Machinery of Government Review of the New Zealand Food Safety Authority


Executive summary

1 A recent performance review of New Zealand Food Safety Authority (NZFSA) identified some concerns regarding the accountability arrangements governing the NZFSA. The concerns stemmed from the fact that NZFSA is a semi-autonomous body (SAB) attached to MAF. In establishing NZFSA as a SAB, Cabinet wanted to provide the Executive Director of NZFSA with the delegated authority to provide advice on food safety matters independent to advice from the Director-General of MAF while, at the same time, capturing the benefits that come from attachment to MAF (including sharing of corporate support services).

2 From an accountability perspective, the SAB model gives rise to some tensions. Under the State Sector Act, the Director-General is accountable to the Responsible Minister for carrying out the functions and duties of the Ministry including NZFSA. While the Director-General can delegate the performance of roles and duties to the Executive Director, he cannot delegate the responsibility that derives from the State Sector Act. Similarly, under the Public Finance Act, the Director-General is accountable for the financial management and performance of MAF including NZFSA. Again, this responsibility cannot be delegated. For example, under the Public Finance Act, a document such as the statement of forecast service performance cannot be a unilateral agreement between the vote Minister and the SAB. The vote Minister and the Departmental Chief Executive must sign the statement of forecast service performance.

3 There is, therefore, potential for tension between the desire for independence and the requirements of the relevant legislation. There are signs that these tensions have spilled over into the relationship between MAF and NZFSA and that the relationship is not working as well as it needs to.

4 The brief for this review has required consideration of the advantages and disadvantages of maintaining existing arrangements, of options for modifying current arrangements including, in particular, separating NZFSA into a stand-alone entity and of the need for any other changes to arrangement that might be appropriate.

5 The main focus of the review has been on the choice between retaining NZFSA as part of MAF or separating it into a stand-alone entity.

6 The review concludes that the preferred option is to retain NZFSA as part of MAF.

7 The main reasons for this conclusion are the strong links that need to exist between the two agencies and the synergies that stem from this. The need for close links reflects several considerations:

- International trade is a fundamental part of NZ’s economic health. Traditional barriers to trade are being replaced by those which focus on biosecurity, food...
safety, environmental and animal welfare issues. There needs to be close co-
modation between NZFSA and MAF (including, in particular, Biosecurity NZ) 
because of the need to maintain a consistent and principled approach to the design 
and application of the regulatory regime and a consistent voice when representing 
NZ in international fora.

- A large part of NZFSA’s work involves providing assurances to trading partners. 
  Its main focus is on animal products, but in order to provide assurances in respect 
of these, it relies upon assurances from Biosecurity NZ regarding the health status 
of NZ’s livestock.

- The two agencies collaborate, at a day-to-day level, on a wide range of trade 
  and regulatory issues.

- NZFSA makes a direct contribution to three of the four high-level outcomes 
described in MAF’s Statement of Intent.

- The nature of the work undertaken by NZFSA and Biosecurity NZ has common 
  scientific and risk-based underpinnings and this is reflected in the composition of 
  staff within NZFSA and Biosecurity NZ.

- Good regulatory design and application needs to be based on a blend of technical 
  and policy perspectives.

- The effectiveness of response in the event of biosecurity incursion or food safety 
  risk depends on close integration between MAF, Biosecurity NZ and NZFSA.

- In general, across government there is a desire for greater collaboration and 
  horizontal integration across agencies reflecting concerns that the relatively 
  fragmented nature of the public sector can hinder achievement of Government’s 
  desired outcomes.

8 The nature of the links between NZFSA and MAF is not temporary or new. Many of the 
functions currently performed by NZFSA were previously undertaken by MAF prior to 
the establishment of NZFSA in 2002.

9 Notwithstanding the advantages that stem from closely integrating the work of NZFSA 
with that of MAF, there are some potential disadvantages. At the time that NZFSA was 
being established, concerns were raised that attaching NZFSA to MAF would allow 
producer interests to dominate and compromise food safety. External stakeholders 
terviewed as part of this review do not consider that this view has any real validity. 
They believe it is more important that approaches to domestic food safety align with 
those governing the export and import of food and related products, reflecting the 
reciprocal nature of trade agreements.

10 Of more substance is the concern that the SAB model gives rise to accountability 
arrangements that are more complex than normal and more likely to give rise to tensions. 
For this reason, the stand-alone option warrants careful consideration. Two main factors, 
however, count against the stand-alone option. The first of these is that the stand-alone 
option increases the risk that the links between NZFSA and MAF will become harder to 
maintain and/or will lose their effectiveness. Several reasons lie behind this view 
including:

  - general concerns that further fragmentation means more points of connection and, 
    by definition therefore, greater risk that one of the links in the chain will break
it is harder to achieve integration and collaboration if agencies are at arm’s-length from one another, and

the nature of the links that exist between NZFSA and MAF create synergies in terms of the approach to issues (e.g. the science/principled approach to regulation) and the competencies of staff involved. These synergies will be much harder to achieve if the agencies are separated. In this regard, it is worth observing that Agriquality NZ achieves synergies and commercial reward through closely integrating biosecurity and food safety under the umbrella of the Company.

11 A second consideration that works against the stand-alone option is cost. This was a significant consideration at the time NZFSA was being established. Estimates prepared by MAF indicate that to implement the stand-alone option, ongoing operating costs could increase by around $5 million per annum with a further one-off transition cost of $6 million (mainly in relation to IT and reflecting the fact that NZFSA’s requirements differ from those of MAF). The review concludes that the benefits that the stand-alone model has in terms of clearer accountabilities are unlikely to outweigh the additional fiscal costs involved nor outweigh the less quantifiable costs that would arise through losing the benefits of close integration as outlined above.

12 Consideration has been given to making NZFSA a division of MAF rather than continuing as a SAB. This would also help to address the accountability tensions while retaining the advantages of close integration. However, the “division” option is not recommended at this stage. There are some advantages in maintaining a degree of separate identity for NZFSA in terms of providing focus and building on the considerable success already achieved by NZFSA since its establishment. Furthermore, from an external stakeholder perspective, retaining NZFSA as a SAB implies no disruption or change.

13 Accordingly, the review concludes with a preference in favour of retaining the SAB model for NZFSA. This is tempered, however, by the need for the parties involved to address some underlying relationship issues by focusing on enhancing the formal and informal mechanisms that need to be in place to foster effective working relationships.

14 The added complexity of the SAB model, in terms of accountability arrangements, increases the onus on the parties involved to make the relationship work. To this end, the review has identified some formal and informal mechanisms, over and above those already in place, to assist with the effective functioning of the relationship between NZFSA and MAF. These include:

- formalising NZFSA’s requirements relating to corporate support services into a shared services agreement
- further articulating, and aligning, values and cultures and reflecting these in key governance documents and policies
- greater joint participation in industry meetings and fora
- making better use of induction processes, and
- co-location.

15 The review encourages the Director-General and Executive Director to explore further, and implement, opportunities for strengthening the functioning of the relationship.
Introduction

16 The New Zealand Food Safety Authority (NZFSA) was established on 1 July 2002 as a semi-autonomous body (SAB) attached to the Ministry of Agriculture and Forestry (the Ministry or MAF). Under this arrangement, the authorities and powers exercised by NZFSA are vested in the first instance with the MAF Director-General who delegates comprehensively to the NZFSA Executive Director. The Executive Director may provide policy advice on matters of food safety independently of advice on those matters that might be offered by the Director-General. The Executive Director is accountable both to the Minister for Food Safety for policy, and to the Director-General for the exercise of delegated authorities and overall performance.

17 The reporting lines and accountabilities in the SAB model can be confusing and difficult to understand. For example, while the Executive Director has a direct reporting line to the Minister for Food Safety, the Director-General has, under the State Sector Act, ultimate responsibility for the conduct of the Ministry and the advice it tenders to Government consistent with the performance measures and expectations set out in the Ministry’s Statement of Intent.

18 A recent performance review of NZFSA (referred to as the “Scott report”) concluded that “the overall impression from considering the stakeholders’ feedback and the formal performance reports is that NZFSA is an outstandingly competent regulator”.\(^1\) Notwithstanding this very positive conclusion, the report raised a number of concerns regarding the effectiveness of the SAB model.

19 More than three years after establishment, now that NZFSA is operating as a highly reputable agency, it is timely to review NZFSA’s status as a SAB attached to MAF with a view to ensuring it is structured to operate in the most efficient, effective and economical way in the future. To this end, the machinery of government review has addressed:

- the advantages and disadvantages of maintaining the current arrangements as a SAB attached to MAF
- the viability of modifying some of the current arrangements, including possible separation of NZFSA from MAF, and
- any other changes that might be appropriate.

20 In addressing these issues, the review has:

- considered existing governance and accountability relationships between the NZFSA, MAF and Ministers and assessed the strengths and weaknesses of these
- compared the NZFSA SAB arrangements with other SABs that exist in the State services
- identified options for change and assessed the risks, costs and benefits involved, and
- brought this analysis together to comment on the advantages and disadvantages of the possible options for change in comparison with maintaining the status quo.

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\(^1\) Scott G., and McKenzie, L., (2005) “Review of the New Zealand Food Safety Authority” The report was commissioned by the NZFSA as part of its review of the performance of the organisation against the ministerial objectives, NZFSA’s objectives and, more generally, the expectations of its stakeholders.
As part of the review’s brief, a wide range of external stakeholders was interviewed to obtain views on the SAB model and the options for NZFSA. The interviews were conducted on a non-attribution basis. A list of interviewees is included as Appendix A.

Overview of NZFSA and its establishment

The Authority was established in 2002 and brought together the primary production and export role of the MAF and the Ministry of Health’s roles in relation to the administration of the Food Act and the regulation of the sale of food in the domestic market. There is approximately 420 permanent staff employed in NZFSA. The appropriations for Vote: Food Safety total $81.540 million for 2005/06. Of this amount, roughly a third is funded by the Crown and the balance is funded by third parties (primarily levies on the meat industry).

Role of NZFSA

NZFSA has two main areas of focus:

- to protect and promote public health and safety through the administration of food related legislation, and
- to facilitate access to markets for NZ food products and related products.

According to information provided by MAF, roughly 80% of NZFSA’s direct activities are related to facilitating access for NZ’s food based primary products to external markets. Many of the functions undertaken by NZFSA stem from those undertaken, prior to NZFSA’s establishment, by MAF. At the time of its establishment, NZFSA also took on roles formerly undertaken by the Ministry of Health in relation to the safety and suitability of food for sale in New Zealand.

The scope of NZFSA’s mandate covers the entire food and related products chain from production through to processing and to sale (both domestic retail sales and exports). Food covers primary and processed products for human or animal consumption or use. Related products include, for example, hides, skins and wool. The main activities of NZFSA can be summarised as:

- administering all food and related product legislation
- administering food safety and hygiene matters in the production, primary processing, distribution, retail sale, preparation of food for sale and assurance of food exports
- managing the relationship with Australia in relation to joint food standards setting Treaty
- providing advice and information to the public and to the Government on food safety matters
- co-ordinating food and related product policy advice across Government agencies
- negotiating and providing official assurances to overseas governments for animal and plant products (other than those assurances that are provided by Biosecurity NZ), and

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contracting with relevant agencies for the provision of food safety services. This includes contracts with the public health units of District Health Boards and territorial authorities.

**Characteristics of the SAB model**

26 The main formal characteristics of the SAB model for NZFSA can be summarised as follows:

- The Executive Director of NZFSA has the delegated authority to provide policy advice on food safety matters that is independent of advice from the Director-General of MAF.
- The Executive Director has day-to-day responsibility for the administration of NZFSA and relevant legislation and servicing the needs of the Minister for Food Safety.
- The Executive Director has delegated authority from the Director-General for recruiting and appointing NZFSA personnel (although personnel are formally MAF employees) and ensuring that obligations in relation to employment-related legislation are observed.
- The Director-General is expected to provide an environment that is supportive and conducive to enabling the roles of the Executive Director to be undertaken. This includes providing the Executive Director with strategic direction and leadership and ensuring that the Executive Director has access to MAF corporate services at a level and quality compatible with effective performance of NZFSA.

27 At the time that Cabinet approved the establishment of NZFSA, it expressed several expectations regarding the relationship between NZFSA and MAF. In particular, Ministers expected:

- NZFSA to operate under a brand which is distinct and separate from MAF
- NZFSA to project a commitment to establishing its reputation as a trusted, credible and independent guardian of public health with respect to the safety and suitability of New Zealand’s food, both in domestic and international markets
- there to be a close and collaborative working relationship between NZFSA and MAF’s biosecurity and trade policy functions
- NZFSA to contribute to the development of, and operate off, MAF corporate infrastructure (HR, IT, Finance etc), and
- NZFSA to operate within MAF’s corporate policies.

**Why was the SAB model chosen for NZFSA?**

28 In the lead up to the establishment of NZFSA, consideration was given to a wide range of options including the option of establishing NZFSA as a stand alone entity. The options were evaluated in light of several considerations. The decision to establish NZFSA as a SAB reflects the outcome of trade-offs between the various considerations (and some have characterised the choice of the SAB model as something of a compromise). In brief, several considerations pointed toward establishing NZFSA as a stand-alone entity rather than attaching it to MAF. Included among these were:

- concerns that food safety objectives could be subject to producer capture. These concerns had essentially three elements:
- that MAF’s historically traditional focus on production and producers would allow it to be unduly influenced by producer interests
- that the interests of producers would override those of consumers
- that the objectives around promoting trade and producer interests would be in conflict with protecting public health

- concerns that the traditional focus of MAF on trade and agricultural issues would crowd out a focus on food safety (although there were similar concerns that food safety was being crowded out within the Ministry of Health), and
- a desire to give food safety greater prominence, recognition and focus. Establishing NZFSA as a stand-alone entity was seen as a better option for reinforcing these objectives.

Equally, however, there were several considerations that pointed toward keeping food safety within MAF. These included:

- recognition of the strong links that existed (and needed to be maintained) between food safety functions and the biosecurity activities undertaken by MAF
- a strong desire for domestic food safety and biosecurity regulatory regimes to be based on the same science and risk based principles, both in terms of design and application (this point is discussed further below)
- a recognition of the credibility attaching to the MAF brand and the importance of the brand to NZ’s trade and wider economic interests, and
- concerns regarding the costs associated with establishing a stand-alone entity. Estimates prior to the decision to establish NZFSA as a SAB indicated that establishing a Ministry of Food would involve one-off costs of around $6.6 million plus additional ongoing costs of $1.6 million per annum. In contrast, at the time, it was estimated that the one-off costs for establishing NZFSA as a SAB would be approximately $0.5 million with ongoing costs in the range of $0.4-$0.7 million per annum (i.e. substantially less than the stand-alone option).

The decision to establish NZFSA as a SAB reflected the outcome of balancing these considerations. The SAB option was considered to be a lower cost option than a stand-alone entity. The stand-alone option would have separated export food assurance from biosecurity and, in so doing, risked creating a dual regime in relation to export assurance. It would also have risked creating inconsistencies between import and export sanitary and phytosanitary\(^3\) (SPS) approaches and NZ’s approach to SPS issues internationally (and thus run counter to the desire at the time to improve the coordination of SPS issues across Government).

At the time, the NZFSA brand did not have the standing it now has and accordingly, it was perceived there would be advantages in leveraging off the internationally recognised MAF brand. The semi-autonomous nature of NZFSA helped to provide assurance that advice would be independent of the “parent” organisation.

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\(^3\) The World Trade Organisation (WTO) “Agreement on the Application of Sanitary and Phytosanitary Measures” covers many animal and plant related health and safety measures that affect trade between WTO members. It is a key part of the regulatory framework governing NZ’s trade interests.
Other options considered

32 In addition to the SAB and stand-alone options, several other options were considered. The table below summarises these and the main reasons why the options were not chosen ahead of the SAB model.

<table>
<thead>
<tr>
<th>Option</th>
<th>Main reasons against the option</th>
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<tbody>
<tr>
<td>Crown entity</td>
<td>Nature of the issues requires decision making close to Ministers. Overseas partners require Government to Government assurances and they do not perceive Crown entities as being consistent with this requirement.</td>
</tr>
<tr>
<td>Attached to Ministry of Health</td>
<td>Different regulatory frameworks. Food safety would struggle for status and recognitions within the Ministry of Health. Most personnel were located within MAF and so it was a much lower cost option to transfer Health personnel to MAF rather than the other way around.</td>
</tr>
<tr>
<td>Ministry of Food and Biosecurity</td>
<td>Some consumers may perceive a potential for food assurance to be compromised by producer interests. Biosecurity stakeholders likely to view this option negatively, particularly non-food industries, reflecting lack of synergy between their industry and food. This option would have involved significant change that would have radically altered the nature and scope of MAF. At the time, it was considered that further and more detailed analysis would be required before proposing this option.</td>
</tr>
<tr>
<td>“Super” Ministry with individual agencies (food, agriculture and forestry, fisheries, border control, biosecurity)</td>
<td>There was little advantage perceived, from a food perspective, by integrating with Fisheries and Customs.</td>
</tr>
<tr>
<td>Domestic Food Agency</td>
<td>This option risked creating a dual regulatory regime in relation to export assurances. Separating food assurance and biosecurity risked creating potential for inconsistencies to develop between import and export sanitary and phytosanitary (SPS) approaches and NZ’s approach to SPS issues internationally.</td>
</tr>
<tr>
<td>Business unit within MAF</td>
<td>Issues of independence (i.e. risks of producer capture and trade bias) were seen as counting against this option.</td>
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</tbody>
</table>

Establishment of NZFSA as a SAB

33 The considerations that led to the decision to establish NZFSA as a SAB also had an influence on the way in which the SAB option was implemented. In particular, the following features were agreed to as part of the establishment in addition to those features described in paragraph 26 above:

- a separate Vote for food safety was established
- a separate ministerial portfolio (The Minister for Food Safety) was established, and
• an independent Food Safety Advisory Board was established to provide advice to the Minister.

34 All of these features were intended to reinforce the sense of separation and independence from MAF while, at the same time, not losing the benefits of being part of MAF in terms of the linkages with biosecurity (and MAF Policy), the cost advantages in utilising corporate support services (finance, administration, IT, legal etc) provided by MAF and, initially at least, leveraging off the MAF brand while the NZFSA brand took time to establish itself.

35 The desire to establish arrangements that afforded NZFSA a sense of separation from MAF is, however, at the heart of the accountability issues raised in the recent performance review (the Scott report) of NZFSA. The risks stemming from the SAB model are discussed further in the next section.

**Concerns and risks with the SAB model**

**What are SABs?**

36 Semi-autonomous bodies have been established within departments to separately exercise distinct functions from the “parent” department. The characteristics of SABs include the following:

- They exercise distinct functions either at the direction of Cabinet or pursuant to statute although the functions have some relationship with those of the parent department.
- They exercise the distinct functions separately from the “parent”. This does not mean that they exercise functions without regard to the “parent”. There is a general obligation on all Ministries to undertake their duties and responsibilities in collaboration with other arms of Government. This applies equally to SABs.
- SABs have their own Vote and a direct reporting relationship with the Vote Minister.
- SABs typically operate with their own brand and name although there are differences between the SABs in terms of the degree to which their branding acknowledges the parent (e.g. the Ministry of Consumer Affairs is recognised as being part of the Ministry of Economic Development in its branding).
- SABs are legally part of the “parent” department.
- The head of the SAB is appointed by, and is an employee of, the Chief Executive of the “parent” department.
- SABs are established on a permanent, rather than time-bound, basis.

**SABs operating in the public sector**

37 Although not a common organisational arrangement, there are a number of SABs currently operating in the public sector. They include:
Risks stemming from the SAB Model

The Scott report drew attention to some potential problems with the SAB model in terms of tension and conflict with public sector management and financial management principles. In short, in establishing SABs to create an element of separateness (i.e. independence of advice) from the parent, there are some fundamental tensions with the accountability frameworks that are embodied in the State Sector Act 1988 and the Public Finance Act 1989 (the PFA).

Under the State Sector Act, the departmental chief executive is accountable to the responsible (i.e. ownership) Minister for carrying out the functions and duties of the department, the tendering of advice to Ministers, the general conduct of the department and the efficient and effective management of the department and its resources. In the case of NZFSA/MAF, this means that the Director-General is accountable to the Minister of Agriculture and Forestry for all that goes on within the Ministry including the advice that is tendered to the Minister for Food Safety. This position is not changed as a result of the Director-General delegating duties to the Executive-Director in relation to food safety matters. The Director-General can delegate the performance of roles and duties, but he cannot, under the State Sector Act, delegate his responsibilities.

This point is reinforced by reference to the Public Finance Act. For the purposes of a chief executive’s financial accountabilities under the PFA, semi-autonomous bodies are part of the department administering the Vote from which the semi-autonomous body is funded. MAF is the administering department for Vote: Food Safety and, accordingly, it is the Director-General who is held to account for the administration of that Vote. This has two significant implications:

- Under the Public Finance Act, the Director-General is accountable to the Responsible Minister (i.e the Minister of Agriculture and Forestry) for the financial management and the financial performance of the Ministry including the financial management and performance of NZFSA. The Responsible Minister is accountable to Parliament for the operations and performance of the Ministry as a whole.
- The Director-General must negotiate and sign the purchase/output agreement with the relevant Vote Minister which, in NZFSA’s case is the Minister for Food Safety. The Minister for Food Safety and the Director-General are the only two parties who are legally accountable for Vote: Food Safety under the PFA and the purchase/output agreement represents a formal agreement between them. While it
is feasible for the Executive-Director of NZFSA to be a co-signatory, the Executive Director should not sign without the signature of the Director-General.

41 There is also a requirement on the Director-General to comply with any lawful actions required by the Minister of Finance or the Responsible Minister.

42 In establishing a SAB, Cabinet cannot of itself legally delegate the Director-General’s powers and functions to the Executive Director of NZFSA. Further, it cannot absolve the Director-General of his legal responsibilities by stating that the Executive-Director is directly responsible to the Minister for Food Safety for the delivery of outputs funded from Vote: Food Safety. Delegation of functions must come from the Director-General and must be in accordance with the provisions of section 41 of the State Sector Act which govern the delegation of functions and power.

43 There is, therefore, a tension between Cabinet’s desire for a degree of separateness between NZFSA and MAF on the one hand and, on the other hand, the fact that the legal responsibilities and accountabilities rest with the Director-General. Several risks stem form this tension.

44 From Government’s overall perspective, there is a risk that in establishing NZFSA as a SAB, Cabinet believed that it was establishing an entity with a greater degree of autonomy and separateness than is actually feasible within the accountability framework established through the State Sector Act and PFA.

45 From the perspective of the Minister for Food Safety, there is a risk that accountabilities get blurred. The Vote Minister will naturally look to the Executive Director of NZFSA for advice in relation to food safety and will look to hold the Executive Director to account for that advice. It is the Director-General, however, who is formally accountable under the output agreement.

46 From the perspective of Executive Director, there is a risk of being faced with two masters; the Minister for Food Safety and the Director-General.

47 Finally, from the perspective of the Director-General, there is a risk that his role and responsibility will be compromised. If the Director-General is not kept abreast of the advice being given to the Minister for Food Safety, and if he is not actively involved in the monitoring and management of the performance of NZFSA, there are risks that his accountability under the purchase/output agreement and accountability under the State Sector Act to the Responsible Minister, will be compromised.

48 A further potential for conflict arises from one of the requirements upon the Director General that is embodied in a Relationship Agreement between the Director-General and the Executive-Director. Under that Agreement, there is an obligation on the Director-General to ensure that the Executive Director of NZFSA receives strategic direction and leadership consistent with the Government’s strategic directions for, inter-alia, food safety. This is difficult to do if, as a result of Cabinet’s preferences regarding the need for independent advice, the Director-General is distanced from the provision of advice to the Minister for Food Safety. To an extent this difficulty is mitigated as a result of the obligation on the Executive Director to keep the Director-General informed of advice being given to the Minister (as provided for under the Relationship Agreement), but the Director-General’s ability to provide strategic direction is potentially compromised if the Director-General is not generally involved in discussions with the Minister for Food Safety.
**Operation of the SAB in practice**

Based on discussions with MAF, NZFSA and various external stakeholders who were interviewed as part of the review process, a number of instances have been raised by interviewees of situations where one or more of the risks noted above have eventuated in some form. The following examples are provided, although it is important to note that there is not necessarily a shared view between MAF and NZFSA regarding the relevance, or legitimacy, of the points raised through these examples:

- There are concerns that the Statement of Intent, and the process for its development, has not afforded sufficient distinction between NZFSA and MAF. As a consequence, there has been tension between NZFSA wanting to stamp its own mark on this key accountability document and the responsibility that the Director-General of MAF has for overall direction, strategy and operations of MAF. More generally, and based on discussions with other SABs, it can be the case the SABs struggle to achieve the prominence that they would like in key accountability documents although in some cases this can be a function of size relative to the parent department.

- Consistent with general approaches in the public sector to achieve greater levels of connectedness and collaboration, MAF has been following a strategy aimed at drawing its divisions closer together into a unified “one-MAF”. Concerns have been raised that the “one MAF” approach will cause the NZFSA brand and identity to be subsumed within, or subordinated to, MAF and that, in so doing, this will lead to confusion among stakeholders regarding NZFSA’s core regulatory responsibilities.

- The Minister for Food Safety became involved in decisions regarding the office location for NZFSA. Clearly there was a difference of view between MAF and NZFSA on this issue, but it is not the sort of issue that would normally be expected to be escalated to Minister level (let alone the Vote Minister).

- NZFSA has relationships with many Government agencies that need to be maintained for the effective discharge of NZFSA’s roles and responsibilities. A point has been raised that NZFSA needs to manage each of these relationships on an equal footing, but that this is difficult to achieve this when one of those relationships is with the parent organisation (i.e. MAF). The perception is that having MAF as the “parent” risks compromising the ability of NZFSA to effectively discharge its responsibilities.

- The Executive Director is on the senior management group of MAF and through this role, and others, is involved in a range of MAF-wide initiatives. Some concerns have been raised that these roles risk consuming too much of the Executive-Director’s time at the expense of core NZFSA roles and responsibilities.

Among the issues raised in the lead up to NZFSA’s establishment, were concerns surrounding producer capture and undue focus on trade-related functions at the expense of domestic food safety matters. A cross section of organisations involved in the domestic food industry was interviewed as part of this review. None of those interviewed considered this perception to have any real basis in fact. Some went as far to say that the perception is, in reality, nonsense. Given this, and the nature of the tensions noted above, it can be concluded that where tensions arise, it is primarily around the fact that it is attached to a “parent” department and, therefore, is subject to scrutiny by the parent as well as the day-to-day issues that affect the parent. Such tensions could be seen
as being a normal part of a relationship that in many respects is similar to that of any subsidiary/parent relationship.

Moreover, the examples of where tensions have arisen need to be put into context. Overall, it is important to remember that the overall conclusion reached in the recent Scott review is that “NZFSA is an outstandingly competent regulator”. This is despite the views expressed in the Scott report that the SAB form tends to be unstable over time and concerns raised by some stakeholders that MAF and NZFSA need to work more closely together in some areas.

Notwithstanding the potential for conflicting accountabilities inherent in the SAB model, several points need to be noted.

- In establishing the SAB model and setting an expectation that the Executive Director would have a line of advice to the Minister for Food Safety, independent of MAF, Cabinet did not intend this arrangement to mean that such advice would be tendered without regard to MAF. Rather, Cabinet’s expectations were that there would be a close and collaborative working relationship between NZFSA and MAF’s biosecurity and agricultural trade policy functions. These expectations have been embodied the Relationship Agreement between NZFSA and MAF.

- Good advice relies on considering issues and their solutions from different perspectives. In tendering advice to the Minister for Food Safety, NZFSA is bound, notwithstanding the SAB model, by the normal convention that officials consult with relevant agencies as part of the policy development process. As reflected in the Relationship Agreement, there is an obligation on the Executive Director to consult with relevant MAF groups on policy issues. In general, this appears to be occurring although there are always instances where groups within MAF would contend that they should have been consulted earlier and/or in a more substantive fashion. The same point can probably be made, however, from time to time with all inter-departmental relationships on policy issues.

- Further, providing the Executive Director with an independent line of advice does not diminish the general onus of responsibility on the Director-General to provide free and frank advice to the Minister for Food Safety of matters affecting the Minister’s portfolio. The Relationship Agreement provides that where the views of NZFSA differ from those of MAF, the Director-General will ensure that the tendering of NZFSA views is not impeded.

- Under the Relationship Agreement, there is an obligation on the Director-General to ensure that the Executive Director has access to MAF corporate services at a level and quality compatible with effective performance by NZFSA. This review has found no evidence of any instance in which there has been any material failing in this regard. The favourable conclusions of the Scott report regarding the performance of NZFSA presumably would not have been reached had there been ongoing and major issues around the provision of corporate support services.

On the basis of these observations and, more generally, the considerable success that NZFSA has had since it was established in 2002, it is reasonable to conclude that the SAB model is not fatally flawed (as might be interpreted from the Scott report). There are, however, inherent tensions between the model and the accountabilities under the State Sector and Public Finance Acts. These tensions need to be managed. In this

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5 Ibid., p 14
respect, the current Relationship Agreement that exists between the Director-General and the Executive Director is, on paper at least, a sensible set of working arrangements for managing the accountability tensions. The contents of the Relationship Agreement reflect a set of arrangements that also exist between MFAT and NZAid and which, in that context, appear to work well.

54 Notwithstanding the arrangements set out in the Relationship Agreement, to make the SAB model work, the parties involved have to want to make it work. There are signs that the relationship between the Director-General and the Executive Director is not working as well as it needs to. There has been correspondence between the two alleging that one is unreasonably intruding on the “patch” of the other and, in so doing, not respecting the principles set out in the Relationship Agreement. Moreover, external stakeholders have commented to the effect that they perceive there to be significant relationship issues between the two. Incidents, such as the disagreement over accommodation arrangements, which escalated to Ministers, are further evidence of a relationship that is below the standard required.

55 This issue is discussed further in the section entitled ‘Making the SAB model work’ with some recommendations as to how the relationship can be made to function more effectively.

Evaluation criteria

General criteria

56 There are several general, machinery of government, criteria that can be used to assist with evaluating the strengths and weaknesses of the various options for NZFSA. From the viewpoint of ensuring that the institutional arrangements operate efficiently and effectively, the following criteria have been considered:

- **Clear accountabilities** must be maintained. Without clear accountability, incentives to deliver against the Government’s desired outcomes are diminished.

- **Roles and responsibilities must also be clear**. If they are not, there is greater risk of gaps or duplications in service delivery.

- The structural arrangements should **promote effective decision making and enable achievement of the Government’s desired outcomes**. This means assigning decision making responsibilities to those who have the best information and right incentives to consider the options and make the right trade-offs.

- The arrangements should **promote efficiency and effectiveness**; that is, decision making should lend itself toward selecting the right mix and level of outputs (effectiveness) and further that those outputs are produced with no waste of resources (efficiency). Much of the work of NZFSA and Biosecurity NZ has a strongly technical and scientific element. This requires input from specialist personnel the availability of which is relatively scarce. Accordingly, there is even greater onus than normal to ensure that resources are utilised as effectively as possible.

- The arrangements should also be **cost effective**. Costs in this context include both the costs incurred by MAF and NZFSA as well as costs imposed on others including compliance costs for industry.

- **Risks should be effectively managed** as part of achieving the Government’s objectives (which is not to say that there should be no risk).
In addition to these criteria that apply generally across all machinery of government issues, there are other criteria that have special significance in the context of the work undertaken by NZFSA and MAF and which link to the achievement of Government objectives:

- maintain an effective, credible and respected regulatory framework and environment governing food and related products. This is critical to NZ’s ability to trade internationally and to maintaining public confidence around domestic food safety, and
- maintain an effective emergency response management framework. This is also critical to NZ’s ability to trade.

**Effective, credible and respected regulatory framework**

Trade in animal and plant products is facilitated in accordance with international rules and guidelines. The WTO Sanitary and Phytosanitary (SPS) Agreement\(^6\) is the most important of these and requires that any sanitary measures that are applied to imported animal and plant products are based on science and risk assessment.

The SPS Agreement is underpinned by the work of international standards setting agencies. The Codex Alimentarius Commission (CAC) and its subsidiary bodies, the Office Infectious Epizooties (OIE)\(^7\) and the International Plant Protection Convention (IPPC), set international standards for animal and plant product safety. It is a priority for MAF and NZFSA to influence the multilateral standard setting processes to benefit New Zealand. MAF and NZFSA must work strategically within the CAC/OIE/IPPC environment to achieve the best outcomes for New Zealand.

MAF and NZFSA have a role in ensuring standards set by OIE, CAC and IPPC are complementary and address animal and plant product safety issues throughout the food chain. NZFSA is heavily involved with a range of Codex committees\(^8\) and manages the overall Codex relationship. Relationships with the OIE and IPPC sub-committees are managed by Biosecurity NZ reflecting the focus of these sub-committees. MAF and NZFSA have a primary role in negotiating market access requirements (covering safety and suitability) for animal and plant products, and providing the official assurances to governments of importing countries through health certification.

International trade relies on consistent application of the principles of the WTO SPS Agreement to ensure that health-based requirements are risk-based, proportionate to the specific risks involved and do not create unnecessary technical barriers to trade.

It is a key priority for New Zealand, and to our standing as a principled trader, that trade is treated as a ‘two way street’. This means that MAF and NZFSA must:

- apply international trade agreements and protocols for both imported and exported animal and plant products in a consistent manner
- ensure all standards and legislation affecting trade in animal and plant products (regardless of which Government department administers them), are risk based and proportionate to risk; are consistent with international obligations and in particular the principles of the SPS Agreement, and

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\(^6\) The formal title for the SPS Agreement is the “Agreement on the Application of Sanitary and Phytosanitary Measures”

\(^7\) OIE is also known as the World Animal Health Organisation and it deals with diseases of animals that are transmissible to humans. OIE sets standards for international trade in animals and animal products.

\(^8\) Codex Committee on Nutrition and Food for Special Dietary Interests, Codex Committee of Food Additives and Contaminants and the Codex Committee on Food Labelling.
• establish and maintain effective liaison with other government agencies.

63 Inconsistent application of the principles of the WTO SPS Agreement by our trading partners to animal and plant products from New Zealand creates unnecessary compliance costs and/or barriers to trade for New Zealand industry and exporters. MAF and NZFSA must continue to challenge unjustified bilateral trade requirements and ensure effective international representation of New Zealand interests. MAF and NZFSA must also ensure that legislation that they administer is aligned with and does not contradict these international obligations.

64 The reciprocal of this is that MAF and NZFSA (and other Government departments) should be following the same principles and a risk-based approach for imports of animal and plant products and other risk goods and not be putting in place unnecessary barriers to trade.

65 In short, trading partners expect that the conditions NZ seeks for import into foreign countries will be reciprocated in terms of their exports to NZ. By implication, there is need for extraordinarily close co-operation and involvement between the work of NZFSA in relation to exports and the work of Biosecurity in relation to imports.

66 The need for consistency in the design and application of the regulatory framework applies not only to the import and export of food and related products, but also to domestic food. The credibility of NZ’s regulatory regime depends on being able to demonstrate that the standards applied to domestic food production are no less stringent than those applying to imported food. Moreover, being able to demonstrate the efficacy of domestic food safety regulation is important when it comes to negotiating trade agreements for the export of NZ food and related products. The strength of New Zealand’s negotiating position is based on international standards, the robustness of New Zealand’s own standards and the integrity of our programmes and their administration.

Emergency response

67 MAF is the lead agency when emergencies caused by a biosecurity incursion or food safety issue arise. The Director-General of MAF is responsible for activating the National Response Centre (NRC). The roles and responsibilities of MAF are coordinated by a NRC Steering Committee (comprising the Director General and heads of NZFSA, Biosecurity NZ and MAF Policy).

68 There are distinct roles and responsibilities that need to be seamlessly integrated including:

• MAF Policy is responsible for recovery management. This involves preparing impact assessments, advice on recovery measures and packages and liaison with Government agencies with recovery responsibilities\(^9\) to facilitate whole-of-government approach to recovery

• Biosecurity NZ has responsibility for disease management. This includes identifying the nature of the incursion and the options for dealing with it and initiating, and reporting on, the response to manage the incursion, and

• NZFSA has primary responsibility for trade and food safety management. This involves liaising with trading partners to advise them of developments and avoid precipitate decisions to close international borders to NZ product as well as

\(^9\) For example, the Ministry of Social Development, the Ministry of Economic Development, the Ministry of Civil Defence and Emergency Management and the Department of Internal Affairs.
providing information and assurance to domestic consumers regarding any food safety issues. NZFSA’s role involves close integration with Biosecurity NZ as well as key agencies involved with trade (MFAT and Customs).

69 The international aspects of the foot and mouth disease (FMD) hoax on Waiheke Island demonstrated the need in a crisis for close coordination among MAF and the two technical arms of MAF with strong overseas links (NZFSA and Biosecurity NZ). Institutional arrangements surrounding MAF and NZFSA need to ensure the seamless integration of the agencies in the event of an emergency.

Future options for NZFSA

70 There are a number of options that can be considered for the future location of, and arrangements surrounding, NZFSA. At a broad level, the choice comes down to whether NZFSA continues to be part of MAF or whether it is separated into a stand-alone agency of some description. For the sake of convenience and reflecting the nature of the discussions with stakeholders, consideration is given first to the options of establishing NZFSA as a stand-alone organisation (ie separated from MAF) and leaving NZFSA within MAF as a SAB. Beyond these two broad options, several variations are also considered.

71 In the context of the stand-alone options, there are choices in terms of:

- the **scope of functions** undertaken by the stand-alone NZFSA. In particular, the options of a Ministry of Food and Biosecurity and a Ministry of Food (with no trade-related responsibilities) are evaluated, and
- the **organisational form** for the stand-alone entity (ie some form of Crown entity or a department).

72 In relation to the SAB option, consideration is also given to removing NZFSA’s status as a SAB and, instead, operating it as a division within MAF (along the same lines as Biosecurity NZ).

Description of the two main options

73 The two main options are briefly described below. For the purposes of comparing these, it is assumed that the stand-alone entity would take the form of a department. The reasons for this are discussed further below but they essentially reflect the need for decision making to be kept reasonably close to Ministers (rather than at arm’s-length as would be implied by some form of Crown entity) and the requirements of international trading partners who seek assurances from Government (and not Government agents).
<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
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<tbody>
<tr>
<td>Retain NZFSA as a SAB attached to MAF</td>
<td>This is a status quo option. Under this option, NZFSA would continue to have an independent line of advice to the Minister for Food Safety. The NZFSA brand would be retained. The Executive Director would be responsible for the day-to-day operation of NZFSA under delegated authority from the Director-General. The Executive Director would also have delegated powers relating to recruitment. NZFSA would continue to access corporate/support services from MAF. The Director-General would continue to have ultimate responsibility for all parts of MAF including NZFSA. The principles and obligations described in the existing relationship agreement between the Director-General and the Executive Director would continue.</td>
</tr>
<tr>
<td>Separate NZFSA from MAF and establish it as a stand-alone department</td>
<td>NZFSA would be reconstituted as a department. The Minister for Food Safety would become both the Vote Minister and the Responsible Minister. The department would be headed by a Chief Executive appointed by the State Services Commissioner in the normal manner. The scope of functions currently undertaken by NZFSA would continue under the new organisation. As a department, NZFSA would assume added reporting and accountability responsibilities. The NZFSA brand would be retained. Initially, at least, the new NZFSA department would procure corporate support services from MAF (i.e. IT, finance, HR, legal etc). Over time, the new department could decide to make other arrangements if these were more cost effective. The existing relationship document between NZFSA and MAF would need to be modified to reflect NZFSA’s new status as a department separate from MAF. Much of the existing content of the document would no longer be relevant. A new relationship protocol would need to focus more on defining areas of common interest, ensuring clarity of respective roles and responsibilities, defining the principles governing the relationship and documenting the nature and form of information sharing and communications between the two parties.</td>
</tr>
</tbody>
</table>

**Retention of NZFSA as SAB attached to MAF**

**Considerations in Favour of attachment to MAF**

74 The review has identified five main reasons in favour of continuing to attach NZFSA to MAF. These are:

- ensuring an effective regulatory regime
- enabling effective decision making
- achieving Government outcomes
- minimising risk to NZ’s trade interests, and
- minimising cost.
Effective Regulatory Regime

75 Traditional barriers to trade (quotas and tariffs) are being replaced by regulatory barriers based around biosecurity, food safety, environmental and animal welfare issues. Maintaining an effective food and biosecurity regulatory regime is, therefore, critical to NZ’s trade prospects. NZFSA plays a key role in maintaining NZ’s access to export markets. While much of its work is technical in nature, there is also a heavy policy and strategic advisory aspect to NZFSA’s contribution reflecting the direct involvement by NZFSA in negotiations over trade access including the conditions under which NZ product can enter markets.

76 The success of NZFSA in these roles, and the maintenance of an effective regulatory regime, requires that close and strong links be maintained with other parts of MAF including, in particular, Biosecurity NZ and MAF Policy. The links exist across several dimensions:

- In the context of providing regulatory assurances to trading partners, there are and need to be very strong links between NZFSA and Biosecurity NZ. A considerable part of NZFSA’s work involves providing assurances to trading partners about the safety and suitability of NZ food exports. NZFSA’s main focus for export certification is animal products but in order to do this, NZFSA relies upon assurances from Biosecurity NZ regarding the health status of NZ’s livestock.

- In a wider context, both NZFSA and Biosecurity NZ are involved in the management of biological risk across borders. Biosecurity NZ’s principal focus is on inbound biological risk but NZFSA also has keen interest in health risks surrounding imported food. NZFSA is focused more on outbound food and related products, but Biosecurity NZ has responsibility for export certificates issued in respect of plant products and live animals.

- There is a strong link that exists by virtue of the need for NZFSA and Biosecurity NZ to operate from the same principled approach to regulation that is built on science and risk-based standards. NZ’s ability, through NZFSA and MFAT, to successfully negotiate against unnecessary regulatory-based barriers to trade would be seriously undermined if Biosecurity NZ did not adopt a principled approach to regulation of imports.

- There are also links in terms of the competencies and backgrounds of NZFSA and Biosecurity NZ personnel reflecting the technical and scientific underpinnings of the standards that are part of the regulatory regime governing food safety and cross-border trade.

- Reflecting the complementary competencies and overlapping areas of focus, NZFSA, Biosecurity NZ and MAF Policy are jointly involved on an ongoing basis on a wide range of trade issues and regulatory issues such as animal identification and traceability, NZ’s BSE status, the future of the TB eradication programme and standards relating to animal feed.

77 The examples above illustrate the close links that exist between NZFSA and MAF and which are needed to ensure achievement of a consistent approach to the regulatory environment. If NZFSA was to be separated from MAF, there is a risk that these links would become strained and, eventually, fail. To the extent that any of the links are weakened, or broken, there is the potential for inconsistencies to develop in the design or, more likely, application of the regulatory framework. If this occurs, NZ’s trading interests are threatened.
These points are essentially no different to those made at the time that the establishment of NZFSA was being considered. They remain valid. At the time, it was argued that linking NZFSA to MAF would:

- allow seamless management of food safety risks from “farm to fork”
- maintain MAF’s existing strengths in managing links to biosecurity, agriculture and trade, and
- provide consistent representation of NZ’s interests internationally.

The principled, science and risk-based regulatory regime is critical both to NZ’s trading success and the cost-effective protection of domestic food consumers. However, good regulation requires a blend of technical capability and analysis coupled with consideration for wider policy issues. The design of food and biosecurity-related regulations requires wider economic, social, cultural and environmental factors to be taken into account. It is not just a matter of undertaking science and risk-based analysis. It is for this reason that a strong case can be made for the policy perspectives of MAF to be closely linked to the more technical orientation of Biosecurity and NZFSA as well the case for close integration of NZFSA with Biosecurity. The issue then becomes one of whether the effectiveness of decision making is better achieved through having NZFSA as part of, or separate to, MAF.

**Effectiveness of Decision Making**

The need to maintain effective links between NZFSA and MAF is not questioned. The issue is whether these links are better maintained by having NZFSA as part of MAF as opposed to being separated. Clearly, NZFSA has links with a number of Government agencies (MFAT, Ministry of Health, ERMA, etc) but it is not attached to any of these agencies.

There are several reasons for believing that integrating NZFSA with MAF will better contribute to maintenance of the links and, in turn, lead to better decision making.

- Foremost, the synergies and common interests that exist between NZFSA and MAF are much more significant and overlapping than is true of the links between NZFSA and any other Government agency.
  - NZFSA makes a direct contribution to three out of four MAF outcomes. The same cannot be said in terms of its contribution to the outcomes of other Government agencies.
  - The frameworks that underpin the work of NZFSA and MAF are the same (and need to be).
  - The nature of the work of Biosecurity NZ and NZFSA share many similar characteristics (ie regulatory, trade-focused, science-based).
  - Most of the functions undertaken by NZFSA have their origins in MAF prior to the establishment of NZFSA.

- Much of the work of NZFSA and Biosecurity NZ (and MAF) is technical in nature but, as discussed above, needs to be balanced by wider policy perspectives. It makes better sense for the technical and policy advice to come together within one entity rather than have two separate strands of advice presented to Ministers. From time to time, there will be differences of view between NZFSA on the one hand and either Biosecurity NZ and/or MAF Policy on the other hand. Generally, effective decision making is better served if the agencies try to address the
differences and identify the trade-offs for themselves rather than escalating the issue up to Ministers to sort out (although major and strategic issues will nonetheless require consideration by Ministers).

- In a somewhat wider context, there have been, and continue to be, concerns that the relatively fragmented nature of NZ’s public sector is not conducive to effective decision making. Much effort is going into horizontal integration and collaboration across agencies so as to improve analysis and decision making and, in turn, improve performance and contribution to Government outcomes. Retaining NZFSA as part of MAF is consistent with this.

At the time that the establishment of NZFSA was being considered, concerns were raised that the effectiveness of decision making would be compromised if NZFSA was part of MAF because of the risk of producer capture. At most this is purely perception and has no basis in fact. MAF and Biosecurity NZ have no incentive to compromise domestic food safety in the interests of producers since to do so would prejudice the integrity of NZ’s regulatory framework and, in turn, NZ’s trading interests. On the contrary, it could be argued that Biosecurity has a more risk-averse attitude than does NZFSA because the consequences from biosecurity risks are, in general, much greater than those associated with food risks. External stakeholders interviewed as part of the review did not consider the producer capture issue to have any relevance whatsoever and, moreover, did not see the trade aspects of MAF’s work undermining effective decision making with respect to food safety issues.

Achievement of government outcomes

The Government outcomes relevant to MAF and NZFSA are articulated in MAF’s Statement of Intent. There are four main outcomes three of which depend heavily on coordinated contributions from MAF, Biosecurity NZ and NZFSA. Achievement of the three outcomes is potentially compromised if the links between MAF (including Biosecurity NZ) and NZFSA are compromised. The three outcomes and the contribution of the agencies is summarised below.

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10 NZFSA does not have direct links to the fourth outcome which relates to the management of natural resources.
<table>
<thead>
<tr>
<th>Outcome</th>
<th>MAF</th>
<th>Biosecurity NZ</th>
<th>NZFSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>NZ’s economic growth and prosperity are enhanced through high performing and innovative sectors</td>
<td>Overarching responsibility to ensure effective and efficient regulatory regimes</td>
<td>Responsibility for Import Health Standards</td>
<td>Responsibility for export certification and food standards</td>
</tr>
<tr>
<td>Safe and Freer Rules-based Trade</td>
<td>Support cross-government approaches to enhance trade liberalisation and market access Advocate for safe and freer rules-based trade</td>
<td>Promote rules-base trade, sound science and risk-based standards Input to CIE and IPPC Ensure credible export assurances</td>
<td>Enhance NZ’s position as a trusted exporter of food and related products Promote rules-based trade, sound science and risk-based standards Overall responsibility for the CODEX relationship Ensure credible export assurances</td>
</tr>
<tr>
<td>Healthy New Zealanders</td>
<td>Policy co-ordination and support</td>
<td>Improve early detection and identification of serious pests and diseases Improve response preparedness Enhance compliance with biosecurity requirements</td>
<td>Development, maintenance and review of food standards Ensure consistent compliance</td>
</tr>
</tbody>
</table>

84 The synergies that exist between NZFSA and MAF, and which contribute to Government outcomes, also have a parallel with one of the Government’s state-owned enterprises. Agriquality NZ provides services that, in part, support the regulatory regime for food and biosecurity. It markets itself under the banner of “food safety and biosecurity” reflecting the close links that the Company sees between its food safety and biosecurity-related functions.

**Minimising risk**

85 Retaining NZFSA with MAF helps to ensure consistent application of protocols for imported and exported animal and plant products and, hence, helps to minimise the risk of inconsistent application undermining NZ’s access to international markets. The same point can be made with respect to domestic food standards vis a vis traded food standards.

86 The SAB option poses, however, higher than normal risks in terms of conflicting or unclear accountabilities and, hence, some risk to the achievement of Government objectives.
Costs

87 Retaining NZFSA as a SAB attached to MAF is, in effect, the status quo. As such, there is no structural change and/or reallocation of roles, responsibilities and resources involved. In this sense, there should be no transitional costs involved. Because this is the status quo option, it might also be expected that there would be no additional ongoing costs. As discussed further in the section titled Making the SAB model work below, the assumption of no additional ongoing cost is unlikely to be appropriate. The SAB model involves accountability arrangements that are more complex than normal. Accordingly, there is a higher than normal onus on the entities involved to take steps to ensure that the model is workable in practice and delivers effective accountability. In the section entitled ‘Making the SAB model work’, some measures for strengthening the functioning of the model, and underlying relationships, are suggested. There would be a small amount of cost to implement and maintain these measures. That said, however, the costs associated with these are orders of magnitude less than those that would be incurred under the stand-alone option.

Considerations against retaining NZFSA as SAB attached to MAF

88 Notwithstanding the advantages of retaining the existing SAB arrangement for NZFSA, there are some disadvantages when assessed against the criteria outlined in the section titled Evaluation criteria above. In particular, it can be argued that the SAB arrangement does not score well in terms of the need for clear accountabilities.

89 In particular, the SAB model involves accountability relationships that are more complex than is normal for departments. As noted in the section entitled ‘Concerns and risks with the SAB model’, the added complexity gives rise to some risks in terms of:

- Ministers/Cabinet expecting a greater degree of separation and independence under the SAB model than is actually achievable under the State Sector and Public Finance Acts
- blurring the accountability of the Director-General and the Executive Director
- creating a situation where the Executive Director perceives that he has two masters (although this should not be any more problematic than the relatively common situation where departmental Chief Executives have output agreements with multiple Vote Ministers), and
- potentially compromising the responsibility of the Director-General if he is not party to the advice being provided to the Minister for Food Safety.

90 Notwithstanding the risks in terms of unclear accountabilities, the SAB model can, and does, work in several contexts. However, because of the inherent tensions associated with the model in an accountability sense, the parties involved need to be committed to making it work. To this end, there is a higher than normal need to ensure that there are clear and shared understanding of roles, responsibilities and accountabilities. In the section entitled ‘Making the SAB model work’, some suggestions are made as to how the NZFSA/MAF SAB arrangement could be made to work better.
Considerations in Favour of a Stand-alone Department

Clear Accountabilities

There is no doubt that viewed against the criterion of promoting clear accountability, the option of the stand-alone department rates ahead of the SAB model. The option of a stand-alone department would conform with all of the formal accountability requirements embodied in the State Sector and Public Finance Acts. Arguably, accountability would be further streamlined by making the Vote and Responsible Minister one and the same portfolio and position (although the situation of one or more Vote Ministers in addition to the Responsible Minister is common to many departments).

Clear Roles and Responsibilities

Under existing arrangements, there are comprehensive delegations in place from the Director-General to the Executive Director and these sit alongside a Relationship Agreement that seeks to define further roles and responsibilities. These arrangements would need to change if NZFSA was established as a stand-alone department.

Clearly there would be no ongoing need for the delegations from the Director-General to the Executive Director and the Director-General would no longer be a signatory to the output agreement between the Minister for Food Safety and NZFSA. In practical terms, the roles and functions of NZFSA in an output sense would remain the same, but clearly would be performed with direct responsibility rather than under delegated authority from the Director-General.

Roles and responsibilities would change in an ownership sense. Clearly, as a stand-alone department, NZFSA would take on responsibility for its own key accountability documentation (Statement of Intent, Output Agreement and, monthly, quarterly and annual reporting) and the Chief Executive of the new department would have full responsibility for financial management and performance. Further, in relation to the provision of corporate services, the relationship between MAF and NZFSA would become more akin to that of provider/customer.

There would be a need to revisit the Relationship Agreement that currently exists between NZFSA and MAF if NZFSA was to be reconstituted as a stand-alone department.

More emphasis would need to be given to the services that MAF provides to NZFSA in order to enable NZFSA to carry out its functions and, more generally, the links between the two entities and the common outcomes to which they contribute. This includes, for example, work undertaken by Biosecurity NZ that enables NZFSA to issue export assurances and certification. Similarly, it would need to make more explicit the terms under which MAF provided, at least in the short to medium term, corporate support services. The revised relationship protocol would also need to be more explicit about the communication protocols and information flows between the two entities.

Less emphasis would need to be given to:
- the personal responsibilities of the Director-General and Executive Director to one another
- roles in relation to planning, budgeting and performance reporting
- the section dealing with managing people, and
- the sections dealing with the establishment of NZFSA as a SAB.

96 Relationship protocols between departments are commonplace and are capable of being designed in a way that promotes clarity of roles and responsibilities. In short, the stand-alone department option presents a clearer picture of roles and responsibilities and, ultimately, accountabilities, than does the SAB model.

97 From an external stakeholder perspective, it might also be argued that the stand-alone option helps to distinguish NZFSA’s roles from those of MAF and, in so doing reduce any perception that advice on food safety matters is tarnished by trade considerations. In reality, such arguments are of doubtful validity. Based on discussions with external stakeholders undertaken as part of this review, there do not appear to be indications that the roles of NZFSA and MAF are misunderstood. There are signs that external stakeholders do not appreciate that NZFSA is a SAB, but equally, this appears to carry no implications from their perspectives. The suggestion that separating NZFSA might reduce the perception that it is tarnished by association with trade is not borne out in practice. External stakeholders interviewed as part of the review do not perceive producer capture to be an issue in reality. In any event, even if NZFSA was to become stand-alone, the majority of its activities would continue to have a strong association with trade and market access issues.

Considerations Against a Stand-alone Department

Effective Decision Making and Achievement of Government Outcomes

98 The links between NZFSA and MAF are critical to the achievement of Government’s objectives in relation to food safety, agriculture and access to markets. These links need to be maintained irrespective of whether NZFSA is stand-alone or part of MAF. The issue is whether the effectiveness of the links, and hence of decision making is impeded in any way if NZFSA is separated from MAF. There is potential for impediment for several reasons:

- at a general level, greater fragmentation of the machinery means a need for more points of connection and, almost by definition, greater risk that one of the links in the chain will break
- it is simply harder to achieve integration and collaboration on issues if agencies are at arm’s-length from one another than if they are part of one organisation, and
- the extensive array of synergies that exist between NZFSA and Biosecurity NZ (as described in paragraphs 76, 81 and 99) will be harder to realise if the agencies are separated.

99 These considerations raise concerns that separating NZFSA into a stand-alone department could undermine the maintenance of an effective regulatory environment and emergency response management capability.

- MAF Policy, NZFSA and Biosecurity NZ all contribute to the protection of NZ’s export markets. They are the official guarantors that NZ has a competent, transparent food and animal regulatory system. Part of their credibility rests on the close co-ordination that occurs across the three arms of MAF and on speaking with one voice. Separating any one of the agencies from the other two would risk undermining the credibility that has been established.
• There are risks from separating MAF Policy from the more technically-focused work of NZFSA. Good regulatory design depends on having technical and wider policy perspectives. By distancing NZFSA from MAF, there is a risk that the design and application of the regulatory framework under NZFSA will begin to diverge from that under Biosecurity NZ. Policy and regulatory coherence is a necessary part of NZ’s success in the international trade arena.

• Where differences of perspective arise between MAF and NZFSA on policy, regulatory and other issues, it is more likely that the issues will need to escalate up to Ministers more so than they do now (because under existing arrangements, such issues get resolved within MAF/NZFSA). This is not necessarily an optimal use of Ministers’ time. Many of the issues that are being dealt with are technical in nature and are better addressed as far as possible at officials’ level.

• The recent FMD hoax on Waiheke Island demonstrated the need in a crisis for close co-ordination between MAF Policy, Biosecurity NZ and NZFSA. Achieving the high degree of co-ordination that is required could be more difficult in circumstances where co-ordination was through negotiation and agreement between separate entities rather than through cooperation and clear lines of authority as currently exists.

• NZFSA and Biosecurity NZ have their discrete areas of operation, but jointly provide assurances on food safety and animal health for NZ exports. From the viewpoint of exporters and overseas jurisdictions, there are advantages in having one assurance authority.

Risks

100 The area of risk with greatest consequence, arising under the stand-alone option is that of allowing inconsistencies in the design and application of the regulatory framework to emerge. There is no reason for doubting that even if stand-alone, NZFSA would continue to apply a principled science and risk based approach to the regulatory regime for food and the standards that exist within the regime. However, under the stand-alone option there are risks that:

• New Zealand will not always speak with one voice in international/trade fora, and
• the application of the regulatory framework managed by NZFSA will begin to diverge in subtle ways from that managed by Biosecurity NZ. Reciprocity with trading partners requires absolutely consistency of approach. Two agencies, rather than one agency, create greater risk that the requirement for consistency will be breached.

Costs

101 MAF has undertaken further work to refresh the estimates of costs of the stand-alone option that were prepared prior to the establishment of NZFSA (paragraph 29 above refers).

Impact on NZFSA

102 Based on 2006/07 budget numbers, NZFSA’s share of MAF corporate overhead costs is $7.4 million. MAF has estimated that if NZFSA was to replicate these services on a stand-alone basis, the cost would escalate to approximately $10.3 million dollars per annum (an increase of about $2.9 million per annum). Further, it estimates that there would be one-off costs of a further $6.1 million. The ongoing costs assume that NZFSA
would seek to replicate corporate support functions rather than continue to look to MAF for some, or all, services under and outsourcing arrangement. Approximately two thirds of NZFSA’s costs are funded by cost recovery (mainly industry levies). By implication, the level of cost recovery to fund NZFSA would need to increase by around $2 million per annum. This is likely to be strongly resisted by industry.

Impact on MAF

103 If NZFSA is established on a stand-alone basis, and assuming that it chooses to arrange its own corporate support services rather than relying on MAF, MAF would no longer receive the $7.4 million contribution to corporate support costs currently paid for by NZFSA. MAF’s requirements for corporate services would reduce in light of the reduced size of the organisation. However, some of its corporate support costs are fixed in nature. This constrains MAF’s ability to shed cost. MAF have estimated that it would be able to reduce corporate support costs by around $5 million per annum. However, it would lose the $7.4 million from NZFSA. In net terms, MAF’s costs would increase by about $2.4 million per annum.

Overall impact

104 In total, as a result of separating NZFSA, some economies would be lost. NZFSA costs could increase under the stand-alone option by around $2.9 million. MAF’s could increase (in net terms) by around $2.4 million. Total operating costs could increase, therefore, by around $5.3 million per annum.

105 In addition, capital costs of around $6 million may need to be incurred as a result of having to build new IT and related systems for NZFSA.

106 It should be noted that these cost estimates are heavily dependent on the assumptions used and do not include provision for establishment-related costs and transitional costs (e.g. redundancy and recruitment costs, costs of terminating existing supply contracts etc).

107 The single largest corporate support cost is IT (NZFSA’s current share of MAF IT costs is around $4.2 million). In recent times, MAF has been investing heavily in the replacement and upgrade of its IT systems. This work has proceeded on the basis that NZFSA is part of MAF. A significant part of the overall IT cost is driven by the need to provide systems and support to the regional network of NZFSA offices. If NZFSA was not part of MAF, MAF would not need to have the same scale of regional network. At some point, MAF would seek to scale back its IT network. NZFSA would then be faced with the prospect of having to build its own IT system.11 On a stand-alone basis, MAF estimate that this would cost NZFSA $7.2 million per annum in ongoing costs compared to the existing $4.2 million share of MAF’s IT costs attributed to NZFSA. The one-off capital costs have not been estimated with any degree of rigour, but could be at least $5 million.

Stand-alone entity: other options

108 If NZFSA were to be separated from MAF into a stand-alone entity, there are other options to consider. The first of these is to establish NZFSA as some form of stand-alone Crown entity rather than, as has been assumed above, a department. Further, there are

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11 More generally, given that NZFSA is utilising technology as a major part of its business strategy (e.g. e-cert), it seems very unlikely that NZFSA would want to rely on MAF, if stand-alone, since it would not be able to influence MAF’s IT strategy. NZFSA would want to own its own IT strategy and the means for achieving that strategy.
some other options around the scope of functions that would be undertaken by the stand-alone NZFSA.

**Crown entity or ministry?**

109 If NZFSA was to be established as a stand-alone entity, an issue arises as to the choice of organisational form. The choice is between a department or a Crown Entity (and if, Crown entity, there would be a further choice as to the type of Crown entity).

110 There are several Crown entities that undertake regulatory responsibilities (in a wide sense of the term) the majority of which are Independent Crown Entities (ICES) and examples are provided in the table below.

<table>
<thead>
<tr>
<th>Independent Crown Entities</th>
<th>Autonomous Crown Entities</th>
<th>Crown Agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broadcasting Standards Authority</td>
<td>• ERMA</td>
<td>• Civil Aviation Authority</td>
</tr>
<tr>
<td>Commerce Commission</td>
<td>• Standards Council</td>
<td>• Electricity Commission</td>
</tr>
<tr>
<td>Human Rights Commission</td>
<td>• NZ Sports Drug Agency</td>
<td>• Land Transport New Zealand</td>
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<tr>
<td>Law Commission</td>
<td>• Office of Film and Literature</td>
<td>• Maritime New Zealand</td>
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<tr>
<td>NZ Sports Drug Agency</td>
<td>• Police Complaints Authority</td>
<td>• NZ Qualifications Authority</td>
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<tr>
<td>Privacy Commission</td>
<td>• Pharmac</td>
<td>• Social Workers Registration Board</td>
</tr>
<tr>
<td>Securities Commission</td>
<td>• Takeovers Panel</td>
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</tbody>
</table>

111 One of the main reasons why most of the regulatory entities in the table above are ICES is because it is not appropriate for Ministers to have any involvement in the exercising of what are quasi-judicial determinations. The nature of NZFSA’s regulatory functions is more akin to those undertaken by Crown agents than they are ICES.

112 For two main reasons, the Crown entity option is not recommended if NZFSA is to be separate from MAF into a stand-alone organisation. First, while NZFSA’s activities have a strong regulatory element, they also have a very important bearing on trade issues. The nature of these issues requires a closer relationship to Ministers than that implied by some form of Crown entity. Moreover, a significant part of NZFSA’s role is to provide policy advice on food and food safety and suitability where suitability refers to those requirements, either legislated or stemming from market access reasons, which do not relate to safety. Advice generally, and particularly in relation to market access is something that requires a close, rather than arm’s-length relationship with the Minister. In general, the nature of activities undertaken by NZFSA is such that it is appropriate to keep responsibility for them reasonably close to Ministers.

113 The second reason for favouring a Ministry form is that a key part of NZFSA’s work is providing official assurances. From the perspective of our trading partners, they want those assurances to come from Government. While Crown entities are part of Government, they operate at one arm’s-length from Government, with more formal and structured channels for Ministerial oversight and influence. This arrangement does not sit comfortably with many trading partners. Anecdotally, there is a view that the trading
partners struggle to understand the concept of a Crown entity. They want to deal with departments that are under the direct control of a Minister.

**Scope of functions**

114 While most of the focus of the review has been on the future location for NZFSA given this current mix of roles and responsibilities, consideration has also been given to two other options:

- a Ministry of Food and Biosecurity, and
- a Ministry for Food Safety excluding any export assurance activities.

**Ministry of Food and Biosecurity**

115 Under this option, the Ministry would be responsible for administering the Food, Animal Products, Agricultural Compounds and Veterinary Medicines, Dairy Industry Animal Welfare and Biosecurity Acts. It would combine the functions currently undertaken by NZFSA and Biosecurity NZ. It is further assumed that the Ministry would also assume the functions undertaken by MAF Quarantine Services (MQS) recognising the close links that exist between the services and Biosecurity NZ (there would be little synergy in retaining MQS with MAF Policy).

116 This option was considered at the time the establishment of NZFSA was being addressed. At that time it was noted that this option would:

- maintain the links between food safety and biosecurity that, as argued above, are better managed if joined together in one entity, and
- in so doing, contribute to the maintenance of a single and cohesive regulatory regime.

117 At the time, it was also noted, however, that this option would raise significant issues in terms of the future for MAF’s policy functions (and several smaller service delivery functions). It was noted that such a change would have a substantial impact on MAF’s roles and functions and, accordingly, would need to be considered in much more detail if the Ministers wanted to explore the option further.

118 This conclusion is still valid. A Ministry of Food and Biosecurity would raise many issues.

**Ministry of Food**

119 This option would involve separating NZFSA’s roles in relation to domestic food safety into a stand-alone department. Export certification and other trade-related functions would remain with MAF. None of the stakeholders interviewed as part of this review has advocated this option, but it is raised simply for the sake of completeness.

120 This option is not recommended on several grounds.

- It would create a dual regulatory regime – one for food that is produced for the local market and one for food that is traded internationally (both imported and exported). This option has the potential, therefore, to directly contradict the need for a single and consistent regulatory framework that is vital to the ability to trade.
- It would increase compliance costs for producers who are selling into both domestic and foreign markets because they would have to deal with two agencies.
• It would involve establishing what would be quite a small Ministry (as noted earlier, MAF estimates that roughly 80% of NZFSA’s direct activities are related to trade). As such, the Ministry would almost certainly lack critical mass to function efficiently and effectively. In turn, this would probably lead to a desire to attach it to another agency – and go full circle in the process.

121 There are no obvious benefits from this option and it is not supported.

**Attachment to MAF: SAB or Division?**

122 If the decision is taken to retain NZFSA as part of MAF, there is a further choice to be made in terms of whether it continues as a SAB or becomes a division of MAF in the same manner as Biosecurity NZ.

123 The advantages of retaining NZFSA as a SAB are that it:

• helps to signal a degree of separateness, if that is what Ministers want
• signals an identity that is related to, but separate from, MAF. The independent branding of NZFSA achieves much the same end, however
• can be seen as better complementing other arrangements including having a separate Vote and Vote Minister
• helps to create focus on NZFSA’s roles and responsibilities and allows NZFSA to foster its own culture and values. These are important dimensions of organisational performance, but care is needed to ensure that these dimensions do not conflict with those of MAF, and
• involves no structural change from existing arrangements. Accordingly, there is no disruption from an internal and external stakeholder perspective although there are issues to address in terms of making the relationships under the SAB model work better (and these are discussed in the section entitled ‘Making the SAB model work’).

124 The disadvantages of the SAB option are the inherent accountability tensions and the premium this therefore places on the parties involved to make the SAB model work and the risks that arise if the SAB model does not work well.

125 Re-establishing NZFSA as a division of MAF would clearly address the potential conflict with the accountability principles underpinning the State Sector Act and PFA. Moreover, being a division would serve to reinforce the close links that already exist between NZFSA, Biosecurity NZ and MAF Policy and which are a key part of ensuring:

• consistency in the design and application of regulatory frameworks both for domestic food safety and international trade reasons
• that NZ speaks with one voice in international trade fora, and
• effective response management in the event of an emergency.

126 Operationally, the switch from SAB to division should not have any major impact at a day-to-day level. The roles and functions of MAF and NZFSA are already clear and understood. The switch to a division does not change this.

127 There would be a need to review, and probably terminate, the Relationship Agreement that currently exists between MAF and NZFSA. It would be very unusual for a Chief Executive to have such a document with a division of his or her department. A performance agreement is much more usual.
The key disadvantage of the divisional option is that does not signal the degree of separateness that is implicit in the SAB model. As discussed earlier, the concerns regarding producer capture and trade bias that were raised at the time NZFSA was being established do not have any basis in reality and, based on stakeholder interviews, do not even appear to be a perception. In short, it is not obvious that there are any compelling advantages in continuing with the SAB model, but equally, provided that the parties involved with the SAB are prepared to make it work, there is not an overwhelming case to change the existing arrangement.

Summary

The two main options that have been considered in this review are to retain NZFSA as part of MAF or to separate NZFSA into a stand-alone organisation. The existing SAB arrangements give rise to accountability issues that are more complex than is normal for departments. The complexities involved create some risks in terms of undermining effective accountability and have the potential to create some tensions between the parties involved. Accordingly, there is a higher than normal onus on the key individuals within the SAB and the “parent” department to make the relationship work.

Notwithstanding the risks posed by the SAB model, there are strong reasons for retaining NZFSA as part of MAF because of the need for close links, and the existence of considerable synergy, between the agencies.

- International trade is a fundamental part of NZ’s economic health. Traditional barriers to trade are being replaced by those which focus on biosecurity, food safety, environmental and animal welfare issues. There needs to be close co-ordination between NZFSA and MAF (including, in particular, Biosecurity NZ) because of the need to maintain a consistent and principled approach to the design and application of the regulatory regime and a consistent voice when representing NZ in international fora.

- A large part of NZFSA’s work involves providing assurances to trading partners. Its main focus is on animal products, but in order to provide assurances in respect of these, it relies upon assurances from Biosecurity NZ regarding the health status of NZ’s livestock.

- The two agencies collaborate, at a day-to-day level, on a wide range of trade and regulatory issues.

- NZFSA makes a direct contribution to three of the four high-level outcomes described in MAF’s Statement of Intent.

- The nature of the work undertaken by NZFSA and Biosecurity NZ has common scientific and risk-based underpinnings and this is reflected in the composition of staff within NZFSA and Biosecurity NZ.

- Good regulatory design and application needs to be based on a blend of technical and policy perspectives.

- The effectiveness of response in the event of biosecurity incursion or food safety risk depends on close integration between MAF, Biosecurity NZ and NZFSA.

- In general, across government there is a desire for greater collaboration and horizontal integration across agencies reflecting concerns that the relatively fragmented nature of the public sector can hinder achievement of Government’s desired outcomes.
The option of establishing NZFSA as a stand-alone agency has the potential to weaken these links and, therefore, diminish, rather than enhance, the achievement of desired outcomes. Moreover, establishing NZFSA on a stand-alone basis could involve significant costs both in an ongoing sense (potentially in the region of $5 million per annum) and in a transitional sense. There is potential for one-off capital (mainly IT) related costs of around $6 million. While the option of a stand-alone entity does offer clearer and simpler accountabilities, the benefits of this are very unlikely to outweigh the fiscal costs involved let alone the costs through losing the benefits of close integration outlined above.

Consideration has been given to making NZFSA a division of MAF rather than continuing as a SAB. This would also help to address the accountability tensions while retaining the advantages of close integration. However, this option is not recommended at this stage. There are some advantages in maintaining a degree of separate identity for NZFSA in terms of providing focus and building on the considerable success already achieved by NZFSA since its establishment. Furthermore, from an external stakeholder perspective, retaining NZFSA as a SAB implies no disruption or change.

Accordingly, the review concludes with a preference in favour of retaining the SAB model for NZFSA. This is tempered, however, by the need for the parties involved to address some underlying relationship issues by focusing on enhancing the formal and informal mechanisms that need to be in place to foster effective working relationships. This is discussed further in the next section.

**Making the SAB Model Work**

The inherent accountability tensions that exist with the SAB model, and the risks this give rise to, increases the onus on the parties involved to take steps to make the model work. Much of this comes down to the quality of the relationships involved. As part of the review, interviews were undertaken with personnel involved with some of the other SABs that exist. Drawing on those interviews, there is a range of formal and informal measures that need to be in place to make sure that the SAB model works well. These measures are summarised in the table below and comments made as to how NZFSA and MAF could jointly strengthen the function of the SAB arrangement.
### Formal Requirements

| Relationship agreement setting out common aims and objectives, accountability principles and requirements, roles and responsibilities, structured processes for consultation, information sharing and communications | An agreement is needed to anchor the relationship. It should act as a point of reference that can be resorted to in the event of relationship difficulties. The existing relationship document between MAF and NZFSA is modelled on that between MFAT and NZAid. Its contents are appropriate for a document of this type. |
| Delegations from the Director-General to the Executive Director | These are in place. |
| Output agreement signed by the Director-General | This is in place and the practice of co-signature by the Executive Director is consistent with the underlying delegation of functions. |
| Aligned HR policies | These have not been assessed as part of the review, but it is understood this is the case. |
| Shared services agreement | No formal agreement exists. The greater the degree of autonomy afforded to the SAB, the greater the need for such a document. The process of agreeing the document of itself is a useful discipline for establishing priorities and evaluating trade-offs. |
| Appropriate recognition given to role of SAB in the Statement of Intent (SoI) and Annual Report | A matter of judgement, but the current SoI and latest Annual Report adequately explain the role of NZFSA and how it contributes to MAF/Government outcomes. Having a separate Vote means there is explicit coverage of NZFSA in the Forecast Statement of Service Performance. |
| Performance appraisal undertaken against agreed and documented expectations | This occurs now. |

135 In short, for the most part, the formal requirements normally expected to assist in shaping and governing the relationship between a parent department and a SAB are in place in the context of MAF/NZFSA. There are no major gaps although development of a shared services agreement is suggested.

136 Formal requirements set the framework, but of themselves do not necessarily deliver the behaviours that are required for an effective Ministry/SAB relationship. The formal requirements need to be supported by appropriate informal mechanisms. Drawing on interviews with various officials involved with other SABs, various informal mechanisms are viewed as supporting the effective functioning of relationships. These are summarised below.

### Informal Mechanisms

<table>
<thead>
<tr>
<th>Informal Mechanisms</th>
<th>Comment</th>
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<tbody>
<tr>
<td>Aligned values and culture</td>
<td>Alignment is hard to measure and can be difficult to change. It is noted that the MAF SoI does not outline the values and cultures that underpin the organisation (although some elements of values are lightly touched on in the relationship document). These are important elements of organisational performance. Poor alignment can seriously impede organisational effectiveness.</td>
</tr>
<tr>
<td>Quality of the CEO/Executive Director</td>
<td>Personalities and the ability to work together are</td>
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</tbody>
</table>
Relationship critical. Both parties need to want to make the relationship work. This should be demonstrated by the parties meeting regularly to review the state of the relationship and to identify ways in which any areas of concern can be addressed. Fortnightly meetings of the Executive Director and the Director-general occur so the opportunity to raise and discuss issues exists.

Co-owning success The recent FMD hoax is an example of this working in practice.

Co-location “Out of sight” can lead to “out of mind”. Most other SABs are co-located with the parent organisation.

Inter-agency involvement in industry forums, gatherings etc NZFSA regularly hosts meetings and fora with industry. It is appropriate that MAF be encouraged to attend these and vice versa. There are suggestions that this is not happening as much as it should.

Induction Personnel joining MAF/NZFSA should, as part of their induction, attend briefings provided by NZFSA/MAF. This is not happening as much as it should.

137 The fact that other SABs exist and, in some cases, have existed for many years, suggests that notwithstanding the inherent accountability tensions, the model can be made to work. A key point, however, is that the parties to the relationship have to want to make it work. Moreover, to assist, the parties need a range of formal and informal arrangements and mechanisms to foster an effective working relationship.

138 Changing existing structural arrangements into a stand-alone department does not alter the need for effective co-operation and collaboration. Changing the structure into a stand-alone department is unlikely, of itself, to strengthen collaborative links. Similarly, changing the existing structure into a division of MAF will not, of itself, address any underlying relationship issues.

139 The outcomes that Government is wanting from MAF and NZFSA (high performing agricultural sector, rules based trade and healthy New Zealanders) demand high levels of co-ordination and collaboration between the two agencies. The risks to NZ’s interests from fragmenting resources into two separate entities are large. There are, however, some advantages in retaining the NZFSA brand and maintaining the focus that comes through having an identity that is to some extent separate from that of the parent organisation. The SAB model continues to offer this potential while at the same time retaining the advantages of having the two organisations very closely aligned with one another. Achieving these advantages does, however, require commitment to make the SAB model work. The formal and informal mechanisms outlined above are practical tools for assisting the parties to ensure that the model does work.
Recommendations

It is recommended that you:

1 **note** that the New Zealand Food Safety Authority (NZFSA) is a semi-autonomous body (SAB) attached to the Ministry of Agriculture and Forestry (MAF) with two main areas of focus:

1.1 to protect and promote public health and safety through the administration of food related legislation, and

1.2 to facilitate access to markets for NZ food products and related products.

2 **note** that in establishing NZFSA as a SAB, Cabinet decided that NZFSA would provide advice directly to the Minister for Food Safety under delegation from, and independent of advice from, the Director-General of MAF

3 **note** that the SAB arrangement creates an inherent tension with the accountability framework that underpins the State Sector Act 1988 and the Public Finance Act 2004 because under these acts, it is the Director-General who is accountable for the performance of the Ministry, including NZFSA and accountable for the outputs funded from Vote: Food Safety notwithstanding that the performance of the functions have been delegated to the Executive Director of NZFSA

4 **note** that in light of these inherent tensions, the review has addressed:

4.1 the advantages and disadvantages of maintaining the current arrangements as a SAB attached to MAF

4.2 the viability of modifying some of the current arrangements, including possible separation of NZFSA from MAF and

4.3 any other changes that might be appropriate.

5 **agree** that the most appropriate structural option for NZFSA is retention as a SAB attached to MAF

6 **note** that the main reasons for supporting the continuation of the SAB model are the need to retain close links between NZFSA and MAF (including Biosecurity NZ) and the advantages that stem from the wide array of synergies that exist between the agencies. The links and synergies arise from:

6.1 the need for the agencies to maintain a consistent and principled approach to the regulatory regimes they administer and which are vital to NZ’s trade interests

6.2 the reliance that NZFSA places on Biosecurity NZ for various assurances given to trading partners

6.3 the scientific and risk-based underpinnings to the work of the agencies that is then reflected in the composition of the staff of the agencies

6.4 the need for effective regulation to be based on a blend of technical and policy perspectives, and

6.5 the need for a seamless response in the event of biosecurity incursion or major risk to food safety
note that in order for the SAB model to work well, there is a higher than normal onus on the parties involved to make it work well

note that in the case of NZFSA, most of the formal requirements for the effective functioning of the SAB model are in place with the exception of a shared services agreement and note that it would be desirable for the Director-General and Executive Director to develop and agree such an agreement

note that to work well, the SAB model also requires a range of informal mechanisms to facilitate the relationship and, to this end, note that there is scope for the Director-General and Executive Director to explore further opportunities for:

9.1 further articulating and aligning values and cultures and reflecting these in key governance documents and policies

9.2 greater joint participation in industry meetings and fora

9.3 making better use of induction processes, and

9.4 co-location.
Appendix A: List of Interviewees

As part of the review, several external stakeholders were interviewed on a non-attribution basis to obtain views on the options for NZFSA. Various MAF and NZFSA personnel were also interviewed but they are not included in the list below.

<table>
<thead>
<tr>
<th>Ministers</th>
<th>Departmental Representatives</th>
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<tbody>
<tr>
<td>Hon. Jim Anderton</td>
<td>Minister of Agriculture and Forestry</td>
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<tr>
<td>Hon. Annette King</td>
<td>Minister of State Services and Minister for Food Safety</td>
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<td>Ministries and Departments</td>
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<tr>
<td>Simon Murdoch</td>
<td>Ministry of Foreign Affairs and Trade</td>
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<td>Derek Leask</td>
<td>Department of Prime Minister and Cabinet</td>
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<td>Maarten Weavers</td>
<td>Ministry of Economic Development</td>
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<td>Todd Kriehle</td>
<td>The Treasury</td>
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<td>Geoff Dangerfield</td>
<td>Ministry of Health</td>
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<td>Mike James</td>
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<td>David Galt</td>
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<td>Frederic Ernst</td>
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<td>Don Matheson</td>
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<td>SABs</td>
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<td>Murray Wright</td>
<td>Crown Company Monitoring Unit</td>
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<td>Peter Adams</td>
<td>NZAid</td>
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<td>Alison Taylor</td>
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<td>Primary Industry Associations</td>
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<td>Charlie Pedersen</td>
<td>Federated Farmers of New Zealand Inc</td>
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<td>Angela Brierley</td>
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<td>Catherine Petrey</td>
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<td>Mark Jeffries</td>
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<td>Ben O'Brien</td>
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<td>Caryll Shailer</td>
<td>Meat Industry Association</td>
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<td>Rowan Ogg</td>
<td>Poultry Industry Association</td>
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<td>Dave Harrison</td>
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<td>Michael Brooks</td>
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<td>Peter Ensore</td>
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<td>Owen Symmans</td>
<td>New Zealand Winegrowers</td>
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<td>Philip Gregan</td>
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<td>Fran Wilde</td>
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<td>Brenda Cutress</td>
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<td>Alastair Rowe</td>
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<td>David Russell</td>
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