



Proposals for changes to food safety regulations

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Part 1: introduction

1 Submissions

The Ministry for Primary Industries (MPI) is seeking submissions on regulatory proposals under the Food Act 2014 and the Animal Products Act 1999.

This document sets out proposals in a number of areas. Your submissions will help us assess whether we need to amend these proposals in any way to better meet your needs, while still meeting the purposes of the Acts.

1.1 How to have your say

The deadline for receipt of all submissions is 5pm on Monday 5 December 2016.

We have included questions throughout this document. You may wish to use these questions to structure your submission.

MPI will consider all relevant material made in submissions, so you are welcome to provide additional information. You may also prefer to provide a submission in your own format. Please make sure you include the following information in your submission:

- the title of this discussion document (*Proposals for changes to food safety regulations*);
- your name and title;
- your organisation's name (if you are submitting on behalf of an organisation); and
- your contact details (e.g. phone number, address and email).

Also:

- make sure that your comments can be clearly read as a number of copies will be made to help with analysis;
- state the number of the question you are answering or, if you are making a general comment, state the number of the section your comments are referring to.

You can return your submission in any of these ways:

Email: foodregulations@mpi.govt.nz

Mail: **Consultation: Proposals for changes to food safety regulations**
Ministry for Primary Industries
PO Box 2526
Wellington 6104

Or hand delivery: **Consultation: Proposals for changes to food safety regulations**
Ministry for Primary Industries
Pastoral House
25 The Terrace
Wellington

1.2 Official Information Act requirements

Under the Official Information Act 1982 (OIA), information held by MPI is to be made available to requestors unless there are grounds for withholding it. The grounds for withholding information are outlined in the OIA.

If you are making a submission, you may wish to indicate any grounds for withholding information contained in your submission. Reasons for withholding information could include that information is commercially sensitive or that you wish personal information, such as names or contact details, to be withheld. An automatic confidentiality disclaimer from your IT system will not be considered as grounds for withholding information.

We will take your indications into account when determining whether or not to release information. Any decision to withhold information requested under the OIA may be reviewed by the Ombudsman.

1.3 What happens next

After the consultation period has closed, we will analyse submissions and make recommendations to the Minister for Food Safety, and Cabinet. A summary of submissions will be sent to all submitters and posted on the MPI website.

Cabinet must approve any proposals for new regulations or Orders in Council. Parliamentary Counsel Office (the Government's legal drafters) will then prepare the regulations and order.

Proposals for new notices are drafted and published by MPI.

| Key dates | Action |
|--------------------|---|
| To 5 December 2016 | Public consultation on the proposed regulations and notices |
| Early 2017 | Regulations and notices drafted |
| Mid to late 2017 | Regulations and notices come into force |

2 How this document is organised

Part one introduces and summarises our proposals. It puts them in the context of the Food Act, and previous consultations.

Part two of this paper will be of particular interest to national programme businesses. It proposes refining the regulatory regime for national programme 1-3 businesses to better reflect the graduated approach to national programme requirements. There will be fewer requirements for lower-risk businesses, especially surrounding record keeping and procedures.

Part three focuses on verification. MPI proposes increasing flexibility for initial maximum timeframes for verification, and including information relating to technical experts in verification reports.

Part four reviews the outdated Food (Safety) Regulations 2002, which were made under the old Food Act 1981. Although some of these regulations apply across all food businesses, this section of the paper will be of particular interest to:

- low-acid canners;
- muttonbird sellers and packers;
- the wine industry; and
- the hemp seed oil industry.

If we take no action, all the Food (Safety) Regulations will expire by the end of the Food Act's introductory period in 2019. MPI proposes an early revocation of rules that are no longer needed (mainly because they are already provided for in the new Food Act regime). We propose moving the rules that we think are still required across to the Food Regulations 2015, or updating them and re-issuing them as notices. Any proposals for new notices are being consulted on separately: see [MPI's website](#) for details.

Part five proposes amendments to the Animal Products (Exemptions and Inclusions) Order 2000. These are technical amendments to ensure that the Animal Products Act 1999 and the Food Act 2014 are well aligned and working together.

The proposals relate to fish on retail premises, and the processing of some food products. They ensure that a risk-based measure under the Food Act applies.

Part six relates to Maximum Residue Levels (MRLs) in wine production.

Appendix one is a compilation of all consultation questions asked throughout the document.

3 Summary of proposals

The proposals in this document provide for:

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

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

MPI is running a separate consultation process on additional requirements in notices under the Food Act. This includes proposed new rules detailing how national programme businesses

can meet the outcomes described in the Food Regulations 2015. Details about this consultation can be found on [MPI's website](#).

4 Context

4.1 Implementing the Food Act 2014

MPI is responsible for the Food Act 2014. This Act sets the legal framework for ensuring that food produced in New Zealand is safe and suitable.

The Food Act became operational on 1 March 2016. It covers all businesses and activities involving trade in food, including food that is imported. Businesses that were trading prior to 1 March 2016 will move to the new Act during a three year introductory period.

Food that is not sold or traded commercially is not covered by the Food Act.

4.2 Risk-based regulation

The Food Act works by creating a risk management framework underpinned by the following principles:

- achieving safe and suitable food;
- requiring all people or businesses who trade in food to take responsibility for its safety and suitability;
- promoting standards and control mechanisms that are, as far as possible, risk and science-based;
- being efficient and minimising compliance costs;
- applying regulatory requirements consistently and fairly across sectors and groups; and
- providing services in a co-ordinated and coherent manner.

The regime does not take a one-size-fits-all approach. Instead, MPI regulates according to the level of risk presented by a business's operation.

The Food Act brought in new food safety risk-based measures: food control plans for higher-risk activities, and national programmes for lower-risk activities (see figure 1).

Within national programmes, food sectors are grouped into three different risk groups. Moving from lowest risk to higher risk, the categories are:

- national programme 1;
- national programme 2; and
- national programme 3.

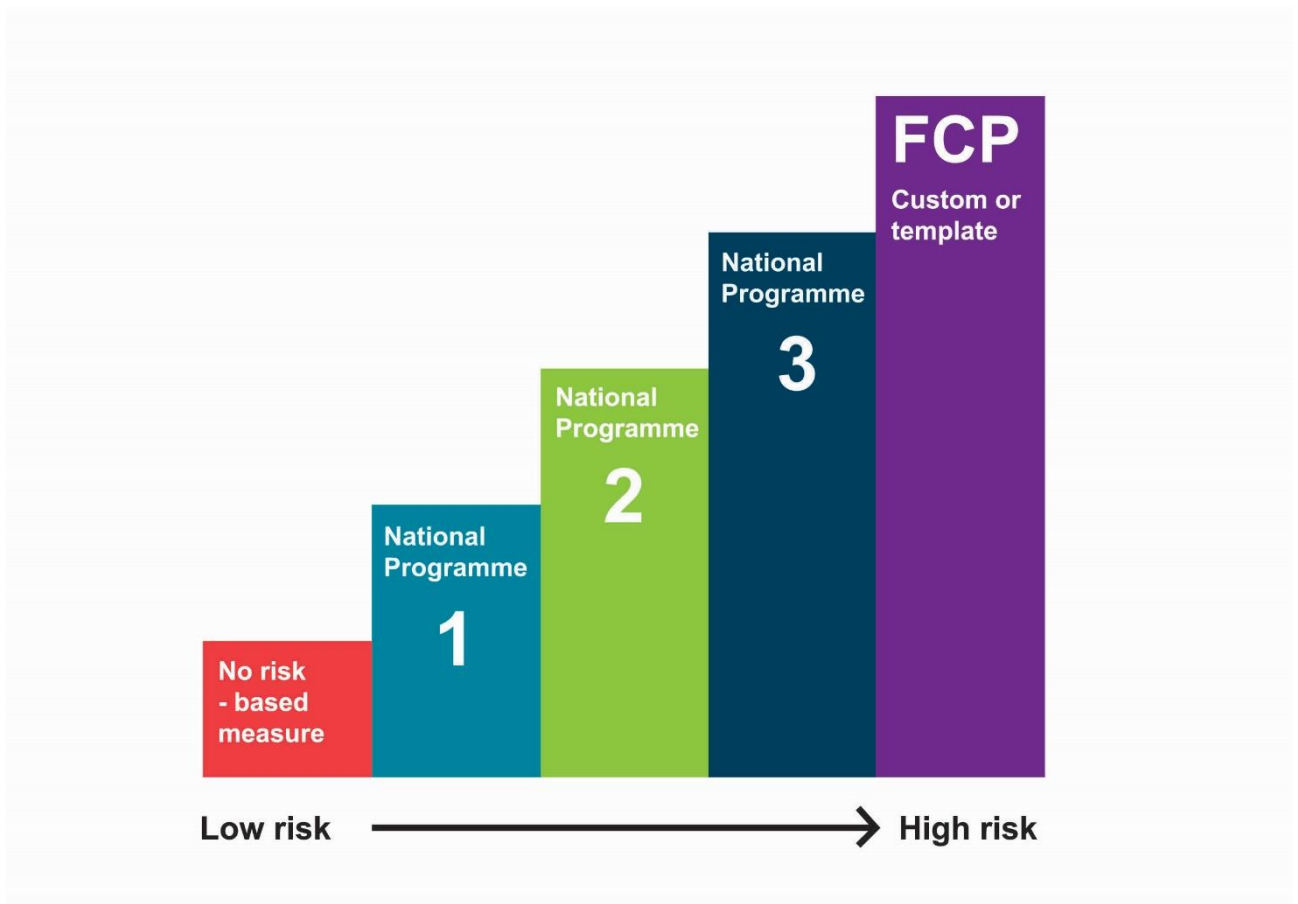


Figure 1: the graduated, risk-based regulatory approach

4.3 Why regulations are needed

Regulations are also referred to as secondary legislation, and notices as tertiary legislation. Both secondary and tertiary legislation impose legally binding obligations.

The Food Act provides the broad framework for ensuring that food produced in New Zealand is safe and suitable to eat. Regulations and notices made under the Act allow for more detailed requirements to set out how things will work on a practical level.

For example, the Food Act requires food businesses operating under national programmes to register, but leaves the detail of who businesses must register with to be set in regulation. This provides an opportunity to develop registration obligations based on careful consideration of operational requirements. Developing regulations also allows time for Government to establish systems and processes and to consult on proposals to ensure they are workable.

In addition to regulations and notices, MPI may continue to issue best practice guidance and other non-legal information on how to achieve safe and suitable food.

MPI must consult with people who are likely to be affected before putting regulatory proposals in place.

4.4 Food Regulations 2015 and Notices

In early 2015, MPI consulted on the first set of regulations needed to implement the new Food Act. Subsequently, the Food Regulations 2015 came into force on 1 March 2016. The regulations are available on the New Zealand legislation website <http://www.legislation.govt.nz/>.

In addition, the Chief Executive of MPI has issued notices to support implementation of the Food Act. These notices were issued following consultation in September 2015. All notices in force are available from [MPI's website](#).

4.5 Continuous improvement

MPI will monitor and evaluate the new Food Act regime as it develops and matures. This second set of regulatory proposals is part of our process of continual improvement and responsiveness. MPI is likely to run further consultation processes if gaps or opportunities to improve requirements appear.

4.6 Removing outdated requirements

The Food (Safety) Regulations 2002 were made under the old Food Act 1981. The new Food Act provided that these regulations would continue in force until the end of the new Act's introductory period, unless revoked earlier.

This document reviews the Food (Safety) Regulations, and proposes to revoke parts that are no longer necessary, and retain regulations that are still needed within the Food Regulations 2015.

4.7 Cost recovery not in scope

The Food (Fees and Charges) Regulations 2015 set out fees and charges payable for named services provided by MPI. MPI consulted on the proposals for new regulations in 2015. Documents relating to this consultation are available on [MPI's website](#).

There are no cost recovery proposals in this document.

However, the Food Act requires that cost recovery be reviewed every three years. This means the next review must take place no later than 2018. This broadly coincides with the end of the transition to the new Act. It will also provide an opportunity to review charges against the MPI cost recovery framework. The framework is being worked on as part of a first principles review of cost recovery. Again, more information on the first principles review is available on [MPI's website](#).

Part two: refining the rules for national programme businesses

5 Background

5.1 A risk-based approach

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

A number of regulations and notices are in place to implement fully the Food Act regime. This first group of rules focused on transitioning the higher-risk sectors to the new Food Act. MPI is now focusing on the lower-risk businesses. We want to ensure that the rules that are in place reflect the risk-based approach, and will help businesses meet safety and suitability requirements.

5.2 Food control plans

High risk business are required to have a food control plan. Food control plans must specify what the food risks for that business are and how they will be managed. Businesses can develop their own custom food control plan. Businesses in the food retail and food service sectors can use a template issued by the MPI Chief Executive.

Regulations about food control plans focus on the outcomes the businesses need to achieve. They are intended to allow for businesses to apply a more flexible approach to achieving the outcome, providing they can prove their approach will result in safe and suitable food.

5.3 National programmes

Low to medium risk businesses operate by using a national programme level 1, 2 or 3 (with level 1 being the lowest risk, and level 3 being the higher risk). Lower risk businesses are subject to fewer regulatory requirements. Furthermore, national programmes are intended to offer greater certainty for businesses by providing clear rules for how to achieve safe and suitable food. Businesses can choose to either work within these rules, or decide to opt-up to a food control plan if they wanted to do something different.

5.4 Reflecting the graduated approach to managing risks

MPI thinks that the regulations could be improved to better reflect the intent in the Food Act that there should be fewer regulatory requirements on lower risk businesses. In addition, we would like to improve clarity on how national programme businesses can meet the high-level outcomes of the Food Regulations 2015.

We think that this will increase certainty for lower-risk businesses, and decrease their compliance costs.

6 What we propose: reflecting the graduated approach (cleaning)

Keeping things clean is essential in order to achieve safe and suitable food. However, the same degree of cleaning is not required for every level of national programme food business. At national programme 1 level, we would expect a business to be kept generally clean and tidy, with anything that is in direct contact with food getting special attention. At national programme 2 and 3 level, there are greater possible risks to food. Cleaning and sanitation of anything that comes into contact with food is likely to be needed for these higher-risk businesses.

As written, the Food Regulations do not reflect the different cleaning requirements across national programme businesses. MPI proposes changing the regulations to clarify that sanitising is not always required. We will supplement any regulatory change with guidance for all national programme businesses on cleaning.

This will mainly affect the lowest-risk businesses operating at national programme 1.

What do you think?

1. Do you agree that the Food Regulations 2015 should be amended to allow for differential cleaning requirements across national programme levels?

7 What we propose: reflecting the graduated approach (record keeping and procedures)

Keeping records about what a business does, and how it keeps food safe, is important. However, lower-risk businesses should have fewer record keeping and procedural requirements than higher-risk operations. Based on our assessment of the risks posed, we propose removing some record keeping and procedural requirements to reflect the graduated, risk-based approach of the Food Act.

Even though we propose removing some regulatory requirements, everyone must still meet the primary duty in section 14 of the Food Act: food traded must be **safe** and **suitable**.

If you are operating a national programme business, you will still need to meet a number of legal requirements, including:

- keeping some records about the key activities and processes that are important for keeping food safe;
- registering business details with your local council; and
- having one or more visits from a verifier recognised by MPI.

The table below summarises our proposals.

Table 1: summary of proposals relating to reduced records keeping and procedural requirements.

| General requirement to be amended | Who is affected | What we propose |
|---|--|---|
| Maintenance (regulation 48) | All national programme 1 businesses. National programme 2 retailers. National programme 2 (ECE). | National programme 1 businesses, national programme 2 retailers and ECE providers will no longer have to record maintenance. They will still have to do maintenance and record occasions when a lack of maintenance requires them to take corrective action. |
| Maintenance compounds (regulation 49). | All national programme 1 businesses. All national programme 2 businesses. | National programme 1 and 2 businesses won't have to record daily actions relating to maintenance compounds. They will still have to make sure they use maintenance compounds carefully and in accordance with any manufacturer's instructions and record incidents when they need to take corrective action. |
| Waste management procedures (regulation 50). | All national programme 1 businesses. National programme 2 retailers. National programme 2 (ECE). | National programme 1 businesses, national programme 2 retailers and ECE providers will no longer have to have special procedures for waste management. They will still have to ensure their waste is collected, stored and disposed of safely. |
| Pest control (regulation 51) | All national programme 1 businesses. National programme 2 retailers. National programme 2 (ECE). | National programme 1 businesses, national programme 2 retailers and ECE providers will no longer have to keep daily records about routine pest checks. They will still have to look out for pests, take action if any are found and record incidents when they need to take corrective action. |
| Protection against contamination etc by people (regulation 74). | All national programme 1 businesses. National programme 2 retailers. National programme 2 (ECE). | National programme 1 businesses, national programme 2 retailers and ECE providers will need to keep fewer records about personal hygiene, sickness and protective clothing. They will still have to ensure that food isn't contaminated by sick people and record incidents when they need to take corrective action. |

| General requirement to be amended | Who is affected | What we propose |
|---|--|---|
| Protection during transportation (regulation 75). | All national programme 1 businesses except transporters or distributors of food products. National programme 2 retailers. National programme 2 (ECE). | National programme 1 businesses (except transporters or distributors of food products), national programme 2 retailers and ECE providers will no longer need to keep records relating to protection of food while it is transported. They will still need to make sure that food stays safe and suitable when it's being transported and record incidents when they need to take corrective action. |

What do you think?

- 2. Do you agree that lower-risk businesses should have fewer records keeping and procedural requirements than higher-risk businesses?**
- 3. Do you see any issues with reducing the records keeping and procedural requirements as proposed?**
- 4. Are there any additional requirements that you think should be removed? If so, why? Which sectors should no longer be subject to those requirements?**

Part three: adjustments to verification requirements

8 Introduction

The Food Act 2014 and Food Regulations 2015 introduced a new verification regime.

Verification is a way that a food business can show compliance with the Food Act, and the ongoing effectiveness of their risk-based measure. It involves a person and/or agency formally recognised by the MPI Chief Executive carefully checking that risk management processes are in place, and whether processes are being followed. Subsequent verifications test whether systems and processes remain fit-for-purpose, and how well a business is managing its risks.

The Food Act requires food businesses to ensure their operations are verified. The Food Regulations 2015 set out detailed rules for how verification will be done including specifying the process that should be followed, and how often verifications will take place.

Frequency of verification relates to the business's risk profile and performance. Businesses that manage risks well will be subject to less frequent verification visits, and will therefore face lower costs.

9 Proposals for change

As the new verification regime beds in, MPI has two proposals to fine-tune its implementation.

MPI proposes allowing the registration authority to increase the timeframe for when an initial verification must take place. This would be restricted to exceptional circumstances where the original timeframe would cause unnecessary hardship or unnecessary compliance costs, and where the registration authority is satisfied that the safety and suitability of food would not be compromised.

Regulation 105(5) sets out what must be included in verification reports. MPI proposes that a verification report must also include details about any technical experts who provided information used by the verifier.

The reasons for these proposals are outlined below.

9.1 Increasing flexibility in initial verification timeframes

Initial verification is critical for checking risks and risk management processes. The existing timeframes in the Food Regulations 2015 seek to strike a balance between how long a business can be allowed to operate without a check that they are producing safe and suitable food, and what is practical. A verifier needs to have enough information about how the business is operating to measure whether they meet the Act's requirements.

The Food Regulations 2015 set the following timeframes for verification. These timeframes are maximums: there is nothing prohibiting earlier verifications. Timeframes are from the date the risk based measure is registered by the registration authority.

Table 3: maximum timeframes for initial verifications under the Food Regulations 2015

| Risk based measure | Existing businesses | New businesses | Registration authority |
|---|----------------------------|-----------------------|---|
| Custom Food Control Plan (regulation 87(1)) | 6 months | 3 months | MPI |
| Template Food Control Plan (regulation 88(1)) | 1 year | 1 month | Territorial authority (unless multi-site) |
| National Programme 3 (regulation 91(1)) | 6 months | 1 month | Territorial authority (unless multi-site) |
| National Programme 2 (regulation 92(1)) | 1 year | 1 month | Territorial authority (unless multi-site) |
| National Programme 1 (regulation 93(1)) | 1 year | 1 month | Territorial authority (unless multi-site) |

MPI has become aware of some practical difficulties with these timeframes. An example is where a new business registers early, but only starts trading a short time before the maximum date that the verifier can visit. This might mean that the business has not had time to bed their processes in and may not have all the evidence a verifier is seeking. The verifier needs this evidence to be assured that the business is consistently producing safe and suitable food. This may result in the verifier having to make a further visit, which increases costs for the business.

In order to allow more flexibility with the timing of the initial verification, MPI proposes that:

- the maximum initial verification timeframes may be extended by the relevant registration authority in exceptional circumstances;
- the maximum extension would be 1 month;
- only one extension may be granted; and
- the registration authority must be satisfied that extending the maximum timeframe would not compromise achieving safe and suitable food.

In exercising this decision, the registration authority would have to have regard to the principles outlined in section 16 of the Food Act 2014. The principles include:

- achieving safe and suitable food;
- minimising compliance costs for food businesses; and
- consistent and fair application of regulatory requirements.

Section 16(2) states that achieving the safety of food has greater weight than any other principle (if the principles are in conflict).

What do you think?

5. **Do you agree that there should be greater flexibility with initial verification timeframes?**
6. **What do you think of the proposed maximum extension timeframes? Do they strike the right balance between ensuring safe and suitable food, and what is practical?**
7. **Do you agree that the decision to extend maximum timeframes should lie with the relevant registration authority?**
8. **Are there additional or alternative criteria that registration authorities should use to make decisions on extending initial verification timeframes?**

9.2 Requiring verification reports to include details about technical experts

Regulation 105(5) lists what must be contained in a verification report.

MPI proposes requiring verification reports to include the names of any technical experts who provided information used by the verifier in the verification process, copies of any reports produced by those technical experts, and information about the competency of those technical experts. This would ensure that, where technical experts are used by the verifier, the verification reports are comprehensive. This would include recording the competencies of any party who had input into the verification.

What do you think?

9. **Do you agree that verification reports should have to include the names of technical experts who provided information, their reports and information about their competency (where a technical expert is consulted)?**

Part four: review of the Food (Safety) Regulations 2002

The Food (Safety) Regulations 2002 are different from the Food Regulations 2015. Unless otherwise indicated, all regulations referred to in this part of the discussion paper are Food (Safety) Regulations.

10 Background

The Australia New Zealand Food Standards Code came into full effect in December 2002. It superseded any equivalent New Zealand food standards. New Zealand's Food Regulations 1984 were revoked and replaced with provisions in the Food Standards Code, and the Food (Safety) Regulations 2002.

The Food (Safety) Regulations 2002 provided for aspects of the Food Regulations 1984 that were not covered by the Food Standards Code. These regulations were intended as a transitional arrangement until these matters were provided for under the Food Standards Code, or by another regulatory arrangement.

When the Food Act came into force on 1 March 2016, it provided that most of the Food (Safety) Regulations would continue in force until the end of the Act's introductory period (unless earlier revoked). Two of the regulations (relating to fluoridated water and the hemp seed oil industry) will expire earlier on 30 October 2017.

This means that if we do nothing, all of the Food (Safety) Regulations will expire by 28 February 2019.

MPI has reviewed these regulations to assess which parts (if any) need to be preserved in the new Food Act regime.

This part of the discussion document sets out MPI's proposals for each regulation, and seeks comment.

11 Summary of proposals

Table 4 below summarises MPI's proposals, which are then explained further in the following sections. Please note that some of these regulations have already been revoked through earlier amendments, and these proposals therefore deal with only these regulations that remain in force.

Table 4: summary of proposals for each Food (Safety) Regulation

| Food (Safety) Regulation | Proposal |
|--|---|
| Regulation 6 – misuse of containers | Revoke regulation 6. |
| Regulation 7 – safety of articles | Revoke regulation 7. |
| Regulation 8 – identification of articles | Revoke regulation 8. |
| Regulation 9 – labels on bottles containing food | Revoke regulation 9. |
| Regulations 10 -12 – infected persons and food | Revoke regulations 10, 11 and 12. |
| Regulations 13-15 – low-acid canned food | Revoke regulations 13-15 and replace with a notice under the Food Act 2014 (no policy change). |
| Regulations 16-17 - muttonbird | Revoke regulations 16 and 17. |
| Regulation 20 - wine | Revoke regulation 20(1) but retain the policy of a 75% varietal rule for imported wine via a new regulation within the Food Regulations 2015. Revoke regulation 20(2). |
| Regulation 24 – fluoridated water | Retain and update regulation 24 for water added to food from reticulated supplies within the Food Regulations 2015. |
| Regulation 26 – sale of hemp seed oil as food | Retain and update regulation 26 within the Food Regulations 2015. |
| Regulation 27 – analyst’s certificate and fees | Revoke regulation 27 |

12 Regulation 6 (Misuse of food containers)

12.1 Description of the regulation

Regulation 6 makes it an offence to put something that could poison someone in a container that looks like it is used for food. The offence relates to people, rather than food businesses.

12.2 Proposal

We propose **revoking** regulation 6 of the Food (Safety) Regulations.

12.3 Rationale

Regulation 6 is no longer necessary. The Food Act 2014 and Food Regulations 2015 manages risks relating to food containers as detailed below.

12.3.1 Food Act 2014

Sections 227-8 of the Food Act 2014 provide for offences for misrepresenting food or food-related accessories. The possible penalties are substantial. For intentional misrepresentation the maximum for an individual is \$100,000, and for unintentional misrepresentation by an individual, \$50,000.

The maximum fine under regulation 6 of the Food (Safety) Regulations is \$500.

12.3.2 Food Regulations 2015

Regulation 16 (food control plans) and regulation 49 (national programmes) of the Food Regulations 2015 provide for the safe use of maintenance compounds.

Maintenance compounds are defined in regulation 3(1) as:

any substance used for—

- (a) maintaining, repairing, servicing, cleaning, or sanitising equipment or surfaces that may be a source of contamination of food or food-related accessories; or
- (b) treating water; or
- (c) controlling pests

Regulation 16 (e) of the Food Regulations 2015 (with a parallel provision in regulation 49(1)(e)) notes that maintenance compounds must be stored in a container that:

- (i) is clearly and appropriately labelled; and
- (ii) is not likely to be mistaken for a container of food; and
- (iii) is not used for storing food.

The definition of maintenance compounds is narrower than the substances covered by regulation 6 of the Food (Safety) Regulations. For example, regulation 6 would include alcohol hand gels and other sanitisers for use on people. However, these other substances will be covered under hazard management rules (for example, Food Regulations 2015 regulations 6, 25, 30, 70 and 76).

What do you think?

**10. Do you agree that regulation 6 (misuse of food containers) should be revoked?
Why/why not?**

13 Regulation 7 (Safety of articles)

13.1 Description of the regulation

Food articles for sale that are intended to be used with food should not be capable of leaching toxic substances. It is okay to sell this sort of thing if it is rendered unusable for food use or has a permanent label attached to it stating that it is not food-safe.

Schedule one (Tests for enamelware and ceramic ware articles) which is referred to in regulation 7(2) was revoked in October 2007. The reason for this was that a review of the risks associated with imported tableware showed that they were not high risk and that monitoring was no longer required.

13.2 Proposal

We propose **revoking** regulation 7 of the Food (Safety) Regulations.

13.3 Rationale

Regulation 7 is no longer necessary. The Food Act 2014, Food Regulations 2015 and consumer law manages risks relating to toxic leaching as detailed below.

13.3.1 Food Act 2014

The new terminology under the Food Act 2014 for food articles is “food-related accessory” (which is defined in section 8(1) of that Act).

Part 4 subpart 6 of the Food Act empowers MPI’s Chief Executive to give various directions relating to food safety. Some of these powers extend to food-related accessories. For example, section 284 could be used by the Chief Executive to initiate a recall of a food-related accessory. This includes situations where there is doubt about the safety and suitability of the accessory, or where there is doubt about whether it may contaminate food.

Some food businesses operate a food control plan based on a template issued by MPI. The template includes a procedure to prevent food becoming contaminated from, among other things, utensils, packaging and tableware. The template has the status of a notice under the Food Act.

13.3.2 Food Regulations 2015

The toxins listed and contamination process envisaged in regulation 7 are not specifically considered in the Food Act or the Food Regulations 2015. However, a number of the Food Regulations 2015 make rules about food-related accessories. Specifically:

- regulations 19 and 65 (c) place obligations on operators to ensure that equipment won’t contaminate food;
- regulations 25 and 70 provide that food-related accessories must not create or contribute to hazards; and
- regulations 27 and 72 provide for procedures for recall of food-related accessories.

The Food Regulations 2015 do not apply to businesses selling food-related accessories that are not food businesses (as defined by section 10 of the Food Act 2014). However, these businesses may still be subject to directions given by the Chief Executive under the Food Act. This would mean (for example) that the Chief Executive could recall food-related accessories sold by a non-food business.

13.3.3 Product safety laws

Food-related accessories are subject to New Zealand’s product safety laws: the Consumer Guarantees Act 1983 and the Fair Trading Act 1986.

The Consumer Guarantees Act states that consumers have guarantees in law including that the goods are reasonably safe and fit for purpose.

Items sold as “food-related accessories” must therefore be suitable for use with food. There are various tools available to ensure that products are safe. The Minister of Commerce and Consumer Affairs may recommend the making of product safety standards under the Fair Trading Act. The Minister can also declare goods unsafe (a product ban) or order a compulsory recall (under the Fair Trading Act).

What do you think?

11. Do you agree that regulation 7 (safety of articles) should be revoked? Why/why not?

14 Regulation 8 (Identification of articles)

14.1 Description of the regulation

You cannot sell things that will be used to prepare and store food unless the articles have some kind of identification on them (such as a registered trade mark, or label with details of the manufacturer or seller). This regulation does not apply to disposable items.

14.2 Proposal

We propose **revoking** regulation 8 of the Food (Safety) Regulations.

14.3 Rationale

Regulation 8 could be used during a recall of food-related accessories. Clear identifying marks or labels could facilitate any recall.

However, the regulation as written is extremely broad. It covers second-hand items and articles such as chopping boards, glasses, measuring cups or cutlery that probably pose a low risk. The argument for such a broad coverage based on the risks posed is weak.

The Food Regulations 2015 require operators to have procedures to be able to recall food-related accessories (regulation 27(1)(b) for food control plans, and regulation 72(1)(b) for national programmes). The regulations take an outcomes-based approach. Rather than prescribing labelling standards, they require appropriate protocols for recalls if they are required.

MPI considers that these regulations enable the purpose of the Food Act to be met.

What do you think?

12. Do you agree that regulation 8 (identification of articles) should be revoked? Why/why not?

15 Regulation 9 (Labels on bottles containing food)

15.1 Description of the regulation

This regulation says that labels on reusable bottles must not hinder the cleaning and inspection of the bottle.

15.2 Proposal

We propose **revoking** regulation 9 of the Food (Safety) Regulations.

15.3 Rationale

Ensuring reusable bottles are clean is important. However, as this regulation is not outcomes-focused, it could prohibit the use of opaque reusable bottles or other practices that are low risk, or where the risks can be managed effectively.

Making sure that bottles (and other food containers) are clean is covered via various obligations within the Food Regulations 2015 (such as regulations 14(1), 47, 54, 65, and 70). Matters provided for in these regulations include:

- mandating procedures for cleaning and sanitising equipment;
- ensuring that equipment allows for effective cleaning; and
- ensuring that packaging does not create or contribute to hazards.

What do you think?

13. Do you agree that regulation 9 (labels on bottles containing food) should be revoked? Why/why not?

16 Regulations 10, 11 and 12 (Infected persons and food).

16.1 Description of regulations

People who are suffering from certain health conditions are excluded from working with food or food-related accessories. Medical Officers of Health and designated officers are given powers to prohibit persons in contact with people suffering from those illnesses from working with food. In addition, Medical Officers of Health and designated officers have powers relating to suspected infected food.

16.2 Proposal

We propose **revoking** regulations 10, 11 and 12 of the Food (Safety) Regulations.

16.3 Rationale

There are clear public health benefits from excluding sick people from working with food, and being able to prohibit the sale of potentially dangerous food.

Regulation 10 is potentially broader than required as it could capture very low risk situations. For example, someone technically captured by the definition may be able to work stacking shelves or as a delivery driver with negligible risks to food.

16.3.1 Food Act and Regulations

The Food Act and Food Regulations 2015 contain the necessary powers relating to infected food and persons to meet the purposes of the Food Act.

Under section 308(3) of the Food Act, food safety officers may exclude someone from a particular location. Food safety officers have broad powers to seize, condemn and require disposal of foods that may constitute a risk to public health (section 306 Food Act). In addition, food safety officers can restrict the use of or close a place (section 307 Food Act).

Sections 62 (food control plan) and 90 (national programmes) of the Food Act enable operations to be suspended if a food may pose a risk to public health. The decision rests with the relevant registration authority. The maximum suspension period of operations is 3 months, with a possible 3 month extension.

There are various enforcement measures available under the Food Act (for example, section 232 relates to selling non-complying food, which has a maximum penalty for individuals of \$100,000 fine or up to 2 years in prison).

Some food businesses operate a food control plan based on a template issued by MPI. The template includes guidance on the exclusion of infected persons, and rules relating to sickness, hand hygiene and personal hygiene. The template has been issued as a notice under the Food Act.

Ensuring infected persons cannot contaminate food is largely covered under the Food Regulations 2015 (regulations 28-29 for food control plans, and regulation 74 for national

programmes). Under these regulations, responsibilities relating to protecting food from contamination by sick people rest with the operator. The responsibilities pertain only to staff members and visitors to the place of business.

16.3.2 Personal responsibility and the Food Act

While regulation 10 of the Food (Safety) Regulations focuses on people who might be sick, the Food Regulations 2015 focus on operators of food businesses. However, taking personal responsibility for ensuring that food is safe and suitable is still an important part of the Food Act regime. Section 14 of the Act places a duty on people who trade in food to ensure that it is safe and suitable. “Trade” is broadly defined - the duty applies to staff involved in the production, processing and handling of food. Food business operators must have procedures to ensure that staff and visitors who may be sick don’t contaminate food. In addition, MPI produces guidance and information for food safety workers to remind them of their responsibilities.

16.3.3 Ministry of Health administered legislation

Medical Officers of Health have broad powers relating to preventing the outbreak or spread of infectious disease, including work restrictions and the ability to isolate a person.

In practice, public health services and territorial authorities work closely together to meet public health and food safety outcomes.

What do you think?

14. Do you agree that regulations 10-12 (infected persons and food) should be revoked? Why/why not?

17 Regulations 13-15 (Low-acid canned food)

17.1 Description of regulations

Regulations 13-15 make rules about low-acid canning under the Food Act. The regulations state that low-acid canning must be supervised by a qualified person, and the various standards that the canning operations must comply with, along with enforcement provisions.

17.2 Proposal

We propose **revoking** regulations 13, 14 and 15 of the Food (Safety) Regulations and **replacing** them with a notice under the Food Act 2014.

17.3 Rationale

The risks posed by low-acid canning are potentially significant. The bacterium *Clostridium botulinum* can multiply rapidly in moist, low-acid foods. The bacterium can cause serious, and sometimes fatal illness. Internationally-recognised risk management systems exist to manage these risks effectively.

There is no case for changing policy on low-acid canning. However, MPI's view is that a notice is a more appropriate instrument than a regulation for managing the risks it poses. This is because low-acid canning requirements are highly technical in nature. A notice will enable the most current codes relevant to low-acid canning to be accurately referenced. It will promote certainty by enabling qualifications that must be held by supervisors to be listed in greater detail, and pose less of a barrier to new educational providers who wish to provide low-acid canning qualifications.

A notice would provide the opportunity for greater alignment of Food Act requirements with the Animal Products Act low-acid canning regulatory system (which is regulated via a notice).

MPI is consulting separately on a new low-acid canned food notice. Details are available from [MPI's website](#).

18 Regulations 16 and 17 (Sale of muttonbird and brands for packages of muttonbirds)

18.1 Description of the regulations

There are three separate issues contemplated in the two muttonbird regulations.

Regulation 16(1) provides for truth-in-labelling –you must prepare your muttonbirds the way you said you have on the label.

Regulation 16(2) provides that muttonbirds for sale must have a dressed weight of not less than 250g (unless it's tītī puku, which is not dressed).

Regulation 17 provides for compliance with the Food Standards Code via a register of people engaged in the preparation and packing of muttonbirds.

18.2 Proposal

We propose **revoking** regulations 16 and 17 of the Food (Safety) Regulations.

18.3 Rationale

18.3.1 Sustainability

Muttonbirds (tītī) are a traditional iconic product and a taonga species. While permissions to hunt/kill muttonbirds generally are controlled under the Wildlife Act 1953, the main muttonbird harvest (on the Tītī/Muttonbird Islands near Stewart Island/Rakiura) is governed via the Tītī (Muttonbirds) Islands Regulations 1978. Any sustainability concerns are best dealt with via the kaitiaki of the resource, and/or via the Conservation and Wildlife Acts, rather than in food legislation.

18.3.2 Consumer protection

MPI considers that the consumer protection and truth-in-labelling matters are already provided for. Consumer protection is covered in the Fair Trading and Consumer Guarantees Acts, along with the Weights and Measures Regulations 1999. In addition, there are general offences in sections 227 and 228 of the Food Act that relate to misrepresentations of food.

18.3.3 Food law

Under section 11E of the Animal Products (Exemptions and Inclusions) Order 2000, no risk management programme is required for primary processing (including harvesting and preparation) of muttonbirds. (Secondary processors are still required to operate under a risk-based measure).

Muttonbirders are not required to operate under a risk-based measure in the Food Act. However, the general duty that people who trade in food must ensure that it is safe and suitable remains.

All the labelling standards under the Australia New Zealand Food Standards Code apply to muttonbirders. The register enabled by the regulation offers an alternative method to comply with aspects of the Code. However, the register is no longer active. MPI has no evidence there is a demand or need for a register.

What do you think?

15. Do you agree that regulations 16 and 17 (muttonbirds) should be revoked? Why/why not?

19 Regulation 20 (Wine)

19.1 Description of the regulation

Regulation 20(1) states that wine labels must be accurate in terms of grape variety mentioned with a 75% rule for descriptions relating to grape variety. Regulation 20(2) provides that wine and mead sold in an off-licence must not contain more than 15% alcohol by volume.

19.2 Proposal

We propose **revoking** regulation 20(1) of the Food (Safety) Regulations but **retaining the policy** of a 75% wine varietal rule for imported wine via a new regulation within the Food Regulations 2015.

We propose **revoking** regulation 20(2) of the Food (Safety) Regulations.

19.3 Rationale

There is a public interest in ensuring accurate labelling of wines. There is also a clear public interest in ensuring the responsible sale of alcohol products. However, this interest does not relate directly to food safety.

19.3.1 The 75% varietal composition rule

New Zealand relies on the 75% varietal composition rule in the Food (Safety) Regulations to set standards for varietal composition of imported wine. This means that, for example, if a wine is described as “merlot” at least 75% of the juice must be derived from merlot grapes.

This rule implements our international commitment with respect to the wine variety labelling requirements for imported wine as agreed under the 2013 *Protocol to the 2007 World Wine Trade Group Agreement on the Requirement for Wine Labelling*, and needs to be retained.

This proposal does not affect the rules for wines produced in New Zealand under the Wine (Specifications) Notice 2006.

19.3.2 Sales from off-licences

Alcohol policy and legislation has been updated since the Food (Safety) Regulations were made in 2002. Harm minimisation from the excessive consumption of alcohol, and the responsible sale of alcohol products is managed via the Sale and Supply of Alcohol Act 2012.

Section 58 of that Act restricts the kinds of alcohol sold in supermarkets and grocery shops, restricting them to beverages containing no more than 15% alcohol by volume.

Regulation 20(2) of the Food Safety Regulations has a broader scope as it applies to all off-licences.

The policy objectives behind regulation 20(2) do not appear to be related to food safety. Rather, they focus on public health and social policies that are now provided for in the Sale and Supply of Alcohol Act 2012.

What do you think?

16. Do you agree that regulation 20(1) (wine) should be revoked, and the 75 percent varietal rule for imported wine continue to be provided for via a new regulation within the Food Regulations 2015? Why/why not?

17. Do you agree that regulation 20(2) (sales from off-licences) should be revoked? Why/why not?

20 Fluoridated water

20.1 Description of the regulation

Regulation 24(1)(a) states that if water is added to food, it must be of potable quality. Fluoridated water from local authority water supplies may be added to food (regulation 24(1)(b) and 24(2)).

Regulation 24 (along with regulation 26 – sale of hemp seed oil as food) expires on 30 October 2017 before the rest of the Food (Safety) Regulations.

20.2 Proposal

We propose **retaining** the policy intent of regulation 24 for water added to food from reticulated supplies (with no expiry date), by rolling this forward into the Food Regulations 2015. Some drafting updates will be required to reflect current terminology and legislation.

20.3 Rationale

There is a clear public interest in ensuring that food is safe for people to eat, and that anything added to food does not adversely affect its safety and suitability.

The Food Regulations 2015 provide that water must be suitable for the purpose for which it is used, and does not adversely affect food safety or suitability (regulation 21 for food control plans, and regulation 55 for national programmes). These regulations are outcomes based. This means that innovative practices are encouraged so long as the primary duty to ensure that food is safe and suitable is met.

The use of fluoridated water in food was previously provided for under the Food Regulations 1984.

For operators who use **reticulated water**, the Ministry of Health administers laws ensuring the quality of this water. This includes setting drinking water standards to ensure potability, and setting acceptable levels of fluoride.

For operators who use **self-supply water** to process and handle food, the Food Notice: Food Control Plans and National Programmes Notice (which came into force on 1 March 2016) sets out the requirements. Clean water must be used for processing and handling food, including where water is added to food. Clean water is defined in section 2.2(1) of the notice.

Retaining regulation 24 for reticulated supplies ensures there is a continued focus on food safety, while recognising that different requirements may apply where food business operators use water from sources other than a registered drinking water supplier. It will clarify that fluoridated water can be used as an ingredient in food.

18. Do you agree that the policy intent of regulation 24 (fluoridated water) should be retained for water added to food from reticulated supplies? Why/why not?

21 Sale of hemp seed oil as food

21.1 Description of the regulation

Regulation 26 allows for the sale of hemp seed oil as food in New Zealand.

Regulation 26 (along with regulation 24) expires on 30 October 2017 before the rest of the Food (Safety) Regulations.

21.2 Proposal

We propose **retaining** the permission in regulation 26 (with no expiry date) in the Food Regulations 2015. Regulation 26 will need to be updated to reflect current terminology and legislation.

21.3 Rationale

Prior to the Food (Safety) Regulations 2002, hemp seed oil could be legally sold in New Zealand under the Food Regulations 1984.

When the Food Standards Code was enacted in 2002, it prohibited the sale of parts of the cannabis plant under Standard 1.4.4 – Prohibited Botanicals.

The intent was that regulation 26 (and regulation 24) would be a transitional arrangement until the policy matters they addressed were provided for under the Food Standards Code.

New Zealand has an established hemp seed oil industry. There is no evidence of a policy problem with the status quo of permitting the sale of hemp seed oil as food.

The sale of foods from non-viable hemp seeds has been an active issue with Food Standards Australia New Zealand for several years. Food Standards Australia New Zealand have developed a draft proposal on how low-THC hemp could be legally designated as a food. Submissions closed on 25 August 2016. If this proposal is eventually accepted by the Ministerial Forum, regulation 26 may no longer be required because hemp seed oil as food would be provided for under the Code.

In the meantime, the permission in regulation 26 is relied on by the New Zealand hemp seed oil food industry and should be retained (in an amended form that reflects the most recent updates to the Food Standards Code, and technical adjustments to the testing regime).

What do you think?

19. Do you agree that the permission contained in regulation 26 (hemp seed oil industry) should be retained? Why/why not?

22 Analyst's certificate and fees

22.1 Description of the regulation

The regulation provides for a standard form for analyst's certificates under section 22 of the Food Act 1981. Fees charged for a copy of the certificate and for requiring an officer to procure a sample for analysis are set.

22.2 Proposal

We propose **revoking** regulation 27 of the Food (Safety) Regulations.

22.3 Rationale

The matters outlined in regulation 27 have been superseded by the new Food Act 2014 regime.

What do you think?

20. Do you agree that regulation 27 (analyst's certificate and fees) should be revoked? Why/why not?

23 Enforcement

The Food (Safety) Regulations include two regulations relating to appeals, offences, and penalties (regulations 22 and 23).

We propose that **regulations 22 and 23 be revoked**. This is because any Food (Safety) Regulations being retained in the new Food Act 2014 regime will come under that Act's offences, penalties, and enforcement system.

24 Additional questions

We invite feedback more generally on our proposals for revoking most of the Food (Safety) Regulations 2002.

What do you think?

21. Do you agree that the new Food Act will achieve the same or better safety and compliances outcomes as the Food (Safety) Regulations that we propose to revoke? Why/Why not?

22. What (if any) disadvantages or risks do you see with the new Food Act taking the place of these different Food (Safety) Regulations?

Part five: amendment to the Animal Products (Exemptions and Inclusions) Order 2000

25 Proposals (Animal Products (Exemptions and Inclusions) Order 2000)

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

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

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

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

Proposed changes would apply to the following clauses:

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

What do you think?

23. Do you agree that the Animal Products (Exemptions and Inclusions) Order 2000 should be amended to clarify that the following persons or types of processing are covered by a risk-based measure under the Food Act 2014:

- **fishmongers selling fish by way of retail sale (clause 10(1));**
- **processing of certain dairy products consumed on premises (clause 7A(1)); and**
- **processing of certain products that are food (clause 7B(1))?**

Part six: maximum residue levels

26 Proposals: maximum residue levels

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

- (1) *The maximum residue level of an agricultural compound that may be present in a food applies to that food regardless of any processing, except for-*
- (a) *drying; or*
 - (b) *dehydration; or*
 - (c) *concentration (including in the production of wine).*

MPI has received advice that the words “(including in the production of wine)” creates an ambiguity in the interpretation of this provision. We propose that the words be deleted.

Clause 142(1)(c) would then read:

- (2) *The maximum residue level of an agricultural compound that may be present in a food applies to that food regardless of any processing, except for-*
- (a) *drying; or*
 - (b) *dehydration; or*
 - (c) *concentration.*

Residues in the wine need to be compliant with the maximum residue limit for the raw food commodity being grapes.

MPI may run further consultation processes if there appear to be gaps or opportunities to improve requirements in relation to maximum residue limits in processed food such as wine.

What do you think?

24. Do you agree that the words “including in the production of wine” should be removed from clause 142(1)(c) of the Food Regulations 2015?

Appendix 1: List of consultation questions

Part two: refining the rules for national programme businesses

1. Do you agree that the Food Regulations 2015 should be amended to allow for differential cleaning requirements across national programme levels?
2. Do you agree that lower-risk businesses should have fewer records keeping and procedural requirements than higher-risk businesses?
3. Do you see any issues with reducing the records keeping and procedural requirements as proposed?
4. Are there any additional requirements that you think should be removed? If so, why? Which sectors should no longer be subject to those requirements?

Part three: adjustments to verification requirements.

5. Do you agree that there should be greater flexibility with initial verification timeframes?
6. What do you think of the proposed maximum extension timeframes? Do they strike the right balance between ensuring safe and suitable food, and what is practical?
7. Do you agree that the decision to extend maximum timeframes should lie with the relevant registration authority?
8. Are there additional or alternative criteria that registration authorities should use to make decisions on extending initial verification timeframes?
9. Do you agree that verification reports should have to include the names of technical experts who provided information, their reports and information about their competency (where a technical expert is consulted)?

Part four: review of the Food (Safety) Regulations 2002

10. Do you agree that regulation 6 (misuse of food containers) should be revoked? Why/why not?
11. Do you agree that regulation 7 (safety of articles) should be revoked? Why/why not?
12. Do you agree that regulation 8 (identification of articles) should be revoked? Why/why not?
13. Do you agree that regulation 9 (labels on bottles containing food) should be revoked? Why/why not?
14. Do you agree that regulations 10-12 (infected persons and food) should be revoked? Why/why not?
15. Do you agree that regulations 16 and 17 (muttonbird) should be revoked? Why/Why not?
16. Do you agree that regulation 20(1) (wine) should be revoked, and the 75 percent varietal rule for imported wine continue to be provided for via a new regulation within the Food Regulations 2015? Why/why not?
17. Do you agree that regulation 20(2) (sales from off-licences) should be revoked? Why/why not?

18. Do you agree that the policy intent of regulation 24 (fluoridated water) should be retained and updated for water added to food from reticulated supplies? Why/why not?
19. Do you agree that the permission contained in regulation 26 (hemp seed oil industry) should be retained? Why/why not?
20. Do you agree that regulation 27 (analyst's certificate and fees) should be revoked? Why/why not?
21. Do you agree that the new Food Act will achieve the same or better safety and compliance outcomes as the Food (Safety) Regulations that we propose to revoke? Why/Why not?
22. What (if any) disadvantages or risks do you see with the new Food Act taking the place of these different Food (Safety) Regulations?

Part five: amendment to the Animal Products (Exemptions and Inclusions) Order 2000

24. Do you agree that the Animal Products (Exemptions and Inclusions) Order 2000 should be amended to ensure that the following persons or types of processing are covered by a risk-based measure under the Food Act 2014:
 - fishmongers selling fish by way of retail sale (clause 10(1));
 - processing of certain dairy products consumed on premises (clause 7A(1)); and
 - processing of certain products that are food (clause 7B(1))?

Part six: maximum residue levels

25. Do you agree that the words “including in the production of wine” should be removed from clause 142(1)(c) of the Food Regulations 2015?