

**Chairperson and Committee Members**  
REGULATORY MANAGEMENT COMMITTEE

2 OCTOBER 2014

Meeting Status: **Public**

Purpose of Report: For Information

## **OVERVIEW OF THE FOOD ACT 2014**

### **PURPOSE OF REPORT**

- 1 To provide a brief overview of the new Food Act 2014 to the Regulatory Management Committee.

### **SIGNIFICANCE OF DECISION**

- 2 The report does not trigger Councils significance policy.

### **BACKGROUND**

- 3 The Food Act 2014 (the Act) received royal assent this year. Some provisions are already in force and the remainder of the provisions relevant to the Council will come fully into force on 1 March 2016 at the latest. The Act replaces the Food Act 1981.
- 4 The new law recognises that each food business is different and unlike the previous 1981 Act, does not assume that 'one size fits all' with respect to food safety.
- 5 From 1 March 2016 (or any earlier date set by the Governor General) there will be a staggered three year period for all food businesses to transition in groups into the new system and ensure they operate under a Food Control Plan (FCP) or have signed up to the National Programme by March 2019. These Plans or programmes identify hazards with respect to food safety and once approved will be auditable, by the Ministry for Primary Industry (MPI); on a risk based approach. National Programmes will be administered under regulations that are currently being developed by MPI. The ministry intends to have the regulations ready for consultation as early as the end of this year, but by the latest early 2015.
- 6 Individual businesses can seek to develop their own FCP (known as a Food Safety Programme under the old Act) or use a template FCP provided by MPI to allow food operators the opportunity to establish under the new regime. However, the existing food safety laws under the 1981 Act continue to apply until March 2016. Until then, an operator can choose to operate a FCP under the new Act under the Voluntary Implementation Programme, in addition to complying with the 1981 Act.
- 7 The Act regulates businesses according to the level of food safety risk. This means that businesses producing higher risk foods will face more stringent food safety requirements and checks than those producing lower risk foods. This will benefit those lower risk businesses that are currently being made to meet extra

requirements that may not be necessary.

- 8 Higher risk businesses such as cafes and restaurants or those preparing and/or selling meat or seafood, must operate under a FCP which identifies the safety risks and the methods by which those will be managed. These businesses will be required to be the first to move across to the new regime and the regulations will establish the dates by which those businesses have to transition.
- 9 Businesses that sell medium or low risk foods such as some dairies, local honey producers or non-alcoholic beverages for example, will operate under a National Programme. There are three levels of the programme, based on the level of food safety risk. These businesses will not be required to register a FCP, but will be required to produce safe food as set out in the regulations; have the details of the business recorded in a register and maintain basic records and be subject to periodic checks.
- 10 Under the new system operators will be able to influence the fees in relation to the level of risk. By “being an efficient operator” and managing the risks well, inspections/audit requirements can be reduced, thus reducing the associated fee. This is not to dissimilar to the grading arrangement currently run by most councils.

#### What about fundraising projects?

- 11 Initially there were concerns that the new Act would limit charities, clubs and organisations having an event to raise funds. The new Act provides for exemption for kiwi traditions such as ‘sausage sizzles’ or home baking fundraising. Such events have been kept outside of the Act to enable fundraising scenarios to continue as they always have.
- 12 The Act allows a person that trades in food solely for fundraisers or to support a charity, cultural or community event, to do so up to 20 times in a calendar year without the need to be registered or undergo checks, however people trading in this way will still need to ensure that the food is safe and suitable to eat.

#### What about markets?

- 13 The Act does allow a person to prepare food from home for sale at markets, provided they operate under an approved FCP or under a National Programme. How this affects preparing ‘high risk’ food at markets is still unclear.

#### What enforcement powers will there be under the new Act?

- 14 The new Act will considerably strengthen the Government’s ability to enforce the law by:
  - Introducing infringement offences; improvement notices and compliance orders giving officers a new enforcement option that sits between warnings and costly court action;
  - mandating consistent food safety requirements so that food operators can be held to account where they are failing to manage risk adequately;
  - significantly increasing penalties for the most serious food safety offences;
  - making numerous changes to offences, penalties, remedies and procedures that will clarify and tighten the regulatory regime; and
  - Introducing new requirements for importers, including that they register with MPI.

## Issues

- 15 Although the new Act is not fully in force yet and may not be fully in force until March 2016 with a transition through till 2019, Council will need to work with all operators to ensure that they are prepared. Council will also need to work with any operators that choose to comply with the new Act sooner than 2016 under the Voluntary Implementation Programme.
- 16 We will need to place more emphasis in this area and allocate additional resource to facilitate businesses meeting the final deadlines. Currently the Council is aligned with the Voluntary Implementation Programme which allows operators to sign up for FCP's and our officers have been assessed and warranted accordingly; however there are approximately only 15% of operators working with a FCP in our district. Any resourcing needs will be discussed in the November presentations of the Regulatory Services Activity Management Plans (AMP).
- 17 Work will continue in this area, particularly over the next 18 months so that we can familiarise ourselves with the Act and the regulations once they are available in draft and make submissions if deemed appropriate.
- 18 There may also be the requirement for Council to have some form of accreditation either to a standard set within the regulations or possibly to ISO 17020. The exact requirements and associated implications of this are not available at this stage; however it is anticipated that the arrangement would be similar to that established for Council's Building Control Team and there would likely be additional costs associated with that. Again these have been addressed/estimated in the draft AMP.
- 19 Once the regulations are available we will be able to obtain a better understanding of the anticipated requirements on all parties involved.

## Financial Considerations

- 20 There are financial considerations with respect to resourcing Act requirements. As noted above, there will be a need to allocate additional staff resources to the implementation of the Act. There are also expected to be costs for accreditation of Council Staff. The costs are not yet defined, both in terms of amount and timing. These costs will be included in the draft Long Term Plan and if any significant cost implications will result in the current year, this will be brought back to Council.
- 21 As well as a provisional estimate for accreditation costs. It is unclear as to whether there will be any other implications on finances once the regulations become available, as noted above. If there are any significant impacts the Committee would be advised accordingly. In the meantime the draft AMP has a provision for possible accreditation costs as noted earlier.

## Legal Considerations

- 22 This report has been peer reviewed by Matt Conway, Senior Associate with Simpson Grierson. He has made some small changes to better reflect the timing of implementation of the changes and he added the second sentence in the following paragraph for clarity.

- 23 The matters discussed in this report are based on guidance produced by MPI. The full legal implications are likely to become clearer once the regulations are available. Staff are keeping a close watch on information being released from MPI and we continue to attend meetings for the Wellington region with MPI and colleagues at other Councils.

## Delegation

- 24 This Committee has the delegated authority to consider this report under section B.2 7.10

“Develop (within any wider existing strategic framework) regulatory policies”

## Publicity Considerations

- 25 There are no publicity considerations with respect to this report at this stage. However, there will be need for communication with food operators within the Kapiti Coast over the next 18 months.

## Other Considerations

- 26 There are no other considerations at this stage.

## RECOMMENDATIONS

- 27 That the Regulatory Management Committee notes the changes required by the Food Act 2014 to the work of Council in support of food operators within the district to comply with the new legislation
- 28 That the Regulatory Management Committee notes that staff will keep the Committee informed on the implementation of the Food Act 2014, including likely costs to be incurred, via further reports to this Committee and/or the draft Regulatory Services Activity Management Plan being prepared as an input to the draft Long Term Plan.

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