



STAFF REPORT

TO: Environment & Planning Committee

FROM: Graham Caradus, Co-ordinator Regulatory

REFERENCE: E411

SUBJECT: **COUNCIL BRIEFING PAPER: FOOD BILL - REPORT REP10-07-10 - Report prepared for meeting of 1 July 2010**

1. OVERVIEW

The Food Bill has been introduced to Parliament. It proposes to significantly change the way in which regulatory authorities register and audit commercial food manufacturers. When enacted, the new Act will repeal the Food Hygiene Regulations 1974. Throughout this report sections of the Food Bill are referred to in parenthesis (thus). A full copy of the Food Bill with explanatory comment is available at:

<http://www.legislation.govt.nz/bill/government/2010/0160/latest/DLM2995803.html?search=ts+bill+food+resel&p=1>

The shift to risk based performance standards proposed for the control of food for sale has been a long time coming. The writer has been involved in discussing the process for at least two decades. Most countries we trade with in the developed world have already adopted risk based performance standards for commercial food sales.

Whilst there are sound theoretical arguments to support moving away from the existing prescriptive legislative controls, the proposed change will not occur without considerable effort and expense for both sellers of food, and councils. There are significant cost implications for council as a consequence of some functions being devolved from Central Government to councils, with no accompanying transfer of funding to council for undertaking these functions. Similarly, the proposed demand for commercial food producers to provide greater levels of monitoring and record keeping will result in them bearing more compliance costs. In some cases there will be a need to register premises where that is not currently required.

Justifying all of this expensive change is the contention that food borne illness is a huge problem for New Zealand. That contention is not reflected in the notifiable disease statistics that Council routinely receives.

2. WHAT WILL BE DIFFERENT?

Three significant differences are planned as follows:

- A move towards self assessed risk based **food control plans** for existing commercial food premises and also for some premises not currently registered by Council.
- Councils to provide food labelling and composition controls for parts of the food industry.
- The manner in which councils and their officers may be directed by the New Zealand Food Safety Authority.

Each of these three changes is dealt with in more detail below.

2.1 Move to Risk Based Food Control Plans

Currently inspections of food premises are undertaken by Environmental Health Officers (EHOs) and they determine if premises comply with prescribed physical and conduct standards. Such standards relate to things like suitability and maintenance of walls, floors, ceilings, lighting, refrigeration, handwashing facilities and so on. In addition to looking at the “nuts and bolts”, the EHO usually sees a food premises in action, so will also inspect some conduct or operational requirements. Such things include perishable food being stored at the right temperature, food preparation areas being suitably cleaned and free from rodents etc.

The proposed change to Food Control Plans (FCPs) will have the operator of a food premises undertaking and recording a self inspection process based on a risk assessment of the food being prepared. This already happens for large operations like dairy factories, fish exporters and freezing works. Large food manufacturers tend to have quality control departments that drive such processes. The proposed FCP process will require the food premises proprietor to have documented systems in place, and to routinely record that the specified control systems are being complied with. The theory that it will encourage production of safer food is impossible to argue against, but the cost/benefit ratio for the extra time and effort required may be questioned by the business operators.

An example of the record keeping required relates to using thermometers. The use of thermometers to measure the temperature of food warmers or refrigerators is generally accepted in the food industry. The new regime will require that such thermometers are calibrated by the operator every 12 weeks and the calibration detail recorded. It will no longer be acceptable to simply make casual observations of thermometers in chillers and warmers, but a diary will have to be maintained in which a probe thermometer is used in a carefully prescribed manner to check the internal temperature of food in each appliance. A similar process is required for cooking some foods. That detail is then recorded at least daily. In addition, the delivery temperature of all perishable food is to be measured and recorded. As can be seen, anyone selling perishable food will be taking part in a very useful quality control process, and maintaining very full records of that process.

Is the additional cost and effort for compliance necessary? I/s the current system that bad? It is reasonable to criticise the variable level of compliance with the existing Food Hygiene Regulations which have been in effect since 1974. Many councils have under-resourced the role of inspecting food premises, and Tasman District Council could have been criticised for that in the past.

2.1.1 Do Not Discard The Baby With The Bath Water

We need to understand what damage the current system of control is causing and be certain that it is not working, before we discard it completely and impose what will be a costly replacement. The New Zealand Food Safety Authority (NZFSA) view appears to be that food poisoning has been suffered by one in four kiwis in the last two years with about 40% of that from home kitchens (NZFSA media release; *Putting an end to kitchen crimes. 26 May 2010*). By implication, more than half of food-borne illness is from other sources including commercially prepared food. These figures are not reflected in the “Notifiable Disease” statistics for Tasman District gathered by the Public Health Service.

It is difficult to gather statistics about food borne illness, as most of the bacteria causing such illness are well capable of making us sick if we ingest them in water, or off unclean hands or surfaces, or in food. For example, one of the most commonly notified infectious diseases in NZ is the zoonosis (disease spread from animals to humans) Campylobacteriosis. It causes 5% to 14% of all diarrhoea worldwide (WHO: Water Sanitation and Health). Under-cooked or re-contaminated cooked chicken is one of the well publicised risk foods for transmitting the illness in New Zealand. However, risk of contracting that disease occurs from contact with a variety of animals from poultry to puppies and cows to kittens, if contact is not followed by careful handwashing. Even children in nappies present a significant risk to those around them for any illness transmitted by the classic faecal-oral route. Therefore illnesses that can be food-borne, are also be transmitted by means other than poor quality food preparation in commercial kitchens.

2.1.2 How Much of a Problem is Food Poisoning in Tasman District?

Apart from extrapolating data from surveys where people are asked what they think made them sick (such as the NZFSA media release above) the only hard facts we have are the monthly Notifiable Disease statistics. These are notorious for being a substantial under-estimation of the real rate of community illness. Only a small percentage of people that have a gastro-intestinal infection consult their GPs, and only a small percentage of those people have their illness accurately diagnosed so that formal notification can follow. For the last three years, for Tasman District they are:

Notifiable Condition	2007 year	2008 year	2009 year
Campylobacteriosis;	106	82	54
Food Poisoning;	0	0	1
Gastroenteritis- unknown cause;		2	
Hepatitis A;	0	0	0
Salmonellosis;	9	19	9
VTEC/STEC infection;	0	1	1
Yersiniosis.	2	6	2

Most of the above diseases are passed on by the faecal-oral route so may be transmitted through food. A very pessimistic view would be that half of the above were the result of food-borne illness, and half of that number came from commercial kitchens (all of which is potentially a gross over estimation), and that those figures represent just the tip of the iceberg. Even so, it is apparent that this is not a very big iceberg. The risk factors for transmission of those diseases such as exposure to farm animals and untreated water supplies are likely to be higher in our rurally based district than NZ generally.

Food poisoning outbreaks involving many people tend to come to the notice of the health authorities and I can report from involvement in such things for a number of decades that they are both memorable and scarce. Most result from conduct break downs such as staff failing to wash hands or adequately refrigerating food. It is awareness of the risks that is more likely to reduce such incidents, and that could best be achieved through mandatory education/qualifications for food handlers.

2.2 Food Labelling and Composition Controls

For many decades, the matter of administering the legislation controlling labelling of food and food composition was the responsibility of the District Health Boards and their predecessors. That approach led to a slightly disjointed food safety delivery package, in that the local authority EHOs looked at the premises and some conduct issues, and substantially ignored labelling and composition of food, while Health Protection Officers (EHOs employed by Central Government) looked at food labelling and composition, but did not have a great involvement in the premises standards or conduct.

The important point is that funding for food labelling and composition work came from Central Government. The proposed regime will have councils undertaking that work, but rather than continue to provide funding from Central Government for this purpose, the intent is that direct and indirect costs associated with any work relating to the proposed Food Act will be recovered by charging fees and levies. (s170)

2.3 NZFSA Will Direct Council And Council Staff

The Food Bill sets out Territorial Authority Responsibilities.(s17) These include:

- delivering services that are needed to achieve the purpose of the Bill, including the provision of advice and the dissemination of information on matters relating to the safety and suitability of food;
- facilitating the administration and performance of functions and activities that support the role of the chief executive (of the Ministry as yet not defined: MAF?) under the Bill;
- contributing to the implementation and delivery of risk-based measures for the safety and suitability of food;
- performing the function of a registration authority;
- carrying out enforcement and other regulatory responsibilities under the Bill in respect of their district;

- carrying out the role of a recognised agency, if so recognised under the Bill; and
- carrying out any functions that are incidental and related to, or consequential upon, the roles set out above.

Furthermore, the Council will have its performance monitored by the Ministry (s157) and will need to provide full access to Ministry staff. Reports in specified formats will need to be furnished on demand to the Ministry and full reviews of the Council's performance may be undertaken and if shortfalls are found the Ministry can undertake work and charge Council. (s169)

The Council is required to act as a collection agency for any fees due to the Ministry. (s172)

The Chief Executive of the Ministry can direct Council and EHOs. (s 245)

3. IMPLICATIONS FOR DIFFERENT SECTORS OF THE FOOD INDUSTRY

Depending on the type and size of the operation, the proposed changes may or may not involve an increased commitment and/or cost from the food seller or Council. The following are the broad categories that will be impacted:

3.1 Premises Currently Operating With Food Control Plans

As at the end of February, 23 food premises within Tasman District were operating under food control plans and are being audited by agencies other than Council. Most are manufacturers, but some represent smaller operators of franchised businesses. No great change is expected although in time some of these operators may chose to have Council audit their premises.

3.2 Large Manufacturing Premises and Supermarkets

Many of the premises that fall into this category will already have quality control systems in place that will easily convert to the proposed system.

3.3 Small Food Manufacturers (Bakeries, Butcheries, Juice or Jam Makers)

Many operators of small manufacturing premises will find that there will be substantially increased demands to comply with the proposed system. The cost in terms of the amount of time required to undertake record keeping for all critical systems is, as yet, an unknown quantity, but may be challenging for some.

3.4 Franchised Takeaway Food Chains (Pizza Hut, McDonalds etc)

Many of these types of premises are already operating under food control plans (e.g. Pizza Hut), or the quality control systems that are currently in place will easily translate into the new regime.

3.5 School Canteens and Kitchens in Hospitals, Retirement Villages/Nursing Homes, Work Place Cafeterias

Currently this group of premises are required to comply with the conduct requirements of the Food Hygiene Regs but are not typically registerable by Council. Under the new regime, such sellers of food will be registered and have to pay for that service. Some exemption will apply for very small scale operations.

3.6 Restaurants, Cafes, Dairies, Convenience Stores, Butcheries

This group represents the bulk of premises that Council currently registers. Few of these premises are set up to move into the new environment of Food Control Plans. Whilst some exemption will exist for very minor players selling only shelf stable pre-packaged foods, the majority of premises in this category will move from the standard registration by Council to the new Food Control Plan regime. A substantial effort will be required to educate the operators of these businesses so they are competent with the continual self audit and record keeping that will be mandatory.

4. IMPLICATIONS FOR COUNCIL

There is a vast amount that remains unclear particularly the resource and cost implications. For example:

- Additional work will be required to bring currently registered premises up to speed with FCPs. Three of this Council's EHOs have been through this sort of transition in either UK or Victoria. Their experience suggests that the transition phase to FCPs for the 350 commercial food premises we expect to make the shift, will amount to several months' continuous work for the whole EHO team. The same EHOs also state that based on their experiences in UK and Victoria, routine ongoing audit work for FCPs will take about twice the time that the current inspections take. Resourcing that demand even if the introductory stage is spaced out over a five year phase in period is well beyond this Council's (and probably many other councils') current resources. The logical consequence of the increased resource requirements for Council will be that registration costs for food premises would have to at least double compared with the current level.
- Additional work will be required to resource the proposed food labelling and composition audits by councils. The exact amount of that additional work is unknown.
- The Chief Executive of the Ministry may direct council or council employed EHOs to undertake work relating to food. The proposed Act requires councils to discharge certain functions to the satisfaction of the Ministry. (s17) The potential demands are unknown and the ability to meet those demands also unknown. If council fails to meet the Ministry's expectation, the Ministry can have the work done by other means and council will be liable for the cost. (s157 to s169)
- Staff competencies and resources are required to be met, but at this stage the future demand and detail is unknown. (s125(c) and (d))

- Fees will be paid by council to the Ministry for being allowed to undertake the required FCP work (s137). These fees are not specified or known.
- Council will act for the Ministry to collect fees due to the Ministry. (s172)
- Much of the detail is to be prescribed by Regulation. Those Regulations do not yet exist so implications can only be guessed or assumed.

5. WHAT CAN BE LEARNT FROM THE UK EXPERIENCE?

When the transition into the new approach to food safety occurred in the UK (Safer Food, Better Business), a massive amount of funding was provided by the UK Government for both the industry, and local authorities. That funding drove the education required for industry and assisted local authorities with resourcing the transition. If the NZ experience is to be primarily a user pay process, both the food industry and councils will need to find a lot of money. NZFSA is providing audit training for Council's EHO's and has made some funding available for training of the food industry through Councils. The experience of a neighbouring council that applied for food premises training funding was that they were asked to deliver roughly twice the result for approximately half the cost they had budgeted. The process simply failed as the council was not prepared to pick up the large shortfall in funding.

Despite the fact that the Safer Food Better Business packs were offered free in the UK, and training provided for proprietors, after five years of the programme, in some districts more than half of the large businesses have come to terms with the process. Typically new entrants into the commercial food businesses have no knowledge of it. (Personal communication between TDC EHO Pete Harcom and ex-colleagues working for New Forest District Council UK June 2010)

6. ARE RISK BASED CONTROLS PRACTICAL FOR SMALL BUSINESSES?

Lessons can be taken from other areas where risk based controls have been adopted. A good example that is well understood relates to the "Safe Ship Management" system that about 10 years ago replaced the "annual survey" for small commercial boats. The writer has considerable experience of operating small commercial vessels under both systems of control. The most significant difference with the risk based approach is the library of manuals that are now carried around or associated with each commercial vessel. A flurry of activity occurs to ensure they are up to date prior to the annual audit, but to a large extent, for most of the year, they are largely forgotten. The foolish or misguided actions of some commercial boat skippers still occur and accidents and incidents still trouble the industry.

7. ARE PRESCRIPTIVE STANDARDS EFFECTIVE AT CONTROLLING HIGH RISK SITUATIONS?

The licensing systems for motor vehicle drivers and firearms users in New Zealand demonstrate that very high risk activities can be effectively controlled with prescriptive standards. Of note is the fact that proof of knowledge (or a level of specific education) is demonstrated before issue of a licence.

8. SUMMARY

The science and logic behind the proposed FCP system of control can not be faulted, and can easily be supported for large scale manufacturers. For example, businesses that are wholesaling to other food premises outside of the region. For those manufacturing businesses, the public health risk if unsafe food is sold is significant, simply because of the scale of operation where many people may be affected. For such producers, it is not an unreasonable expectation to have quality control systems in place and logical that they pay for the privilege of having that imposed through FCPs.

However, in small food businesses such as dairies, sellers of take-away food, cafés and restaurants, it is the writer's opinion that the proposed changes will result in a "Rolls Royce" quality assurance programme, when a "Mini" would be sufficient. That "Mini" could consist of an improved prescriptive set of rules that incorporates an update of the physical premises needs, and much of the conduct requirements for preparing safe food. Less emphasis should be placed on record keeping. A requirement for a basic food safety qualification to be held by staff with supervisory roles within any food premises would be logical, and could be phased in over time.

A certainty is that there will be increased (as yet unknown) costs for Council and for the food businesses that they register and audit. Based on the experience of EHOs previously involved with the UK's "Safer Food, Better Business", a significant percentage of the small food businesses that prepare some of the food they sell will be severely tested by the compliance and record keeping effort required. A similar experience is reported in Victoria.

9. CONCLUSION

The cost of the effort required for smaller businesses will be substantial and outweighs the value of any improvements to be gained. A more prescriptive control system requiring less record keeping, but some requirement for supervisors to be qualified is considered a more appropriate solution.

10. WHAT IS THE NEXT STEP?

The Food Bill will go through a select committee process at which stage Council can have its position heard. At the time of writing this report, that date had not been established.

11. WHAT IS COUNCIL'S POSITION?

Advice is sought from Council as to whether this Bill should be supported or opposed.

12. RECOMMENDATIONS

THAT the Environment & Planning Committee of Council submits through the Select Committee process and through LGNZ making the following recommendations:

- 1. That the Food Bill limits the requirement for Commercial Food Premises to operate under a risk based management system, known as Food**

Control Plans, to those large manufacturing premises that warrant such controls either by virtue of the quantity of food they produce for sale, or the high public health risk that may be associated with that food.

- 2. That a prescriptive standard be established for commercial food premises that do not warrant Food Control Plans as defined in recommendation 1 above.**
- 3. That a food safety qualification be a mandatory requirement for supervisory staff in any commercial food premises.**
- 4. That the Food Bill does not devolve the responsibility for food labelling and composition compliance to Territorial Local Authorities, unless provision is made for adequately compensating such Territorial Local Authorities for the work undertaken.**

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