



Proposals for changes to food safety regulations

Summary of submissions

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Requests for further copies should be directed to:

Publications Logistics Officer
Ministry for Primary Industries
PO Box 2526
WELLINGTON 6140

Email: brand@mpi.govt.nz
Telephone: 0800 00 83 33
Facsimile: 04-894 0300

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1 Introduction

In October 2016, the Ministry for Primary Industries (MPI) sought submissions on regulatory proposals under the Food Act 2014 and Animal Products Act 1999.

This document summarises the feedback received¹.

1.1 BACKGROUND

The proposals provided for:

- reduced regulatory requirements for some national programme businesses to reflect the graduated approach to risk management in the Food Act 2014;
- greater flexibility surrounding initial verification requirements and a change to verification reports;
- a review of the Food (Safety) Regulations 2002;
- amendments to the Animal Products (Exemptions and Inclusions) Order 2000 to ensure that the Animal Products Act 1999 and the Food Act 2014 are working together effectively; and
- a change to the Food Regulations 2015 relating to maximum residue levels.

The proposals sought to amend the Food Regulations 2015, or change the Animal Products (Exemptions and Inclusions) Order 2000.

Submissions were sought either in writing, or by using an online survey.

1.2 RELATIONSHIP TO OTHER CONSULTATION

MPI ran a parallel consultation process on additional requirements to be placed in notices under the Food Act. It included proposed new rules detailing how national programme businesses could meet the outcomes described in the Food Regulations 2015. This consultation also closed on 5 December 2016.

1.3 SUBMITTER PROFILE

We received 213 submissions: 161 via the online survey, and 52 written submissions. Submissions came from a variety of sources. Within the written submissions in particular, the early childhood sector was well represented.

¹Where quotes from submissions are used, the source is noted as either from the online survey, or where a written submission was received, by a number (e.g. 047). Quotes have been amended to correct spelling or grammar if necessary.

Figure 1: Submitter profile across all submissions.

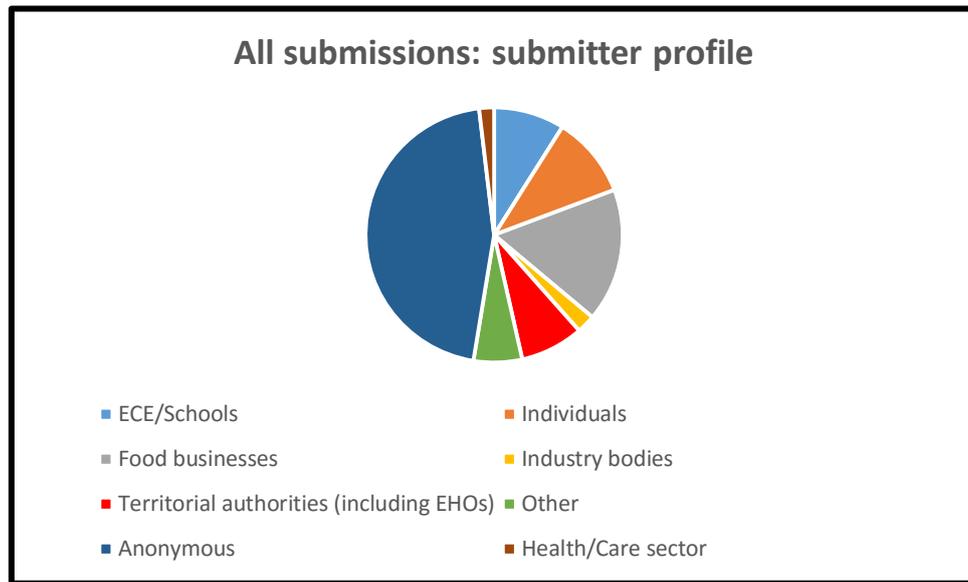


Figure 2: Submitter profile (written submissions only).

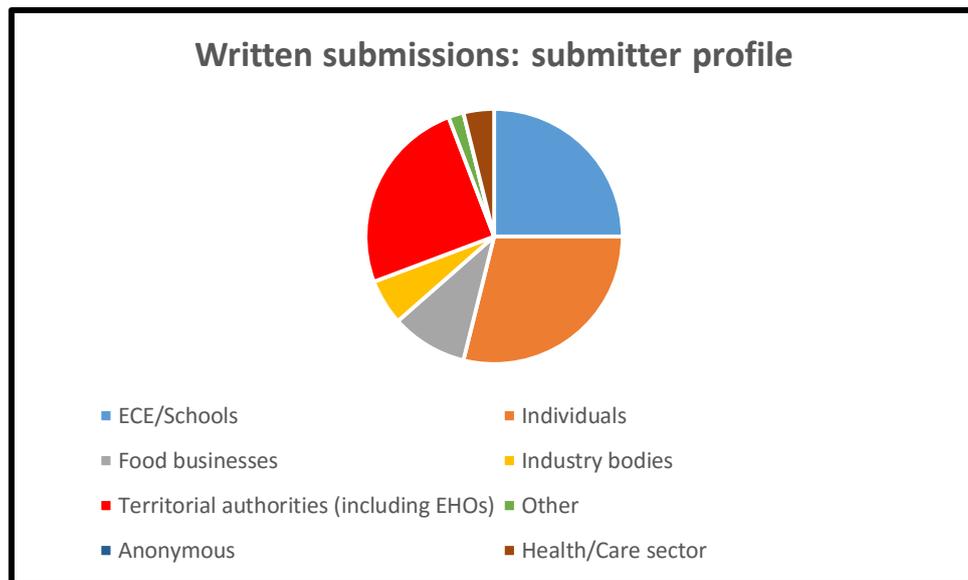
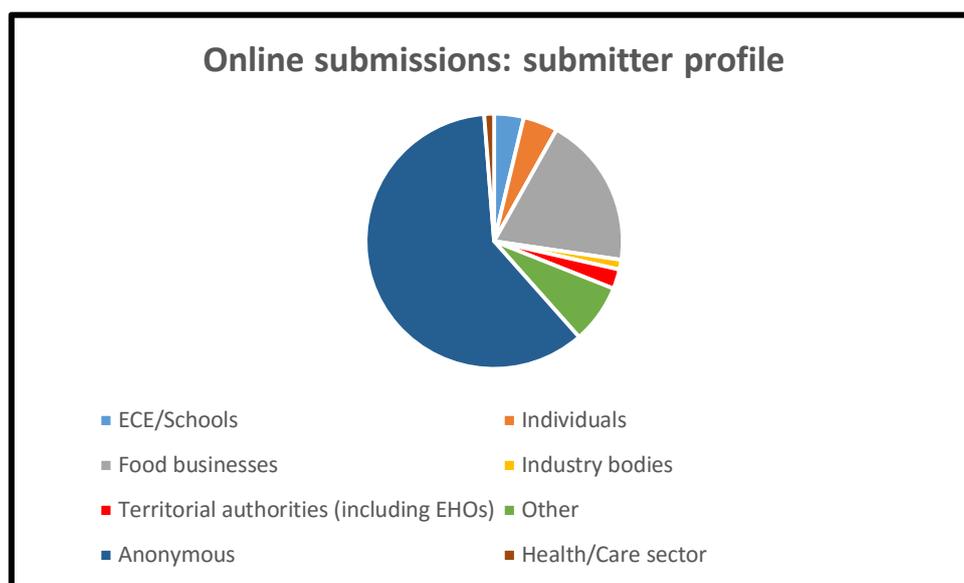


Figure 3: Submitter profile: (online submissions only).



1.4 WHAT HAPPENS NEXT

MPI has made recommendations to the Minister for Food Safety, and Cabinet.

Cabinet must approve any proposals for new regulations or Orders in Council.

Cabinet’s decision will be published on [MPI’s website](#).

Parliamentary Counsel Office (the Government’s legal drafters) will then prepare the regulations and order.

Key dates	Action
From 5 December 2016	Submissions analysed by MPI
Early 2017	Regulations and Orders in Council drafted
Mid 2017	Regulations and Orders in Council come into force

2 Refining the rules for national programme businesses

2.1 INTRODUCTION

The Food Act takes a risk-based approach to food safety. Food sectors are categorised according to risk and subject to different risk-based measures.

High risk businesses are required to have a food control plan. Lower risk businesses operate under a national programme. National programme businesses are divided into three categories, with national programme level 1 being the lowest risk, and national programme level 3 the highest.

MPI proposed changing the Food Regulations 2015 to better reflect the intent of the Food Act that there should be fewer regulatory requirements on lower risk businesses.

2.2 DIFFERENTIAL CLEANING REQUIREMENTS

2.2.1 What we proposed

MPI proposed differential cleaning requirements across different national programme levels. In particular, we wanted to clarify that sanitising is not always required. MPI would supplement any regulatory change with guidance for all national programme businesses on what cleaning and sanitising is required to keep food safe.

2.2.2 What submitters said

Most submitters agreed in principle that there should be differential cleaning requirements across national programme levels.

One submitter preferred one universal cleaning regulation for all food businesses, with verifiers using their discretion to determine what cleaning would be appropriate. Another noted that some things need cleaning and others sanitising across all national programme levels, so any change should be worded to include all these businesses.

Some concerns were expressed about:

- the lack of guidance available currently;
- how this proposal would work for businesses operating under more than one type of risk-based measure;
- how this would work in higher-risk situations within lower risk businesses (for example, something that required full sanitising within a national programme level 1 businesses);
- the proposal causing confusion and inconsistency.

2.3 A GRADUATED APPROACH TO RECORD KEEPING AND PROCEDURES

2.3.1 What we proposed

MPI proposed removing some record keeping and procedural requirements to reflect the graduated, risk-based approach of the Food Act.

Table 1 summarises the proposals.

Table 1: summary of record keeping and procedural requirements proposed to be amended

General requirement proposed to be amended	Who would be affected
Fewer maintenance records required (regulation 48)	All national programme 1 businesses. National programme 2 retailers. National programme 2 (ECE).
Fewer records about maintenance compounds (regulation 49)	All national programme 1 businesses. All national programme 2 businesses.
Fewer procedures required for waste management (regulation 50)	All national programme 1 businesses. National programme 2 retailers. National programme 2 (ECE).
Fewer pest control records required (regulation 51)	All national programme 1 businesses. National programme 2 retailers. National programme 2 (ECE).
Fewer records required about protection against contamination etc by people (regulation 74)	All national programme 1 businesses. National programme 2 retailers. National programme 2 (ECE).
Fewer records required about protection of food while it is transported (regulation 75)	All national programme 1 businesses except transporters or distributors of food products. National programme 2 retailers. National programme 2 (ECE).

2.3.2 What submitters said

Overall, there was strong support for the idea that lower risk businesses should have to keep fewer records.

Some submitters made the distinction between just having fewer requirements, and carefully tailoring them to each business type.

“Yes – not necessarily fewer – but more appropriate for the type of operation.” (010)

“I support this amendment in principle. However it is important to recognise that not all national programme one businesses are the same.” (018)

Submissions from the early childhood education sector supported a general reduction in their record keeping requirements.

Please, please consider whether this really does need to apply to early childhood centres. We are so over legislated....” (online submission)

“...a level of documentation/accountability is important. However, any documentation is time spent away from children – our core business.” (016)

“Record keeping should take into consideration current MOE [Ministry of Education] requirements for ECE services, so as not to essentially double the workload...but to compliment what they already have.” (010)

However, other submitters had specific concerns about including the early childhood education sector in the list of business type that would have fewer record keeping requirements.

“Early Childhood Centres are basically food service and are a high risk population where outbreaks can be common.” (023)

*“ECE businesses that **provide fully catered meals** present a far higher risk than other business within the NP2 sector...[l]owering the cost of compliance for ECE business through reducing record keeping requirements is neither risk based nor science based.” (039)*

“We recommend no reduction in record keeping procedures for ECE entities to safeguard public health.” (033)

Two submitters felt there was sufficient flexibility already in the regulations that would allow businesses to tailor their procedures to the risks posed without altering the regulations themselves. Specific comments of this nature were made about the proposal for maintenance compounds, waste management and pest control.

2.3.3 Additional requirements that could be removed

A small number of submitters thought that additional requirements could be removed from the regulations. These included requirements relating to:

- receiving and sourcing food (regulation 68) and identification and tracing of food (regulation 71);
- maintaining written cleaning schedules;

- enabling records to be kept for a shorter time (regulation 81).

In addition, one submitter thought there should be an additional requirement that hot water be available (regulation 55).

3 Adjustments to verification requirements

3.1 INTRODUCTION

The Food Act 2014 and Food Regulations 2015 introduced a new verification regime. Verification is a way that a food business can show compliance with the Food Act, and the ongoing effectiveness of their risk-based measure. It involves someone formally recognised by MPI's Chief Executive carefully checking that risk management processes are in place, and whether processes are being followed.

3.2 INCREASING FLEXIBILITY FOR VERIFICATION TIMEFRAMES

3.2.1 What we proposed

MPI proposed allowing registration authorities to extend the maximum verification timeframes for initial verification in exceptional circumstances. The maximum extension period would be one month, with only one extension possible. The registration authority would have to be satisfied that extending the maximum timeframe would not compromise achieving safe and suitable food.

3.2.2 What submitters said

There was strong support for greater flexibility in initial verification timeframes. Overall, submitters felt that the current timeframes were not practical.

“My business had a huge interior flood and the kitchen was shut and gutted it was a depressing mess yet still I had to go through my check.”
(online submission)

“...4 weeks could make all the difference to a business to give them time to make sure everything is covered.” (online submission)

However, many submitters were not convinced that the proposed 4 week extension would be enough. Various alternative extension periods ranging from six weeks to 12 months were suggested to take into account all the issues that regularly arise when a new food business starts up. One submitter suggested that the timing of verification should be in accordance with any approved industry programme that a food business may be operating under.

Some submitters sought greater clarity about what exactly was proposed. Some felt that guidance would need to be issued defining exceptional circumstances, or expressed concerns about nation-wide consistency in decision making.

“This proposal raises many questions...Would the food business apply for an extension or would the registration authority/verifier use their discretion? How would extensions be documented... What exactly are ‘exceptional circumstances’?” (023)

Submitters were divided on whether the registration authority should be the decision maker for any extensions. The most common alternative suggested was that MPI should decide, or should play some kind of monitoring role.

Some submitters suggested that verifiers should either make the decision, or play an advisory role.

Additional criteria for decision making suggested by submitters included:

- the date a new business starts trading;
- type of food made or scope of the business;
- the expertise and experience of the business managers, and/or the degree of confidence that the registration authority has in them;
- language and cultural differences;
- cognition differences; and
- compliance track record.

3.3 DETAILS ABOUT TECHNICAL EXPERTS IN VERIFICATION REPORTS

3.3.1 What we proposed

MPI proposed requiring verification reports to include the names of any technical experts who provided information used by the verifier, copies of any reports produced by those technical experts, and information about the experts’ competency.

3.3.2 What submitters said

Most submitters agreed that details about any technical experts used should be provided, arguing this would promote transparency.

“Registration authorities need to have confidence that the technical advice given to verifiers is valid. Providing details which support the claim of being a ‘technical expert’ goes some way towards providing this assurance.” (online submission)

Not all submitters agreed that a verifier’s report needed to include copies of any technical experts’ reports.

4 Review of the Food (Safety) Regulations 2002

4.1 INTRODUCTION

The Australia New Zealand Food Standards Code (the Code) came into full effect in December 2002. The Food (Safety) Regulations 2002 provided for parts of the old Food Regulations 1984 that weren't covered by the Code.

The intention was that the Food (Safety) Regulations would be a transitional arrangement. When the Food Act 2014 was passed, it stated that these old regulations would stay in force until the end of the Act's introductory period (unless earlier revoked). Two of the regulations (relating to fluoridated water and the hemp seed oil industry) expire earlier on 30 October 2017.

4.2 WHAT WE PROPOSED AND WHAT SUBMITTERS SAID

Table 2 summarises what we proposed, and what submitters said in response.

Table 2: response from submitters to Food (Safety) Regulations proposals.

Food (Safety) Regulation	What we proposed	What submitters said
Regulation 6 – misuse of containers.	Revoke this regulation – it’s no longer necessary as the Food Act 2014 and Food Regulations 2015 manage these risks for food businesses.	<p>Most submitters who commented on this regulation supported the proposal.</p> <p>One submitter did not agree with the proposed revocation as they felt regulation 6 was a clear rule with wide application.</p> <p>Another submitter felt that the \$500 fine for non-compliance in the Food (Safety) Regulations was more appropriate than the large possible fines under the Food Act for offences where the risk is isolated (such as decanting and storing cleaners that are not for retail sale in food containers (051).</p>

Food (Safety) Regulation	What we proposed	What submitters said
Regulation 7 – safety of articles.	Revoke this regulation - it's no longer necessary as the Food Act 2014 and Food Regulations 2015 manage these risks for food businesses.	<p>Most submitters who commented on this regulation supported the proposal.</p> <p>A common theme was the desire for more guidance about how the Food Act applies to businesses that sell food accessories (such as plastic packaging), and what responsibilities food businesses have.</p> <hr/> <p><i>“More clarification (guidance material) would be good. It is confusing where food contact packaging manufacturers fit and the obligations they have.” (online submission)</i></p> <p><i>“We recently had an MPI audit and had to produce evidence from global packaging giants that their packaging was safe – we did, but it was absurd bureaucracy.” (online submission)</i></p> <hr/>
Regulation 8 – identification of articles.	Revoke this regulation - it's no longer necessary as the Food Act 2014 and Food Regulations 2015 manage these risks for food businesses.	<p>Most submitters who commented on this regulation supported the proposal.</p> <hr/> <p><i>“Yes, with so many food-safe products on the market, this requirement is just not practicable.” (024)</i></p> <hr/>
Regulation 9 – labels on bottles containing food.	Revoke this regulation - it's no longer necessary as the Food Act 2014 and Food Regulations 2015 manage these risks for food businesses.	<p>Most submitters who commented on this regulation supported the proposal.</p>

Food (Safety) Regulation	What we proposed	What submitters said
Regulations 10, 11, and 12 – infected persons and food.	Revoke these regulations – infected persons and food are managed adequately under the Food Act 2014 and Food Regulations 2015, in tandem with legislation administered by the Ministry of Health.	Most submitters who commented on this regulation supported the proposal.
Regulations 16 and 17 – sale of muttonbird and brands for packages of muttonbirds.	Revoke these regulations – they are outdated and aspects are better provided for under consumer protection or conservation legislation, or under the tikanga of the kaitiaki.	Most submitters who commented on this regulation supported the proposal.
Regulation 20 (wine).	<p>Revoke regulation 20(1) but retain the policy of a 75% wine varietal rule for imported wine via a new regulation. This will ensure we continue to implement our international obligations.</p> <p>Revoke regulation 20(2) (sales from off-licences) as its policy objectives are now regulated under the Sale and Supply of Alcohol Act 2012.</p>	Most submitters who commented on this regulation supported the proposal.
Regulation 24 (fluoridated water)	Retain and update regulation 24 for water added to food from reticulated supplies via a new regulation.	Most submitters who commented on this regulation supported the proposal.

Food (Safety) Regulation	What we proposed	What submitters said
Regulation 26 (sale of hemp seed oil as food)	Retain and update regulation 26 with the Food Regulations 2015.	<p data-bbox="1059 236 2168 268">Most submitters who commented on this regulation supported the proposal.</p> <hr data-bbox="1070 335 2168 343"/> <p data-bbox="1070 367 2168 438"><i>“Agree. Hemp is low risk...we should reduce the amount of regulation and/or let the industry write up their own safety issues in this regard.” (online submission)</i></p> <hr data-bbox="1070 454 2168 462"/>
Regulation 27 (analyst’s certificate and fees)	Revoke this regulation as the matters it refers to have been superseded by the new Food Act regime.	Most submitters who commented on this regulation supported the proposal

4.3 GENERAL COMMENTS ON THE FOOD (SAFETY) REGULATIONS 2002

Some submitters took the opportunity to make general comment on the Food (Safety) Regulations 2002.

Most of these comments were supportive of the proposed revocations.

“It’s not good to have too many separate regulations under the Act.” (024)

“The Food (Safety) Regulations were only ever intended to be a holding pen for matters not immediately covered by the Food Standards Code or other legislation until provisions could be made to accommodate those that needed to be retained.” (052)

‘Reducing the amount of different regulations to follow is great. Having it all under two or three acts can make things simpler....’ (online submission)

A number of submissions from early childhood educators did not agree that the new Food Act will achieve the same or better outcomes as the regulations we propose revoking.

5 Amendments to the Animal Products (Exemptions and Inclusions) Order 2000

5.1 INTRODUCTION

There is a significant overlap of the food types regulated by the Food Act and the Animal Products Act 1999 (APA).

The Food Act has a much wider scope, generally applying to anything that is food for sale. The APA applies principally to animal material and products that are intended for human or animal consumption.

The Animal Products (Exemptions and Inclusions) Order 2000 (the Order) exempts people and businesses from some APA requirements. One reason for such an exemption is that it is more appropriate for the person or process to be regulated under the Food Act.

5.2 WHAT WE PROPOSED

MPI proposed making minor changes to the Order to ensure that the APA and Food Act regimes work together seamlessly. The proposal clarified that where a person or business is exempt from operating under a risk based measure under the APA, an appropriate risk-based measure under the Food Act (for example a national programme or food control plan) would apply instead.

The proposed changes that would affect the following people and processes:

- fishmongers selling fish by way of retail sale (clause 10(1));
- processing of certain dairy products consumed on premises (clause 7A(1)); and
- processing of certain products that are food (clause 7B(1)) – including, biscuits, cakes, bread, soups, sauces, snack goods, pastries, confectionary, prepared meals that do not consist principally of dairy products, and formulated caffeinated and alcoholic beverages.

5.3 WHAT SUBMITTERS SAID

Most submitters agreed with the proposal. One submitter sought further clarification of the Order, while others said it was hard to understand where they fitted.

“It can be confusing determining the difference between RMP and FCP/NP.”

“It is very confusing at this stage for some businesses.”

(online submissions)

6 Maximum residue levels

6.1 INTRODUCTION

Clause 142(1)(c) of the Food Regulations 2015 deals with maximum residue levels in processed food.

How the clause has been written (specifically the wording “*including in production of wine*”) creates an ambiguity in its interpretation.

6.2 WHAT WE PROPOSED

MPI proposed that the words “*including in the production of wine*” be deleted from clause 142(1).

The effect of this is that residues in wine would need to be compliant with the maximum residue limit for the raw food commodity (being grapes in this case).

6.3 WHAT SUBMITTERS SAID

Almost all submitters who commented on this proposal supported it.

“[Our group] supports the removal of reference to ‘production of wine’ in regulation 142 of the Food Regulations 2015 in light of the ambiguity the phrase presents about whether the grapes or the wine should meet maximum residue levels when this clearly the grapes.” (052)

7 Other submission topics

7.1 INTRODUCTION

Submitters took the opportunity to raise many different issues with the Food Act and its regulations. While these are largely out of scope of this consultation, the key issues raised are recorded below.

7.2 EARLY CHILDHOOD EDUCATION SECTOR

The early childhood education sector was well represented in submissions. Commonly raised issues in their submissions included:

- rejection of the distinction in the Food Act space between centres that charge and those that don't, and the exclusion of home-based commercial childcare;
- concerns about compliance costs, and the lack of available verifiers with early childhood education experience;
- disagreement with categorising early childhood education centres as “food businesses”, and/or as national programme 2 businesses;
- seeking exemptions from Food Act rules, caps or controls on fees, and/or adjustments to how the Act is administered for them.

7.3 VERIFICATION

Submitters made various comments on broader verification issues. In the main, these focused on concerns about the cost of verification and availability of verifiers.

Some submitters advocated for greater recognition of territorial authorities as verifiers, either across all risk-based measures, or for national programme retailers and/or businesses currently inspected under the Food Hygiene Regulations 1974.

7.4 GUIDANCE FOR NATIONAL PROGRAMMES AND COMMUNICATION WITH STAKEHOLDERS

Some felt that businesses needed better guidance on what they needed to do to make safe food under a national programme.

“...there is a more fundamental problem. There is no ‘programme’ for National Programmes...NP food businesses (particularly smaller retail and food service businesses)...need clear and determinative guidance to help them achieve safe and suitable food.” (032)

One submitter thought that notices should be available on the New Zealand legislation website, while another thought MPI needed to improve its communications and advice to businesses.

7.5 EXCESSIVE COMPLIANCE COSTS AND RED TAPE

In addition to the comments from some ECE businesses on compliance costs, other submitters expressed frustration with compliance costs and red tape within the Food Act regime. There were particular concerns about the impact of costs on small businesses.

7.6 OTHER OUT OF SCOPE ISSUES

Some individual submitters made proposals specific to a single business or class of businesses, or on a specific out of scope issue (such as truth in labelling and food colouring in food).