



**Local Government New Zealand**  
*te pūtahi matakokiri*

Submission to the New Zealand Food Safety Authority

In the matter of the  
Domestic Food Review - Transition and Implementation  
Discussion Paper

From *Local Government New Zealand*

12 February 2010

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## INTRODUCTION

1. *Local Government New Zealand* thanks the New Zealand Food Safety Authority (NZFSA) for the opportunity to make this submission in relation to the Domestic Food Review - Transition and Implementation Discussion Paper.
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand. It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with the Local Government Food Safety Steering Group. With the consultation period over the Christmas/New Year period, we were not in a position to seek feedback more widely from local authorities. We are aware however that many councils are making individual submissions. The *Local Government New Zealand* submission in no way derogates from those individual submissions.
3. This final submission was endorsed under delegated authority by:
  - Lawrence Yule, President, National Council
  - Kerry Prendergast, Vice President, National Council
  - Dianne Hale, Local Government Performance & Legislation portfolio, National Council.
4. *Local Government New Zealand* would be pleased to meet with the NZFSA for further discussion on any of the points raised in this submission.

## GENERAL OVERVIEW

5. *Local Government New Zealand* supports the review of food safety legislation. We support the Government's objective of a regulatory (and non-regulatory) regime to more effectively provide an efficient, effective and risk based food regulation that manages food safety issues while meeting the Government's objective of improving business certainty and reducing or maintaining compliance costs.
6. Responding to the proposals in this discussion document about implementation has posed some difficulties when the policy has not yet been confirmed. In particular, we acknowledge, and support, the increased use of national programmes where

appropriate, however as the role of local authorities with these programmes is not yet established, it is difficult to comment on in detail on implementation from a local government perspective.

7. Notwithstanding the challenges noted above, this submission raises some key matters for consideration. We have enjoyed a close working relationship with the NZFSA in the development of the food safety policy and legislation to date, and we hope this will continue with the opportunity for further input as the policy and programmes are further developed.

## **IMPLEMENTATION OF THE NEW REGIME**

### **National programmes**

#### *General*

8. There is minimal profile for proposed National Programmes compared to the other tools that territorial authorities and many operators have become familiar with. Exactly what a National Programme is and how it will work remains somewhat unclear. The role for territorial authorities with national programmes is also not clear. In particular, we note the uncertainty with verification/monitoring frequency, and uncertainty regarding cost recovery.
9. *Local Government New Zealand* supports the concept of reducing compliance/regulation and taking a national approach where this is appropriate and practical. It would assist if the criteria for selecting the appropriate tool were made clear. These criteria should be stated in the Act.
10. We question if “National Programme” is the best term for this category of regulation, particularly given its previous use as something different. A name that better reflects this new category the difference between this category and the Food Control Plan category is recommended.
11. We recommend piloting a National Programme with one sector to test criteria, implications, costs, roles etc.

### *Registration*

9. *Local Government New Zealand* accepts that registration will need to be available via a number of options. It will be important that there is easy access to all sources of registration data by all registration agencies. We note that territorial authorities have extensive systems already for registration as well as their property based information systems, and care will therefore be needed that any new options do not unnecessarily duplicate existing administrative infrastructure. A national database may need to be established that can easily align with council property based databases. This is a complex area.
  
10. The ability for low risk activities to “self register” can be considered, but we caution that this may have unintended consequences. The document provides little detail on this option. We note that the registration fee traditionally covers more than an administrative registration cost ie territorial authority costs in providing advice and cost recovery for responding to complaints and undertaking enforcement. It is unclear how territorial authority costs will be covered for activities under a National Programme (particularly level 1). If some registrations in a territorial authority’s area are being handled centrally, this may impact on revenue streams to fund regulatory work. If territorial authorities are not collecting registration fees, this may also reduce the incentive to undertake a check at a convenient (and cost-effective) time, for example checking mobile operators at a special event while they are operating. The potential impact of this will need to be carefully analysed to determine where costs will fall with National Programmes.

### *Verification*

11. The number of proposed verification options for food businesses makes it difficult to determine the exact role that territorial authorities may have in verification and the regulatory compliance costs for councils. *Local Government New Zealand* believes it would be appropriate for territorial authorities to have an exclusive verification role for some sectors, particularly those which are currently registered by councils. This would ensure a smooth transition for both businesses and councils, certainty for councils, and minimise compliance costs. Territorial authorities have established infrastructure, support, services, community contacts, and knowledge to resolve matters at a local level. It would be disappointing to give this up for unknown benefits.

12. The proposed amount of verification for national programmes seems appropriate. It is also supported to add verification to other existing audit systems where possible. A national programme will only be the appropriate tool where you can be satisfied that the defined amount of verification will be adequate for that entire sector. Exactly what a verification visit involves as well as the frequency needs to be set out in detail.
13. A significant area of uncertainty relates to food service chains. For example, at least 20% of Auckland City food service businesses are part of some kind of chain, so if all these were dealt with centrally, that could have a significant impact on the role and workload of the council.

*Businesses operating in a number of locations*

13. The regime will need to be clear if a business can nominate a territorial authority to be a verifier in another district. This is not clear in the document.
14. In principle we support an explicit and simple approach for mobile food stalls with one registration with a “home authority”. However there is considerable detail to resolve in this area.

**Off the Peg Food Control Plans**

*General*

15. The Voluntary Implementation Programme (VIP) has provided useful information on likely impact of introduction of Off the Peg Food Control Plans (OTP-FCP) in full. In particular, it has highlighted the significant education and support component for the territorial authority and the need for tools to manage uptake.
16. The resources required to implement the new programme are significantly more than under the current regime, particularly in the start up phase. This resourcing aspect needs to be managed and provided for to ensure effective implementation. We are not sure that the resources that will be required by territorial authorities to implement the regime in full are actually available, for example availability of adequate staff with appropriate competencies. We seek to work with the NZFSA to ensure these aspects are monitored and managed. One means of managing this may be risk-based flexibility in verification approach, for example, so that a mandatory full verification visit is not the

default, and partial verification is all that is required for some sectors. We are particularly concerned about the impact of this in the first two years of the new regime and comment further on this below in relation to the transition.

#### *Accreditation of Territorial Authorities as verifiers*

17. We support territorial authorities being the exclusive external verifiers of OTP FCP (except for businesses with an existing external auditor recognised under the current Act). Our understanding from the document is that this exclusivity will continue after the transition as long as the territorial authority meets the new verification agency standard. This certainty about exclusivity will be required in order for territorial authorities to justify investing in the graduated programme during the transition period.
  
18. It is intended to require territorial authorities to be accredited as meeting the new verification agency standard in order to undertake verification after the transition period. The document (p22) notes a graduated programme for territorial authorities to meet the new verification agency standard in full by the end of the transition period. Given the learnings from the accreditation of Building Consent Authorities under the Building Act, an “accreditation system” is not considered to be necessary or cost effective for either territorial authorities or the businesses who will be seeking the verification service. We recognise that certain standards and competency are necessary and expected, and it is accepted that there must be a reporting or review mechanism for territorial authorities to be able to demonstrate they have the necessary competencies to do the work. Local government seeks to work with the NZFSA to ensure appropriate standards, a programme that is fit for purpose and significant ongoing support from the NZFSA in councils working towards the new requirements.

#### **Custom made Food Control Plan**

19. As noted above for national programmes, a registration system will need to be accessible at both the territorial authority level and nationally for the NZFSA. A national database may need to be established that can easily align with council property based databases. Please refer to comments above (in section on registration of National Programmes) about relevant considerations for such an approach.

## **Food Handler Guidance**

20. The approach to the development of guidance to date is supported. We support this tool being used for the very low risk operations. As noted above, we believe that clearer criteria are required to ensure only appropriate activities are managed using this tool.

## **TRANSITION TO THE NEW REGIME**

### **Transition policy**

21. *Local Government New Zealand* supports a pragmatic staged approach to transition to the new regime over five years. Clarity of verification agency requirements and the graduated programme is required as soon as possible to enable a workable and successful transition.
22. As you are aware, local authorities have legislated transparent processes for planning and budgeting. We seek alignment of transition timing with council planning/budgeting cycles as much as possible.
23. We acknowledge NZFSA investment and support in training programmes through VIP to date. We strongly endorse this continuing, including regional availability, to ensure a successful transition.

### **Risk management tools and transition years**

#### *Phasing*

24. Year one of the transition contains the majority of food premises currently registered by territorial authorities. In addition, businesses that have not previously been required to be registered are included in year one (food service - on site catering).
25. Year two also contains sectors not currently required to be registered (food service - residential YOPI, day care YOPI, hospital YOPI).
26. We are concerned that the phasing is not balanced for territorial authorities. Councils have a major role in promoting understanding of the new system by food businesses

and the public. As demonstrated by VIP, council officers have to spend longer than they would under the current regime with each food premise to bring them up to speed and have confidence that they will be able to maintain their food control plan appropriately. The work required to be undertaken in moving businesses to the new regime cannot be underestimated. Implementation in the first two years will be critical to the perception and ongoing success of the whole new regime.

27. We believe the number of businesses falling into the first two years, but the first year in particular, is too many. The document is not clear about the consequences for businesses that do not meet the required timeframe. Flexibility in attitude to enforcement may be necessary. With the knowledge from VIP now available, we do not believe the first two years of the transition will be possible in practice. We suggest these businesses be transitioned over a three year period instead of two. We also suggest that the entire transition programme needs to be reviewed (in light of VIP knowledge) giving more flexibility to businesses, territorial authorities and NZFSA.

*Changes to proposed tool by sector*

28. *Local Government New Zealand* generally supports the proposed changes and use of national programme tool where appropriate.
29. We expect you will receive comment directly from territorial authorities will more detailed knowledge about specific sectors and whether the proposed tools are appropriate. In this submission, we draw attention to three particular sectors which have been the subject of discussions at meetings of the NZFSA/local government steering group.
30. Firstly we are concerned about food service - handles and retails food, being a national programme. Annual verification provides an important monitoring opportunity which is critical for this particular sector (change of nature of operation common). For example, dairies may sell dry goods one month and be selling pies the next. Such businesses to not tell compliance agencies of changes to business activity so active monitoring is important. We suggest this be kept as OTP-FCP.
31. Secondly, food service - mobile low risk. These operations are generally licensed by councils under bylaw as they operate on public land. This is an example where a

national programme will increase compliance costs unless territorial authorities have exclusive verification role to enable them to synchronise inspections (where possible).

32. Thirdly, cereal manufacture. We are concerned about a change to National Programme. The sphere of influence is large there the high possibility of contaminants (eg nuts, metal filings) means a robust level of monitoring needs to be in place. National distribution is common, so a custom-made FCP is the most appropriate tool.

## **COMPLIANCE AND ENFORCEMENT**

33. *Local Government New Zealand* supports the NZFSA developing a range of sanctions and compliance tools for territorial authorities and the NZFSA.