



Domestic Food Review

Summary of submissions: Papers 6 & 7

November 2005

Introduction

This document is a summary of submissions made on Papers 6 and 7 of the Domestic Food Review. It contains an executive summary of the key issues raised by submitters, followed by a full summary of the views of submitters. Copies are available on the New Zealand Food Safety Authority (NZFSA) website (www.nzfsa.govt.nz) or by contacting NZFSA on freephone 0800 NZFSA 1 (0800 693 721) or via email info@nzfsa.govt.nz.

Background

NZFSA has previously published five discussion papers for public consultation as part of its Domestic Food Review. The first four papers were released in September 2004 and the fifth in December 2004. The five papers comprised:

- Paper 1: Introduction and Context
- Paper 2: Regulatory Roles, Responsibilities and Structures
- Paper 3: Proposed Food Control Plans
- Paper 4: Implementation of Food Control Plans
- Paper 5: Cost Recovery.

Following on from these papers NZFSA released two further discussion papers for public consultation in June 2005. The two new papers comprised:

- Paper 6: Compliance and Sanctions: Criteria and Tools for the Future
- Paper 7: Criteria and Processes for Various Approvals.

The papers are available on the internet (www.nzfsa.govt.nz) and in hard copy. The closing date for written submissions on Papers 6 and 7 was 30 August 2005. Nine Domestic Food Review meetings were held in July and August 2005 as part of a road-show so that NZFSA could meet with people to discuss the proposals contained in the papers. Comments made at those meetings have been recorded as oral submissions, but the comments have not been attributed to identified persons and are therefore not categorised in the breakdowns of submissions provided throughout this summary of submissions. This summary does, however, include comments made at road-show meetings.

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Executive Summary

In total 57 written submissions were received. These comprised of:

- 21 government bodies (including Territorial Authorities and Public Health Units/District Health Boards)
- 16 academic/professional institutions
- 10 industry organisations
- 6 community organisations
- 4 businesses.

Compliance and sanctions (as discussed in Paper 6)

Comments on the principles, the assessment criteria for measuring non-compliance and possible additional tools to manage and prevent non-compliance were, in general, positive. Submitters welcomed moves to develop criteria that would assist the regulator to assess the level of non-compliance and the addition of tools to be able to more appropriately respond to non-compliance. A few submitters were unsure how compliance and sanctions would fit into the proposed Food Control Plans, and looked forward to the further position paper to be able to provide further comment.

The changes were welcomed so long as compliance costs to implement them were minimised, and appropriate consideration was given to education and training to raise the awareness of 'persons' responsibilities to deliver safe and suitable food.

Various approvals (as discussed in Paper 7)

The four principles, and the criterion for approvals, proposed in paper 7, were supported by submitters. A few commented that cost recovery principles and mechanisms require further discussion. Approvals that ensure food produced in New Zealand is safe and suitable was strongly supported and it was encouraged that, where possible, the duplication of systems should be avoided.

Submission summary: Compliance and sanctions – Criteria and tools for the future (Paper 6)

Introduction

Paper 6 in the Domestic Food Review proposed assessment criteria, with underlying policy principles, to help achieve a nationally consistent approach to compliance and sanctions across New Zealand. The paper sought discussion from submitters on a range of additional tools to help the regulator to manage and redress non-compliance across the food sector. Public comment was also sought on a set of assessment criteria to assist the regulator to respond more effectively to non-compliance (or omissions) with food safety and suitability requirements.

The paper was divided into the following sections:

A. Scope: considered the current range of tools available to administer food legislation, and policies and guidelines to contain, manage and prevent non-compliance. The paper also examined tools employed in other New Zealand law.

B. Background: described how the domestic food regulatory system attempts to ensure safe and suitable food by requiring 'persons' to comply with law. Non-compliance includes a broad range of actions and omissions that can have varying effects on the safety and suitability outcomes of the food. Non-compliances are currently managed through a variety of non-regulatory and regulatory responses.

This section looked at criteria measuring the seriousness of non-compliance; what motivated compliance; what worked against compliance; costs of non-compliance; identification of non-compliance and points of intervention; and the responses available to the regulator.

C. Current System: problems and solutions: set out the inconsistencies in current food legislation and outlined the shift in the regulator approach discussing five policy principles which would underpin the policy objectives. The current Food Act 1981 had been in place for almost 30 years and reflected the accepted practices at the time the legislation was originally drafted and at each subsequent amendment. This incremental approach, combined with more recent legislation applying to other parts of the food chain, and the lack of a back-to-basics review, had led to incoherence and inconsistency across the food sector.

D. Possible Assessment Criteria for Measuring Non-Compliance: set out a proposal that assessment criteria for measuring non-compliance be developed and harmonised across food legislation. The criteria would assist the regulator, Public Health Units (PHU's) and Territorial Authorities (TA's) in measuring the seriousness of non-compliance and appropriate responses.

E. Possible Additional Tools to Manage and Prevent Non-Compliance: set out and discussed nine new tools that might be considered by the regulator, PHUs and TAs to manage and deal with incidents of non-compliance. The tools could be applied individually or used in combination to escalate their application dependent on the seriousness of the non-compliance.

Overview of submissions

Fifty-seven written submissions commented on *Compliance and Sanctions: criteria and tools for the future*. These comprised of:

- 21 government bodies (including Territorial Authorities and Public Health Units)
- 16 academic/professional institutions
- 10 industry organisations
- 6 community organisations (including clubs, associations, not-for-profit organisations and schools)
- 4 businesses.

Summary

Comment on the paper itself

The majority of submitters were supportive of the principles; the proposals to develop assessment criteria for measuring non-compliance; and the consideration of additional tools that might be included to manage and prevent non-compliance.

Some submitters questioned how they were expected to provide comment on specific criteria and tools without knowing the goal (i.e. the outcomes of decisions on papers 1-5 of the Domestic Food Review) and commented that it was difficult to provide precise comment on precise approaches, responsibilities, tools, criteria and sanctions. Others commented that

their views on this discussion paper should be considered alongside their earlier submission on papers 1-5 of the Domestic Food Review.

There were a few topics that submitters raised within their submissions that were not part of the discussion paper such as mandatory education and training. A few submitters felt that the language used in the paper was complicated and might not have been easily understood by some food operators who have English as a second language.

Hospitality Association submitted that it was difficult to give a definitive view when there were numerous decisions to be made to determine a clear proposed regime for the future. The Association acknowledged that the next phase of consultation later in the year would provide more certainty regarding the proposed regime for the future with appropriate corresponding detail and it looked forward to providing more complete and authoritative submissions at that point.

Auckland City Council considered that the overall information covered in papers 6 and 7 of the NZFSA's Domestic Food Review was appropriate for incorporation into the new regulatory structure and if implemented it would result in an improved regulatory system. The Council considered the added benefit would be that agencies charged with carrying out food safety audits etc would have improved compliance and enforcement tools available to them. A national approach applied consistently and equitably across New Zealand and enforced by the local TAs and PHUs would allow for harmonisation across the food sector.

A. Scope:

Similar to submitter comment on papers 1-5 of the Domestic Food Review, one of the topics listed as being separate (namely training and education requirements) was commented on by a number of submitters. A few industry organisations noted that they required more information on how this would be used to assist businesses to gain the knowledge they required to be able to deliver safe and suitable food.

Hospitality Association wanted to encourage NZFSA to clearly indicate its intentions regarding mandatory training as part of the next phase as they believed this would have a substantial impact on compliance costs and industry's ability and willingness to embrace the new regime.

Federated Farmers commented that regulation was no cure-all to reducing the incidence of foodborne illness. They considered education and information to encourage greater individual responsibility in the handling and preparation of food was more likely to succeed.

B. Background:

Eight sections were discussed in the background to Paper 6, which focused on the following:

- criteria measuring the seriousness of non-compliance
- what motivates compliance?
- what works against compliance?
- costs associated with non-compliance
- identification of non-compliance and points of intervention
- responses available to the Regulator (Regulatory and non-regulatory response)
- prosecutions
- penalties.

Submitters were supportive of the concept of criteria being developed to help measure the seriousness of non-compliance. Many submitters welcomed the ideas and questions that had been highlighted in the paper under the above headings. Specific comment was directed at the sections on the policy principles and the tools and criteria for measuring non-compliance. A few submitters commented that one of the key factors to motivate compliance was the good working relationships between the food operator and the regulator and this should also be considered when making decisions on whether any action should be taken. Further, a few submitters felt that the points under each heading were too broad and not reflective of day-to-day experiences.

Clutha District Council commented that the criteria described for measuring the seriousness of compliance failure appeared to take a very broad overview somewhat removed from the day-to-day considerations that face Local Authority officers in their routine involvement with food businesses. The Council considered a more realistic and practical benchmark was required.

C. Current System: Problems and Solutions

The review of the current system, its problems and possible solutions looked at the inconsistencies across food legislation, the shift in the regulator approach and the limited range of tools available.

Five policy principles were put forward in paper 6 to underpin the proposed changes to compliance and sanctions. Submitters were supportive of all five policy principles and voiced their views on both positive and negative aspects that needed to be given consideration for future changes. Submitters were interested in how the principles would be applied within Food Control Plans and were interested in how a nationally consistent approach would be achieved.

Policy Principles

Policy Principle 1: 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.

Submitter support for this principle was strong. However, a few submitters questioned how this principle would be implemented given the vast diversity of businesses within New Zealand. One submitter stated that they agreed with the compliance and sanctions regime being seamless and coherent, but did not agree that the provisions should be applied consistently and equitably across all food sectors. Submitters were keen to keep any changes that are made simple, easily understood and not overly complicated.

Foodstuffs supported the proposal to adopt a national approach.

Local Government New Zealand agreed that the compliance and sanctions regime needs to be seamless and coherent, but did not necessarily agree that regulatory and non-regulatory provisions need to be applied consistently and equitably across all food sectors. The reason given was that it might be appropriate to vary the sanctions depending on the type of operation involved, the level of risk, and the severity of the break. Local Government New Zealand also suggested that the particular circumstances of the operation, impact on their business and their ability to pay might also need to be considered.

Policy Principle 2: Persons have responsibility to ensure they understand and implement the requirements of current food safety and suitability legislation.

The majority of submitters who commented on this principle supported it. Questions were raised by submitters about how the regulator could ensure that food businesses understood their obligations. It was suggested that the language used to facilitate the requirements be kept simple as a number of operators have English as a second language. Submitters noted that it was important to acknowledge that the vast majority of food businesses actively seek to comply with food legislation and that consumers require protection from only a small minority of ‘persons’ who flout the law.

Clutha District Council stated that there was a need for a clear shift in emphasis which would result in food businesses taking more responsibility for themselves rather than wait for a routine inspection to be told what to do. Further, the Council stated that the existing control system (based on set regulations that form an ‘idiot’s guide’) had fostered a “Nanny State” approach. The Council agreed with the principle, but disagreed with the means by which this was achieved.

Progressive Enterprises Limited supported the principle relating to responsibility for producing safe food being placed on the ‘person’. The role of the regulator needed to be one of information, guidance, monitoring and ultimately compliance, the onus to produce safe and suitable food must rest on the producer within the scope of known food safety process.

Policy Principle 3: 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.

Many submitters were in agreement that no single method or solution would work in enforcing compliance. Most of the submitters who commented on this principle were positive about the proposal to increase the range of tools available to manage and prevent non-compliance. A few noted that any new tools that were introduced would require a Right of Appeal process to ensure appropriate processes had been followed. A few submitters were unclear how the new “tools” would fit into or run alongside the Food Control Plans that had been discussed in the earlier Domestic Food Review papers.

A few submitters emphasised that better use should be made of the tools that were already available to the regulator and that the cost of implementing changes should be minimised.

The nine proposed new tools are discussed later in this paper.

Local Government New Zealand supported the principle. Several local authorities had developed bylaws to provide new tools because they considered the tools currently available were insufficient. Local Government New Zealand supported the development of additional tools to manage and prevent non-compliance on food safety matters, considered the tools should only be part of the toolbox available and that they should be used in conjunction with education and training.

Hastings District Council stated that a review of regulatory tools available to officers could enable a more flexible and appropriate level of response to regulatory issues as they arose. The use of non-regulatory tools must remain fundamental to the administration of food safety. Important to note that without appropriate regulatory tools the role of Local Authorities in effectively administering food safety legislation was severely compromised. The Council was critical that any review provides tools to regulatory agencies that are easily deployed and could be used without necessarily bureaucratic impediment.

Policy Principle 4: The Regulator will apply a set of assessment criteria to measure the seriousness of the non-compliance and thus the appropriate response.

Support for this principle was strong and submitters were keen that a set of assessment criteria to measure the seriousness of non-compliance was developed to enable an appropriate response to be considered or applied by the regulator.

One submitter felt that this could open up a minefield and lawyers would have a field day dealing with clients who disputed the assessment decision made against them.

Foodstuffs agreed in principle, however, did not agree that factors relating to the size of a business (influence, breadth of spread) should be included in proposed criteria as this would effectively introduce different tests for businesses of differing size (multiple standards). Also they were concerned that the assessment criteria might include a type of “victim-impact” assessment and believed that the Authority needed to tread cautiously in this area.

New Zealand Food and Grocery Council stated that they supported the criteria that had been identified, noting they were not mutually exclusive, and recognised non-compliance might necessitate a combination of responses. The Council considered taking a risk-based approach was essential.

Timaru District Council supported this principle. The Council considered it would be good to have a set list of criteria to determine the most appropriate course of action. The Council

stated the only condition to this was that it be clearly outlined to the regulator at ALL levels what the criteria were and how they were to be applied.

Policy Principle 5: An incremental scale of sanctions will be applied consistently and equitably across all food legislation.

Submitters had mixed views on this principle. While supportive of the principle, submitters were concerned about how this would be achieved consistently and equitably on a national scale because of the wide ranging businesses that were in New Zealand.

Consumers' Institute noted that it was important that an incremental scale of sanctions be applied consistently and equitably across all food legislation.

Timaru District Council agreed with the concept of an incremental scale of sanctions but disagreed that such sanctions should be applied equitably and consistently across all food legislation. The Council considered this disagreement could be resolved, however, if it was acknowledged that there would only be one piece of legislation to cover all aspects of food in the future.

D. Possible Assessment Criteria for Measuring Non-compliance:

The overarching objective of the criteria was to achieve a nationally consistent approach to compliance and sanctions. The assessment criteria were characterised by specific policy objectives which were:

- to support the wider objectives and policies of the Domestic Food Review
- to support consistent regulatory responses to non-compliance
- to support transparency to consumers, industry and regulators on the decision-making process for deciding the level and type of response to a given non-compliance.

The five policy principles, as discussed in (C) above, then underpinned the policy objectives. Submitters agreed that assessment criteria should be developed and were supportive of future developments that set out more specific detail. A few raised concerns that there was potential for the assessment to be subjective, so clear guidelines would assist in minimising the risk of this happening. Submitters agreed that the criteria would help the regulator, TAs and PHUs in making decisions on the most appropriate course of action to take in response to the non-compliance.

Canterbury District Health Board agreed that assessment criteria for measuring non-compliance should be developed and be harmonised across food legislation. The Board considered this approach should ultimately provide for consistency in its application. In the past, due to a lack of documented criteria, it was often difficult to measure the seriousness of any given non-compliance action or omission and therefore to determine the type and level of response that was required. Having assessment criteria developed and written into policy guidelines to assist regulators would be of great assistance to the regulators and also provide for consistency.

Hospitality Association New Zealand noted that the assessment criteria outlined in the paper appeared thorough and fair and should provide transparency and clarity to industry if adopted as the criteria to be used by the regulator going forward.

E. Possible Additional Tools to Manage and Prevent Non-Compliance:

Nine additional regulatory tools, which had been identified as more flexible and that could assist regulators, were proposed in Paper 6. Those submitters who commented specifically on the various proposed tools were supportive of many of them and thought that they would be of benefit to the regulator. Submitter views on each of the tools were as follows:

Incentive Schemes

Submitters who commented on this tool supported its inclusion to assist regulators. Those submitters felt that an incentive scheme could be linked to other things such as the grading of a food premise as motivation to comply. For example significant cost savings could be achieved by obtaining a higher grade, and failure to meet certain minimum standards could trigger the need for further visits for verification resulting in further costs for the business.

Canterbury District Health Board noted performance based verification (PBV) was an example of an incentive scheme which the Board believed would be very effective, i.e. high performers evaluated in terms of compliance with proposed Food Control Plans and other legal requirements would undergo less frequent and less intensive external verification from low performers.

Food safety award and recognition schemes

Those submitters who commented on this proposed tool were evenly divided as to whether it should be included or not.

Submitters that disagreed with its inclusion raised concerns about the potential for awards becoming outdated but remaining on display by the business. They thought this might lead to the public being misled by the displayed award, especially if the food safety standards of the business had declined since the award was made. A few noted that a food safety award was based on a snapshot of a food business on a particular day and that there was potential for standards to change. A further comment from a submitter was that they considered the tool did not manage or prevent non-compliance and should not be included.

Clutha District Council stated that whilst such schemes were seen as attractive to consumers, in practice they rarely had a major effect upon the trading position. In as much as awards are primarily promotional as far as the businesses are concerned then it was the Council's view that they should only be run by the industry, for the industry.

Local Government New Zealand did not have a problem with awards and recognition schemes. However, Local Government New Zealand was of the view that grading systems would largely achieve the same benefits, while having a number of advantages and were therefore preferable.

Public notification and grading schemes

The response by submitters to this proposed tool was very strong with the majority of submitters who commented on this tool supporting its inclusion as an option. A few raised questions on how this would be applied nationally and consistently. Submitters felt that this tool should be implemented in a manner that ensures it is publicly available and accessible.

Consumers' Institute stated it would also support a notification and grading scheme that was publicly available. The Institute considered consumers had the right to clearly see how well a business complied with food safety and suitability requirements. Further, the Institute thought this would give increased consumer confidence in the food supply. The Institute acknowledged there were the following drawbacks to a public grading scheme. Firstly, the scheme must be consistently implemented nationwide. Secondly, there must be the opportunity for the premise to be re-graded in a reasonable period of time. This would be at

the cost of the premise. As the grade is a “snapshot in time” this seemed fair. Thirdly, the grading system must be clearly communicated to consumers.

Public apologies

Submitters’ views on this tool were mixed. Some noted the possibility of the requirement to make a public apology acting as an incentive for a business to comply because it would encourage them to avoid having to make such a public apology that could adversely affect their business and therefore would act as incentive to comply.

Submitters who were against the inclusion of this tool felt that it would be difficult to ensure that the offending business made the public apology and checks would need to be in place to ensure this happened and that its application was fair.

Hospitality Association of New Zealand stated that this approach could have significant negative impact on businesses, particularly SMEs and the severity of the impact is difficult to predict and impossible to graduate. The Association had reservations about it being used consistently and fairly, while they acknowledge that if this option were adopted it could be as one of a range of sanctions that could be used when repeated non-compliance had occurred.

Diversion schemes

Comments on consideration of including this tool were divided. Many submitters commented that it was a good idea however the practicalities of implementing a diversion scheme would need to be assessed. Submitters felt that for a diversion scheme to be effective and transparent an administrative system, that was diligently maintained, would need to be in place to enable those enforcing the tools to be able to check if operators have been previously subject to a diversion.

A positive for this tool was seen to be the potential ability for the regulator to be able to check a database system to ascertain if the non-compliant operator had previously been subject to compliance action.

Local Government New Zealand considered that a diversion scheme merited further investigation as a potential tool. The success of such a scheme would depend on the detail and how it was designed to work.

Universal system of improvement notices

This tool was strongly supported by those submitters who commented on its inclusion in the available toolbox for the regulator. A few submitters believed that this tool could be successfully used in conjunction with other tools such as infringement and prohibition notices. The ability to provide a clear direction to improve non-compliance within specific timeframes would facilitate clear guidance to the operator on what needed to be done to avoid further enforcement action.

Canterbury District Health Board considered that an improvement notice would be another helpful tool. This was on the basis that it could be a useful precursor to any subsequent sanction or prosecution if the non-compliance was not addressed.

Infringement notices

Submitters were strongly in favour of including this tool, but acknowledged that there might be difficulties with its implementation and that it would be necessary to ensure that this tool was applied consistently and fairly so that relationships between businesses and the regulator were maintained and not compromised. They considered that the level of instant fines would be dependent on the severity of the non-compliance, scale of available fines and the consistent application of this type of enforcement. Submitters felt that the application of this tool would be for those instances of non-compliance where there was a clear uncontested non-compliance that had been previously identified to the person but had not been rectified.

Hamilton City Council noted that the threat of 'on the spot' financial penalties for food safety infringements identified by the regulator should act as a powerful incentive for a food business to take the necessary steps to ensure compliance with legislative requirements. They considered the system might be used in conjunction with Prohibition and Improvement Notices or when a warning system had not been heeded and food safety contraventions continued.

Prohibition notices

This tool was also strongly supported by submitters because of the potential of the tool to be useful in ensuring compliance and protecting the safety of the public. A few would have liked more details of how this tool would work before they made final comment.

Public Health South considered that the improvement, infringement and prohibition notices could all be used successfully in conjunction with each other, as well as separately to achieve compliance, e.g. a breach of a prohibition notice would result in an infringement notice.

Local Government New Zealand supported the use of prohibition notices as a potential tool, particularly for dealing with situations where a premise might need to be closed or where the use of a particular piece of plant or equipment might need to be prohibited.

Demerit points

Of those submitters who commented specifically on this tool, the majority of submitters did not support the inclusion of it. Reasons given for not including demerit points as a tool were: its potential to be abused; the costs of administering the system which would need to be kept up-to-date; the promotion of the idea that an operator could remain in business with non-compliance practices until they had reached the maximum number of points. Submitters considered this might encourage some businesses to operate with unsafe practices.

Auckland City Council stated that the use of a diversion scheme for dealing with food safety non-compliance would be very limited and should only be applied to clearly definable instances of harm where the costs can be identified quickly and easily. Further, they considered that although Auckland City Council did not oppose this concept, in reality the use of such a scheme was considered of little benefit as better tools existed for ensuring compliance. They considered that should this type of scheme be implemented it would be imperative to ensure that the ability for the regulator to enforce it was clearly defined and relatively easy to achieve through appropriate legislation.

Submission Summary: Criteria and processes for various approvals (Paper 7)

Introduction

The purpose of Paper 7 was to establish whether or not an approvals system was justified as part of New Zealand's food safety system, and if it was, to:

- identify the criteria that would be used to ensure that any required approvals were justified; and
- establish a framework for the legislative and administrative processes for such a system.

The regulator (in this case, primarily NZFSA) currently issues approvals for various aspects of food production and processing in New Zealand, but these requirements were characterised by a lack of legislative coherence and consistency. The paper examined the need for legislation to enable the regulator to approve compounds, documents, equipment, persons, premises and systems used in connection with the production and processing of food in New Zealand.

Public comment was sought on the principles for other approvals; the criteria for approvals; legislative processes for approvals; and the publication of approvals. An 'approval' was described as recognition by the regulator that the relevant compound, document, equipment, person, premises or system had met all regulatory requirements at the time of the approval.

The paper was divided into the following sections:

A. Scope: considered the criteria and processes needed to administer the regulator's approvals. The process for registering Food Control Plans and the recognition of persons or agencies who might evaluate and/or verify Food Control Plans were excluded from this paper as they were covered in Paper 4: *Implementation of Food Control Plans*. Additionally requirements for export approvals and matters associated with government staff (i.e. appointments, statutory powers or delegations) were also excluded.

B. Background: dealt with the need to extend consideration of the ideas and concepts discussed in Paper 4 (which dealt primarily with proposals around Food Control Plans) to a broader range of 'approvals'.

C. Are Approvals Necessary? Described the primary objective of approvals on safety and/or suitability grounds as ensuring that substances did not contaminate or generate unacceptable residues in food. Many reasons were put forward for using approvals as the preferred regulatory intervention to achieve the above objective, such as unique methodologies; standard methodologies; and costs.

D. Criteria for Approvals: presented general criteria that were proposed to govern all approvals and the approval system of compounds, documents, equipment, people, premises and system. Additionally the appendix contained specific information on laboratories.

E. Legislative Processes for Approvals: outlined the basic framework for an approvals procedure with specific detail on what was expected to be included was outlined. It also looked at a generic appeal and review process that was intended to be used where an approval was declined and at the publication of approvals.

F. Appendix: Proposed Treatment of Laboratories: described various laboratory testing regimes across the food sector, differences among the regimes analysed and a more consistent and harmonised approach for the future, based on the principles and criteria discussed in this paper was proposed.

Overview of submissions

Businesses of all sizes, industry organisations and government agencies, TAs and PHUs/District Health Boards were the main submitters on Paper 7 *Criteria and processes for various approvals*.

Forty-five written submissions commented on various sections of the various approvals paper. These comprised:

- 17 government bodies (including TAs and PHUs/District Health Boards)
- 13 academic/professional institutions
- 9 industry organisations
- 4 businesses
- 2 community groups, clubs, associations, not-for-profit organisations and schools.

Summary

Comment on the paper itself

Submitters generally supported the principles and criteria outlined in Paper 7 with some commenting that their comments on this paper should be considered alongside their submission on papers 1-5 of the Domestic Food Review. Submitter comments focused on the four principles that had been proposed in the paper to support the various approvals that would be required to ensure safe and suitable food was delivered to consumers.

A. Scope

Under the current regulatory systems administered primarily by NZFSA (including the associated Acts, regulations and standards) approvals had been required for compounds, documents, equipment, persons, premises and systems. Submitters were supportive of the scope of the paper.

B. Background

The background highlighted that there was currently no consistent approach to approvals and that the types of approvals and the justification of them were inconsistent. It also noted that there was a measure of unnecessary and inefficient duplication in databases and administrative systems. Submitter comment supported a nationally consistent approach to approvals and the avoidance of duplication of approval systems.

A submitter commented that it would have been useful to have specific examples of approvals for various stages of a food production to aid in determining if an approval system was justified.

Clutha District Council stated that in as much as the approvals discussed within this paper were for issues which were national in scale and outside the scope of current local government jurisdiction that the Council had no comments to make on the paper other than to recognise the need for such a system of approval with regard to goods and services that had a direct bearing on food hygiene.

Waikato District Health Board supported an approval system, which enhanced the safety and suitability of food in New Zealand while encouraging innovation, diversity and competition.

C. Are Approvals Necessary?

The primary objective of approvals on safety and/or suitability grounds was to ensure that substances did not contaminate or generate unacceptable residues in food. Two principles were discussed in paper 7:

Principle 1: The regulator should have the legal authority to require approvals of certain compounds, documents, equipment, persons, premises and systems:

- when justified according to specified criteria, including that the approval addresses an identified food safety or suitability risk and builds credibility and confidence in the food supply
- using administrative tools that ensure the approvals system is efficient and can be clearly understood.

Principle 2: The regulator should avoid unnecessary duplication of approval systems.

Submitters were supportive of the two principles and considered that a formal approval system was necessary, duplication of systems should be avoided, and compliance costs should be minimised. The criteria for approvals should be based on objective analysis of risk, taking into account sound science and the relevant costs and benefits.

Timaru District Council stated that given the scope of matters covered by the Domestic Food Review, the Council was of the view that a formalised approval system was appropriate. There needed to be a set process in place to cover the use of any thing in the food programme from a food safety programme itself to a certain type of dishwasher or auditor to audit the programme.

D. Criteria for Approvals

Three proposed criteria for approvals were discussed in Paper 7.

Criterion 1: The approval provides or improves credibility of and confidence in the food supply because one or more of the following apply:

- matters that relate directly to food safety and suitability
- standards can be more easily met because of the approval
- process checks (such as testing) are more comparable, reliable and defensible
- competence of persons performing critical activities clear
- industry standardisation results that relates directly to food safety or suitability

- consistency with international standards
- fosters continuous improvement.

Criterion 2: The approval improves efficiency because the relevant approval will be applied widely and/or consistency or standardisation will be increased.

Criterion 3: The approval is clear and delivers transparency because it ensures system accountability and/or improves industry understanding.

Submitters who commented on the criterion supported them.

E. Legislative Processes for Approvals

This section considered processes for approvals and the publication of approvals. It set out the basic framework for the approvals procedure, key elements for a generic appeal and review process, which would be available where an approval was declined and proposed that the regulator publicise approvals. The following two principles were proposed:

Principle 3: Approvals should be time-bound; may be subject to conditions; may be surrendered, suspended or withdrawn with proper cause; will be subject to cost-recovery; and decisions may be subject to review and appeal.

Principle 4: Regulator approval systems should be published (via a website) and enable the clear identification of what items have been approved by the regulator.

Submitters considered that the framework was appropriate, however, further discussion of cost recovery principles and mechanisms would need to be considered in more depth. Support for a web based approvals register was strong, but a few submitters felt that this would not provide universal coverage, such as in rural areas where the internet might be unavailable or difficult and costly to access.

New Zealand Pork Industry Board stated that at a general level the principles seemed an appropriate framework within which to consider the use of approvals. The Board pointed out that web-based publication of approvals would not generate universal coverage of food businesses.

F. Appendix: Proposed Treatment of Laboratories

The appendix described the various laboratory testing regimes across the food sector, analysed the differences among the regimes, and proposed a more consistent and harmonised approach for the future, based on the principles and criteria that were previously set out in the paper.

The few submitters who specifically commented on the appendix were generally supportive of the process outlined in the document. A submitter who commented on the six key elements noted that export activities would be managed differently to domestic requirements because of overseas market access requirements. The submitter agreed that ISO17025 was the best standard but did not support other elements such as a public register of approved laboratories as this was a duplication of what would be on the IANZ website.

Waikato District Health Board stated that currently, laboratory accreditation had been limited to those who wished to be accredited. It was a good idea to require approval of laboratories. However the Board advised of the need for care in relation to standards that would be accepted. It also needed to be determined which laboratories would need to be approved.

One submitter gave detailed comment on experiences conducting laboratory tests, stating that laboratory approval should only be applicable for routine test procedures where there was an appropriate and technically valid laboratory accreditation and individual competent analysts should not be excluded from approval of the above routine test procedures. The comments were based on specific incidents that had been seen during the last 12 years.

The next step

This Summary of Submissions is intended to identify the issues, ideas and concerns expressed by people and organisations that contributed submissions to the Domestic Food Review on the final two papers that formed part of the suite of seven papers on the Domestic Food Review.

A proposed Position paper on the Domestic Food Review that will bring together all the proposals to date in a single package amended as appropriate to address the concerns and issues raised by submitters is due to be released for public consultation in early 2006. The Position paper is intended to present a proposed way forward for the New Zealand domestic food sector.

Appendix 1: List of Submitters

Submitter type	Code
Anonymous	AN
Business	B
Community groups, clubs, associations, not-for-profit organisations and schools	C
Industry organisations	IO
Members of the public	MP
Academic or professional bodies	A
Government, including Territorial Authorities and Public Health Units (District Health Boards)	G

Sub no.	Submitter	Code	Sub no.	Submitter	Code
1	Secretary Soy Information Service	C	30	Ronald Hume Environmental Health Officer	G
2	Clutha District Council	G	31	National Operations Manager Hospitality Association of New Zealand	C
3	Food Safety Lecturer Otago Polytechnic	A	32	Food Safety & Public Health Hamilton City Council	G
4	Policy Analyst ERMA New Zealand	G	33	Martin Taylor Healthcare Providers New Zealand	IO
5	Belinda Allan Consumers' Institute of New Zealand Inc	A	34	Paul Lynch Hauraki District Council	G
6	Distilled Spirits Association	IO	35	Wietske Cloo Hawkes Bay DHB	G
7	Acting Environmental Health Manager Rodney District Council	G	36	Policy Coordinator Hutt Valley DHB	G
8	Team Leader Environmental Health Hastings District Council	G	37	Health Protection Officer Mid Central Health	G
9	Government Relations Consultant New Zealand Retailers Association	C	38	Executive Director New Zealand Food & Grocery Council	IO
10	Xumei Li Post Graduate Student University of Auckland	A	39	Executive Director Poultry Industry Association of New Zealand & Egg Producers Federation of New Zealand	IO
11	Ashna Khan Post Graduate Student University of Auckland	A	40	General Manager Retail Meat New Zealand Pork Processors Association Inc	C
12	Meenu Matharu Post Graduate Student University of Auckland	A	41	Health Protection Officer Public Health South	G
13	Priyank Gupta Post Graduate Student University of Auckland	A	42	National Health and Food Safety Manager Progressive Enterprises Ltd	IO

Sub no.	Submitter	Code	Sub no.	Submitter	Code
14	Fazeelath Basith Post Graduate Student University of Auckland	A	43	General Manager Retail Meat New Zealand Ltd	IO
15	Jehan Youssef Post Graduate Student University of Auckland	A	44	Public Health Unit Manager Tairāwhiti DHB	G
16	Juan Chen Post Graduate Student University of Auckland	A	45	Environmental Health Manager Timaru District Council	G
17	Lucy Y Wu Post Graduate Student University of Auckland	A	46	Environmental Services Group Manager Waikato District Council	G
18	Helen Miller Post Graduate Student University of Auckland	A	47	Food Coordinator Waikato DHB	G
19	Ernest Kore Post Graduate Student University of Auckland	A	48	President @home New Zealand	IO
20	Sze Wing Chan Post Graduate Student University of Auckland	A	49	Environmental Health Project Officer Dunedin City Council – Planning & Environment Committee	G
21	Sridhar Nannegari Post Graduate Student University of Auckland	A	50	Manager Policy Tourism Industry Association New Zealand	IO
22	Sarah Wakeman Post Graduate Student University of Auckland	A	51	Consultant New Zealand Pork Industry Board	IO
23	Ajay Kumar Verma Post Graduate Student University of Auckland	A	52	General Manager City Development Auckland City Council	G
24	District Environmental Health Officer Ashburton District Council	G	53	R H Molony Molab Ltd	B
25	Health Protection Officer Community & Public Health Canterbury DHB	G	54	Director Verification New Zealand Ltd	B
26	G Brunton Talley's Frozen Foods Ltd	B	55	Director – Building Consents & Licensing Services Wellington City Council	G
27	Federated Farmers	IO	56	Chief Executive Local Government New Zealand	G
28	Executive Manager Foodstuffs (NZ) Ltd	IO	57	Executive Officer Rural Women New Zealand	G
29	Regulatory Manager Fonterra Co-operative Group Ltd	B			

Appendix 2: List of road-show meetings

Date	Location
25 July 2005	Christchurch
25 July 2005	Christchurch Asian Community
26 July 2005	Invercargill
26 July 2005	Dunedin
29 July 2005	Hawkes Bay
1 August 2005	Hamilton
1 August 2005	Thames
2 August 2005	Auckland
3 August 2005	Wellington