

Chairperson and Committee Members
REGULATORY MANAGEMENT COMMITTEE

12 MARCH 2015

Meeting Status: **Public**

Purpose of Report: For Information

FOOD ACT 2014: PROPOSED REGULATIONS

DELEGATION

- 1 This Committee has the authority to exercise functions, duties and powers of the Council relating to public safety under the Health Act 1956, the Local Government Act 2002, and the Kapiti Coast District Council Food Safety Bylaw 2006.

BACKGROUND

- 2 This report is to inform Committee members in relation to activities surrounding the implementation of the Food Act 2014.
- 3 In the last week of December 2014 the Ministry of Primary Industries (MPI) released a confidential public discussion paper to Chief Executives in each of the Territorial Authorities (TA's).
- 4 This discussion focused on the proposals for regulations under the Food Act 2014. This discussion paper was distributed more widely during January of 2015 and submissions were called for with deadlines occurring on 20 February 2015 in relation to cost recovery proposals (section 7 of the document) and 31 March 2015 in relation to all other proposals.
- 5 It is anticipated that the regulations and notices will be drafted throughout this year and will come into force by 1 March 2016 having an immediate effect for food businesses starting after that date and including transition periods for food businesses existing on that date.
- 6 The Food Act (the Act) provides for further requirements to be specified in regulations to set out how things will work on a more practical level. Setting requirements in regulations give necessary flexibility if, after a period of operation, it is considered necessary to make changes.
- 7 The proposals for regulations include requirements around:
 - Food Control Plans (FCP) and National Programmes, regulations related to registration, verification and food safety and suitability;
 - Recognised agencies, persons, and classes of persons;
 - Approved documents, materials, facilities, persons and classes of persons;
 - Cost recovery;
 - Food Standards;
 - Imported food;

- Exemptions;
 - Infringement offences; and
 - Transitional matters.
- 8 Some of the proposals for regulations will not impact TA's, such as the proposals around approved documents, materials, facilities, persons and classes of persons; food standards; and imported food. It is important to note that the cost recovery proposals only relate to MPI services and activities and this document does not consider cost recovery proposals for TA's.

Food Control Plans and National Programmes

- 9 The regulations:
- will require that types of business register either with MPI or the TA;
 - will create some guidance around physical requirements of the business;
 - will set timeframes around frequency of verification (audit);
 - will set requirements around places, equipment, essential services, health and hygiene practices, ingredients and inputs, and production, processing and handling of food;
 - will set requirements for reporting to MPI in relation to registrations and verifications.

Recognised agencies and persons

- 10 The regulations propose to:
- set requirements and competencies to confirm that agencies and individuals seeking recognition are 'fit and proper';
 - make sure the skills and competencies of recognised agencies reflect the range of food preparation and activities; and
 - make the recognition process transparent and consistent.

Cost recovery

- 11 The regulations propose to:
- identify MPI services that are not crown funded;
 - establish appropriate charging mechanisms for cost recovery; and
 - establish particular costs for those services.

Exemptions

- 12 The proposals for exempting food businesses from requirements are limited except as detailed under s31 of the Act.
- Under s31 of the Act, businesses that trade in food to raise money for charitable, benevolent, philanthropic or cultural purposes will be exempted from the requirement to operate under a food control plan or national

programme. The proviso is that fundraising activity is not carried out on more than 20 occasions in any one year.

13 However under s32 of the Act there is a power to make regulations whereby the exemptions provided for in s31 do not apply. For instance an exemption of an exemption could be applied to:

- any food or classes of food;
- classes or descriptions of persons who trade in food;
- classes or descriptions of operations or places in relation to any trade in food;
- the proposal asks if there are any sound reasons or instances worth investigating to exclude any food, persons or operations from the general exemption for businesses trading for charitable, benevolent, philanthropic or cultural purposes.

Infringement offences

14 The regulations propose to introduce infringement offences, but the document advises that the requirements around that are still being developed. At the present time it appears that infringement fines related to labelling offences under the Food Standards Code are the only infringement offences being considered, however as the Act is implemented the need for other infringement offences will be considered.

Transition matters

15 The regulations will set out the timeframe that specific food sectors and recognised persons and agencies must move from operating under the Food Act 1981:

- 1 March 2016 to 30 June 2017 – All food businesses that hold an on licence; food service to pre-school children, processors of nuts and seeds;
- 1 July 2017 to 30 June 2018 – The rest of the cafes, restaurants; retail butchers, delicatessens, bakeries, fishmongers, supermarkets etc; retailers of packaged chilled and frozen food; confectionary manufacturers; bakeries that manufacture bread;
- 1 July 2018 to 30 June 2019 – brewers and distillers; ice and iced confectionary manufacturers, manufacturers of shelf stable condiments (preserves, jams etc); coffee carts with packaged food; honey manufacturers; producers of horticultural food; retailer or ice cream and iced confectionary (dairies).

16 Approved auditors at TA's who hold or gain an approval as a recognised auditor prior to 1 March 2016 will be recognised until the end of transition on 30 June 2019.

ISSUES AND OPTIONS

Issues

17 The staff will work together to prepare a submission on the proposed regulations, it is understood that the Regional Food Working Group may propose a joint submission, time permitting. The submission will be made by staff given the

technical nature of the regulations. At this stage some of the issues that may be considered in a submission include the following.

Food Control Plans and National Programmes

- 18 It is noted that the Regulations propose that TA's act as registration authority (totally administrative activity) for many types of low risk food business (operating under national programmes) who may not have ever been registered before and who may not ever have to be visited or audited.
- 19 There is a hidden cost to Council when acting as the administration arm of MPI in registering these food businesses. TA's will only be able to charge minimal fees for this administrative function, but will have unreimbursed costs related to enquiries, finding previously unregistered premises, receiving and investigating complaints and giving advice on how to comply with requirements.
- 20 This means that through future annual planning rounds TA's will have to consider making the registration costs higher to cover the activities mentioned above unless they allow this cost to fall to the ratepayer.
- 21 It is also noted that after 2019, the MPI Chief Executive will review the requirement that TA's are the only verifiers of food businesses operating under template FCP's. If this area of verification was opened up to other verification agencies then TA's would be left in the same situation they are with low risk national programme businesses, which is acting solely as a registration authority, with all the potential unreimbursed costs.

Places, Equipment and essential services

- 22 Staff agree that the structural requirements as outlined in the Food Hygiene Regulations 1974 are unduly restrictive and outdated in some respects. However, it is considered important that clear guidance on what is required in terms of facilities, equipment and essential services is clearly outlined in the regulations otherwise there may be a reduction in hygiene standards and there will not be any improvement in consistency between TA's in this regard.
- 23 Mobile or vehicle based businesses (other than coffee carts)
 - There has been a significant increase in recent years of mobile or vehicle based business becoming registered solely to prepare food for sale at markets and events (regionally and nationwide).
 - In addition in this district we have had a significant increase in mobile or vehicle based business who want to trade on vacant land permanently or semi permanently utilising limited amounts of hot water, potable water and waste water storage.
 - Many operators of small mobile businesses selling a range of prepared food need a base kitchen associated with the operation, and this is often never assessed by those approving the base operation. Ensuring that the registration authority deals with these matters thoroughly, is important if another TA wants to be satisfied that the scope of the business has been covered by the TA registering the Food Control Plan.

Interface of Data Sharing Applications

- 24 It is understood that MPI wants to maintain a national data base of registrations and verifications however this will present a significant cost to TA's unless MPI

develops a system that can interface with the TA data systems. Otherwise TA's will be entering data twice as required with the current voluntary system.

Verification of new registrations

- 25 It is proposed that TA's conduct verification within one month of receiving a registration for a new food business, yet other verification agencies dealing with custom FCP's are given three months. This seems unfair and while some custom FCP's may be more complex, the business should have been intimately involved with the development of their own customised FCP so therefore should have a knowledge of the system they have chosen to work under.
- 26 In the food service sector TA's deal with, there are a lot of operators who have never owned a food business and to them the template FCP's will be complex. Our experience with grading of food premises shows that most new businesses need at least two months to understand requirements, educate staff, get systems in place so as to have the best chance of receiving a favourable grading.
- 27 It is recommended that the time frames for verification of new businesses under template food programmes be set at within 3 months of registration

Assigning an outcome to verification

- 28 The proposal that there are only two outcomes in relation to a verification (acceptable or unacceptable) is concerning and the language could be considered inflammatory.
- 29 It is suggested that there are at least three or four possible outcomes, performing, conforming, non-conforming, and unacceptable (or non-complying).

Verification frequency and adjustments

- 30 The proposals related to decreasing the verification frequency seem clear and easily understood by food businesses and verifiers. However, there also needs to be clear rationale around requirements for increasing verification frequencies otherwise TA's will be tied up in requests for reconsideration. No food business likes their fees being increased without being shown a clear rationale as to why.

Food Standard Code impacts

- 31 This is a new area for TA's as compliance has previously been monitored by and funded by MPI, which may impact resourcing and budgets.

Recognised agencies and persons

- 32 It is agreed that agencies and persons conducting verifications should be approved in some way, however it would be concerning if TA's are charged by MPI for these approvals.
- 33 Companies conducting third party audits of custom food control plans and risk management plans work in areas of higher food safety risk and they also opt into the system, therefore it is understandable that fees would be charged for approving these verifiers.
- 34 TA's cannot opt out of registration and verification of food businesses using template food control plans or national programmes. Therefore staff should consider that there should not be fees for approvals for something they are mandated to do, particularly given that there will be enough costs for TA's in maintaining competencies for its agency and approved persons (verifiers).

35 Competencies for recognition:

- It is agreed that agencies and persons wishing to verify custom FCP's should be accredited to ISO 17020.
- It is agreed that a lower level of recognition should be allowed for TA's verifying template FCP's, however there is not enough detail in the consultation document to ascertain what MPI proposes as the core requirements of such an assessment.
- It is noted that MPI is concerned that the cost of full or surveillance assessment by them, may not be significantly less than accreditation to ISO 17020. If this is the case it is proposed that MPI should share some of these costs with TA's given that TA's are mandated by the legislation to undertake this role.
- The costs related to assessment or accreditation of TA verifiers will need to be passed on to the food business, and if these costs are too high, then fees may significantly increase.

Cost Recovery

- 36 It is noted that MPI will be developing a cost recovery fees regulation for their own use, to come into effect before TA's can make changes to their fees. It will be important for TA's that MPI develop and introduce fees and charges that are realistic and represent a total user pays system. It was noted in the past that fees charged for evaluation of custom food safety programmes (through Public Health units) were incredibly cheap and did not come anywhere close to recovering costs.

Exemptions

- 37 It is noted that the Act and the proposed regulations seem to make it clear that fundraising groups can trade up to 20 times with no restriction on the type of food they can sell. This definition may hurt some bone-fide charity fundraisers such a hospice shops, church groups etc. who sell on a regular basis. These types of business will probably fit within NP2, if they operate more than 20 times, but will still be forced to pay a registration fee which many will feel unhappy about.
- 38 Over the years bona-fide fundraising groups have been allowed to operate low risk fundraising stalls (sausage sizzles, cake and preserves stalls) without applying for approvals to do so and under guidance material and its hard to see the risk in allowing this to continue. It is suggested that some further definition be provided in the Regulations to allow bona-fide fundraising groups selling low risk foods to trade as many times as they wish under guidance material.
- 39 While bona-fide fundraising groups generally operate in the district where they are based there are a number of private individuals operating mobile premises or stalls who operate multiple times in each TA in the region and beyond preparing and selling high risk foods. Unless the definition around fundraising is further clarified these people will continue to operate unchecked throughout the country. Many of these operators will not self-regulate, and it is these operators that present the greatest food safety risk at markets and events.
- 40 Setting a large number (such as 20) on the amount of times a fundraising/private profit activity can trade is an administrative nightmare which will not be able to managed or checked by TA's or MPI. It seems that the intention is that if a

premises is exempt they do not need to apply for any kind of food stall approval at markets or events any longer. Is this what MPI intend? If so, this should be further clarified in guidance material for food businesses and TA's.

Other matters

- 41 Enforcement Action related to non-payment of registration fees or verification fees:
- With the new system it is highly likely that TA's costs in relation to invoicing and collection of debts will increase due to the separate invoicing that may need to happen for registration and verification.
 - Achieving simple enforcement options such as closure of premises for non-payment of fees should be considered in order to cut down the costs related to debt collection for TA's. Many food premises do not pay their fees each year and there is no alternative but to make due considerations under the Enforcement Policy as to whether or not to take them to court. To do this involves significant costs to the TA and most operators pay a day or two before it gets to court, and TA's are left with the pre-court legal fees.
 - Introducing a system similar to the Sale and Supply of Alcohol Act where application fees must be paid on application (including renewals) and penalties such as suspension or cancellation of the licence for non-payment of verification fees should be considered.

CONSIDERATIONS

Policy considerations

- 42 This is a consultation document from MPI and does not affect current Council Policies. It should be noted that from March 2016 any Council policy related to food licensing or approvals, will be transitioned out of the system.

Legal considerations

- 43 There are no legal considerations in relation to this consultation document.

Financial considerations

- 44 There are no financial considerations to be considered at this point. However once the Food Act and the Regulations come fully into force, it is anticipated that financial considerations will need to be addressed.

Tāngata whenua considerations

- 45 There are no issues for consideration by Iwi, however Iwi are free to submit on the consultation document as are any interested person or group.

SIGNIFICANCE AND ENGAGEMENT

Degree of significance

- 46 This report does not concern a strategic asset and has a low level of significance under the Council policy.

Consultation already undertaken

47 This report is related to a consultation document issued by MPI.

Engagement planning

48 An engagement plan is not needed as this report is for information only.

RECOMMENDATIONS

49 The Regulatory Management Committee reads and accepts Report RS-15-1498 which informs Committee members in relation to activities surrounding the implementation of the Food Act 2014.

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