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Proposals for regulations under the Food Act 2014

Local Government New Zealand's submission to the Ministry of
Primary Industries

31 March 2015

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We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand.

Introduction

Thank you for this opportunity to submit on proposals for regulations under the Food Act 2014 ("the Act"). This submission has been prepared on behalf of New Zealand's territorial authorities (TAs), who have a regulatory role under the Act.

LGNZ is a member of the Territorial Authorities Steering Group (TASG) that has assisted the Ministry for Primary Industries ("the Ministry") with the development of the Act to date. We look forward to further engagement as these proposals are progressed into regulations.

We have focused our comments on high-level concerns and feedback, and have not responded to specific consultation questions.

Food control plans and national programmes

Change of responsibilities for territorial authorities

The proposed regulations for the Act introduce a new risk-based food safety system that provides some categories of food businesses with the choice of who to register their business with. For example, a multi-site food business could register individual sites with their respective local TA, or register all sites with the Ministry.

LGNZ is concerned that this approach may lead to confusion and inconsistency as TAs will no longer be responsible for all food businesses in their area and have a clear oversight of food business operation in their area. We expect, that even with these changes, TAs will remain the primary contact point for the public if they have concerns or complaints about a food business. However, TAs may have little or no knowledge of the food business in question if it is registered with the Ministry.

We encourage the Ministry to prioritise the development of a central database, to ensure that all TAs have access to information about all food businesses and to avoid the doubling up or omission of information. There will of course be a cost associated with developing a central database but we encourage the Ministry to develop this alongside the TASG to ensure the database can be developed and rolled out in the most efficient and cost-effective manner.

In addition, we are concerned that the implementation of the proposed regulations may lead to resourcing issues for some smaller councils. We encourage the Ministry to communicate any additional responsibility required from TAs as soon as is possible.

Recommendation:

The Ministry prioritise the development of a central database to facilitate the sharing of information with TAs.

Complexity of requirements

The Ministry has proposed a high degree of variation in the verification frequencies for food control plans and national programmes (as set out in Tables 3 – 5 of the consultation paper). We consider that this proposal introduces an unnecessary level of complexity for TAs to manage.

It will be potentially unmanageable from an administration perspective, and could lead to errors and omissions in food business verifications. The proposed approach may also be difficult for businesses to understand. We recommend that the focus of regulations should be on specifying a minimum verification frequency, not specifying a maximum frequency.

Recommendation:

LGNZ recommends that the verification frequencies are discussed further with the TASG to determine what the optimal frequencies would be for the different categories of food businesses.

General comments

LGNZ has the following comments on the proposals for food control plans and national programmes (chapter 4).

- Guidance needs to be developed for how TAs should deal with complaints or non-compliance when issues are found with a food business that is not registered with the TA. We note that dealing with this non-compliance will still create a cost for a TA that cannot be recovered if the food business is registered elsewhere.
- LGNZ does not believe that there should be a large differential for new and existing food businesses transitioning to the new regulations under the Act. We understand that this approach has been developed to stagger the transition of food businesses, manage the workload, and to minimise the time that TAs are required to operate under two pieces of legislation. However, it appears unfair to require new businesses to be fully compliant with the new regulations from the commencement date of the new Act, while existing food businesses have considerable time to transition. For example, new businesses subject to national programmes will be required to have their initial verification within one month of registration, while food businesses subject to national programme levels 1 and 2 will receive an initial verification within one year of registration (page 31 of the consultation paper).

We recommend that the Ministry discuss the transition phase for new businesses with the TASG to understand the practicalities of a slightly longer timeframe (for example, 3 months); and

- We support the proposal that the Chief Executive of the Ministry of Primary Industries be given the power to waive the requirement for onsite assessment. However, we require clarification as to whether the Ministry anticipates that this could be applied to multi-site food businesses.

Recognised agencies, persons and classes of persons

Proposed requirement for ISO 17020 accreditation

LGNZ has concerns around the proposed requirement for ISO accreditation for verifying and evaluating custom food control plans.

Accreditation to this international standard would be very costly for TAs, costing approximately \$5,000 to \$10,000 per annum to maintain. This may be cost prohibitive for many TAs and could consequently eliminate many TAs from conducting work with food businesses operating under custom food control plans. This proposal removes a regulatory role from an established regulatory body and could lead to only third party agencies being able to conduct the work. Having a pool of qualified professionals is important in smaller areas, where capacity may be limited. It is possible that this restriction may lead to a reduced supply of accredited verifiers and evaluators and consequently increased compliance costs for food businesses.

Accreditation to ISO 17020 does give the Ministry confidence that an Agency has robust processes and procedures in place and can ensure consistency around the way it conducts its work. However, it does not ensure that the verifications or evaluations are necessarily carried out to a higher standard. We consider that the determining factor will be the competency of the person carrying out the verification or evaluation. In LGNZ's view, many TAs have sufficiently competent staff to conduct audits of businesses that will be required to have custom food control plans and in fact currently do so.

Recommendation:

LGNZ recommends that the Ministry discuss with the TASG alternative options to ISO accreditation, where there is interest from TAs to be involved.

Level of technical detail contained in the regulations

LGNZ does not agree with the degree of technical detail that the Ministry has proposed for inclusion in the regulations for the requirements necessary for an Agency or person to gain recognition (as outlined in pages 61 to 63 of the consultation paper). We consider that regulations are too inflexible and cannot be easily adapted as practices in the industry change over time.

It is our preference that the Ministry place its reliance on the minimum professional qualifications for entry into the profession. Further detail can then be contained in a Code of Practice and subsequently be audited and updated by the Ministry. In line with this suggestion, we recommend that the Ministry consider reviewing the professional qualifications and competencies required to enter the profession in New Zealand. If the Ministry is satisfied that the professional qualifications have included all the competencies necessary, no further regulations or requirements should be necessary.

Infringement offences

Infringement fees for registration

LGNZ supports the decision that it should be mandatory for all food businesses to be registered. However, we note that a failure to register may not be the type of offence that all TAs may initially wish to focus on or impose infringement fees for. There is a considerable turnover of food businesses across the country and it may require substantial effort by TAs to chase up fees for not registering. Slow payment of fees, however, can be a real problem in some TA areas.

Given the objectives of the Act, a failure to register can be considered a relatively minor offence. LGNZ would prefer the Ministry to focus its efforts on establishing infringement offences and fees that concentrate on serious food safety risks, not just minor transgressions. We recommend that the Ministry consider the proposal of allowing TAs the option of issuing an infringement for not registering.

Food safety

LGNZ seeks clarification on what role the Ministry anticipate TAs will play regarding infringements around the Food Standards Code. Historically these issues have been primarily regulated by the Ministry and District Health Board Health Protection Officers. Any additional requirements on TAs need to be carefully considered and communicated to the sector.

Range of infringement fees available

LGNZ is concerned that all the potential infringement offences will not be in place when the Act commences on 1 March 2016. The preparation of regulations and infringement offences should ideally occur in tandem, therefore providing all parties with certainty, clarity and consistency. Infringement offences are an important tool for an effective regulatory regime, ensuring the Act achieves its purpose. TA Environmental Health Officers are well placed to provide details on the commonly encountered non-compliance issues that they face on a regular basis, and what infringement offences and fees are required to address these issues.

Recommendation:

We recommend that the Ministry work with the TASG to develop a comprehensive set of infringement offences and fees as soon as is practicable.

Transitional matters

LGNZ is comfortable with the proposal to align the transition phase of the regulations with the local government financial year. However, we consider that the Ministry has proposed an overly complex transition schedule to bring all food businesses under the new legislation (as set out in Table 13). For example, food businesses operating under a National Programme 2 (NP2) are transitioned across 3 years.

We appreciate that this approach is intended to help regulators address the change in requirements, and to enable food businesses registrations and subsequent workload to be staggered. However, we recommend that the transition schedule is simplified. In our view, there is no need to separate the types of food businesses out to the degree proposed in Table 13.

Recommendation:

The Ministry simplify the transition schedule proposed in Table 13, by grouping together food businesses operating under the same risk-based tool.

Other comments

LGNZ has minor comments on the following areas:

- *Approved documents, materials, facilities or persons or classes of persons:* LGNZ is comfortable with the proposed criteria for approvals that will be set out in the regulations. The criteria look to cover all the necessary areas; and
- *Exemptions (consultation questions 75 – 76):* LGNZ agrees with the proposed circumstances for exemption and the granting of some power to TA Chief Executives.