

11. DOMESTIC FOOD REVIEW

General Manager responsible:	General Manager Regulation and Democracy Services
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PURPOSE OF REPORT

1. The purpose of this report is to advise the Council on the release of a further discussion paper on a review of Government involvement in the domestic food sector and to seek the Council's approval to make comments on the paper.

EXECUTIVE SUMMARY

2. The review consists of a number of papers that comprise the foundation work of the Domestic Food Review. This is a major long term project likely to run over the next five years. There are seven papers to date in the review but this report concentrates only on Paper 6 – Compliance and Sanctions: Criteria and Tools for the Future. (Copies of this paper have been separately distributed to Councillors.)
3. A number of principles are proposed in the paper as suggestions to guide the application of sanctions in the future and comments are particularly sought on these.

FINANCIAL AND LEGAL CONSIDERATIONS

4. There are no financial or legal considerations in respect of the proposed submission but the Council should be aware of the potential longer term implications if the provisions contained in the review are implemented.

STAFF RECOMMENDATIONS

It is recommended that the Council make a submission to the New Zealand Food Safety Authority that:

- (a) indicates support in general for the Domestic Food Review; and
- (b) includes the comments contained in this report.

BACKGROUND ON DOMESTIC FOOD REVIEW

5. The Council registers, inspects and controls premises manufacturing, preparing or selling food (other than premises handling food for export). Since an amendment to the Food Act in 1996, food premises have had the option of either being registered with the Council (and being inspected by Council Environmental Health Officers) or developing a Food Control Plan to be approved by the New Zealand Food Safety Authority (NZFSA) and then be audited on an annual basis by independent auditors or verifiers.
6. The purpose of the review is to provide a food regulatory programme that integrates the various legislation and agencies currently involved with the safety and suitability of domestic food, to define the roles and responsibilities of the regulators at various levels, criteria for assessing structural options and a range of structural options for the future shape of the regulator involving central government, district health boards and local government (territorial authorities).
7. This latest paper seeks discussion on a range of additional tools to assist NZFSA to manage and redress non-compliance across the food sector. It is noted that prosecution is the only legally allowable regulatory response in many cases across the food sector, and it is widely accepted that this is insufficiently flexible.

PAPER 6: COMPLIANCE AND SANCTIONS: CRITERIA AND TOOLS FOR THE FUTURE

CURRENT SYSTEM: PROBLEMS AND SOLUTIONS

Inconsistencies Across Food Legislation

8. The paper notes that the current food legislation has been in place for several decades and reflects the accepted practices at the time the legislation was drafted and then amended over time. This incremental approach, combined with the lack of a back-to-basics review, has led to incoherence and inconsistency across the food sector. Even where provisions are relatively coherent, many are regarded as outdated in view of current knowledge and regulatory best practices. These anomalies are a source of confusion and frustration for persons and regulators alike.
9. It is proposed that a national approach be applied consistently and equitably across New Zealand and, in the longer-term, be harmonised across all food legislation.

Principle 1	<i>The compliance and sanctions regime will be seamless and coherent and will apply regulatory and non-regulatory provisions consistently and equitably across all food sectors</i>
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10. **Comment:** It is of benefit to all if there is a uniform and consistent approach across all food sectors and across the country. This principle is strongly supported.

Shift in Regulator Approach

11. In the past, compliance has mainly required the regulator to take responsibility for pointing out non-compliance issues. More recently, there has been a cultural shift involving 'persons' taking responsibility to meet the requirements for food safety and suitability by proactively complying with food law.
12. As part of this shift, regulators encourage food businesses to develop a 'culture of food safety'. This trend can be observed in food regulatory agencies around the world, including the Food Standards Agency in the United Kingdom and the Food Safety Authority of Ireland.
13. NZFSA is proposing to apply this approach across the domestic food sector. Regulators will, however, continue to assist in informing persons about these requirements as set out under food legislation.

Principle 2	<i>Persons have responsibility to ensure they understand and implement the requirements of current food safety and suitability legislation. (i.e. it is their responsibility to produce safe and suitable food. The legislation defines what 'safe and 'suitable' means).</i>
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14. **Comment:** This is a major change in the approach to achieving compliance and is fundamental in achieving food safety. If food handlers understand the basics of food safety and implement them because they can appreciate why they are necessary and the potential consequences if they are not followed, then this is far better than if such procedures are only implemented when the "Inspector" is standing over them. Long term, the aim is to have food handlers accept that it is their responsibility to provide safe food at all times. This is a very commendable aim but there are strong doubts that this will work in the majority of food premises without the ongoing involvement of the regulator. Experience would indicate that the 'good' operator will take a responsible approach whilst the 'bad' operator will carry on regardless. This principle is also supported, albeit with reservations.

Limited Range of Tools

15. The current range of regulatory tools is not sufficiently flexible or extensive to manage the range of possible non-compliance. For example:
- a number of food businesses are not required to register under the Food Hygiene Regulations, making it difficult to correct problems;
 - current penalties are often not precise in their effect. Collateral damage can have an impact on a wider group than those responsible for the relevant non-compliance. An example of this would be the poor performance of one franchisee of a multi-food producer and the only response is to penalise the whole food producer by loss of accreditation, or a blanket increase in audit frequency.
16. In response to such limitations, it is proposed that a wider range of responses and/or tools (regulatory and non-regulatory) be available to the regulator across the food sector.

Principle 3	<i>The range of tools available to manage and prevent non-compliance will be flexible and extensive and will comprise options for both non-regulatory and regulatory intervention.</i>
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17. **Comment:** This is a sensible principle and is supported for the same reasons given below for supporting Principle 4.

Making Better Use of Current Tools

18. It is recognised that in some cases regulators might be able to make better use of the tools currently available in food legislation to manage non-compliance. Education or training could enhance the use of current and prospective tools. With the continuing work on the Domestic Food Review, a paper on training and education will be produced in the future.
19. There is little consistency in the current legislative provisions for different types and levels of offences, and sanctions against them, across New Zealand's food legislation.
20. It is proposed that a set of assessment criteria be developed to assist regulators to judge the seriousness of the offence. These criteria are intended to be harmonised across food legislation to provide persons and regulators with consistent and transparent guidance on managing food safety and suitability issues.

Principle 4	<i>The regulator will apply a set of assessment criteria to measure the seriousness of each non-compliance and thus the appropriate response</i>
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21. **Comment:** Again, this is sensible and is supported. There is a wide range of potential areas of non-compliance and an even wider range of potential consequences as a result of the non-compliance. It is appropriate that the seriousness of the non-compliance is considered before

deciding on the response and/or penalty. If there is a range of options available as suggested in Principle 3 then it follows that there must be a standardised set of assessment criteria to be used to decide on the appropriate response. The paper sets out possible assessment criteria that are seen as sensible and simple.

Sanctions

22. The current range of sanctions (including court-imposed sentences) for offences varies greatly according to which legislation covers the sector. An incremental scale of sanctions is proposed in order to implement deterrents consistently across the food sector.

Principle 5	<i>An incremental scale of sanctions will be applied consistently and equitably across all food legislation.</i>
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23. **Comment:** This flows on from the previous two principles and is supported for the same reasons.

Possible Additional Tools to Manage and Prevent Non-compliance

24. It was noted earlier that prosecution is the only legally allowable regulatory response in many cases across the food sector, and it is widely accepted that this is insufficiently flexible.

25. The paper seeks discussion on a range of additional tools to assist NZFSA to manage and redress non-compliance across the food sector.

26. The proposed new tools are:

- incentive schemes;
- award/recognition schemes;
- grading and public notification schemes
- public apologies;
- diversion schemes;
- improvement notices;
- infringement notices;
- prohibition notices;
- demerit points.

27. **Comment:** The paper lists the pros and cons of each of the above and the NZFSA would particularly seek comments on these possible additional tools. As the pros and cons are listed, comments are restricted to whether the proposed tool is supported or not and the reasons why.

28. It must be remembered that the proposed tools are “to assist NZFSA to manage and redress non-compliance across the food sector” and so may or may not have relevance to the Council in its current role of registration and inspection.

Incentive Schemes: Supported

29. These are much more likely to gain support from the industry than some of the other proposals as the industry can see benefits such as reduced costs. There is also an attraction that this tool rewards the good operator and punishes the bad.

Award/Recognition Schemes: Supported

30. Acknowledges commitment to safe and suitable food and encourages industry to comply with policy Principle 1.

Grading and Public Notification Schemes: Not Supported

31. Public grading and notification of grades (name and shame) schemes have been implemented by a number of authorities both in New Zealand and overseas. There is divided opinion as to the effectiveness or otherwise of such schemes with conflicting reports on their effect on food

borne disease. (A Tennessee report concluded that restaurant inspection scores alone do not predict the likelihood of a food borne outbreak occurring in a particular establishment whilst a Californian report found that the introduction of grade cards for restaurants corresponded to a 20% decrease in the number of people admitted to hospitals with food related illnesses.)

32. A negative that is not mentioned in the pros and cons for this tool is the additional administrative charges associated with ensuring such schemes are kept current with all published grades up to date.
33. Food premises with an approved food control plan, audited by an independent verifier, should be only preparing or selling safe food. These premises should all, in theory at least, be 'A' Grade premises and therefore there is no advantages in grading them.
34. In general, it is considered that any advantages of these schemes are outweighed by the extra resources that would be required and the associated costs. It would also appear that such schemes would be contrary to the underpinning policy principle No. 1 set out in the first paper of the Review that "Government involvement and imposed compliance costs to the food sector will be minimised, consistent with Government policies and the need for food to be safe and suitable".

Public Apologies: Supported

35. In some ways, this can be seen already when firms issue a recall notice for food that has been found to be contaminated or have a manufacturing fault.

Diversions Schemes: Partial Support

36. There are some attractions for this as an additional tool, but strong guidelines would need to be prepared to ensure a consistent approach across the country.

Improvement Notices: Not Supported

37. On the information provided, it does not appear that this tool offers any real advantages and does not appear to fit with the verification process for approved Food Control Plans.

Infringement Notices: Supported

38. As noted, there are few offences that would fit into this category but for those that do this would be a very quick means of ensuring that food premises operators are made aware of the need to comply with the legislation.

Prohibition Notices: Supported

39. Again, this would provide a rapid response to a situation where there was a high risk in terms of food safety.

Demerit Points: Not Supported

40. This tool does not sit well with the objectives of the Domestic Food Review as a whole in terms of increased costs, matching the policy principles for the review set out in Paper 1 or achieving an acceptable solution to non-compliance.

Concluding Comments

41. The paper offers a range of additional tools for the regulator to use to ensure compliance with the requirements of the legislation in terms of food safety.
42. It is considered that the wide range of tools is desirable and will give much needed flexibility to the regulator instead of the single option of prosecution.
43. The New Zealand Food Safety Authority should be commended for the production of a comprehensive paper and review.