

## Food Bill Proposes New Role For Local Authorities

The Food Bill (**Bill**) proposes substantial reforms to the current regulatory regime for the safety and suitability of food. Introduced into Parliament on 26 May 2010, the Bill proposes to replace the Food Act 1981 and Food Hygiene Regulations 1974. The Bill will also make consequential amendments to the Animal Products Act 1999 and the Wine Act 2003 to harmonise requirements and processes where appropriate to ensure consistency across the food sectors.

### Scheme Overview

The aim of the Bill is to shift from a prescriptive regime to an outcome-based regulatory system based on the perceived level of risk to human health. The Bill prescribes risk-based tiers where the highest risk activities must be managed by Food Control Plans (**FCPs**); middle risk activities must comply with National Programmes (which are to be set out in regulations made under the Bill); down to the lowest risk activity where Food Handler Guidance is supplied but compliance is voluntary.

FCPs are individually developed by a person or food business and then registered with the relevant registration authority (either the territorial authority or the Chief Executive of the relevant Government Department (**CE**)). National Programmes are proposed to have several levels so that the risks from the particular type of the food business activity are subject to the appropriate regulatory measures.

Every person who trades in food must, subject to certain exceptions, operate that business under the risk-based measure that applies to the food sector that the food business is in.

The Bill places the primary responsibility on the food industry, requiring any person who trades in food to ensure that their product is safe and suitable for its purpose. Importers of food must be registered with the Ministry of Health and comply with all of the requirements of the Bill relevant to the importation activity.

### Administration

The Minister's role in the food safety regime is to issue national outcomes (objectives) in relation to the performance of territorial authorities under the Bill, issue domestic food standards and adopt joint food standards with Australia. The Minister can also recommend the making of regulations and appoint persons to review decisions made by the CE in respect of registration matters and other administrative decisions.

The CE, along with territorial authorities, will also implement and manage the risk-based measures for the safety and suitability of food and the food safety regime for imported food. The CE has a wide range of responsibilities under the Bill including:

- providing information to territorial authorities, the food industry and the public;
- establishing and administering a public register of food importers;
- establishing and monitoring the performance of territorial authorities against the national outcomes, performance criteria and standards;
- reviewing decisions made by relevant territorial authorities;
- monitoring compliance and enforcement with the legislative framework; and
- working collaboratively with territorial authorities and regulatory bodies to enforce the legislation.

The Bill seeks to consolidate and clarify the role territorial authorities will have in the food safety regime and expressly requires territorial authorities to:

- carry out enforcement and other regulatory responsibilities in respect of their district;
- provide advice and disseminate information on the safety and suitability of food;
- support the role of the CE;
- contribute to the implementation and delivery of FCPs, National Programmes, monitoring programmes, and Food Handler Guidance;
- perform the function of a registration authority (which involves registering FCPs, food businesses under the National Programme, and importers); and
- where recognised by the CE, carry out the role of a 'recognised agency' responsible for the management and verification (compliance checking) functions and activities as well as other specialist functions.

The Bill allows territorial authorities to transfer their functions, duties and powers to another territorial authority or regional council or to the CE.

## Compliance Measures

To promote compliance with the legislative regime a range of tools is provided in the Bill including:

- enforcement powers for food safety officers;
- the ability to seek compliance orders from the District Court;
- enhanced penalty provisions; and
- registration authorities will be able to impose conditions in FCPs, suspend operations or cancel registration of the FCPs and National Programmes, subject, in the case of registered businesses, to review by the CE.

## Transition Period

The Bill proposes a five year transition period so that the new regime can be implemented progressively. The expiry date of the authorised transition period will be determined for each food sector or class of food sectors by Order in Council. This allows different food sectors to switch to the new risk based measures at different times. The transition period will also allow time for changes such as the Food Safety Programmes under the Food Act 1981 to be changed to FCPs (their new equivalent under the Food Bill).

## Amendments to the Local Government Act 2002 (LGA'02)

The Bill proposes amending the LGA'02 to require territorial authorities to have regard to national outcomes in preparing Long-Term Council Community Plans. Bylaw making powers will be restricted to prevent territorial authorities from making bylaws that are inconsistent with, or more stringent or lenient than, those duties prescribed in the following documents:

- regulations;
- an adopted joint food standard;
- a domestic food standard;
- an Order in Council; or
- a notice.

The reforms are not yet law and the Bill has not received its first reading. However the Bill proposes a commencement date of July 2011 suggesting it is expected to progress through Parliament this year. If you have any queries in relation to the Bill please contact one of our Local Government partners.

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