audit considers it may be beneficial to the community to encourage food businesses to voluntarily display current food business registrations. This would assist consumers in being able to support food businesses that comply with registration requirements.

³⁹ Productivity Commission 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, page 148.

⁴⁰ ACT Government Media Release, *Transparency key to improving food safety*, 22 August 2011.

Recommendation 10

Managing compliance (Chapter 5)

Compliance with food safety legislation should be improved by the ACT Health Directorate:

- a) considering the effectiveness of enforcement activities used in other jurisdictions such as on-the-spot fines, and ‘naming and shaming’ of businesses;
- b) promptly completing its public consultation and impact assessment of the proposed food business rating scheme; and
- c) encouraging food businesses to immediately voluntarily display current food business registrations pending any amendments to food safety legislation.

6. RESPONDING TO FOOD-BORNE ILLNESS OUTBREAKS

In this chapter the Health Protection Service' responsiveness to food-borne illness outbreaks is examined. The effective management of food-borne illness outbreaks is important to minimise the costs and impacts on the ACT community. Effective post-outbreak investigations provide useful information to help identify appropriate control measures, monitor trends in the incidence of disease caused by food, detect outbreaks and inform preventive measures.

SUMMARY

Conclusion

The Health Protection Service has responded to, and investigated, food-borne illness outbreaks promptly. Since August 2011, the Health Protection Service has implemented standard operating procedures for responding to food-borne illness outbreaks.

Key findings

- Between 2005 and 2009 the ACT recorded an average of four outbreaks annually (or an average of 1.07 per 100 000 population). On average the outbreaks affected 47 people (less than 3 percent of the Australian average of 1 875), with two people hospitalised per year (1 percent of the Australian average).
- At the time of audit fieldwork, the ACT did not have policies or procedures in place to respond to food-borne illness outbreaks. The Health Protection Service informally adopted New South Wales Food Safety Protocols, supplemented by other national food-borne disease outbreak response guidelines.
- The Health Protection Service's responses to outbreaks were generally managed in a timely manner and the documentation was adequate for external reporting.

FOOD-BORNE ILLNESS OUTBREAKS – AFFECTS ARE SIGNIFICANT

- 6.1 Food-borne illnesses have a significant impact on individuals, families and the economy.⁴¹ For individuals and families, food-borne illnesses cause physical discomfort and, in some cases, long-term health issues. There are also costs associated with medical treatments and time off work for the sufferers and carers.
- 6.2 Furthermore, all levels of government face significant costs from each occurrence of a food-borne illness, including the costs of investigations and follow-up monitoring. Food-borne illnesses can also be costly for food businesses, and can lead to lower sales, increased insurance premiums and costs associated with responding to prosecutions and legal actions.⁴²

⁴¹ Australia New Zealand Food Standards, *Food Safety Standards – costs and benefits, May 1999*, refer <http://www.foodstandards.gov.au>

⁴² Productivity Commission 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*, Research Report, Canberra, page 39.

- 6.3 Food-borne illness outbreaks, defined as a situation in which two or more people experience a similar illness after eating a common food or meal, are a measure of the prevalence of food-borne illness.
- 6.4 In Australia, an estimated 5.4 million cases of food-borne disease occurs annually, costing an estimated \$1.2 billion per year. In 2009, food-borne illness outbreaks affected 2 679 persons resulting 342 hospitalisations and eight deaths.⁴³
- 6.5 The ACT Health Directorate estimates the cost of food-borne illness in the ACT is about \$61 million per year. In 2009, the Health Directorate identified and investigated 47 outbreaks of gastroenteritis, of which seven related to outbreaks of food-borne disease. Eighty-eight people were affected and three people were hospitalised. The settings for these outbreaks included private residences, a restaurant, a commercially catered event and an aged care facility.⁴⁴
- 6.6 In 2010, three outbreaks of food-borne or suspected food-borne disease illnesses, affecting 59 people, were reported. One outbreak was caused by unsafe food consumed from a local takeaway salad bar; food from a restaurant was responsible for another of the outbreaks.

Comparisons of ACT food-borne illness outbreaks statistics with other jurisdictions should be viewed cautiously

- 6.7 In 2000, the Commonwealth, states and territories established OzFoodNet to enhance national surveillance and conduct research into the cause of food-borne illnesses.⁴⁵ The collection and evaluation of data from food-borne illness outbreaks by all jurisdictions provides useful information to measure the outcomes from food-safety regulation.
- 6.8 Over the five year period between 2005 and 2009, the number of people affected by food-borne outbreaks in the ACT was highest in 2009 (85 people). However, no death was reported during the period (Table 6.1)

⁴³ Commonwealth Department Health and Ageing (DOHA), *Monitoring the incidence and causes of diseases potentially transmitted by food in Australia: Annual Report of the OzFoodNet Network, 2009*, page 396.

⁴⁴ ACT Health, *Enhancing food-borne disease surveillance across Australia, OzFoodNet ACT, Annual Report 2009*, page 22.

⁴⁵ Kirk MD, McKay I, Hall GV, Dalton CB, Stafford R, Unicomb L, et al. *Food Safety: food-borne disease in Australia: the OzFoodNet experience. Clinical Infectious Diseases 2008; 47(3):392-400.* OzFoodNet website (www.ozfoodnet.gov.au) is established by the commonwealth Department of Health and Ageing as a collaborative initiative with state and territory health authorities to provide better understanding of the causes and incidence of food-borne disease in the community, and to provide an evidence base for policy formulation.

Table 6.1: Comparison of food-borne outbreaks summary statistics and impacts between ACT and Australia average - 2005 to 2009

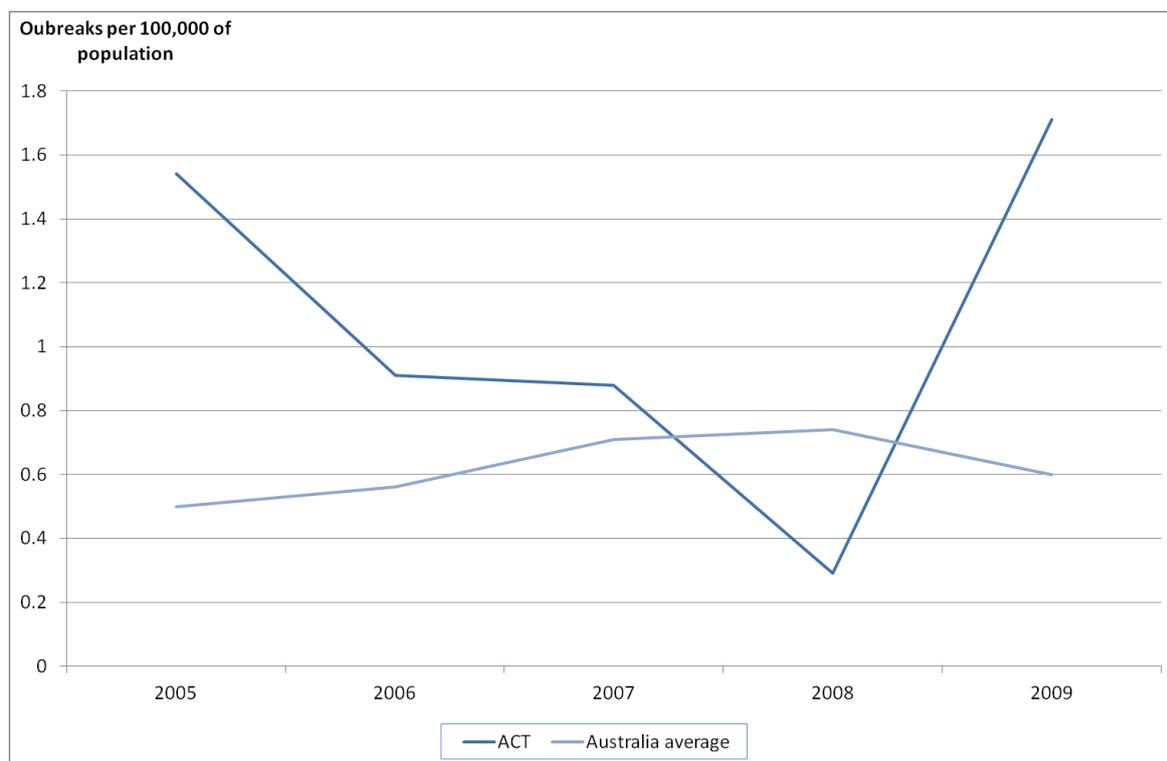
	2005	2006 (a)	2007	2008	2009(a)	Average (5 years)
Outbreaks per 100 000 population						
ACT	1.54	0.91	0.88	0.29	1.71	1.07
Australia average	0.50	0.56	0.71	0.49	0.74	0.60
Number of outbreaks						
ACT	5	3	3	1	6	4
Australia average	102	112	149	104	160	125
Number of people affected						
ACT	51	27	46	24	85	47
Australia average	1 972	1 411	2 290	1 454	2 246	1 875
Hospitalisation						
ACT	4	1	0	2	1	2
Australia average	166	126	266	96	174	166
Fatalities						
ACT	0	0	0	0	0	0
Australia average	4	0	5	11	4	5
Comment:						
(a) 2006 and 2009 totals do not include the outbreaks and impacts relating to 3 multijurisdictional outbreaks.						

Source: Productivity Commission 2009 Report (Table 3.4) and OzFoodNet Annual Reports (2005-2009)

6.9 Figure 6.1 shows the rate of outbreaks in the ACT (per 100 000 of population) compared to the Australian average.

6.10 The Health Protection Service advised that the higher rate of outbreaks in the ACT compared to other jurisdictions in 2009 was not consistent with the longer-term downward trend for the ACT. The Health Protection Service also indicated that the interpretation of population-based rates of outbreaks should be viewed cautiously. Due to the smaller population of the ACT (350 000) compared to larger jurisdictions (for example, New South Wales has a population of around 7.1 million), a small number of outbreaks reported in the ACT is likely to make any calculation of population-based rates more sensitive to small variations. By way of example, a difference of one outbreak per year in the ACT represents a 16 percent change in the rate of outbreaks, while for NSW the same change represents only a 1.5 percent difference. Because outbreaks are to some extent random events, this makes data from the ACT inherently variable.

Figure 6.1: Outbreaks of food-borne disease per 100 000 population in the ACT and Australia - 2005-2009



Source: OzFoodNet annual reports 2006-2009

POLICIES AND PROCEDURES – NEEDED TO GUIDE THE IMPLEMENTATION OF LEGISLATION

- 6.11 The Communicable Disease Control Section of the Health Protection Service is responsible for coordinating responses to food-borne illness outbreaks. At the time of audit, the Health Protection Service did not have formalised procedures to respond to food-borne illness outbreaks. Staff used New South Wales Protocols,⁴⁶ which were supported by other national food-borne disease outbreak response guidelines such as the Multi-jurisdictional Outbreak Guidelines developed by OzNetFood.
- 6.12 The Health Protection Service standard response to cases of food-borne illness outbreaks is to assemble an Acute Response Team, comprising staff from various operational areas, to coordinate and manage investigatory activities. Investigations of food-borne diseases require a multi-disciplinary approach, involving communicable diseases (including epidemiology), environmental health and laboratory input. Nevertheless, every outbreak is unique and although the suite of activities applied will be generally similar, the activities will be tailored to suit the circumstances.
- 6.13 Audit considers that adoption of guidelines developed by other jurisdictions is a practical approach. Further, Audit recognises that the Communicable Disease

⁴⁶ New South Wales Health Department, *Food-borne Illness Outbreak Control Guideline*, October 2009. Refer www.health.nsw.gov.au/facts/guideline/foodborne_illness.html

Control Section has staff experienced in applied epidemiology and communicable disease control, including the ACT OzFoodNet Epidemiologist, to manage responses to outbreaks.

- 6.14 The Health Protection Service has advised that standard operating procedures have since been prepared and adopted (see paragraph 6.18).

RESPONSES - *OUTBREAKS NEED TO BE CONTAINED QUICKLY*

- 6.15 Audit examined documentation in relation to several food-borne illness outbreak responses and found that:

- the responses were generally undertaken in a timely manner; and
- the documentation was adequate for external reporting purpose.

- 6.16 In one instance, however, Audit noted that insufficient information was obtained by the Health Protection Service staff from interviews with patients about a salmonella outbreak. This suggests that some Service staff lacked a sound understanding of, and necessary experience in, undertaking patient interviews and adopting acceptable practice for food-borne diseases investigation. Inadequate documentation and follow-up interviews impairs the capacity of the Health Protection Service to identify the source of the infection and help prevent further cases. The provision of training to staff may enhance their performance.

- 6.17 Audit also found that there was no documented post-event evaluation report for most outbreaks. Better practice suggests that conducting and documenting a post-event evaluation or de-briefing report, particularly for the major outbreaks, is an integral component of a regulator's quality assurance framework. A systematic and structured assessment of the effectiveness of the performance of outbreak responses would provide the Health Protection Service with valuable feedback and possible ideas for improvement.⁴⁷

- 6.18 In August 2011, the Health Protection Service developed and implemented standard operating procedures for emergency responses, in particular relating to a large-scale public health incident and event. The new Standard Operating Procedures (*Public health incident, event and emergency management – assessing operational response requirements*) require post-outbreak reviews of all responses conducted by Acute Response Teams.

⁴⁷ Australian National Audit Office (ANAO) Better Practice Guide, *Administering regulation*, March 2007 Chapter 9. Refer ANAO website http://www.anao.gov.au/uploads/documents/Administering_Regulation_.pdf

APPENDIX A: AUDIT OBJECTIVE, CRITERIA AND APPROACH

AUDIT OBJECTIVE

The objective of this Audit is to provide an independent opinion to the Legislative Assembly on whether the Health Directorate has a sound regulatory framework for the management of food safety in the ACT, and is implementing this effectively.

AUDIT CRITERIA

Assessments of efficiency and effectiveness were based on the following criteria:

- The regulatory and policy framework for management of food safety being well-defined and supporting the objectives of the *Food Act 2001*.
 - The regulatory framework effectively guides the Health Protection Service to achieve food safety outcomes.
 - Policies, procedures, and guidelines in relation to food safety are comprehensive and in accordance with Food Standards Code.
- Regulatory activities related to food safety are performed in accordance with legislative requirements, and are effective.
 - Procedures for registration of food businesses (including renewals) are well defined and in accordance with relevant sections under Part 8 of the *Food Act* and Standard 3.2.2 of the Food Standard Code.
 - The routine inspection program is well planned, effectively managed and up-to-date.
 - Food inspections are conducted in accordance with relevant professional standards and procedures.
 - Surveillance activities, including targeted inspection programs, are well planned and meet food safety priorities.
 - Mandatory food safety programs are effectively monitored and enforced.
 - Responses to public complaints in relation to food issues are timely and adequate.
 - Responses to food-borne illness outbreaks are timely, thorough and efficient.
 - Education provided to food proprietors and the community is adequate and effective to enhance compliance with food safety requirements.
- There are strategies in place to identify and manage issues affecting the delivery of food safety activities.
 - There are strategic planning processes in place to ensure food safety outcomes are achieved.

- Management of workflow and human resources is efficient to meet legislative requirements and national standards.
- There is adequate performance measurement, monitoring and reporting to measure the efficiency and effectiveness of the activities of the Health Protection Service in meeting food safety outcomes.
- Relevant indicators and targets are set to measure efficiency and effectiveness of activities in improving food safety.

AUDIT APPROACH

The performance audit was conducted under the authority of the *Auditor-General Act 1996*, and in accordance with the principles, procedures, and guidance contained in Australian Auditing Standards that are relevant to performance auditing. These standards prescribe the minimum standards of professional audit work expected of performance auditors. Of particular relevance is the professional standard on assurance engagements - *ASAE 3500 Performance Engagements*.

Evidence was collected by:

- conducting a literature review of the *Food Act 2001* and *Food Regulation 2002*, the FSANZ Food Standards Code 2001, in particularly Chapter 3 - Food Safety Standards;
- conducting a literature review of work undertaken on the subject of food safety by other jurisdictions including other audit offices to identify better practices;
- identifying and reviewing relevant ACT Health Directorate's information and documentation including the governance and accountability framework, related policy and procedures, research documents, and relevant reports;
- identifying and documenting controls and procedures used to give effect to the policies and guidelines and to ensure compliance;
- conducting interviews and discussions with key staff of the Health Directorate, the Health Protection Service and relevant stakeholders to obtain sufficient understanding of the food regulation environment in general, particularly that related to food safety;
- accessing Health Protection Service's registration database and complaints database to extract and analyse data on various aspects of the Health Protection Service's food safety activities;
- sample testing whether classification of food businesses adheres to the relevant policies and standards;
- sample testing whether food businesses are inspected as frequent as recommended in accordance with the Health Protection Service's targets;
- observing environmental health officer inspections of food businesses;

- conducting interviews with key staff of the Health Protection Service and reviewing documentation in their responses to major complaints or food-borne illness outbreaks to determine their responsiveness and assess the adequacy of their activities; and
- analysing data extracted and information on Health Protection Service's performance against their key accountability indicators and internal targets.

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