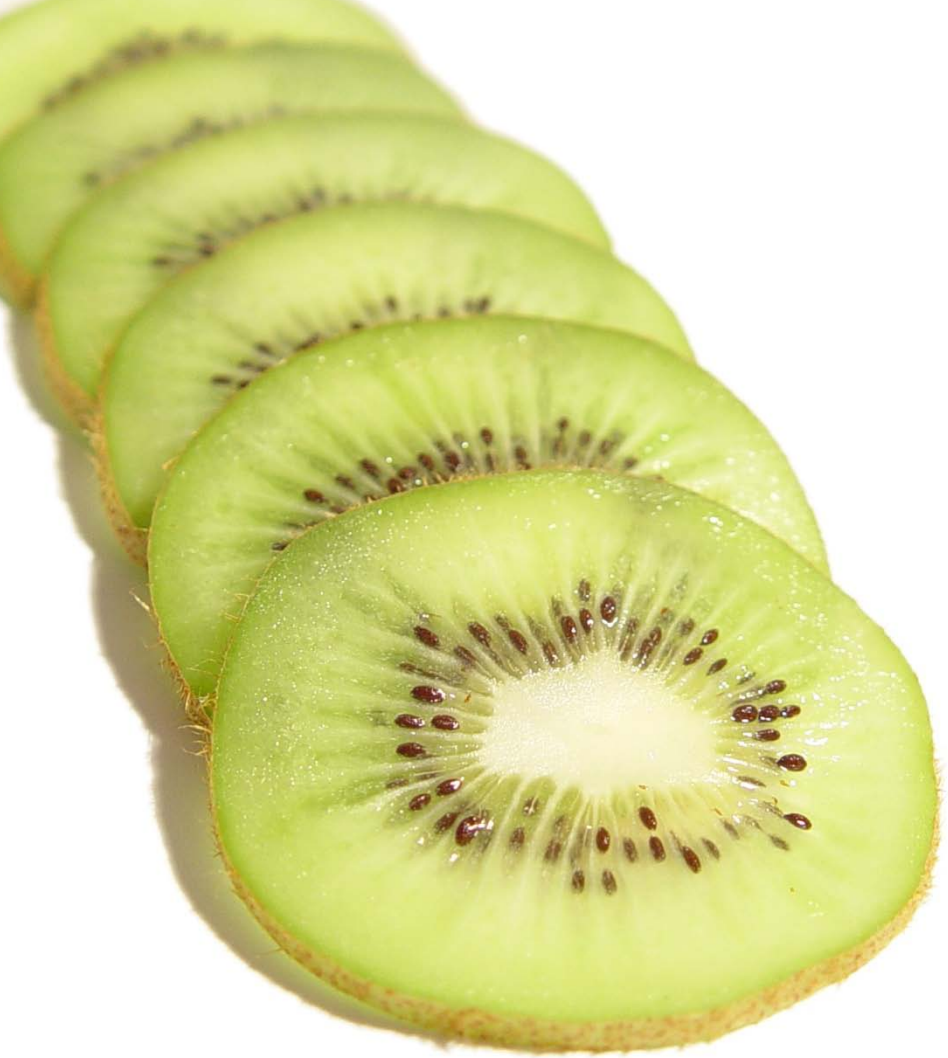

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LGNZ.

SUBMISSION

Food Bill 2010

LOCAL GOVERNMENT NEW ZEALAND SUBMISSION
To the Primary Production Select Committee

16 August 2013

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Introduction

1. Local Government New Zealand (LGNZ) thanks the Primary Production Select Committee for the opportunity to make this submission in relation to the Food Bill.

2. LGNZ makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand. It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission. In addition, some councils will also choose to make individual submissions. The *LGNZ* submission in no way derogates from these individual submissions.

3. We prepared this submission following an analysis of the Bill, analysis of all feedback from many councils, and discussion and feedback from members of the local government food steering group.

4. This final submission was endorsed under delegated authority by:

    - Lawrence Yule, President, National Council

5. LGNZ wishes to be heard by the Primary Production Select Committee to clarify the points made by this written submission as necessary.

6. We have been pleased to have the opportunity to work closely with the Ministry for Primary Industries throughout the period of policy development. We would be pleased to continue to assist officials with any technical or substantive matters raised in this submission.

Summary of key submission points

7. This submission provides extensive comment due to the comprehensive Bill being considered, and due to the relevance and impact of the Bill on local authorities. For convenience, we highlight our key submission points here:

    - support for a review of the Food Act and Food Hygiene Regulations and support for a three tier risk based approach
    - uncertainty about the ability of, and potential costs for, small businesses to meet the new requirements
    - the Bill will result in additional costs for councils. LGNZ is concerned that a cost recovery model will not capture all the costs of implementation (and therefore business will bear the charges)
    - request education and training of food premise operators to be a requirement of registration
    - support a national register
    - clarify that the verification or audit function currently carried out by TAs in the regulation of retail food service remain a function of TAs only
    - clarify role and function of TAs, especially any new functions, ensuring no new unfunded mandates

- oppose the unreasonable powers for central government to direct TAs, for example though national outcomes or directions, and the overly complicated associated monitoring and reporting requirements being placed on TAs.
- support the infringement regime
- request that a TA have the power to appoint food safety officers
- Request that the Ministry for Primary Industry works closely with TAs to ensure appropriate regulations on matters of detail are fully implemented and that guidance and templates are considered. This was a recommendation of the Productivity Commission's recent report on regulation
- request greater certainty about the transition, and a longer transition phase in for both councils and businesses to meet the new requirements
- request certainty about ongoing implementation support from the Ministry of Primary Industries

Comments

General comments on the Bill

8. LGNZ supports in principle the review of the Food Act 1981 and Food Hygiene Regulations 1974 and a new regime that confirms a central role for local government in achieving food safety outcomes.

9. We congratulate Ministry for Primary Industries on the process followed to develop this Bill, particularly the extensive efforts to consult with local government and to pilot aspects of the new regime.

10. The objective of the Bill is sound: to provide an efficient, effective and risk-based regulatory regime that manages domestic food safety and suitability issues.

11. A risk-based approach which regulates only at the level necessary to mitigate risk is supported. The objective of reducing regulation and compliance costs is supported, provided risk is identified and managed at the appropriate level. Greater industry or business responsibility for food safety is also supported.

12. There is no doubt that the approach focused on risk-based, business-responsibility, and lower prescription will require a shift in thinking from both councils and businesses. Experience indicates that this will take longer and take more support than perhaps first considered.

13. We acknowledge that the approach in the Bill reflects both the philosophy of the current Government, and today's food safety regulatory environment. In our view, food safety legislation and the Government regime for food safety needs to:

    - provide a strong ongoing role for TAs
    - provide a clear and appropriate framework for all parties with roles in food safety to work together towards common objectives
    - be flexible rather than prescriptive in nature (but provide prescription where necessary)
    - reinforce responsibility for safe and suitable food with food operators

- only regulate where necessary
- ensure the tools, such as a FCP, are simple, reasonable and fit for purpose
- provide ongoing support for councils in implementation
- minimise costs to councils and business, particularly in the transition
- provide a clear and workable transition to the new regime for both councils and businesses.

14. We believe that the Bill will impose significant additional costs on councils and businesses, particularly in the transition. Costs to food businesses will increase with this new approach to food safety. Examples of costs (some being transition costs only):

    - TAs establishing new practices and procedures
    - reviewing bylaws
    - developing new public information, guidance, forms
    - establishing new practices for a new enforcement regime.
    - establishing relationships, protocols etc with verifiers
    - education and training for staff
    - educating businesses on the details of a FCP
    - additional time for verification visits compared to inspections under the current regime (particularly for high performing premises).

15. The Ministry for Primary Industries has provided significant support in determining the detail of implementation with sector groups. It will be critical that this continue.

Bill Part 1 – Purpose and preliminary provisions

16. LGNZ supports the purpose of the Bill. Alongside the purpose, clause 14 sets out the principles to be taken into account by TAs, the chief executive (CE) and the Minister in carrying out functions under the Act. We support these principles.

17. A commencement date starting 1 July is preferred by local government to align with financial year planning, funding and cost recovery. In the case of this Bill, we expect a significant lead in time will need to be provided to put in place regulations template FCP, set up new processes, forms, fees and other administrative arrangements prior to commencement.

18. The definition of “food business” in clause 9 is critical for the operation of the Act. LGNZ notes that there is no clear link between “food business” and a food “place” or “premise”. For practical reasons a food business should be consistent with a single premise. However, the SOP of proposed amendments does go some way to capture transporting activities and food storage intended for sale or for processing into food for sale.

19. The definition of “operator of a food business” does not align with practice that the operator is the person responsible for the business operating from the premise, not the person in control of the

business overall. This is particularly important for franchise businesses which are a growing proportion of the food business sector. In these businesses it is the individual franchise operator that will ensure safe food at the outlet.

20. Clause 15 sets out the role of the Minister. This includes "issuing national outcomes in relation to the performance by territorial authorities". Under clause 16(f) it is a role of the CE to establish and monitor national outcomes, performance criteria, standards, and other requirements that must be met by territorial authorities, agencies and persons performing functions under the Act. LGNZ have some concerns with these aspects and we comment on them later in the submission in relation to those specific tools.

21. Clause 17 sets out the role of TAs being the functions duties and powers specified in the Bill. LGNZ support the stated role. We note that some of these roles must be shared with the Ministry, for example dissemination of information. TAs cannot take on this role "without limitation".

22. LGNZ notes that Clause 18 has been deleted. Subpart 2A (12A) now contains the definition of the primary duty of persons who trade in food. This clear obligation is appropriate in the new framework and is supported.

Bill Part 2 – Risk-based measures

Risk based measures and classification of food sectors to those measures

23. As noted above, *LGNZ* supports the risk based approach. The risk based measures provide scope to apply an appropriate measure to different types of food sector and we support these measures.

24. Clause 21 enables the Minister to amend the schedules by regulation. This avoids the need to go through the process of legislative amendment every time and is supported. Clause 341 sets out an expectation of consultation on regulation making and is referred to in clause 21 (although needs an equivalent cross reference in clause 341). We believe that clause 21 should explicitly require the Minister to consider the views of local government and the impact of these regulations on the regulator(s).

Food Control Plans (FCP)

25. Clause 35 sets out the contents for a FCP. Regulations or notices may also set out additional requirements for content of a FCP. The list in clause 35 seems reasonable and not onerous. However, the template FCPs developed to date suggests the contents of a FCP can be extensive compared to what clause 35 and 29 state. Some councils are concerned about the potential for a FCP "creep" where over time the content of a FCP grows or adds in new requirements which have not previously been part of TA inspections e.g. labelling. It is important to ensure that the Bill sets up a framework within which any custom, model or template FCP developed includes a robust assessment to ensure it is fit for purpose and reasonable. Adding new requirements to TAs role through a notice amending a template FCP is not appropriate.

26. Clause 35 (d) states that a FCP must set out "how the applicable requirements of this Act will be met under the plan". This generic catch all requires greater clarity on what the applicable requirements

are, over and above the other matters specified in clause 35. LGNZ welcomes the SOP amendment 35A (da) which provides more clarity.

27. Clause 35A (1) (g), alongside clause 73 (1) (l), requires further clarification as to what constitutes "appropriate training". This wording could be seen as subjective and a stronger reference to unit standard level training would be supported.

Amendments to a FCP

28. Clauses 36 – 40 deal with amendments to template or model FCP. Where amendments are specified as "significant" (to be defined by "notice"), the operator of a registered FCP must amend the FCP and apply for registration of the amendment (clause 38). Amendments to a FCP to suit an individual business circumstances are often appropriate and flexibility is needed to enable this without undue notification or re-registration requirements. When the Ministry amends the template FCP, operators of a registered template FCP need to be directly notified. Direct notification is considered appropriate; especially as contact information of operators of that template FCP will be available for the Ministry on the public register. LGNZ does note that Section 368 outlines the requirements for notices to be consulted upon.

29. LGNZ notes that the SOP amendment to clause 39 now clarifies that notification of amendments are to the registration authority that approved the original FCP, not any registration authority.

Registration of a FCP

30. Clause 41, 45 and 46 set out the requirement for a FCP to be registered and duties of food businesses to operate under the FCP. Clause 46 did not specify a timeframe within which an operator must notify the registration authority of the significant change in circumstances but a "notice" under 367 can specify a timeframe. For clarity and simplicity, the timeframe for notifying the registration authority of "significant changes" is now stated in the Act itself. LGNZ welcomes this amendment in the SOP.

Application for registration of a FCP

31. Clause 48 states that for a template or model FCP, the TA will be the registration authority. This is supported. LGNZ welcomes the SOP amendment outlined in clause 48(1).

32. The deletion of 48(1) (b) (ii) removes the provision for territorial authorities to be an appropriate registration authority by regulation. The retention of the ability to change who is the appropriate registration authority by way of regulations, thus retaining the future proofing originally envisaged, would be preferable.

33. LGNZ welcomes the SOP amendment to 48(2a) It aligns with clause 22(c) whereby an FCP takes into account "each place in which the food business trades in food".

34. A mobile food business will register where the business address of the mobile food business is situated (clause 48(2b)). This is considered an appropriate measure. It will require the home TA to liaise with other TAs in which the business operates.

35. Markets and events do not fit well in the Bill's approach to mobile food businesses or charitable activities. This is an area where greater clarity and consistency would assist. LGNZ welcomes the fact that clause 26A and 26B provide some clarity as outlined in the SOP amendments.

36. At times, a TA may wish to add information requirements to the application form for registration. This may be information specific to the district, for example for planning certification, or relate to a survey the council is carrying out. Clause 49 (2) as amended in the SOP allows for this flexibility.

37. Clause 52 sets out the criteria for registration. LGNZ notes there is now more clarity in describing who the plan applies to and the requirements relating to multiple business operators.

38. We believe that one of the most important determinants in the ability of an operator to ensure safe and suitable food in accordance with the Bill is the operator and food premise staff having basic training in food safety. This will ensure a knowledge of responsibilities to operate the FCP and would greatly reduce the time and cost involved in audit. This approach has been critical in the operation of similar regulatory regimes, for example managers being qualified under the Sale of Liquor Act. The Bill includes extensive detail on competency and other requirements for "recognised persons" and others with roles under the Bill but does not establish an expectation about the competency of the operator with a registered FCP. This should be included as a criterion under clause 52. LGNZ note that there is no amendment in the SOP to give effect to this.

39. Greater clarity as to the time period in question in clause 53 (1) (b) is needed. There should be a finite time so as to give some certainty to the registration authority as to whether there is likely to be a written submission or not. A "reasonable opportunity" is ambiguous and indefinite.

40. As with clause 53 (1)(b), there should be a finite time so as to give some certainty to the applicant that the application to register a food control plan has been registered in clause 55 (1). Sub-clause (2) should also be amended in a similar manner for the same reasons.

41. Clause 55 and Schedule 5 require a public register of all registered FCP. This may be an IT "portal" similar to the current arrangement. This current portal operates well but could be improved in its connection to TAs' related information databases. This implementation detail is yet to be worked through but is important. We note that there are significant parallel initiatives underway by various government agencies looking at national databases connecting to local government databases. We strongly recommend these initiatives be integrated across Government and be developed with local government.

Suspension or cancellation of registration

42. We support the ability for the registration authority to suspend or cancel registration. The provisions for suspension and cancellation appear appropriate and reasonable. The registration authority does need the ability to close a premise when warranted and this is provided for, however clause 66 would benefit by making this more explicit. We note that with the more flexible and risk-based approach under the new regime the risk assessment may not be so black and white. Competency and training of both verifiers and operators will assist with consistency in deciding on suspensions, cancellations and closures. LGNZ notes the detailed amendment to clause 80 on mandatory suspension and supports this amendment. The clarity of the SOP amendment to clause 81A and 81B also provide more clarity in relation to voluntary suspension and the effect of suspension.

National programmes

43. All details of a national programme are to be set out in regulation so it is not possible in the Bill to determine how these national programmes would work and what the role or implications will be for local government. In particular, there is no certainty with verification/monitoring frequency, roles, and cost recovery. Appropriate consultation on proposed regulations for a national programme will be important.

44. LGNZ endorse as far as possible the shifting of medium to low risk premises out of FCP requirements into a national programme.

Food handler guidance (FHG)

45. LGNZ notes that Clause 94 which provided specific provisions for community based fund raising activities through food handler guidance has been deleted.

46. LGNZ support the principle outlined in the SOP that traditional fundraising and "Kiwiana" activities such as sausage sizzles and school fairs are not regulated other than the requirement to ensure food is safe and suitable.

Bill Part 3 – Food imported for purpose of sale

47. The roles of TAs or council food safety officers under this part of the Bill are unclear. Any role under this part would be significant new functions on TAs. Clarity is required and before any new functions are imposed, this needs to be fully assessed. There is additional clarity outlined in clause 100(3) which states "a food safety officer must be satisfied (including, but not exclusively, by declaration of the importer"

Bill Part 4 – Recognition, territorial authorities, administration and enforcement

Recognised agencies and persons

48. Along with the Ministry or other government department, the CE can recognise a TA without an application process (clause 129). The SOP amendments to subpart 1 clauses 123 – 129 provide more clarity on how and when this recognition process will occur. LGNZ note however, that 129(1)(c) requires clarification as to how the chief executive will recognise an officer or employee of a territorial authority".

49. This part of the Bill provides for third party verifiers. As a matter of principle, *LGNZ* has generally opposed private provision of any regulatory functions historically carried out by TAs. In food safety regulation, TAs have not been exclusive providers of all regulatory functions. We accept that there is a place for third party verification in some areas of food safety. For example, in complex manufacturing operations, or where a complex custom FCP is required, TAs do not necessarily have the expertise to undertake this verification.

50. LGNZ agrees that businesses that produce or sell medium to low risk foods will come under National Programmes. However it is important to ensure that these businesses have the systems in place that a food business needs to have in place to produce safe food.

51. However, in the case of the verification or audit function currently carried out by TAs in the regulation of retail food service, there are many reasons why this should remain the domain of TAs:

- TAs have developed important relationships with these operators
- there are significant cost/time efficiencies as part of a broader regulatory role, for example TA officers can advise on matters such as trade waste or building requirements
- operators would be involved with one agency
- consumers have ready access to the people responsible for conducting food safety assessments
- a TA can incorporate (and fund) an element of public good service provision
- there is a risk that independent verifiers will "cherry pick" the easy and profitable jobs, leaving the TA with the difficult and costly work, a scale of work that is not economic to maintain, and no ability to balance this within a broader portfolio of environmental health functions.

52. Clause 141 requires a recognised person or agency to pay any prescribed fee for renewal of a recognition. It is not clear what the purpose of this fee is, particularly as conditions can be imposed for the provision of any information or records. If the fee is for the purpose of the Ministry monitoring the operation of the Act, then this would seem to be part of the legislative role of Government and not chargeable to agencies who by law the Government has prescribed (in the case of TAs) certain roles they must carry out. If there is a valid fee payable for a specific function the Ministry is carrying out, then this should be specified in more detailed regulations.

53. Clause 145, liability for loss, should be extended to include TAs given their responsibilities under the Bill.

Functions and duties of TAs

54. Clauses 146 to 147 add more specific functions and duties for TAs, in addition to the general functions in clause 17. Although not explicit in clause 146-147, the Bill establishes the possibility of many additional extra responsibilities for TAs compared to the current regime. For example activities related to labelling, food related disease investigation, release of imported foods, emergencies, food complaints, information dissemination. As these details are developed, and as guidance or regulation is prepared, careful assessment is required of where specific functions and activities should sit. This would mirror the recommendations as stated by the Productivity Commission with regards to a framework for better regulation.

55. LGNZ as a principle oppose any new unfunded mandates. In relation to food labelling and composition control, public education on food safety and suitability, and operator training in food safety, these functions should explicitly remain a central government function.

56. Clause 146(e) requiring investigation of complaints on direction of the Ministry CE is very open and leaves the TA in a position of considerable uncertainty as to what their function may be. Clearer explanation of when and why the Ministry would be directing a TA would be helpful. It is also a stated function for a TA to respond to recalls or emergencies in accordance with directions from the Ministry CE. Again, clearer definition is required of what may be a "recall" or "emergency" and what the function of the TA may be. As a minimum, any additional directions or requests must be limited to functions and responsibilities of the TA.

57. Clause 147 includes details on duties around ensuring adequate resources, capability, staff competency, monitoring performance, providing reports to the Ministry. The duties are reasonable expectations but their impact and cost will only be known when we see the detail that is yet to come. As a minimum any instruments defining such things should involve consultation with local government.

58. We have some concerns about the practicality of clause 147(g) related to emergencies. While reasonable assistance or capability from a TA could be expected, wording that requires anything beyond this will not be able to be met. Depending on the type of emergency, the TA is likely to have many demands on its staff and resources and needs to be able to direct these appropriately. In particular we expect any council to focus on core functions.

59. A duty is something that a TA must do. It is inappropriate to have a catch all duty as in clause 147(i) for the TA to "carry out any other function, duty, or direction imposed or given under this Act". This effectively makes the stated functions into duties. Duties should be clear, not open to interpretation.

60. We have concerns about the "national outcome" instrument under clause 148. This is issued by the Minister about the performance or exercise of TAs functions, duties and powers. A national outcome could set performance standards or details of the TAs operation of its role and impact on a TAs role, purpose and the cost of performing functions. The nature of this new instrument is not clear and creates significant uncertainty for TAs. As it is not a "regulation", we are concerned about the possibility of national outcomes being issued by the Minister without the normal process of justifying the need for the regulation, undertaking a full assessment of its impact (e.g. costs / benefit), and obtaining Cabinet endorsement. Any such national outcome or direction should be by the normal regulation process. Again this was exactly the framework referred to in the Productivity Commission's report and recommendations.

61. Any regulatory function or requirement feeds into the Long Term Plan (LTP) process and is taken into account by the TA at that time. This does not require an amendment to section 93 of the Local Government Act (LGA) as proposed in schedule 7 of the Bill.

Monitoring and review of TAs

62. Clause 157 gives the Ministry full powers to monitor a TA, request a report, and have access to all information and records. It is assumed that these monitoring powers will be used reasonably but there is no process of agreement between local and central government as to what reporting will occur, by whom, when, and who pays. There is no provision for any report back to local government about the monitoring. While we fully accept the need to monitor (and the reporting necessary to inform that), we are concerned about unconstrained powers of unelected officials to impose requirements that add compliance costs. We seek assurance that monitoring and reporting will be reasonable and a framework established with local government.

63. Clause 158 to 164 provide for the Minister to review a TAs performance. The LGA sets out a very clear and detailed process for any review of councils (see schedule 15 of LGA). Rather than this Bill establishing a whole new approach and process, it would be more appropriate and efficient for these existing provisions in the LGA to apply.

Cost recovery

64. Clause 170 and 176 set out criteria for cost recovery and ability for TAs to set fees for its functions under the Act. We support these provisions. A key function for the TA is the provision and dissemination of information and advice. This may be an indirect cost related to registration, verification and compliance, but confirmation of this within the cost recovery provisions is important.

65. Clause 177 provides for the Minister to impose a levy (via regulation). Clause 172 requires a TA to collect a levy for the Ministry if required to do so by regulation. Clause 179 requires persons collecting levy funding to keep this in a trust account. It is unnecessary for this to apply to TAs, should they be required to collect levies. This can be an administrative arrangement between the TA and the Ministry, much like the building levy, and there would be no risks justifying the extra cost and process of administering a separate type of account.

66. Clause 178 provides for regulation to exempt, waive or refund fees. This clause must be amended to clarify it does not apply to fees set by TAs. Fees are set by TAs, in consultation with their community, to recover their costs. TAs can and do manage requests made directly to them for waiver, exemption or refund. It is inappropriate for the Minister to interfere in the TAs financial management.

Offences

67. An infringement regime is provided in clauses 188 to 191. Infringements are an efficient streamlined approach for minor offences under other legislation and we support an infringement regime being available for minor offences under this Bill. A maximum infringement fee of $1,000.00 is considered appropriate for the type of offences and the type of businesses likely to be served with an infringement notice. The infringement notice will be a primary enforcement tool for TAs and the regulations putting the regime in place must be promulgated to come into effect at the same time as the Act.

68. The offence provisions are comprehensive and supported, as are the stated defences. Our only comment was whether the offence of failing to register a FCP is adequately provided. The SOP amendment to clause 210 (1A) clarifies this and is welcomed.

Powers and enforcement

69. LGNZ is of the view that a territorial authority should be empowered to appoint food safety officers where those officers are carrying out functions and duties of the territorial authority under the Act.

70. Clauses 245 to 256 set out provisions for the Ministry CE to issue “directions”. This includes under clause 245 the power to issue a direction to a TA about how it is to perform its functions or duties or exercise its powers under the Act. It is inappropriate for the CE to be able to direct the TA in this manner. The administration of the Act will be a partnership between the Ministry and TAs, and this is endorsed by clause 13 setting out principles for the relationship between the Minister, CE and TAs. Applying clause 245 to TAs is considered unnecessary, contrary to the partnership approach under which the Act will operate, could result in an unelected official imposing compliance costs, and could be contrary to the council’s local accountability determined through the LTP process. There does not appear to be any consultation requirement for a direction issued under clause 245.

71. Clause 263 to 300 set out the provisions relating to powers of enforcement, entry, evidence, etc. These powers are available to a "food safety officer" to determine compliance with the Act, to determine if food is safe and suitable, and to take enforcement action, for example serving infringement notices. Under clause 243 the CE of Ministry may appoint a person as a food safety officer. They do not need to be an employee of the state sector to be appointed. There was no ability in the Bill for the TA to appoint its own enforcement officers.

72. Clauses 301 to 313 provide for the court to issue a compliance order for breaches of the Act. Applications for compliance orders can be made to the court by the CE of the Ministry and by the TA if they are authorised to do so by the CE of the Ministry. If the TA is seeking a compliance order in relation to enforcement activity related to its own functions and duties, it is unclear why the authorisation of the Ministry is first required. LGNZ notes the SOP amendment to clause 302 (1b) which is welcomed.

73. With the exception of the matters raised above, we believe that the extensive provisions for enforcement and offences will be workable in practice.

Bill Part 5 – Miscellaneous provisions (clauses 314 – 406)

Review of TA decisions

74. Clauses 324 sets out the decisions made by a TA (as registration authority) or by the Ministry CE that can be reviewed. The review procedure provides the opportunity to assist with national consistency

75. Clause 330 provides for the reviewer to require either the applicant or the TA to meet all or any of the other party's reasonable costs and expenses. It is considered inappropriate for the CE of the Ministry to be able to make such a costs award.

Information

76. Clauses 332 to 340 deal with disclosure of information. We support these clauses but seek specific clarification in the Bill about how these clauses align or affect the Local Government Official Information and Meetings Act.

Consultation by Minister and CE of Ministry

77. Clauses 341 to 342 set out the consultation requirements when the Minister or CE of the Ministry is exercising various powers under the Bill. The consultation with "persons or organisations that the CE considers representative of the interests of persons likely to be substantially affect by the exercise of the power" may not clearly incorporate TAs. Notice should preferably be given to all TAs when either the Minister is consulting under clause 341 or the CE is consulting under clause 342 in relation to any function performed by a TA.

Regulations

78. The regulation making powers in clauses 344 to 357 are extensive. We suggest that clause 344(8) and (9) also provide the opportunity to authorise or confer discretion on a TA. This would be consistent with the wide enabling provisions of clause 344.

79. Clause 348 provide for regulations about grading schemes. LGNZ support regulations to put in place a national grading scheme.

80. Clause 351 provides for the regulations setting standards or requirements for recognised agencies and recognised persons. It is accepted that TAs performing regulatory functions should meet certain standards of competency, process/systems, operation. The difficulty in specifying these matters later, by regulation, is that it is not possible to assess the implications and costs of meeting these standards, and therefore to assess that ability for TAs to undertake the role of recognised agencies. It is critical that these regulations are developed with TAs with the intention of ensuring they establish appropriate requirements and timeframes on the basis of full and robust analysis (including full cost/benefit analysis). LGNZ welcomes the SOP amendment with some definition of the scope of expected standards.

81. We have all learnt from the experience under the Building Act of requiring accreditation and the Government setting the accreditation standards by regulation. We believe this experience clearly demonstrates the importance of working closely with local government in setting the standards and the importance of undertaking robust cost/benefit analysis before setting standards.

Notices

82. Clauses 367 to 372 provide for the CE of the Ministry to issue "notices" for general or specific requirements under the Act. It is accepted that some operational matters can be dealt with through "notices". However, some of these matters are significant in setting requirements under the Act for example "functions and activities that must be managed or performed by recognised agencies or recognised persons" and we submit would be more appropriately addressed or set through the regulation making provisions

83. A notice may relate to matters of direct consequence to food business operators and TAs, for example, issuing a template FCP, defining change of circumstances to be notified to registration authority, defining specialist functions of a recognised agency. It is not considered adequate that these notices be published in the Gazette and available in the head office of the Ministry (clause 369). These notices are of significance to the operation of the Act that they should be notified directly to TAs and registered operators as appropriate.

Transitional provisions

84. We support providing for an "introductory period" for the new Act. We believe that TAs should carry out the verification role for those sectors TAs currently register, as a minimum for the introductory period of the new regime. This would ensure a smooth transition for both businesses and councils, certainty for councils, and minimise compliance costs. TAs have established infrastructure, support, services, community contacts, and knowledge to resolve matters at a local level.

85. Although the details of transition periods for food sectors are to be defined in regulation, we wish to make a comment here as we firmly believe that the success of this Bill is absolutely dependant on a smooth transition that is workable for business operators, TAs, the Ministry and all parties with a role in putting the new regime into practice. LGNZ supports the alignment of the dates for enforcement of the Act with the LTP timeline (July2015 – July2018)

86. We have particular concern about the phasing of the transition and seek transition arrangements that do not result in the majority of food premises currently registered by TAs being included in year one or two of the transition. This should be phased over a longer period of at least three years. The move to template FCP for the retail food sector is significant and VIP has demonstrated that operators require a lot of assistance to come on board with the new approach.

87. Clause 373(7) requires a new food business to operate under the applicable risk-based measure. This conflicts with clause 385(2) which provides for a food business to operate either under the Food Hygiene Regulations or the risk-based measure applicable under the new Act. We believe that further thought needs to be given to the transitioning of new businesses. Firstly, clarification is required if a new operator of an existing premise is a "new business". Some councils experience a turnover of around 20% annually. These existing premises will be already operating under either the Food Hygiene Regulations or a FCP. If already operating under a FCP, you would want that to continue but if the business is set up to operate under Food Hygiene Regulations then a transition could be reasonable. The timing of the development of template or model FCP is also critical here. For example, if a new business establishes in the first six months of the new regime but the template FCP for that sector is programmed for year 2 of the transition, it would be unreasonable to expect that new business to develop and operate under a custom FCP while they wait for the template FCP to be available.

88. Under clause 395 an agency that manages an approved auditor is deemed to be a "recognised agency" under a date the CE of the Ministry specifies by notice. They must then make an application under the new provisions to continue to be a recognised agency after that date. As TAs are to be treated as recognised agencies under clause 129 SOP proposed amendments (without application) it is also considered appropriate that TAs be deemed recognised agencies in the transition – without having to go through the application process.

89. The CE of the Ministry may issue notices under clause 396 setting out conditions, functions, training requirements, competency standards or management standards for deemed recognised persons or agencies for the transition. Consultation is required under clause 341 in relation to any notices. The issuing of transitional notices provides for a stepping up of the requirements for recognised persons or agencies over time and is supported. As per comments above, any standards relevant to TAs must be developed with TAs.

90. LGNZ see no reason to have a different regime for setting fees during transition than under the substantive part of the Act but note that the principles in section 170 of the SOP amendment refer back to the need to consult.

Relationship to bylaws and revoking existing bylaws

91. Clause 405 addresses precedent when there is any inconsistency between a bylaw and a regulation, order in council or notice issued under the new regime. An amendment to the LGA also clarifies this. These clauses are clear and appropriate.

92. Clause 406 SOP amendment clearly states that a local authority must amend or revoke the bylaw to remove the inconsistency if a bylaw made by a local authority is inconsistent with this Act. LGNZ welcomes the clarity of this clause.

93. Bylaws have been used by many councils to complement the Food Hygiene Regulations and to fill gaps that will either be covered by this Bill or are expected to be covered in later regulations. During the transition, those bylaws will still be relevant until food businesses have fully transitioned to the new regime and regulations dealing with matters covered in bylaws are in place. For example, councils should continue to operate current grading schemes and should continue to exercise their ability to close premises (both by bylaw) until the new regime is fully in place to address those matters.

Bill Schedules

94. In general, we believe the allocation of food sectors between the different risk-based measures in schedule 1 to 3 is appropriate. We support moving businesses into national programmes as much as possible (appropriate for their risk).

95. Schedule 7 proposes an amendment to section 93 of the LGA. As noted above (Para 64), any regulatory function or requirement feeds into the LTP process and is taken into account by the TA. This does not require an amendment to section 93 of the LGA as proposed in schedule 7 of the Bill. This amendment would introduce one arbitrary regulatory item to section 93 and is inconsistent with the focus and streamlining proposed in the LGA Amendment Bill. LGNZ also notes that reference is made to a long-term council community plan (LTCCP). The LGA was amended to refer to a Long Term Plan or LTP in 2010.

Conclusion

96. LGNZ is generally supportive of the changes proposed but we have made a number of recommendations to improve the Bill.

97. LGNZ thanks the Primary Production Select Committee for the opportunity to comment on this Food Bill.

Recommendations Summary

Clause	Recommendations
Bill Part 1 (Clause 1–18)	
2	provide a 6 – 12 month lag between finalising the At and its commencement.
7-9	consider suggested improvements to definitions of "public health", "food business", and "operator of a food business".
15	endorse Part 1 with the exception of amendments to clause 15 9role of Minister) to reflect recommendations later in this submission.
Bill Part 2 (clause 19-96	
	endorse the three tier risk-based approach.
21	Include a reference between clause 21 and 341
35	either remove clause 35(d) "how the applicable requirements of this Act will be met under the plan" or specify what those relevant requirements are over and above the other matters specified n clause 35.
36/37	require the CE of the Ministry to directly notify operators of registered template FCP if the CE amends a template or model FCP (notification not required on amendments for individual food businesses).
45	include more specific qualification and training requirements in clause 45 (1) (d).
46	include a timeframe for notifying the registration authority of "significant changes".
49	amend clause 49 (or 35) to require mobile food businesses to state all districts in which they will operate as part of their application information.
49	provide the opportunity for a TA to add information requirements to an application form.
49	amend to require an applicant to provide information to satisfy criteria in 52 (c) and (d) – resident status and ability for operator to comply with Act.
52	clarify what, if any, assessment of the compliance of a template FCP is required for registration (refer clause 52 9a) and (b)).
52	amend clause 52 to include a criterion for the registration authority to be satisfied that "the operator of the food business is a fit and proper person to manage and carry out the requirements of the FCP. In assessing this, the registration authority must take into account the competencies and resources of the operator as demonstrated by the operator holding a qualification prescribed by regulation or by completing a training course that meets the criteria prescribed by regulation or notice under this Act".
55	endorse a national public register of registered FCP, but require significant improvement to the current portal approach to enable useful connection between a national register and TA databases. Require the Ministry to work *with* local government on implementation details.
55	include a specified time period such as "20 working days" in 55 (1) and 55 (2) to give some certainty to both the registration authority and the applicant as to the registration process.
66	amend to make explicit the ability of the registration authority to close a food business.
70	endorse the concept of national programmes but require the Ministry to work *with* local government and relevant food sectors to ensure objectives are met, e.g. reduced compliance costs for lower risk food businesses.

Bill Part 4 (Clause 123-313)	
	endorse a place for third part verifiers in some aspects of food safety regulation but confirm TAs as the verifiers in the retail food sector which has historically been managed by TAs.
137	remove the prescription of unexplained recognition fees.
145	amend clause 145 to also cover TAs.
146	clearly articulate any new activities to be taken up by TAs, assess any new activities with reference to our LGNZ principles, ensure no unfunded mandates, and ensure public education, operator training and food labelling and composition control remain the function of central government. remove clause 146 (e) and (f).
147	amend clause 147 (g) to be limited to a requirement to provide "reasonable assistance or capability". remove clause 147 (i).
148	remove clause 148 and use the regulation making powers for imposing any "national outcomes" on TAs performance of their functions, duties or powers.
157	Provide greater certainty on the expectations for monitoring TAs under clause 157.
158-169	Delete clauses 158 to 169.
176	either confirm that the TA role n the provision and dissemination of information and advice is an indirect cost recoverable under clause 176, or explicitly include it in clause 176 (2).
178	amend clause 178 so it does not apply to TAs.
179	amend clause 179 so it does not apply to TAs.
188 and 153	ensure the regulations putting the infringement regime in place are promulgated to have effect at the same time the new Act comes into effect.
243	enable the TA to appoint food safety officers to undertake action within the scope of the TAs functions and duties.
245	amend so it does not apply to any functions, powers or duties of a TA.
Bill Part 5 (Clause 314-406)	
330	endorse the proposed process for review of decisions by a TA but delete clause 330 (awarding of costs).
332-340	clarify if and how the Local Government Official Information and Meetings Act applies.
341	include a requirement to consult when the Minister is exercising the power to make regulations about what is in schedule 1 to 3.
341/342	amend so that notice is given to all TAs when the Minister is consulting under clause 341 or the CE is consulting under clause 342.
344	amend clauses 344 (8) and (9) to include TAs.
351	endorse the requirement that TAs performing regulatory functions meet certain standards of competency, process/systems, operation. Ensure that regulations under clause 351 are developed with TAs with the intention of ensuring they establish appropriate requirements and timeframes on the basis of full and robust analysis (including full const/benefit analysis).
367	review matters that can be dealt with by notices under clause 367 that would be more appropriately addressed or set through the regulation making provisions e.g. "functions and activities that must be managed or performed by recognised agencies or recognised persons".
369	amend the Bill to ensure notices under clause 369 be notified directly to TAs and registered operators as appropriate.

	ensure the transition of food sectors into the new regime is phased so that it does not result in the majority of food premises currently registered by TAs being included in year one or two of the transition. This should be phased over a longer period.
373-401	endorse a five year introductory period. endorse only TAs with the verification role for those sectors TAs currently register, as a minimum for the introductory period of the new regime.
373/385	clarify the transition for new businesses under clause 373 and 385 and ensure this is reasonable for existing premises and provides for alignment with availability of template FCP.
395	deem TAs to be recognised agencies for the transition (consistent with clause 127).
396	ensure that any notices relating to standards relevant to TAs will be developed *with* local government.
406	amend clause 406 and schedule 7 to clarify that bylaws are revoked, when they are revoked, and saving during the transition.
Bill Schedules	
1-3	endorse the allocation of food sectors in schedule 1 to 3.
7	delete the amendment to section 93 of the LGA. ensure all bylaw references in schedule 7 are correct.