Chair
Cabinet Economic Growth and Infrastructure Committee

Proposals for Regulations under the Food Act 2014

Proposal

1. This paper seeks Cabinet's agreement to policy proposals for regulations that are necessary to support full commencement of the Food Act 2014 (the Food Act).

Executive Summary

2. Consumers of New Zealand food expect the food they eat to be safe and suitable for human consumption.

3. Foodborne illness can cause significant harm to the individuals who are directly affected, and place costs on the health system and on businesses. In 2010, the cost to society of the six major foodborne illnesses in New Zealand was estimated at NZ$162 million.[1] An effective food safety system reduces these costs, and also underpins New Zealand's international reputation as a trusted supplier of safe and suitable food.

4. In recent decades, the focus of food regulation has shifted from eliminating risk through prescriptive regulation to achieving the outcome of providing safe and suitable food using a proportionate approach. The Food Act, which received Royal assent on 6 June 2014, brings our domestic food system into line with the risk-based approach of other food statutes that have more of an export focus.

5. The Food Act covers all businesses that trade in food, regulating these businesses according to the level of food safety risk they present. There are four participants in the system: consumers, food businesses, verifiers and the regulator. The Ministry for Primary Industries (MPI) is the regulator, and is supported in this role by territorial authorities.

6. The Food Act provides a high level framework only. It has a delayed commencement to enable detailed requirements to be established in regulations and notices. Full commencement of the Food Act must be no later than 1 March 2016.

7. Public consultation on proposals for regulations occurred between January and March 2015. There was overall support for the proposed regulations. Changes that were made to the proposals as a result of the consultation process are identified in this paper.

[1] *The Economic Cost of Foodborne Disease in New Zealand,* Applied Economics Ltd, November 2010.

8. I am now seeking Cabinet agreement to final policy proposals for regulations under the Food Act and approval to issue drafting instructions to the Parliamentary Counsel Office.

9. Regulations will cover the following areas:

- *Food control plans and national programmes:* regulations will set out requirements for the registration of food businesses, the verification (auditing) of food businesses, and the essential elements of food safety that a business must manage to ensure safe and suitable food.
- *Recognised agencies and persons:* regulations will establish the core requirements and competencies for agencies and persons carrying out functions and activities under the Food Act.
- *Approved documents, materials, or facilities, or persons or classes of persons:* regulations will establish criteria that must be taken into account before approving certain facilities, items or persons.
- *Food standards:* food can be affected by the residues from agricultural products used in its production. Regulations are risk-based and will cover methods for determining residue levels, prohibit the sale of foods containing unacceptable residues, and provide grounds for exemptions from residue level requirements in circumstances where the residue does not present a food safety risk.
- *Imported food:* regulations will establish general requirements for importers, risk categories for imported food, and clearance requirements for foods according to identified risk levels.
- *Infringement offences:* regulations will establish infringement offences for importing food for sale while not being registered, failing to register a food control plan or a business under a national programme, and breaching certain requirements in the Australia New Zealand Food Standards Code.
- *Transitional matters:* regulations will set out dates for the operation of the transition period and the timeframe within which specific food sectors must move from operating under the Food Act 1981 to the Food Act 2014.

The Food Act 2014 – a risk-based regulatory regime

10. The Food Act received Royal assent on 6 June 2014. It will fully replace the prescriptive requirements of the Food Act 1981 and some requirements (i.e. the Food Hygiene Regulations 1974) under the Health Act 1956.

11. The Food Act provides for a risk-based regulatory regime to protect consumers of New Zealand food from food safety risks. This regime reflects the diversity of businesses operating in the food industry and differentiates food businesses according to the level of food safety risk they present.

12. The Food Act sets out the regulatory roles, responsibilities and structures for the risk-based food safety regime. These are:

- *food businesses* - are responsible for managing food safety risks and meeting the standards set by government;
- *verifiers* - will confirm the compliance of food businesses with their risk-based measures;

- *the Ministry for Primary Industries* - is the regulator responsible for setting the standards that food businesses must meet, for recognising agencies and persons to provide verification and evaluation services, and for maintaining certain registers;
- *territorial authorities* - have a co-regulatory role. They are responsible for registering the risk-based measures of certain food businesses in their districts and for verifying those businesses.

13. The Food Act requires high risk food businesses to operate under a food control plan, and medium to low risk businesses to operate under national programmes. National programmes are in turn divided into levels 3, 2, and 1, with level 3 being the highest level of risk, and level 1 the lowest.

14. Following consideration of submissions made during the development of the Food Bill, the Food Act provides that some food operators are not required to operate under a risk-based measure. These include traditional fundraising and 'Kiwiana' activities such as sausage sizzles and school fairs. However, these operators are still required to sell food that is safe and suitable.

Summary of proposed regulations

15. The Food Act establishes a high level framework for food safety, but provides for detailed requirements to be established in regulations made on the recommendation of the Minister for Food Safety, or in notices issued by the MPI chief executive.

16. Cabinet authorised public consultation on proposals for regulations in December 2014 [EDC Min (14) 21/7], and this consultation took place between 19 January and 31 March 2015. Regulations are now recommended in the following areas:

    1. Food control plans and national programmes;
    2. Recognised agencies and persons;
    3. Approved documents, materials, facilities or persons;
    4. Food standards;
    5. Imported food;
    6. Infringement offences;
    7. Transitional matters.

17. Regulations authorising cost recovery for services provided under the Food Act were made recently as part of a wider review of MPI's fees and charges. A small amendment to one of these regulations is proposed in this paper to address a minor drafting error. The amendment will clarify that territorial authorities are able to waive their own fees and charges.

18. The following sections summarise the proposed regulations. Where stakeholder feedback has resulted in changes being made to the proposals Cabinet authorised for consultation, this is noted.

1. Proposed regulations for food control plans and national programmes

19. Regulations for food control plans and for national programmes will set out requirements in three areas:

    - *Registration*: The Food Act requires all food businesses that are subject to either a food control plan or to national programme regulations to register with MPI or their local territorial authority.
    - *Verification*: Food businesses need to be periodically verified to determine whether they are meeting regulatory requirements.
    - *Safety and suitability requirements*: Safety and suitability refers to the essential elements of the food safety system that need to be managed to ensure food is safe.

20. National programmes Level 3, 2 and 1 will be imposed by regulations, and will require every person or food business that is subject to these programmes to comply with the applicable requirements of the Food Act.

Registration of food control plans

21. Where a business develops or significantly amends its own custom food control plan, the Food Act requires that the plan be independently evaluated before it can be registered by MPI. Regulations will formalise the evaluation process.

22. The regulations will require:

    - evaluators to undertake an onsite assessment of the business, unless the MPI chief executive waives this requirement. An example of when the requirement may be waived might be for a multi-site business that operates similar or identical sites, as there may be no additional food safety benefit to visiting each site;
    - food business operators to provide evidence to the evaluator that certain products or processes are safe, for example by validating a product or process;
    - evaluators to include content in their evaluation reports about information such as the products and activities to which the food control plan applies, the assessment of the validation process, and any technical experts used; and
    - evaluators to endorse both the evaluation report and the food control plan to certify that the plan has not been modified since the evaluation.

23. Regulations will also require all businesses wishing to register food control plans to provide information about the physical boundaries of their premises, and the activities undertaken within those boundaries, so that verifiers can be sure of where verification should take place.

24. Submitters to the proposals generally supported these requirements, although some submitters requested more detail about how the requirements will be implemented. Because these requirements are highly technical in nature, MPI will provide further guidance to businesses before the regulations take effect, on how they will operate.

Registration of businesses subject to national programmes

25. The Food Act requires operators of food businesses subject to a national programme to register with the appropriate registration authority.

26. Regulations will require food businesses operating under national programmes to register with the territorial authority responsible for the district where the business is located. Registration information will be made available to MPI so that it can fulfil its statutory obligation to maintain an up-to-date and accurate register of businesses subject to national programmes.

27. There will be an exception to the general rule that businesses register with their local territorial authority for:

    - mobile or vehicle-based food businesses - these business will have to register where the business address of the mobile food business is situated, even if such businesses operate across territorial authority boundaries; and
    - businesses that operate in more than one territorial authority district - these businesses will have the option to register each part of their business individually with the relevant territorial authority, or register their whole business with MPI.

28. Regulations will require food businesses operating under national programmes to renew their registration biennially with the appropriate registration authority. A biennial registration requirement is a change from the existing requirements under the Food Act 1981 that food businesses register annually. Territorial authorities will be able to extend businesses' registration dates beyond 24 months to align their registration renewals with the financial year end.

29. Submissions from territorial authorities broadly supported annual registration, but many submitters considered it an unnecessary revenue-raising exercise, and submitted that renewal should be less frequent. After consideration I have decided that biennial registration for lower risk national programme businesses is preferable, as this will reduce compliance costs for the many small businesses that will operate under national programme requirements.

Verification frequency

30. Regulations are required to set out the frequency with which different types of food businesses will be verified. Verification will be both risk and performance based – higher risk businesses will be verified more often than lower risk businesses, and well-performing businesses will be verified less often than poor performing businesses. This creates performance incentives for operators as they are required to pay the cost of verification services.

31. The verification frequency ranges are set out in Table 1 below.

Table 1: Verification frequency range

Food sectors subject to:	Initial verification of existing businesses	Initial verification of a new business	Verification frequency range	
			Maximum frequency	Minimum frequency
Custom food control plans Complex businesses such as manufacturers of high risk meat, fish and poultry products	Within 6 months of registration	Within 3 months of registration	3 months	18 months
Template food control plans Food service businesses such as restaurants and cafes	Within 1 year of registration	Within 1 month of registration	3 months	18 months
National programme level 3 Most manufacturers of medium risk foods such as alcohol beverages and herbs and spices	Within 6 months of registration	Within 1 month of registration	3 months	2 years
National programme level 2 Mix of manufacturers of medium to low risk foods such as confectionery and shelf stable products	Within 1 year of registration	Within 1 month of registration	3 months	3 years
National programme level 1 Lowest risk such as transporters or sellers of manufacturer-packaged food	Within 1 year of registration	Within 1 month of registration	Nil unless a situation arises	

32. A number of submitters felt that the timeframe for initial verifications for new businesses was too short. The initial verification timing has to strike a balance between how long a business can be allowed to operate without checking (verifying) they are producing safe and suitable food, and what is practical for the business in terms of starting to compile records. I am satisfied that the proposed regulations strike this balance appropriately.

33. A substantial number of submissions expressed concerns at the proposal that National Programme Level 1 businesses not be subject to routine verification beyond the initial verification. Most of these businesses will not be receiving any visits under the current regulatory regime, and the Food Act has placed these businesses in the lowest risk category.

34. The initial verification will provide an opportunity to identify any areas where these businesses need to improve. If during or after this initial verification information came to light that a business was performing badly, the verifier or a food safety officer will be able to recommend that the business be subject to verification until it is performing well enough to go to no routine verification. I

am satisfied that the risks associated with these businesses can be managed as proposed.

35. The Food Act allows businesses to operate under a higher risk-based measure if they consider it beneficial. If a business wishes to do so, they will remain subject to the verification frequency that would normally apply to their sector.

36. As noted above, the regulations will provide for businesses to be verified more or less often based on their food safety performance. Within the range provided for each risk-based measure (Table 1), the actual verification frequency will be based on the steps in Table 2 below.

Table 2: Steps for determining performance-based verification frequency

Verification step	**Verification frequency**			
	Food sectors subject to food control plans Complex businesses such as manufacturers of high risk meat, fish and poultry products and food service businesses such as restaurants and cafes	**Food sectors subject to national programme level 3** Most manufacturers of medium risk foods such as alcoholic beverages and herbs and spices	**Food sectors subject to national programme level 2** Mix of manufacturers of medium to low risk foods such as confectionery and shelf stable products	**Food sectors subject to national programme level 1** Lowest risk businesses such as transporters or sellers of manufacturer-packaged food
Step 8	-	-	-	No verification
Step 7	-	-	3 years	3 years
Step 6	-	2 years	2 years	2 years
Step 5	18 months	18 months	18 months	18 months
Step 4	12 months	12 months	12 months	12 months
Step 3	9 months	9 months	9 months	9 months
Step 2	6 months	6 months	6 months	6 months
Step 1	3 months	3 months	3 months	3 months

37. For businesses subject to food control plans, an acceptable initial verification will result in the verification frequency being set at step 4 (12 months). If the business receives two consecutive acceptable verification outcomes, it will transition to Step 5 (an 18 month frequency).

38. For businesses subject to national programmes, the verification frequency, upon an initial acceptable verification will commence as follows:

- National Programme Level 3: Step 6 (2 years);
- National Programme Level 2, Step 7 (3 years); and
- National Programme Level 1, Step 8 (no verification).

39. Any food business that receives an unacceptable verification outcome will be placed on a lower verification step. Guidance will be issued by MPI to assist verifiers to determine which step a business should be placed on following an unacceptable verification result.

40. Changing the frequency of verification will be a major performance incentive. The regulations will establish the following criteria for the verifier to use in determining ongoing frequencies:

- confidence in management;
- food safety behaviour;
- the effectiveness of process controls;
- the effectiveness of environmental controls; and
- compliance history.

Verification process

41. To provide certainty to business and ensure national consistency in the verification process, regulations will set out requirements for verification as follows:

- *Verifiers' duties to inform the operator:* Within a reasonable period of undertaking the verification, the verifier must inform the operator of any deficiencies found, the likely outcome of the verification visit, and when the next verification visit will take place.
- *Verifier to negotiate and confirm corrective actions:* If the verifier detects non-compliances, he/she may negotiate with the business operator corrective actions to be completed within a specified timeframe. In a subsequent visit the verifier must confirm with the operator that the corrective actions have been satisfactorily addressed.
- *Assigning an outcome:* To designate the outcome as acceptable, the verifier must be satisfied that:
  - the operator is complying with all applicable regulatory requirements; or
  - if there have been any departures from regulatory requirements that the operator's corrective actions have been, or are being, applied appropriately and are effective.

  The verifier will be required to designate the outcome as unacceptable if he/she has determined that the operator is not complying with all applicable regulatory requirements relevant to their operation and corrective action is not being taken or is ineffective. The regulations will set out an indicative list of relevant factors.
- *Verifier to provide a written report to the operator:* The verifier must provide a written report to the operator after assigning an outcome. The report must include: whether the outcome is acceptable or unacceptable; any agreed corrective actions; whether any aspects of an unacceptable outcome have triggered an increase in verification frequency; and when the next verification will be.

- *Right to request a reconsideration of a verification decision:* If a business operator does not agree with a verifier's decision, the operator will have the right to request a reconsideration by another entity within 21 days of the verification decision.
- *Verification of multi-site businesses:* Each premises or site must receive an onsite initial verification assessment. Following this initial verification, each premises or site may be treated as part of the wider food business; and the verification frequency and scope may vary between each business, premises or site, as agreed between the registration and the business.
- *Reporting to MPI:* Verifiers must make verification information available to the MPI chief executive on request. The verifier must inform the MPI chief executive of any 'critical non-compliance' as soon as possible, and include any recommendations about the actions that the MPI chief executive should undertake.
- *Operator verification:* Food businesses operating under custom food control plans will be required to ensure that internal practices, procedures and activities comply with the applicable requirements of the Food Act by performing regular checks of places, facilities, equipment, people, processes and practices and the like.

42. Submitters were generally supportive of setting out the verification process in regulations as it will help provide a base set of requirements that apply to all verifiers, whether they are employed by territorial authorities or private companies. Many submitters, however, wanted further detail about how verifiers would make decisions to place food businesses on a lower step as part of the performance-based verification approach, and how much discretion verifiers would have to make their decisions.

43. I have asked MPI to prepare operational guidance on these matters to support the regulations. I note also that verifiers will be required to meet certain competencies and receive training, which will assist them to understand the extent to which a businesses is complying and to use their discretion correctly. I am satisfied that these measures will reduce the potential for verifiers to act unreasonably or inconsistently.

Safety and suitability requirements

44. The Food Act aims to move the food safety system from a prescriptive regime to a performance-based regime. Regulations setting out requirements to ensure the safety and suitability[2] of food will generally allow food businesses to determine for themselves how best to achieve a prescribed outcome.

[2] Safety and suitability are defined in the Food Act as follows:
- Safety means a condition in which food, in terms of its intended use, is unlikely to cause or lead to illness or injury to human life or public health.
- Suitability means a condition in which the composition, labelling, identification, and condition of the food are appropriate to food in terms of its intended use.

45. The regulations do differentiate between food control plans and national programmes in the level of prescription that is provided. Higher risk food control plan operators will have generally more discretion to demonstrate how they meet requirements than lower risk national programme operators. This is because food control plan operators will operate under their own plans, but national programme operators will operate under the programme specified in the regulations.

46. A substantial number of submissions were received on these proposals. Many considered that aspects of the proposals were too prescriptive, while others considered that some proposals lacked adequate detail. In response to submissions some proposals have been:

- refined to make it clear in which circumstances particular requirements would apply, to which risk-based measures they would apply and what documentary evidence would be required to show compliance;
- deleted because, on reflection, they are already adequately covered; and
- earmarked as being more suited to tertiary notices or guidance, and are no longer contained in the proposals.

47. Details of the specific regulations that will apply to the production of safe and suitable food are set out in Appendix 1.

2. Recognised Agencies and Persons

48. The Food Act provides for the MPI chief executive to recognise agencies, persons and classes of persons to provide assurances about the safety and suitability of food for sale. Recognised agencies and persons will evaluate custom food control plans before they are registered and verify the performance of food businesses (including food importers) against the requirements of the Food Act and their applicable risk-based measure (food control plan or national programme).

49. Regulations are required to prescribe for recognised agencies and persons:

- competencies, qualifications and experience or other requirements;
- requirements and procedures for recognition and renewal of recognition;
- performance standards and other requirements; and
- eligibility to be the only parties who may evaluate custom food control plans.

50. A regulation will also require that only a recognised agency or recognised person may evaluate custom food control plans.

51. Regulations about classes of persons are not proposed at this time.

Competencies, qualifications, experience and other requirements

52. Regulations will establish core requirements for recognised agencies. These are that agencies must maintain a documented Quality Management System, manage the technical competencies of their staff, and manage any potential conflicts of interest.

53. Regulations will also establish the core competencies for recognised persons focussing on the skills, experience and knowledge of the individual. Depending on the sector or process for which recognition is sought, technical competencies may include knowledge such as:

    - relevant regulatory requirements;
    - identification and control of food safety hazards;
    - good operating practice (such as hygiene, contamination, and pest control);
    - technical matters relevant to particular industries, sectors or processes;
    - design and construction of premises, facilities and processes;
    - competency in performing audits;
    - the ability to recognise the need for additional technical input when required.

54. In addition to core competencies, a recognised person who is not under the management of a recognised agency will also need to meet certain additional requirements relevant to the size of their business and the scope of their recognition.

55. These regulations will not apply to territorial authorities when managing and carrying out their core verification functions. The Food Act requires territorial authorities to ensure that their staff are competent and adequately resourced to carry out their role.

Requirements and procedures for recognition and renewal of recognition

56. Regulations will differentiate how an agency or person applying for recognition as an agency must demonstrate they meet the core requirements based on the nature of the services they will provide when applying for recognition. To verify or evaluate businesses operating under the more complex custom food control plans, the agency or person will need to have their systems and procedures assessed by an independent accreditation agency and be accredited to ISO 17020. This is the international standard for inspection bodies that certify products, processes and activities.

57. An agency who wants to verify food importers or businesses operating under other risk-based measures will be assessed by MPI against core requirements.

58. A person not under management of a recognised agency applying for recognition must demonstrate that they meet the additional requirements by:

- being assessed by an independent accreditation agency and holding accreditation to ISO 17020 (if they wish to verify or evaluate custom food control plans); or
- being assessed by MPI against the additional requirements (to verify food importers or food businesses operating under other risk-based measures.

59. To renew recognition, agencies and persons will need to demonstrate that they continue to meet the requirements, competencies, qualifications, experience and any specified conditions of recognition, and that they have met performance standards to an acceptable level during their period of recognition.

Performance standards and other requirements

60. Regulations will establish performance standards to ensure that recognised agencies and persons meet the applicable requirements of the Food Act to an acceptable level during their period of recognition. The standards will include expectations such as the carrying out of statutory duties, verification processes and procedures, corrective action procedures, and reporting requirements. Any disputes or complaints about the agency or person will be taken into account, and the regulations will also specify other requirements such as the scope and frequency of performance reviews.

3. Approved documents, materials, facilities or persons or classes of persons

61. The Food Act allows the MPI chief executive to approve certain documents, materials, facilities and persons for various purposes and activities under the Act. Approvals help to promote safe and suitable food by ensuring that the documents, materials and facilities are appropriate for their intended purpose, and that persons providing services have the necessary competence and training to do so.

62. Regulations will establish criteria that the chief executive must take into account before making approvals. The use of these criteria will enhance the transparency and consistency of decisions over time. The proposed criteria are that the approval will:

- improve the credibility of and confidence in the food supply (for example, because it clarifies the competency of particular facilities to perform critical activities); or
- improve the efficiency of the food system (for example, because the approval will be applied widely and consistently across food sectors); or
- improve the clarity and transparency of the system (for example, by improving industry understanding.

4. Food Standards

63. The Food Act generally provides for food standards established under the old Food Act 1981 to be maintained in their current form. The Food Act does, however, change the way that maximum residue limits (MRLs) in food are established. The term maximum residue limits refers to residues from agricultural compounds used in a food's production (e.g. a pesticide or a veterinary medicine).

64. Under the Food Act 1981, MRLs are established by the Minister for Food Safety. The Food Act changes this to empower the MPI chief executive to establish MRLs by notice. This change reflects the very technical nature of such decisions.

65. Regulations will guide the MPI chief executive's decisions on MRLs to ensure that residue levels are set based on the best available evidence. The regulations will establish the following:

- criteria to be used to determine MRLs including:
  - international best practice;
  - consistency with the applicable Codex Standards (Codex is the relevant international standard setting body);
  - methods to determine MRLs for food that is diluted, reconstituted, or food with concentrated residues due to processing, or contains more than one food.

- information that must be included in notices issued by the MPI chief executive to set MRLs, including:
  - the compound's common name;
  - Chemical Abstracts Service Registry Number;
  - compound's components to be considered in determining the MRL;
  - the food(s) to which the MRL applies;
  - the MRL for the compound in relevant foods; and
  - any condition of approval such as a time limit for which the MRL will apply.

- conditions of sale for foods containing residues of agricultural compounds including:
  - prohibiting sale of food containing residues of an agricultural compound; except where the food complies with regulations and any limits specified in a notice under the Food Act;
  - allowing the sale of food containing residues not exceeding 0.1mg/kg unless specifically provided by notice; and
  - allowing sale of imported food containing residues if the food complies with requirements under the Food Act or applicable Codex standards.

- food containing residues from an agriculture compound may be exempt from the conditions of sale above when the compound is used in accordance with a condition specified by notice under the Food Act for the management of:
  - plants, or parts of plants, from which food is derived; or
  - plants to be fed to animals from which food is derived; or
  - animals that are intended for food, or from which the food is to be derived.

5. Imported Food

66. As imported foods are produced overseas they have not necessarily been manufactured with regard to New Zealand's standards. The Food Act requires that food importers are registered, and provides for regulations to establish more specific requirements. Regulations are required in the following areas to ensure imported food is safe and suitable:
    - General and information requirements of food importers;
    - Importer verification requirements; and
    - Establishing categories of imported food products and specific requirements for foods in a particular category. *General and information requirements of food importers*

67. General requirements for importers will be established that outline how the safety and suitability of food is maintained. Importers will need to:
    - assess the source and destination of the product and controls in place during manufacture;
    - ensure food is stored and transported appropriately;
    - clearly identify foods; and
    - supply certain information in relation to specific consignments of food for import in English.

68. Regulations will require importers to maintain, or have ready access to the above information in relation to source, storage and transport, for four years. Food safety officers will be able to require that information, including labels, be translated into English.

Importer verification requirements

69. Regulations will not require routine verification of importers. However, the MPI chief executive may require an importer to be verified if this is considered necessary as a result of MPI monitoring, systems audits, benchmarking surveys, a food safety incident or following a justified complaint.

70. If importers are subject to verification, regulations will empower a food safety officer to recommend to the MPI chief executive to set the schedule of verification for importers in the same way a registration authority would for national programmes level 1. Importers would then be subject to verification until they are performing well enough to go to no routine verification.

Categorisation of imported food

71. Regulations will establish categories of imported food so that foods that present a greater risk can be targeted and lower risk foods do not receive unnecessary intervention.

72. There will be two categories of imported food described in regulation: high regulatory interest and increased regulatory interest. The categories will be described in regulation and the MPI chief executive will allocate food to the categories in a notice under the Food Act.

73. High risk imported foods will be categorised as "high regulatory interest" and will require clearance to enter New Zealand's food system.

74. For food that requires clearance, a food business will need to provide evidence that the food is safe. This may include providing assurances or certificates from competent overseas authorities, another form of information on controls in the exporting country, or the results of any sampling and testing. Food requiring clearance must be isolated from other food and clearly identified. A food safety officer may require food requiring testing and/or clearance to be moved at the cost of the importer. Food that is not cleared must be isolated and managed.

75. A food may be categorised as "increased regulatory interest" where there is insufficient information to determine its true risk or there are emerging issues that may impact on its risk. s 6(a) [redacted] For food in this category MPI will apply additional measures to manage risk; gather information such as test results and assurances; evaluate hazards and food safety risk; and manage any issues until resolved. Food in this category may require clearance if specified in a notice made under the Food Act.

76. Testing of imported food may be required for high or increased regulatory interest food. Testing may be for biological, chemical or physical hazards. Testing will need to be undertaken by an approved laboratory. Food safety officers will be able to decide the frequency of testing for consignments of a specific food from a specific importer.

77. Imported food that is not categorised will be considered low regulatory interest, and there will be no specific requirements for these foods in regulation.

6. Infringement offences

78. The Food Act provides that regulations may be made to categorise some offences in the Act as "infringement offences".

79. The objective of an infringement scheme is to change behaviours to reduce harm caused by relatively minor offending. Infringement regimes encourage compliance with the law, hold people accountable for their actions, promote a sense of responsibility and educate people about unacceptable conduct.

80. The infringement offences proposed relate to offending that is comparatively minor in nature, that involves straightforward issues of fact, and that warrants more than a warning but less than the full sanction of criminal law. The proposals were developed in accordance with Ministry of Justice and Legislation Advisory Committee guidelines.

81. I propose that only infringement offences considered necessary and achievable for the commencement of the Food Act are established. Further infringement offences, relating to safety and suitability requirements and scalable fees for repeat offending, may be added as MPI and territorial authorities gain experience with implementing the new regime.

82. The regulations will establish infringement offences in three areas. These areas, and the infringement fees that will apply, are set out in Table 3:

Table 3: Infringement offences and fees

Infringement offence	Infringement fee
Importing food for the purpose of sale while not being registered.	$450
Failure to register a food control plan or to register under a national programme if required to do so under the Food Act.	$450
Breach of certain requirements in the Australia New Zealand Food Standards code (specified in Appendix 2).	$300 (low level outcome) $450 (medium level outcome) $650 (high level outcome)

83. In order to make the new infringement regime operable, the regulations will prescribe an infringement notice for use by food safety officers.

84. MPI will work closely with territorial authorities to jointly implement the infringement scheme to ensure there is consistency in the approach taken throughout the country.

7. Transition

85. New food businesses starting on or after 1 March 2016 will be subject to the requirements of the Food Act from the date they commence operations. Existing businesses will transition into the new regime over a three-year period from 1 March 2016.

86. Regulations will establish the end date by which specific food sectors must move from operating under the previous regime to meeting the requirements of the Food Act. The transition schedule is attached as Appendix 3.

87. Following consultation, a new sector has been created to encompass all businesses that are operating voluntarily under a risk-based food safety programme. As these businesses are already following a risk based approach, they will be given until the end of the introductory period to transition formally under the Food Act.

88. To avoid the potential for all businesses to register right at the end of their transition period, the regulations will require that registration applications must be received three months before the relevant transition period ends.

89. The Food Act requires that regulations be made to set the relevant appointed date for the purposes of the operation of various transitional provisions, and also to set a date for the repeal of the Food Act 1981. For alignment purposes these dates will be 1 March 2016.

90. MPI will be supporting implementation of the Food Act with a comprehensive communications programme aimed at ensuring that everyone in the food sector can understand and meet the new requirements.

Exemptions

91. The Food Act allows for regulations to be made exempting food businesses from requirements in the Act. The objective of exemptions is to acknowledge that there are instances where flexibility in applying the requirements of the Food Act to food businesses achieves better results, and that the purposes of the Food Act can still be met despite an exemption being provided.

92. I am not proposing that any such regulations be made at this point. Instead I consider that after a period of operation, it will become clear whether specific exemption regulations might need to be considered. In the interim, I consider that the MPI chief executive's powers to grant exemptions by notice in particular circumstances, such as for exports, is adequate to deal with exemptions on a case-by-case basis.

Public consultation on regulatory proposals

93. The Food Act requires that, before recommending that regulations be made or notices issued, the Minister for Food Safety must be satisfied that appropriate consultation with affected stakeholders has taken place, and that the results of consultation have been taken into account.

94. Public consultation on regulatory proposals commenced on 19 January 2015, and remained open until 31 March 2015. MPI held 23 meetings during this period in twelve locations. Eleven of these meetings were specifically with territorial authorities, and twelve were public meetings. In total over 600 people attended a consultation meeting and 148 written submissions were received.

95. New Zealand also notified the World Trade Organization of its intention to consult on the proposals in February 2015.

96. Overall, there was support for the proposed regulations. A number of changes have been made to the regulations to reflect submitter feedback.

97. The early childhood education (ECE) sector (and to a lesser extent the wider education sector) expressed concerns about the impact that the Food Act and its regulations may have on their sector.

98. I consider food safety to be critically important in an education setting, particularly when the food is being provided to preschool children. The risks associated with providing food in the early childhood education sector were considered by Parliament when the Food Act was developed, and Parliament explicitly decided that the sector should be subject to the Act.

99. Early childhood education providers undertake a range of food related activities. How the Food Act applies to them will depend on the nature of those activities. Most early childhood centres will need to register and comply with the requirements of a National Programme. Centres that undertake minimal food handling, such as providing fruit or biscuits, will be exempt from the requirements of the Food Act. Many kindergartens, Play centres and kohanga reo will fit into this latter category.

100. Existing early childhood education centres will not become subject to the Food Act 2014 before 30 June 2017. MPI will continue to work closely with the Ministry of Education and the education sector on how impacts and costs can be minimised and to proactively communicate with the sector.

101. Prior to the Food Act taking effect, the Ministries will work together to ensure there is no duplication of food safety regulations across the food safety and education systems. As part of this the Ministry of Education will consider if any changes to the current early childhood education regulations and licensing criteria are needed to ensure that providers meeting requirements under the Food Act face no additional food safety requirements.

102. In addition, the Food Act regulations will provide an ability to exempt businesses from fees on a case-by-case basis, for example where this is hardship. MPI will provide guidance to territorial authorities on how they might use this discretionary power.

Cost Recovery Regulations

103. Regulations authorising MPI to recover the transactional cost of “fee for service” activities it provides under the Food Act 2014 were established earlier this year as part of a wider review of MPI’s fees and charges. The Food (Fees and Charges) Regulations 2015 were gazetted on 14 May 2015.

104. Regulation 4 of the Food (Fees and Charges) Regulations 2015 contains a minor error. Regulation 4 enables the MPI chief executive or a territorial authority to grant an exemption from, or waive or refund, any fee or charge specified in the schedule to those regulations. However, the schedule only applies to services provided by MPI. The effect of this error is that territorial authorities will have no discretion to waive or refund their fees or charges.

105. Territorial authorities will set their fees separately under the Food Act 2014. I seek your agreement to instruct Parliamentary Counsel Office to draft an amendment to regulation 4 that would enable territorial authorities to grant an exemption from, or waive or refund, their fees and charges.

Next Steps

106. Subject to Cabinet's agreement, I will invite Parliamentary Counsel Office to draft regulations according to the recommendations of the paper. Issues about detail may arise during the drafting process, and I seek authority to make changes consistent with the policy intent on any issues that arise.

107. Once the regulations have been drafted, Cabinet Legislation Committee approval will be sought so that the regulations come into effect at the same time as the Food Act fully commences on 1 March 2016.

Consultation

Departmental consultation

108. The following government departments were consulted in the development of the draft consultation paper: the Ministry for Business, Innovation and Employment, Department of Corrections, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Department of Internal Affairs, Ministry of Justice, the New Zealand Customs Service and the Treasury. The Department of Prime Minister and Cabinet was informed.

109. The Ministry of Health noted that there may be opportunities to align certain requirements under the Food Act with those of other regulatory regimes, including the Health and Disability Services (Safety) Act 2001. MPI and the Ministry of Health will work together to explore this.

110. Some of the proposed regulations will have an impact on the importation of food into New Zealand. The proposed regulations do not raise any issues of consistency with New Zealand's obligations under the WTO Technical Barriers to Trade Agreement, and the consultation requirements of the Sanitary and Phytosanitary Agreement were met. Draft regulations will be reviewed to ensure consistency with international obligations.

Industry and council consultation

111. MPI has worked closely with key stakeholder groups during the development of the Food Act and its regulations. These groups included a Territorial Authority Steering Group established specifically for that purpose, and the Food and Beverage Forum, which comprises representatives of a broad range of food industry groups.

112. s 9(2)(f)(iv) [redacted]

Financial Implications

113. There are no direct financial implications arising from these proposals.

Human Rights Implications

114. The proposals in this paper have no implications under the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990.

Legislative Implications

115. Regulations are required to implement the proposals in this paper. Subject to Cabinet approval, these proposals will be drafted for commencement on 1 March 2016.

Regulatory Impact Analysis

116. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and is attached as Appendix 4.

117. Treasury's Regulatory Impact Analysis Team (RIAT) has reviewed the RIS and associated supporting material prepared by MPI. Members of MPI's RIA Panel have assisted with the review. RIAT considers that the information and analysis summarised in the RIS meets the quality assurance criteria.

118. The RIS provides some indication of the impact the proposals will have on businesses. However, the RIS acknowledges that some of the impacts are unknown and will depend on business performance and the costs borne by territorial authorities. MPI will monitor the fees and charges set by territorial authorities once the Act comes into force.

Gender Implications

119. There are no gender implications arising from this proposal.

Disability Perspective

120. There are no disability implications arising from this proposal.

Publicity

121. I propose that a copy of this Cabinet Paper is posted on the MPI website to assist with communicating how the new food safety regime will operate.

122. MPI will post a summary of submissions and a copy of the RIS on its website, having regard to the objectives of the Official Information Act 1982. These documents will form part of a wider package of information on implementation of the Food Act.

Recommendations

123. I recommend that the Cabinet Economic Growth and Infrastructure Committee:

1. **Note** that the Food Act 2014 was passed on 6 June 2014 with a delayed commencement to provide time to develop the detailed regulations necessary to support full implementation of the Act;

2. **Note** that consultation was undertaken on proposals for regulations between January and March 2015, and that I am now seeking Cabinet agreement on final policy proposals;

Food control plans and national programmes – Registration

3. **Agree** that regulations will support evaluation of custom food control plans by requiring:
    i. evaluators to undertake an onsite assessment of the business, unless the MPI chief executive waives this requirement
    ii. food business operators to provide evidence to the evaluator that certain products or processes are safe
    iii. evaluators to include prescribed information in their evaluation reports, including information about the products and activities to which the food control plan applies, the assessment of the validation process, and any technical experts used, and
    iv. evaluators to endorse both the evaluation report and the food control plan to certify that the plan has not been modified since the evaluation;

4. **Agree** that regulations will require businesses subject to template and custom food control plans to provide information about the physical boundaries of their premises, and the activities undertaken within those premises;

5. **Agree** that regulations will require food businesses operating under national programmes to register biennially with the territorial authority responsible for the district where the business is located;

6. **Agree** that regulations will provide for national programme businesses that are mobile to register where the business address of the mobile food business is situated;

7. **Agree** that national programme businesses that operate in more than one territorial authority district be given the option to register each part of their business individually with the territorial authority in whose district they are based, or to register their whole business with MPI;

8. **Agree** that regulations will provide for a registration authority to extend registrations so they align with the financial year end;

9. **Agree** that national programmes Level 3, 2 and 1 be imposed by regulations, and require every person or food business that is subject to these programmes to comply with the applicable requirements of the Food Act;

Food control plans and national programmes – Verification

10. **Agree** that regulations will require businesses subject to food control plans and national programmes to be verified according to the frequencies set out in the table below:

Food sectors subject to:	Initial verification of existing businesses	Initial verification of a new business	Verification frequency range	
			Maximum frequency	Minimum frequency
Custom food control plans	Within 6 months of registration	Within 3 months of registration	3 months	18 months
Template food control plans	Within 1 year of registration	Within 1 month of registration	3 months	18 months
National programme Level 3	Within 6 months of registration	Within 1 month of registration	3 months	2 years
National programme Level 2	Within 1 year of registration	Within 1 month of registration	3 months	3 years
National programme Level 1	Within 1 year of registration	Within 1 month of registration	Nil unless a situation arises	

11. **Agree** that regulations empower verifiers and food safety officers to recommend to the registration authority that poorly performing national programme Level 1 businesses be made subject to verification;

12. **Agree** that if a business chooses to operate under a higher risk-based measure, that they will remain subject to the verification frequency that would normally apply to their sector;

13. **Agree** that regulations will empower verifiers to adjust verification frequencies as set out in the table below:

Verification step	Verification frequency			
	Food sectors subject to food control plans	**Food sectors subject to national programme level 3**	**Food sectors subject to national programme level 2**	**Food sectors subject to national programme level 1**
Step 8	-	-	-	No verification
Step 7	-	-	3 years	3 years
Step 6	-	2 years	2 years	2 years
Step 5	18 months	18 months	18 months	18 months
Step 4	12 months	12 months	12 months	12 months
Step 3	9 months	9 months	9 months	9 months
Step 2	6 months	6 months	6 months	6 months
Step 1	3 months	3 months	3 months	3 months

14. **Agree** that, for businesses subject to food control plans, the verification frequency will initially be set at step 4, and if the business receives two consecutive acceptable verification outcomes, it will transition to step 5;

15. **Agree** that for businesses subject to national programmes, the verification frequency will commence as follows:

    i. National programme Level 3: Step 6
    ii. National programme Level 2, Step 7
    iii. National programme Level 1, Step 8;

16. **Agree** that regulations will establish the following criteria for the verifier to use in determining ongoing frequencies:

    i. confidence in management
    ii. food safety behaviour
    iii. the effectiveness of process controls;
    iv. the effectiveness of environmental controls, and
    v. compliance history;

17. **Agree** that regulations will establish certainty for businesses and ensure national consistency by setting out the following elements of the verification in regulation:

    i. the verifier's duty to inform the operator of any deficiencies found, the likely outcome of the verification visit, and when the next verification visit will take place
    ii. the verifier's duty to negotiate and confirm corrective actions with the food business operator and to confirm in a subsequent visit that corrective actions have been satisfactorily addressed

iii. the verifier's duty to assign an outcome as acceptable if satisfied that the operator is complying with regulatory requirements; or have addressed any departures satisfactorily with corrective actions

iv. the verifier's duty to designate the outcome as unacceptable if the operator is not complying with all applicable regulatory requirements based on a list of relevant factors

v. the verifier's duty to provide written reports to the operator following a verification outcome and the contents that such a report must contain

vi. the food business operator's right to request a reconsideration of a verification decision within 21 days

vii. that multi-site businesses must receive an onsite initial verification assessment, but that further verification may vary between each business, premises or site

viii. the verifier's duty to make verification information available to the MPI chief executive on request, and inform the MPI chief executive of any 'critical non-compliance'

ix. the food business operator of a custom food control plan's duty to perform regular checks of their business to ensure compliance with the applicable requirements;

Food control plans and national programmes - Safety and Suitability Requirements

18. **Agree** that regulations will establish safety and suitability requirements as set out below:

i. *places*: food business operators must ensure places used for food are:

- designed, located and constructed to enable food safety and suitability of food to be achieved and maintained, and
- maintained to facilitate cleaning and sanitising, and prevent contamination of food;

ii. *supporting systems*: food business operators must control pests, manage waste, use appropriate chemicals and maintenance compounds and ensure appropriate use of water;

iii. *facilities, equipment and essential services:* food business operators must ensure that:

- facilities, equipment, and essential services are constructed and maintained and located to enable safety and suitability of food and operated in a manner that does not exceed their capacity.
- adequate drainage and liquid and solid waste disposal systems are provided.

National programme business operators must additionally ensure that:

- adequate cleaning facilities are provided

- laundry activities are appropriate
- appropriate hygiene facilities and amenities are available
- equipment used to control the temperature of food are optimal and maintained
- equipment is appropriate to control harmful or undesirable micro-organisms
- air quality and ventilation and is maintained, and adequate lighting is provided
- adequate facilities for the storage of food, materials and cleaning equipment are provided
- equipment used with food, and for cleaning places, is fit for intended use
- vending machines only dispense food that is safe and suitable;

iv. *people:* food business operators must ensure that all people at any place where food is produced or processed and handled use appropriate hygiene, wear appropriate clothing, and that they are not handing food when ill;

v. *food ingredients and food related accessories:* Food business operators must ensure that:

- food ingredients and food-related accessories that are used in the processing and handling of food are safe and suitable
- packaging does not become a hazard to food
- food can be traced from the supplier, within the business and to the next recipient in the supply chain (other than the final consumer)
- they have a procedure in place enabling the recall of food and the reporting of the recall to the MPI chief executive;

vi. *production, processing and handling:* food business operators must ensure that:

- food does not contain biological, chemical, and physical hazards or extraneous objects, material, or substances
- food that is transported is safe and/or suitable for its intended use;

vii. *documents, records and reports:* food business operators must ensure that records are kept that enable the operator, MPI chief executive, a food safety officer or a verifier to readily ascertain that the business is meeting its regulatory obligations;

viii. *corrective action*: food business operators must take corrective actions and keep records of such actions;

ix. *reporting*: food business operators must report to their verifier any breach that resulted in unsafe food that can cause injury to human life or public health;

x. *competency and training:* food business operators must ensure that persons working at food businesses have the necessary competencies or skills to carry out their tasks;

Recognised Agencies and Persons

19. **Agree** that regulations will allow only recognised agencies and recognised persons to provide independent evaluation functions;

20. **Agree** that regulations will require that recognised agencies must meet the following core requirements:

    i. a documented Quality Management System; and
    ii. management of technical competencies; and
    iii. management of potential conflicts of interest;

21. **Agree** that recognised persons must demonstrate core competencies including knowledge of:

    i. relevant regulatory requirements;
    ii. identification and control of food safety hazards;
    iii. good operating practice for food businesses;
    iv. particular sectors, industries or processes;
    v. design and construction of premises, facilities and processes;
    vi. competency in performing audits;
    vii. when additional technical input is required;

22. **Agree** that recognised persons who operate independently of a recognised agency may be required to meet additional requirements relevant to the size of their business and the scope of their recognition;

23. **Agree** that regulations will require agencies and persons applying for recognition as an agency to provide independent evaluations and verify businesses operating under custom food control plans to hold a current accreditation to ISO 17020;

24. **Agree** that regulations will require agencies and persons applying for recognition as an agency to manage and provide verification functions to businesses other than those operating under a custom food control plan to demonstrate to the Ministry for Primary Industries that they meet core requirements;

25. **Agree** that regulations will establish performance standards to ensure that agencies and persons meet their obligations during their period of recognition to an acceptable level, including expectations such as the carrying out of statutory duties, verification processes and procedures, corrective actions procedures, reporting requirements, and other requirements such as the scope and frequency of performance reviews;

26. **Agree** that regulations will specify the requirements for agencies and persons to renew their recognition, including continuing to meet relevant requirements, competencies, qualifications, experience, specified conditions and performance standards;

Approved documents, materials, facilities or persons or classes of persons

27. **Agree** that regulations will set out the criteria that the MPI chief executive must take into account before approving a document, material, or facility, or a person or class of persons:
    i. the approval will improve credibility and confidence in the food supply; or
    ii. the approval will improve efficiency; or
    iii. the approval will improve clarity and transparency;

Food Standards

28. **Agree** that regulations will establish criteria to be used to determine maximum residue limits (MRLs) including:
    i. international best practice;
    ii. consistency with the applicable Codex Standards;
    iii. methods to determine MRLs for food that is diluted, reconstituted, or food with concentrated residues due to processing, or contains more than one food;

29. **Agree** that regulations will establish requirements for the following information to be included in notices issued by the MPI chief executive to set MRLs:
    i. the compound's common name;
    ii. Chemical Abstracts Service Registry Number;
    iii. compound's components to be considered in determining the MRL;
    iv. the food(s) to which the MRL applies;
    v. the MRL for the compound in relevant foods; and
    vi. any condition of approval such as a time limit for which the MRL will apply;

30. **Agree** that regulations will establish conditions of sale for foods containing residues of agricultural compounds include:
    i. prohibiting sale of food containing residues of an agricultural compound except where the food complies with regulations and any limits in notice under the Food Act,
    ii. allowing the sale of food containing residues not exceeding that 0.1mg/kg unless specifically provided otherwise by notice; and
    iii. allowing sale of imported food containing residues if the food complies with requirements under the Food Act or applicable Codex standards;

31. **Agree** that regulations will establish that food containing residues from an agriculture compound may be exempt from the conditions of sale above when the compound is used in accordance with a condition specified by notice under the Food Act for the management of:
    i. plants, or parts of plants, from which food is derived; or

ii. plants to be fed to animals from which food is derived; or
iii. animals that are intended for food, or from which the food is to be derived;

Imported Food

32. **Agree** that regulations will oblige food importers to:
    i. assess the source and destination of the product and controls in place during manufacture;
    ii. ensure food is stored and transported appropriately;
    iii. clearly identify foods; and
    iv. supply certain information in relation to specific consignments of food for import in English;

33. **Agree** that regulations will require importers to maintain or have access to information in relation to recommendation 32 i and ii above, and to provide these on demand;

34. **Agree** that regulations will allow food safety officers to require records and labels on imported foods to be translated into English;

35. **Agree** that regulations will enable importers to be made subject to verification as the result of MPI monitoring, systems audits, benchmarking surveys, a food safety incident or a justified complaint;

36. **Agree** that regulations will provide that, if verification of importers occurs, it will take place until the business is performing well and will be according to a schedule determined in the same way a registration authority would for national programmes level 1;

37. **Agree** that regulations will establish two categories of imported food: high regulatory interest and increased regulatory interest;

38. **Agree** that regulations will provide for food categorised as high regulatory interest to require clearance at the border;

39. **Agree** that, to have an imported food cleared, a food business will need to provide evidence that food is safe, and that this may include providing assurances or certificates from competent overseas authorities, another form of written information on controls in the exporting country, or the results of any sampling and testing required by a food safety officer;

40. **Agree** that regulations will require that food to be cleared must be isolated from other food and clearly identified, that a food safety officer may require food requiring clearance and/or testing to be moved at the cost of the importer, and that food that is not cleared must be managed;

41. **Agree** that regulations will provide for additional measures to be applied to food categorised as “increased regulatory interest”, food in this category may require clearance. MPI will apply additional measures to manage risk, gather additional information such as test results and assurances, evaluate hazards and food safety risk, and manage any issues until resolved;

42. **Agree** that regulations will establish that sampling and testing of imported food must be done at an approved laboratory;

Exemptions

43. **Note** that, while the Food Act allows regulations to be made that provide for exemptions, I am not proposing any such regulations at this time;

Infringement Offences

44. **Agree** to establish infringement offences in regulation, with a fee of $450, for:

    i. importing for the purpose of sale while not being registered
    ii. failing to register a food control plan
    iii. failing to register under a national programme if required to do so under the Food Act;

45. **Agree** to establish infringement offences in regulation for breaches of certain requirements in the Australia New Zealand Food Standards code as specified in Appendix 2 of this paper, with infringement fees ranging from $300 to $650;

Transitional Matters

46. **Agree** that the relevant appointed date for the purposes of the operation of various transitional provisions, and the date for the repeal of the Food Act 1981, will be 1 March 2016;

47. **Agree** that regulations will establish the timeframe and sector schedule for existing businesses to become subject to the Food Act 2014 as outlined in Appendix 3;

48. **Agree** that businesses currently operating under a risk-based food safety programme will be given until the end of the introductory period to transition under the Food Act 2014;

49. **Agree** that businesses must apply for registration under the Food Act 2014 no later than three months before the end of the transition date that applies to their sector;

Cost recovery

50. **Agree** that regulation 4 of the *Food (Fees and Charges) Regulations 2015* be amended to enable territorial authorities to grant an exemption from, or waive or refund, their fees and charges;

Next Steps

51. **Authorise** the Minister for Food Safety to issue drafting instructions to the Parliamentary Counsel Office to implement the agreed regulations;

52. **Authorise** the Minister for Food Safety to make decisions on detail and to make changes, consistent with the policy intent outlined in this paper, on any issues that arise during the drafting process for the regulations;

53. s 9(2)(f)(iv) [redacted]

54. **Agree** that the Minister for Food Safety may publish a copy of this paper on the website of the Ministry for Primary Industries having regard to the objectives of the Official Information Act 1982.

Hon Jo Goodhew
Minister for Food Safety
/ /2015

Appendix 1: Safety and suitability requirements

Safety and suitability regulations will cover the following aspects of food businesses:

- *places:* food businesses must ensure that the places where food is produced, processed, and handled are:
  - designed, located and constructed to enable the safety and suitability of food to be achieved and maintained;
  - maintained to facilitate cleaning and sanitising, and prevent contamination of food.

- *supporting systems:* food business operators must:
  - control pests, by conducting inspections and taking corrective action where they are found;
  - manage waste and recyclable matter by disposing of these at sufficiently frequent intervals;
  - use chemicals and maintenance compounds appropriate for the task, to prevent them from contaminating food;
  - ensure that water used with food and for cleaning is suitable for the purpose for which it is used.

- *facilities, equipment and essential services:* food business operators must ensure that facilities, equipment, and essential services are:
  - designed, constructed, and located to enable the safety and suitability of food to be maintained;
  - operated in a manner that does not exceed their capacity;
  - maintained to facilitate cleaning and sanitising procedures, function as intended; and prevent contamination of food.

- Operators of national programmes will additionally need to ensure that:
  - adequate drainage and liquid and solid waste disposal systems are provided and designed and constructed to reduce the risk of contaminating food or water supply;
  - adequate cleaning facilities are provided with supply of clean cold and hot water;
  - laundry activities are operated so as not to be a source of contamination of food;
  - facilities and amenities must be available to enable persons at places used for food to maintain an appropriate level of personal hygiene (including hand washing facilities, clothes changing and baby changing areas);
  - equipment used to control the temperature of food is designed to achieve the required food temperature as rapidly as necessary in the interests of food safety and suitability, and maintain it effectively;
  - equipment is appropriate for the range and volume of food activities processed, so that harmful or undesirable micro-organisms, or their toxins, are effectively controlled;

- air quality and ventilation and is maintained, and adequate lighting is provided;
- adequate facilities are provided for the storage of food, packaging materials, and cleaning equipment, chemical and maintenance compounds;
- equipment used with food, and equipment used for cleaning places, are fit for intended use and do not contaminate food;
- vending machines are only able to dispense food that is safe and suitable at the time it is dispensed.

- *people:* food business operators must ensure that all people:
  - at any place where food is produced or processed and handled, follow an appropriate personal and hand hygiene routine that does not compromise the safety and suitability of food;
  - who are known to be, or suspected of being, infected by or a carrier of a disease or illness that is likely to be transmitted through food, are precluded from handling food;
  - wear appropriate clothing and that the clothing itself does not become a source of contamination.

- *food ingredients and food-related accessories:* food business operators must ensure that:
  - food ingredients and food-related accessories that are used in the processing and handling of food are safe and suitable for their intended purpose, and, if not fit for human consumption are clearly identified;
  - packaging does not become a hazard to food;
  - the food business operates a traceability system that allows for the identification of food, and enables the movement of food to be traced from the supplier, within the business, and to the next recipient in the supply chain (other than the final consumer);
  - the food business has a recall procedure that enables it to recall food or a food-related accessory, where the safety and suitability of food is in doubt. Food businesses will also be required to report any food recall to the MPI chief executive.

- *production, processing and handling:* food business operators must ensure that:
  - food and food related accessories are processed and handled in a manner that minimises the potential contamination or deterioration of the food;
  - food does not contain biological, chemical, and physical hazards or extraneous objects, material, or substances, (by identifying hazards and methods to control those hazards, and keeping records of critical controls and corrective actions taken if critical controls were not met);
  - when transporting food, temperature, humidity, atmosphere or other characteristics to keep food safe are maintained, and that the food arrives in a condition that is safe and suitable for its intended use.

- *documents, procedures and records:* food business operators must ensure:
  - that records are kept that enable the operator, MPI chief executive, a food safety officer or a verifier to readily ascertain that the business is meeting their regulatory obligations;
  - all records and documents required to be kept are legible, accurate and complete.

- *corrective action:* food businesses must have a system for and keep records of corrective actions, including how control was restored, how any affected food was disposed of, and how the competency of people involved with the loss of control was identified and dealt with.

- *reporting:* food business operators must report to their verifier any breach of a risk-based measure, that has resulted in food that has the potential to cause or lead to illness or injury to human life or public health.

- *competency and training:* food business operators must:
  - ensure that persons who can affect the safety or suitability of food, or who carry out activities where a particular competency or skill is required, have the necessary competencies or skills to carry out their tasks;
  - identify the competency or skill needed by the day to day manager, and any person responsible for specific tasks.

Appendix 2: Infringement Scheme for the Food Standards Code

Breaches of the following sections from the Food Act 2014 have been assessed as suitable for prescribing as infringement offences.

Section	Descriptor	Cl	Requirement	Fee
234	Offences involving imported food	(1)(c)	Breaches or fails to comply with section 108	$450
108	Restriction on importation of food for purpose of sale	(1)	A person must not import any food for the purpose of sale unless—	
		a)	the person is a registered importer; or	
		b)	if the person is not a registered importer, the person is importing the food through an agent who is a registered importer.	
		(2)	The importation of food in a quantity that is more than that which a reasonable person would consider to be reasonably required for the purpose of personal consumption must, unless the contrary is proved, be treated as an importation of the food for the purpose of	
240	Offence involving breaching or failing to carry out duty	(2)	A person commits an offence if the person breaches or fails to carry out a duty specified in section 48 (food control plans must be registered) or section 79 (food businesses subject to national programme must be registered)	

The following clauses from Chapters 1 and 2 of the Food Standards Code have been assessed as suitable for prescribing as infringement offences

CHAPTER ONE – GENERAL FOOD STANDARDS

Std No	Standard	Descriptor	Clause	Requirement	Fee
1.2.1	Requirements to have labels or otherwise provide information	Prohibition on altering labels	22(1)&(3)	(1) A person who sells a food for sale that is packaged, or deals with a packaged food for sale before its sale, must not deface the label on the package unless: (a) the *relevant authority has given its permission; and (b) if the relevant authority has imposed any conditions on its permission—those conditions have been complied with. (3) In this section: ***deface*** includes alter, remove, erase, obliterate and obscure.	$650

				(1.2.1 – 22(2) allows for overlabelling)	
		Information required on food that is required to bear a label	6 & 8(1)(b)	If food for sale is in a package, it is required to bear a label with the following information (b) lot identification (see section 1.2.2—3); *1.2.2—3(a) for ice cream, and 1.2.2—3 (b) for small packages – exemptions apply*	$450
			6 & 8(1)(c)	If food for sale is in a package, it is required to bear a label with the following information name and address of the *supplier (see section 1.2.2—4);	
			6 & 8(1)(d)	If food for sale is in a package, it is required to bear a label with the following information advisory statements and section 1.2.3—2(1);	
			6 & 8(1)(e)	If food for sale is in a package, it is required to bear a label with the following information a statement of ingredients (see section 1.2.4—2); *1.2.4—2 (2) and 1.2.4—2 (3)(a)(b) and (c) set out more detail regarding exemptions*	
			6 & 8(1)(g)	If food for sale is in a package, it is required to bear a label with the following information storage conditions and directions for use (see section 1.2.6—2);	
			6 & 8(1)(i)	If food for sale is in a package, it is required to bear a label with the following information nutrition information (see Standard 1.2.8);	
			6 & 8(1)(n)	If the food for sale is in a package, it is required to bear a label, for raw meat joined or formed into the semblance of a cut of meat—the required information relating to that meat (see section 2.2.1—8);	
			6 & 8(1)(p)	If the food for sale is in a package, it is required to bear a label, for formed or joined fish—the information relating to that fish (see section 2.2.3—3);	
			6 & 8(1)(r)	If food for sale is in a package, it is required to bear a label with the following information for juice blend—the name and percentage by volume of each juice in the blend (see section 2.6.1—4);	
			6 & 8(1)(v)(i)	If food for sale is in a package, it is required to bear a label with the following information for formulated caffeinated beverages:	

				(i) declarations of average quantities (see section 2.6.4—5); and	
			6 & 8(1)(v)(ii)	If food for sale is in a package, it is required to bear a label with the following information for formulated caffeinated beverages: (ii) any advisory statements (see section 2.6.4—5);	
			6 & 8(1)(w)(i)	If food for sale is in a package, it is required to bear a label with the following information for a food that contains alcohol—if required: (i) a statement of the alcohol content (see section 2.7.1—3)	
			6 & 8(1)(w)(ii)	If food for sale is in a package, it is required to bear a label with the following information for a food that contains alcohol—if required: (ii) a statement of the number of *standard drinks in the package (see section 2.7.1—4);	
			6 & 8(1)(y)(ii)	If the food for sale is in a package, it is required to bear a label with the following information: the required statements and other information for: (ii) food for infants (see Standard 2.9.2); and	
			6 & 8(1)(y)(iii)	If the food for sale is in a package, it is required to bear a label with the following information: the required statements and other information for: (iii) formulated meal replacements and formulated supplementary foods (see Standard 2.9.3); and	
			6 & 8(1)(z)	If the food for sale is in a package, it is required to bear a label with the following information: the required information for reduced sodium salt mixtures and salt substitutes (see section 2.10.2—8).	
		Information requirements for food for sale that is not required to bear a label	6 & 9(3)(e)	This section applies to food for sale that is not required to bear a label, the information specified in subsection (3)(e) must, in accordance with the provisions indicated, be stated in labelling, that (a) accompanies the food; or (b) is displayed in connection with the display of the food; or (e) if the food for sale is not in a package – for fermented comminuted processed or manufactured meat – the prescribed name (see sections 2.2.1-9 and 2.2.1-10).	$450

			6 &9(5)(a)	The following information must be declared or provided to the purchaser, in accordance with the provisions indicated: (a) any required statement indicating the presence of offal must be declared (see section 2.2.1—6);	
			6 & 9(5)(b)	The following information must be declared or provided to the purchaser in accordance with the provisions indicated: (b) for raw meat joined or formed into the semblance of a cut of meat any required information relating to that meat must be provided (see section 2.2.1-8)	
			6 & 9(5)(c)	The following information must be declared or provided to the purchaser: (c) for formed or joined fish – any required information relating to that fish must be provided (see section 2.2.3(3))	
			6 & 9(7)(g)	For formulated caffeinated beverages – any advisory statements must be stated in labelling that is: (a) displayed in connection with the display of the food; or (b) provided to the purchaser on request	
		General legibility requirements	24(1)	If this Code requires a word, statement, expression or design to be contained, written or set out on a label—any words must be in English	$450
1.2.3	Information requirements – warning statements, advisory statements and declarations	Mandatory Advisory Statements	2(1)	For the labelling provisions, if a food is listed in Column 1 of the table in Section S9—2, the corresponding advisory statement in Column 2 of that table is required. [With the exception of pollen and propolis (where lack of associated advisory statement would be managed by an alternative enforcement tool) lack of an advisory statement on the label of the foods listed in Column 1 of the table in Section S9 could result in an infringement]	$450
			2(2)(a)(b)(c)	For the labelling provisions, an advisory statement to the effect that excess consumption may have a laxative effect is required for a food that contains: (a) one or more of the following substances, either alone or in combination, at a level of or in excess of 10 g/100 g: (i) lactitol; (ii) maltitol; (iii) maltitol syrup; (iv) mannitol; (v) xylitol; or	

				(b) one or more of the following substances, either alone or in combination, at a level of or in excess of 25 g/100 g: (i) erythritol; (ii) isomalt; (iii) polydextrose; (iv) sorbitol; or (c) one or more of the substances listed in paragraph (a), in combination with one or more of the substances listed in paragraph (b), at a level of or in excess of 10 g/100 g.	
1.2.4	Information requirements – statement of ingredients	Requirement to list all ingredients	3(1)	Subject to subsection (2), a statement of ingredients must list each ingredient in the food for sale. 1.2.4(3)(2)(e) set out more detail regarding exemptions	$450
		Ingredients to be listed by common, descriptive or generic name	4(a)	A statement of ingredients must identify each ingredient: (a) in the case of offal—in accordance with section 2.2.1—6	$300
1.2.5	Information requirements – date marking of food for sale	Required wording and form for dates for labels	5(1)	The date marking information may only be expressed in accordance with this section. *To avoid doubt, section 1.2.5—5 does not prevent the addition of a packed-on date or a manufacturer's or a packer's code on the label on a package of food (1.2.5(6)).*	$450
			5(2)(a)(i) and 5(2)(b)	for a best-before date—the words 'Best Before'; be accompanied by: (i) the relevant date; or (ii) a reference to where the date is located on the label .	
			5(2)(a)(ii) and 5(2)(b)	for a use-by date—the words 'Use By' be accompanied by: (i) the relevant date; or (ii) a reference to where the date is located on the label	
			5(2)(a)(iii) and 5(2)(b)	for a baked-for date—the words 'Baked For' or 'Bkd For'; be accompanied by: (i) the relevant date; or (ii) a reference to where the date is located on the label	
			5(2)(a)(iv) and 5(2)(b)	for a baked-on date—the words 'Baked On' or 'Bkd On'; be accompanied by:	

				(i) the relevant date; or (ii) a reference to where the date is located on the label	
			5(3)(a)(b)(c)	In a *best-before date or a *use-by date: (a) the day must be expressed in numerical form; and (b) the month may be expressed in: (i) numerical form; or (ii) upper or lower case letters; and (c) the year must be expressed in numerical form and may be expressed using the full year or only the last 2 digits of the year.	$300
			5(4)(a)(i)(ii)	if the best-before date or use-by date is not more than 3 months from the date it is applied: (i) the day and month, in that order; or (ii) if the month is expressed in letters—the day and the month, in any order;	$450
			5(4)(b)	if the best-before date or a use-by date is more than 3 months from the date it is applied—the month and the year, in that order.	
			5(5)	The day, month and year must be expressed so that it is apparent which number is the day, the month or the year.	
1.2.6	Information requirements – directions for use and storage	Directions for use, and statement of storage conditions	2(a)	if specific storage conditions are required to ensure that the food will keep until the *use-by date or the *best-before date—a statement of those conditions	$450
1.2.8	Nutrition information requirements	When nutrition information panel is required	5(1)	For the labelling provisions, the required information on packaged food is a nutrition information panel *1.2.8—5(2)(a) and (b) set out detail regarding exemptions*	$300
		What must be on nutrition information panel	6(1)&(2)	(1) A nutrition information panel must contain the following information: (2) A nutrition information panel must be set out in the format in section S12—2, unless this Code provides otherwise.	
			6(1)(a)	A nutrition information panel must contain the number of servings in the package, expressed as either: (i) the number of servings of the food; or (ii) if the weight or the volume of the food as packaged is variable—the number of servings of the food per kilogram, or other unit as appropriate;	

			6(1)(b)	A nutrition information panel must contain the *average quantity of the food in a serving expressed in: (i) for a solid or semi-solid food—grams; or (ii) for a beverage or other liquid food—millilitres;	
			6(1)(c)	A nutrition information panel must contain the *unit quantity of the food;	
			6(1)(d)(i)	A nutrition information panel must contain for a serving of the food and a unit quantity of the food: (i) the *average energy content expressed in kilojoules or both in kilojoules and in calories or kilocalories	
			6(1)(d)(ii)	A nutrition information panel must contain for a serving of the food and a unit quantity of the food: (ii) the average quantity of (A) protein, carbohydrate, sugars, fat and, (B) subject to subsection (4), saturated fatty acids,	
			6(1)(d)(iii)	A nutrition information panel must contain for a serving of the food and a unit quantity of the food: (iii) the average quantity of sodium, expressed in milligrams or both milligrams and millimoles; and	
			6(1)(d)(iv)	A nutrition information panel must contain for a serving of the food and a unit quantity of the food: (iv) the name and the average quantity of any other nutrient or *biologically active substance in respect of which a *claim requiring nutrition information is made, expressed in grams, milligrams, micrograms or other units as appropriate;	
		What must be on nutrition information panel	6(3)	If a *claim requiring nutrition information is made in respect of: (a) cholesterol; or (b) *saturated,* trans, *polyunsaturated or *monounsaturated fatty acids; or (c) omega-3, omega-6 or omega-9 fatty acids; a nutrition information panel must include declarations of the trans, polyunsaturated and monounsaturated fatty acids in accordance with section S12—3.	
			6(5)	If a *claim requiring nutrition information is made in respect of: (a) fibre or any specifically named fibre; or (b) *sugars or any other type of *carbohydrate; a nutrition information panel must include a declaration of the presence or absence of *dietary fibre in accordance with section S12—3.	

			6(6)	The absence of *dietary fibre under subsection (5) must be indicated by using the symbol '0'.	
		How to express particular matters in nutrition information panel	7(1)	The nutrition information panel must clearly indicate that: (a) any average quantities set out in the panel are average quantities; and (b) any minimum or maximum quantities set out in the panel are minimum or maximum quantities	
		How to express particular matters in nutrition information panel	7(3)	The following must be expressed in a nutrition information panel to not more than 3 significant figures: (a) the average energy content; (b) the average, minimum or maximum quantities of nutrients and biologically active substances.	
		Percentage daily intake information	8(3)(a)	If information relating to percentage daily intake is included, the nutrition information panel must include: (a) the percentage daily intake per serving, calculated using the associated reference value listed (in the standard) for the following items: energy, protein, fat, saturated fatty acids, carbohydrate, sodium, sugars, dietary fibre (if declared)	
			8(3)(b)	If information relating to percentage daily intake is included, the nutrition information panel must include: (b) either of the following statements: (i) 'based on an average adult diet of 8 700 kJ'; (ii) 'Percentage daily intakes are based on an average adult diet of 8 700 kJ'.	
		Percentage recommended dietary intake information	9	(1) This section applies if: (a) a *claim requiring nutrition information is made about or based on a vitamin or mineral (the ***relevant vitamin or mineral***); and (b) the relevant vitamin or mineral has an *RDI (see sections S1—2 and S1—3); and (c) the food to which the claim relates is not a food for infants. (2) Subject to section 1.2.8—10, the percentage of the *RDI for the relevant vitamin or mineral contributed by one serving of the food must be set out in the nutrition information panel. (3) The percentage *RDI under subsection (2) must be calculated using the nutrient values set out in the nutrition information panel. (4) Despite paragraph (1)(c), percentage recommended dietary intake information may be included in the *nutrition information panel for a *food for infants	
		Requirement for dehydrated or	11	If the label on a package of a food for sale indicates that the food should be reconstituted with water before consumption, the nutrition information panel must	

		concentrated food		express the information required by this Standard as a proportion of the reconstituted food.	
		Food intended to be drained before consumption	12	If the labelling for a food for sale contains directions indicating that the food should be drained before consumption, the nutrition information panel must: (a) express the information required by this Standard as a proportion of the drained food; and (b) clearly indicate that the information relates to the drained food	
		Requirement for food for sale in small packages	14(1)(a)	For the labelling provisions, for a food for sale in a small package, the following nutrition information is required if a *claim requiring nutrition information is made: (a) the *average quantity of the food in a serving, expressed: (i) for a solid or semi-solid food—in grams; and (ii) for a beverage or other liquid food—in millilitres; and	
			14(1)(b)	if a claim is about a matter in Column 1 of the table to section S13—2, the particulars specified in Column 2, expressed: (i) as minimum, maximum or average quantities, unless otherwise specified; and (ii) with a clear indication of whether the particulars are minimum, maximum or average quantities	

CHAPTER TWO – FOOD PRODUCT STANDARDS

Std No	Standard	Descriptor	Clause	Requirement	Fee
2.2.1	Meat and meat products	Statement indicating the presence of offal	6	For the labelling provisions: (a) brain, heart, kidney, liver, tongue or tripe must be identified as: (i) offal; or (ii) by the specific name of the type of offal; and (b) any other type of offal must be identified by the specific name of the type of offal.	$300
		Information about raw meat joined or formed into the semblance of a cut of meat	8	For the labelling provisions, for a food that consists of raw meat that has been formed or joined in the semblance of a cut of meat, whether coated or not, using a binding system without the application of heat, the following information is required: (a) a declaration that the food consists of meat that is formed or joined; and (b) in conjunction with that information, cooking instructions that would result in microbiological safety of the food being achieved.	
		Labelling of fermented comminuted processed meat	9(1)	(1) The *prescribed name for fermented comminuted processed meat is: (a) if the meat has not been heat treated or cooked—'fermented processed meat – not heat treated'; and (b) if the meat has been heat treated—'fermented processed meat – heat treated'; and (c) if the meat has been cooked—'fermented processed meat – cooked'.	
			9(2)	For the labelling provisions, if the label on a package containing fermented comminuted processed meat contains a trade name, the following words are required to be included on the label in association with the trade name: (a) if the meat has not been heat treated or cooked—'fermented'; (b) if the meat has been heat treated—'fermented heat treated'; (c) if the meat has been cooked—'fermented cooked'. ***Note*** The labelling provisions are set out in Standard 1.2.1.	
			9(3)	The labelling may refer to a heating process only if: (a) the reference is included for compliance with this section; or (b) the heating process is a cooking instruction for the consumer.	

		Labelling of fermented comminuted manufactured meat	10(1)	The *prescribed name for fermented comminuted manufactured meat is: (a) if the meat is not heat treated or cooked—'fermented manufactured meat – not heat treated'; and (b) if the meat has been heat treated—'fermented manufactured meat – heat treated'; and (c) if the meat has been cooked—'fermented manufactured meat – cooked'.	
		Labelling of fermented comminuted manufactured meat	10(2)	For the labelling provisions, if the label on a package containing fermented comminuted manufactured meat contains a trade name, the following words are required to be included in association with the trade name: (a) if the meat has not been heat treated or cooked—'fermented'; (b) if the meat has been heat treated—'fermented heat treated'; (c) if the meat has been cooked—'fermented cooked'.	
		Labelling of fermented comminuted manufactured meat	10(3)	The labelling may refer to a heating process only if: (a) the reference is included for compliance with this section; or (b) the heating process is a cooking instruction for the consumer.	
		Fermented comminuted meat—unpackaged	11	(1) This section applies to fermented comminuted meat that is not required to *bear a label because it is not in a package. *Note* See subsections 1.2.1—6(4) and 1.2.1—9(4)). (2) For the labelling provisions, despite paragraphs 2.2.1—9(1)(a) and 2.2.1—10(1)(a), the words 'not heat treated' need not be displayed.	
2.2.3	Fish and fish products	Labelling of formed or joined fish	(3)(a)(b)	For the labelling provisions, for a food that consists of raw fish that has been formed or joined in the semblance of a cut or fillet of fish using a binding system without the application of heat, whether coated or not, the following information is required: (a) a declaration that the food is either formed or joined; (b) in conjunction with that declaration, cooking instructions that would result in microbiological safety of the food being achieved.	
2.6.1	Fruit juice and vegetable juice	Name and percentage by volume of juices in juice blend	4	For the labelling provisions, the name and percentage of each juice in juice blend is not required for orange juice which contains no more than 10 percent in total of: (a) mandarin juice; or	

				(b) tangelo juice; or (c) mandarin juice and tangelo juice.	
2.6.2	Non-alcoholic beverages and brewed soft drinks	Labelling—composition of packaged water	5 (1)	For the labelling provisions, for water presented in packaged form that contains added fluoride, a statement to the effect that the water contains added fluoride is required.	
		Labelling of electrolyte drinks and electrolyte drink bases	11	(1) For the labelling provisions, the following information is required for an electrolyte drink or an electrolyte drink base: (a) the average per 100 mL, of: (i) the average energy content; and (ii) the *carbohydrate present, including each type of monosaccharide and disaccharide; and (iii) added minerals and electrolytes, expressed as milligrams and millimoles; (b) the recommended volume and frequency of use. (2) For an electrolyte drink base, the declaration must be based on the electrolyte drink as ready to drink.	
2.6.4	Formulated caffeinated beverages	Labelling requirements—formulated caffeinated beverage	5(1)(a)	For the labelling provisions, the required declarations of average quantities are a declaration of the *average quantity, per serving size and per 100 mL, of: (a) caffeine, expressed in milligrams; and	
			5(1)(b)	For the labelling provisions, the required declarations of average quantities are a declaration of the *average quantity, per serving size and per 100 mL, of: (b) each listed substance (if any) that the beverage contains, expressed in the units in Column 2 of the table to section S28—2.	
			5(3)(a)(b)	For the labelling provisions, the required advisory statements are statements to the effect that: (a) the food contains caffeine; and (b) the food is not recommended for: (i) children; or (ii) pregnant or lactating women; or (iii) individuals sensitive to caffeine; and	
		Required advisory statements	5(3)(c)	For the labelling provisions, the required advisory statements are statements to the effect that:	

				(c) if the food contains a listed substance—no more than a one-day quantity should be consumed per day.	
2.7.1	Labelling of alcoholic beverages and food containing alcohol	Statement of alcohol content	3(1),(2)&(3)	(1) For the labelling provisions, a statement of the alcohol content is required for: (a) a food (including an alcoholic beverage) that contains more than 1.15 percent alcohol by volume; or (b) an alcoholic beverage that contains 1.15 percent or less alcohol by volume; or (c) a beverage that contains not less than 0.5 percent but not more than 1.15 percent alcohol by volume. (2) For paragraph (1)(a), the alcohol content must be expressed in mL/100 g, mL/100 mL or as the percentage of alcohol by volume. (3) For paragraph (1)(b) or (c), the alcohol content must be expressed in words to the effect 'CONTAINS NOT MORE THAN X PERCENT ALCOHOL BY VOLUME'..	
		Statement of the number of standard drinks	4(1)&(2)	(1) For the labelling provisions, a statement of the approximate number of *standard drinks in the food for sale is required for a food that: (a) is capable of being consumed as a beverage; and (b) contains more than 0.5 percent alcohol by volume, measured at 20°C. (2) The statement must be accurate to: (a) for a food for sale containing 10 or less *standard drinks—the first decimal place; or (b) for a food for sale containing more than 10 standard drinks—the nearest whole number of standard drinks.	
2.8.2	Honey	Prescribed name	4	For the labelling requirements in 1.2.1 (6, 8 & 9) the name of the food is, if the food has a prescribed name, the prescribed name Honey' is a *prescribed name.	

2.9.2	Food for infants	Labelling	7(3)	For the labelling provisions (see 1.2.1), the required information relating to composition is: (a) a statement indicating the consistency of the food; and (b) a statement indicating the minimum age, expressed in numbers, of the infants for whom the food is recommended; and (c) if the food is recommended for infants under the age of 6 months—in association with the statement required by paragraph (b), the *warning statement 'Not recommended for infants under the age of 4 months'; and (d) if the monosaccharide and disaccharide content of added sugars and honey is more than 4 g/100 g—the word 'sweetened'; and (e) if honey has been used as an ingredient—in association with the word 'honey', the word 'sterilised'.	
		Additional labelling requirements relating to specific nutrients and energy information	8(1)(a)	For the labelling provisions (see 1.2.1), the required information relating to composition is: (a) if a reference is made in the label (including in the name of the food) to milk, eggs, cheese, fish, meat (including poultry), nuts or legumes—the percentage of that ingredient in the food for sale; and	
			8(1)(b)	For the labelling provisions (see 1.2.1), the required information relating to composition is: (b) if the food contains more than of 3 g of protein/100 kJ—the *warning statement 'Not suitable for infants under the age of 6 months'.	
		Prohibited representations	9(2)	The label on a package of food for infants must not include a recommendation that the food can be added to bottle feeds of an infant formula product.	
		Nutrition information	11(3)	The nutrition information panel for food for infants must be set out in the format set out in section S12—6.	
		Food in dehydrated or concentrated form	12(1),(2),(3)&(4)	(1) This section applies to food for infants that is in dehydrated or concentrated form. (2) For the labelling provisions (see 1.2.1), directions are required for how the food should be reconstituted. (3) The particulars set out in each column of the nutrition information panel must be expressed as a proportion of the food as reconstituted according to those directions. (4) If more than one fluid for preparing the food is nominated in the label: (a) the particulars set out in the column should be adjusted according to the first liquid nominated; and	

				(b) the name of this liquid must be included in the nutrition information panel.	
		Storage requirements	13	For the labelling provisions (see 1.2.1), the storage instructions must cover the period after the package is opened.	
2.9.3	Formulated meal replacements and formulated supplementary foods	Labelling of formulated meal replacements	4(1)(a)	The nutrition information panel on the label on a package of formulated meal replacement must include a declaration of the average quantities of the vitamins and minerals that: (a) in the case of vitamins and minerals listed in the table in section S29—12—are present in the food; and	
			4(1)(b)	The nutrition information panel on the label on a package of formulated meal replacement must include a declaration of the average quantities of the vitamins and minerals that: (b) in the case of vitamins and minerals listed in the table in section S29—13—have been *used as a nutritive substance in the food.	
			4(2)(a)	A claim as to the presence in a formulated meal replacement of a vitamin or mineral listed in the table to section S29—12 or S29—13 may be made on the label on a package of formulated meal replacement only if: (a) no less than 10 percent *RDI or *ESADDI of that vitamin or mineral is present in a serving of the food; and	
			4(2)(b)	(2) A claim as to the presence in a formulated meal replacement of a vitamin or mineral listed in the table to section S29—12 or S29—13 may be made on the label on a package of formulated meal replacement only if: (b) for a vitamin or mineral that has been *used as a nutritive substance in the food—the claimed amount of that vitamin or mineral in a serving is no more than the amount set out in Column 3 of the relevant table to section S29—12 or S29—13.	
			4(4)	For the labelling requirements in 1.2.1 (6, 8 & 9), the name of the food is, if the food has a prescribed name, the prescribed name 'Formulated meal replacement' is a *prescribed name.	
		Labelling of formulated meal replacements	4(5)	For the labelling provisions (see section 1.2.1), the required statement is words to the effect that the product must not be used as a total diet replacement.	

		Labelling of formulated supplementary foods	6(1)	The nutrition information panel on the label on a package of formulated supplementary food must include a declaration of the average quantities of any vitamin or mineral that: (a) is listed in Column 1 of the table to S29—14; and (b) is present in the food	
			6(2)(a)&(b)	A claim as to the presence in a formulated supplementary food of a vitamin or mineral listed in section S17—2, S17—3 or S29—14 may be made on the label on a package of formulated supplementary food if: (a) no less than 10 percent* RDI or *ESADDI, as appropriate, of the vitamin or mineral listed in Column 1 of the table to section S29—14 is in a serving of the food; and (b) for a vitamin or mineral that has been *used as a nutritive substance in the food, the claimed amount in a serving of the food is no more than the amount set out in Column 3 of the table.	
			6(4)	For the labelling provisions (see 1.2.1), the required statement is a description of the role of the food as a supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual's requirements.	
			6(5)	For the labelling requirements in 1.2.1 (6, 8 & 9), the name of the food is, if the food has a prescribed name, the prescribed name 'Formulated supplementary food' is a *prescribed name.	
		Labelling of formulated supplementary foods for young children	8(1)	(1) The nutrition information panel on the label on a package of formulated supplementary foods for young children must include a declaration of the *average quantity of any vitamin or mineral that: (a) is listed in Column 1 of the table to section S29—15; and (b) is *used as a nutritive substance in the food.	

			8(2)(a)&(b)	A claim as to the presence in a formulated supplementary food for young children of a vitamin or mineral in section S17—2, S17—3 or S29—15 may be made on the label on a package of formulated supplementary food for young children if: (a) no less than 10 percent *RDI or *ESADDI, as appropriate, of the vitamin or mineral listed in Column 1 of the table is present in a serving of the food; and (b) for a vitamin or mineral that has been *used as a nutritive substance in the food, the claimed amount of that vitamin or mineral in a serving of the food is no more than the amount set out in Column 3 of the table.	
			8(5)	For the labelling requirements in 1.2.1 (6, 8 & 9), the name of the food is, if the food has a prescribed name, the prescribed name 'Formulated supplementary food for young children' is a *prescribed name.	
2.10.2	Salt and salt products	Labelling requirement for reduced sodium salt mixtures and salt substitutes	8(1)	For the labelling provisions (see 1.2.1), the required information is a declaration of the sodium and potassium content, expressed per 100 g.	
2.10.3	Chewing gum	Labelling requirements	5(1)(a)	If a claim is made in accordance with section 2.10.3—4, the nutrition information panel must include: (a) for chewing gum in a small package: (i) the *average quantity of *releasable calcium per serve; and (ii) the serving size; and	
			5(1)(b)	If a claim is made in accordance with section 2.10.3—4, the nutrition information panel must include: (b) for chewing gum other than in a small package—the average quantity of releasable calcium per serve and per 100 g; and	

			5(1)(c)(i)(ii)	If a claim is made in accordance with section 2.10.3—4, the nutrition information panel must include: (c) in any case: (i) the proportion of the *RDI (for calcium) of releasable calcium per serve; and (ii) a statement to the effect that the average quantity of calcium is released during 20 minutes of chewing.	

Appendix 3: Transition schedule

30 June 2017	30 June 2018	28 February 2019
Manufacturers of food for vulnerable populations	Manufacturers of commercially sterilised food products	Manufacturers of vegetable protein and other protein products
Manufacturers of fresh ready-to-eat salads	Manufacturers of meat, poultry or fish products	-
Manufacturers of non-shelf stable sauces, spreads, dips, soups, broths, gravies or dressings	Manufacturers of dairy products	-
-	Manufacturers of processed egg products	-
-	Manufacturers of meals and prepared food	-
-	Wholesale bakers	-
Listed importers must register by first anniversary date of current listing after 1 July 2016		Businesses operating with a current deemed Food Control Plan as at 1 March 2016
Food service sector general-on licence	Food retailers that prepare or manufacture and sell food – including retail butchers, fishmongers, delis, supermarkets	
	Food service sector general-no on licence	
	Processors of herbs or spices	Processors of grain
	Retailers that handle food (but do not prepare or manufacture food)	Manufacturers of oils and fats for human consumption
	Manufacturers of food additives, processing aids, vitamins, minerals and other nutrients intended to be added to food	Manufacturers of dry mix powders

30 June 2017	30 June 2018	28 February 2019
	Manufacturers of non-alcoholic beverages	Brewers, distillers, manufacturers of vinegar, alcoholic beverages or malt extract
Food service to pre-school children (including children under 5 years) in a centre-based setting	Retailers of manufacturer packaged chilled and frozen food (excluding ice cream and iced confectionery)	Manufacturers of shelf-stable grain-based products
Processors of nuts or seeds	Manufacturers of confectionery	Manufacturers of crisps, popcorn, pretzels, soy crisps or similar snack products
-	Bakeries that prepare or manufacture bread or bread-derived products only	Manufacturers of dried/dehydrated fruit or vegetables
-	-	Manufacturers of water based products including ice, iced confectionery and desserts
-c	-	Manufacturers of shelf-stable condiments (including sauces, spreads and preserves)
-	-	Manufacturers of frozen fruit and vegetables
-	-	Retailers of hot beverages and shelf-stable manufacturer packaged foods only
-	-	Extractors and packers of honey
-	-	Manufacturers of sugar or related products
-	-	Transporters or distributors of food products
-	-	Producers of horticultural food and horticultural packing operations (packhouses)
-	-	Retailers of manufacturer packaged ice cream and iced confectionery