



AUSTRALIAN FOOD SOVEREIGNTY ALLIANCE

Review of the Food Act 2006

Queensland Health

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By email to

foodsafety@health.qld.gov.au

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Acknowledgement of Country

This submission was written and edited by contributors across multiple nations and sovereignties. We acknowledge the Traditional Owners on the respective lands and waters on which we reside, and honour their care and custodianship of Country for millennia. We acknowledge that we are farming on unceded lands with which the Traditional Owners have a deep spiritual connection.

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About the Review

The *Food Act 2006* (Food Act), which commenced in June 2006, is the primary piece of food safety legislation in Queensland. The Food Act seeks to ensure that food for sale is safe and suitable for human consumption. It also seeks to prevent misleading and deceptive conduct in relation to food.

In 2019, the Queensland Audit Office (QAO) undertook a performance audit into the management of food safety in Queensland. QAO's final report made 14 recommendations, including that Queensland Health conduct a legislative review of the Food Act to ensure that it enables effective responses to food safety risks.

While the Food Act has been amended over the years, it has not been subject to a formal review. You are invited to provide feedback on 39 legislative reform proposals outlined in the consultation paper. The consultation paper seeks stakeholder views about policy and operational issues where amendment would make the Food Act fit for purpose and ensure minimum effective regulation. You are also invited to provide information relating to other matters not identified where legislative amendment may be considered beneficial.

While Queensland Health has previously developed guidelines to assist local governments to interpret the requirements of the Food Act and Food Regulation, the 2019 QAO Audit Report noted the absence of an overarching risk-based framework to support consistent and effective application of the legislation by these entities.

About the Australian Food Sovereignty Alliance

The Australian Food Sovereignty Alliance (AFSA) is a farmer-led civil society organisation of people working towards socially-just and ecologically-sound food and agriculture systems. The democratic participation of First Peoples, small-scale food producers and local communities in decision-making processes is integral to these efforts.

AFSA provides a balanced voice to represent small-scale food producers and local communities' interests at all levels of government. We connect small-scale food producers for farmer-to-farmer knowledge sharing, assist local, state and federal governments in instituting scale-appropriate and consistent regulations and standards that enable agroecology and socially-just localised food systems, as well as advocate for equitable access for small-scale food producers to local value chain infrastructure and markets.

We are part of a robust global network of civil society organisations involved in food sovereignty and food security policy development and advocacy. We are members of the International Planning Committee for Food Sovereignty (IPC), La Vía Campesina (the global movement of small-scale food producers, and the largest social movement in the world), and Urgenci: the International Network for Community-Supported Agriculture. We also support the Australasian representative on the Civil Society and Indigenous Peoples' Mechanism (CSIPM), which relates to the UN Committee on World Food Security (CFS).

Our vision is to promote care for Country and all on it through agroecology and localised, socially-just food systems, while promoting First Peoples' rights to self-determination and Country. This has taken on an added salience in the face of the increasing impacts of the climate crisis, the ongoing COVID-19 pandemic and rising food prices resulting from flood, drought, fire, war, and inflation caused by corporate profiteering.¹ Australians care more than ever about the way their food is produced and how and where they can access it, with a growing awareness of its social, environmental, and economic impacts. Nutritious food produced locally in socially-just, ethical and ecologically-sound ways is increasingly in demand.

Governments must facilitate and encourage the emergence and viability of agroecology embedded in localised food systems with short and direct supply chains, thereby protecting the environment and human and animal health. Inextricable to this vision is the need to honestly and truthfully account for the land's needs. As such, AFSA works to increase understanding of and appreciation for Aboriginal and Torres Strait Islander Peoples' connection to and care for Country and the ongoing impacts of colonisation and development on Country. We aim to put First Peoples' knowledge first as best practice for healing Country and sustaining life, and as an organisation we are committed to decolonial futures for food and agriculture systems.

¹ <https://australiainstitute.org.au/post/profit-price-spiral-excess-profits-fuelling-inflation-interest-rates-not-wages/>

Feedback on Proposals

Proposal 1: Require Queensland local governments to utilise a risk-based categorisation framework when licensing food businesses.

Disagree

While AFSA agrees in principle with a risk-based framework, we do not believe a direct interpretation of the nationally endorsed Risk Framework, *Food Safety: The priority classification system for food businesses* is appropriate without further direction for local government regulators.

Issues

Unlike NSW² and Victoria³ (for example), where certain food businesses are only required to notify council of their food business, in QLD the requirement (with limited exemptions) is that *all* food businesses must be licenced and therefore subject to approved food safety accreditation schemes. This is not in line with the intent of more nationally consistent regulation. In QLD there is no allowance for scale, low-risk assessments or direct supply chain considerations, which is the subject of many of the proposals in this review. Whilst all food businesses are subject to the Food Standards, this allows for appropriate regulatory compliance inspections based on risk at the Local Government level.

There needs to be greater consideration with regard to:

- Length of Supply Chain
- Over-Classification of businesses according to 'highest risk'
- Food Safety Management Tools
- Scale
- Cost of regulatory burden

We are concerned that many small businesses, especially horticulture producers, who have vertically integrated or 'stacked' food enterprises, are captured under these changes to the Food Act and are also subject to the Food Production (Safety) Act and Food Production Regulations as well as Chapter 4 of the (Standards 4.2.7, 4.2.8 and 4.2.9) of the *Australia New Zealand Food Standards Code*. Making them some of the most regulated food businesses in the state.

We believe this places an unfair regulatory burden on small scale producers. This will not impact large scale producers, processors or manufacturers in the same way as due to their size; they are less likely to be vertically integrated and therefore less likely to end up with higher risk classifications being imposed.

Length of Supply Chain

Reports by AFSA members show that of small scale horticultural producers:

² <https://www.foodauthority.nsw.gov.au/help/licensing>

³ <https://www.health.vic.gov.au/food-safety/food-businesses>

- 75% are selling directly to the customer via farm gate, markets or box deliveries
- 25% sell the majority of their product into the wholesale market
- 100% include 'washing' in the processing activity
- Over 75% of producers provide consumers with the product within 24 hours of harvesting
- Over 70% have cold storage facilities
- Over 60% are registered with local council and 27% have food safety qualifications/plans
- Around 10% are also involved in higher-risk food categories for which they hold appropriate licences such as the sale of eggs, meat or poultry.

The very short supply chain reduces food safety risks as it minimises the time for growth of any pathogenic microorganisms that may be present, and also reduces risks in longer cold supply chain management. FSANZ's own risk assessment asserts that these are risk mitigation measures - which are inherent in our members' systems.

FSANZ uses a flow chart in its 2018 Strategy document to show the 'food chain for each commodity', which fails to capture the model of most small-scale farms. The many risk points represented in the conventional industrial supply chain are vastly reduced in small-scale farming models with direct sales channels - these farmers are not commodity farmers.

Conventional Supply Chain for Commodities



Small-Scale Farm Supply Chain for Food



The review must assure small-scale producers that safety management options, mandatory or not, will be commensurate to risk, and acknowledge the high level of traceability in models where produce is sold directly from the farmer to consumers.

As it currently stands, the *Food Safety: The priority classification system for food businesses* makes no allowance for length of supply chain, and its implementation without consideration of this risk mitigation strategy would be penalising.

Over-Classification of businesses according to 'highest risk'

'For businesses that handle or process more than one type of food, the food types that present the greatest risks are used to determine the score for that business.'⁴

As an example, cut fruit and vegetables fall into Medium Risk categories as they a) ready to eat - giving 25 points⁵ and b) medium-risk ready to eat foods are *handled* during processing or manufacturing of food - potentially giving another 25 points. This alone gives 50 points, with another 5 points if you are a small business. Why do you get ANY points for being a small business (you get 5 and anyone not a small business gets 10)?

- Low-risk is 39 points or less
- Medium-risk is 40-64
- High-risk is 65 or more

Definitions⁶

Processing 'in relation to food, means activity conducted to prepare food for sale including cooking, drying, fermenting, heating, pasteurising, thawing and *washing*, or a combination of these activities.'

Ready to eat 'means food that is ordinarily consumed in the same state as that in which it is sold and does not include nuts totally enclosed in the shell or whole fruit and vegetables intended for further processing.'

Ready to eat fruit and salad producers may fall under Medium-risk which would require maximum 6 month and minimum 18 month inspections and it would require a licence and food safety supervisor.⁷

AFSA notes previous issues with compliance implementation at local government level who often see 'little room to move' and these changes will therefore promote a huge over-regulation of small-scale food producers.

We do not believe the act of 'washing' or 'cutting' fruit and vegetables hardly requires such onerous legislation.

Over-regulation

Small scale producers who both farm, do limited processing on farm and sell at a separate retail outlet are hit by multiple levels of confusing legislation. If you add other elements to the mix, such as the production and sale of eggs, meat or poultry, the burden is even larger.

⁴ ANZFA "Food Safety: The priority classification system for food businesses"

⁵ under the ANZFA "Food Safety: The priority classification system for food businesses"

⁶ ANZFA "Food Safety: The priority classification system for food businesses"

⁷ https://www.foodstandards.gov.au/publications/documents/ANZFA_1578_Info_Paper___final.pdf

Due to the nature of the small businesses we represent, with over 50% selling at Farmers Markets (in addition to already being regulated under the Food Production (Safety) Act, and for the Medium-Risk Processing at their farm site), they will also require a Mobile Business Registration as they now fall under 3.2.2 of the Food Standards Code⁸ requiring a Food Safety Supervisor which has to be renewed every 5 years and now include operations such as Market Stalls.

It is the State and Territory Governments that hold the responsibility for food legislation and therefore they have the discretion to use any risk assessment tool that they consider appropriate

We ask that the QLD Government use their discretion with regard to minimally *processed* (ie washed, cut and bunched) ready to eat products with short supply chains sold direct to customers. This relates to point 5.2 Activity of the food business where the 'amount of handling' should be considered.

We believe that the classification of a fruit stall selling cut fruit and a salad/vegetable producer producing RTE salads into the medium-risk category alongside abattoirs, dairy factories and poultry processing in *Food Safety: The priority classification system for food businesses* is overreach and therefore ask you to consider exemptions relating to the level of processing and method of sale.

The licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

Scale

The only concession, if you can call it that, for scale is based on whether the business is a small business, for which they get 5 points, rather than not being a business they get 10 points.

Definitions

Small business *a business that employs less than 50 people in the 'manufacturing' sector or which employs less than 10 people in the 'services' sector.*

*A **micro business** is a type of small business that employs fewer than 10 people, according to the Small Business Association, while small businesses can include businesses with up to 500 employees.* 1 June 2022

In fact the level of scale we are talking about is significantly lower than the 500 defined by the Australian Taxation Office, or even the 50 defined by FSANZ, with almost all of the food producers we are talking about employing less than 10 people in all instances and the majority less than 5, many operating as single or couple family farmers, putting them into the 'micro-business' category.

Notes to *Food Safety: The priority classification system for food businesses* 5.4 Customer base state that
The number of individuals potentially exposed to a food hazard is an important determinant in assessing the severity of the risk presented by the food business. The number of persons exposed

⁸ Food Standards Australia and New Zealand, Food Standards Code, Standard 3.2.2A, Food Safety Management Tools (PDF, 1.04mb).

will, in all but fully automated processes, be related to the number of employees required for production.'

AFSA asks that this is fully taken into account by any directive proposed by the QLD Government.

Cost of regulatory burden

The biggest issue here is with regard to the change of category putting these businesses into medium and high-risk categories would be the cost of:

- Food Safety Supervisor Costs
- Licences
- Accreditation systems
- Auditing
- Amendments required to facilities when businesses are 'overclassified' into higher risk categories

When these are micro businesses of less than 10 employees for which the regulatory impact is overwhelmingly large both as a percentage of time and revenue.

Many small farms start in horticulture because of the low barriers to entry. Increasing regulatory barriers into horticulture production would prohibit the much-needed growing movement of young people returning to farm in small-scale agroecological systems, and in turn inhibit communities' access to fresh, local food produced in socially-just and ecologically-sound systems.

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas asserts that:
States shall take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production. It further asserts that 'States shall stimulate sustainable production, including agroecological production, whenever possible, and **facilitate direct farmer-to-consumer sales.**'
(UNDROP, Article 16.4)

The public health system in Australia is under pressure due to an epidemic of diet related disease. One of the most important ways to counter the effects of poor dietary options is to ensure the public have access to high quality fresh vegetables and fruits. Requiring every enterprise that processes vegetables to have a licence will make such enterprises as urban micro farms, community-supported agriculture, food buyers' groups, farmers' markets, and foodbanks more difficult to start and harder to run. According to the IBISWorld *Fruit and Vegetable Processing - Australia Market Research Report*,

The licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

Case Study

SCPA Organics - Participatory Guarantee System⁹

SCPA Organics is an *organic certification process* based on peer inspection and assessment which is managed by SCPA - South East Producers in Bega, NSW. It was established in 1998 to meet the need of local producers for a system that was affordable and credible. It is suitable for small growers who want to sell their produce locally. SCPA Organics is not nationally accredited and therefore not suitable for export produce. Our aim is to develop and promote organic production in the Bega Valley and adjacent areas in the South East Region.

Initially member growers/producers adhered to the de facto Australian National Standards for Organic and Bio-Dynamic Produce. In 2009 the AS6000 Australian Standard for Organic & Biodynamic Products was published. Due to strict copyright and the cost of obtaining copies of this Standard for every member, we decided to prescribe the IFOAM Standard for Organic Production and Processing as an informative guide to organic principles and practices. Where the IBS and AS6000 significantly differ and the latter standard potentially provides a higher quality of produce, then members will be informed by supplementary publications to meet the higher standard.

As per the Australian Standards, the **SCPA Organics** certification process takes 3 years. If the initial inspection and soil test are approved you are recorded as “Pre-Certified”. At least 12 months later a second inspection is made by a **SCPA Organics** member. If everything is in order at the second inspection you will be recorded as “In-Conversion” and issued with a Certificate. This phase applies for 2 years of organic practice. If all is in order after your fourth annual inspection you will become “Certified Organic”.

To assist the initial inspection an **Organic Management Plan (OMP)** is required to indicate your experience and intentions to manage your property/activities in accordance with the prescribed Organic Standards.

Each member must in turn inspect another member's property with full knowledge of the prescribed standards. Inspections take place in winter each year, followed by group assessment, addressing of issues and, where appropriate, certification.

This peer review system not only develops trust and education within the group, but also promotes education and knowledge sharing of the standards. Whilst this example is specific to organic certification and members performing inspections, the PGS system certainly has potential to be used for other community certification needs relating to food safety.

Recommendations

In FSANZ's 2nd Call for submissions – Proposal P1052, it acknowledges the following its response to feedback from the first two rounds of consultation, and we believe it would be important for QLD Health to take on

⁹ <https://organics.scpa.org.au/pages/an-introduction>

these recommendations with regard to the Proposal to support national consistency.

Impacts on small businesses in-particular were considered. Advice to FSANZ is that, if new regulations were found to be warranted and approved, **food regulators would support businesses, particularly small ones, to become compliant with that new regulation, easing uptake through guidance documents and templates.** In relation to fees, **regulators already have the ability to alter the fee structure for small businesses, which can include reduced fees or a fee-free threshold.** Fees are charged per hour (rather than at a flat rate), and therefore can scale up or down depending on business size.

Reform

AFSA recommends that the QLD Government:

- Review the consistency of food regulation approaches and make subsequent reforms that are commensurate with the level of risk of different scale food producers and the length and complexity of their supply chains including a review of licensable activities and the implementation of a notification system for lower risk, smaller scale, short supply chain businesses rather than the licensing approach.
- Include democratically-elected representatives of smallholders and civil society in stakeholder groups in the development of food safety policy and regulation. Representation from broader cross-sections of food and agriculture will ensure that food safety regulations are developed at scale of risk to public health.
- Support the setup of Participatory Guarantee Systems (PGS) in local areas through scale appropriate regulatory framework. PGS' are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange.¹⁰ These could be developed for many areas of the production, processing, distribution and consumption parts of the food system.

Non regulatory measures

AFSA recommends that the focus for micro businesses should be on:

- Guidance documents
- The provision of food safety accreditation plan templates (that do not require an external audit prior to approval) for micro businesses.
- Education - Food Safety Supervisor and Handling on a state-wide fee-free basis
- Participatory Guarantee Systems

Exemptions

AFSA recommends that:

- That no licence nor audits be required for small scale producers of salad, fruit and vegetables who sell directly to consumers as an addition to their food production business.
- That if required an audit and/or testing frequency of no greater than 12 months apply to micro businesses.

¹⁰ <https://www.ifoam.bio/our-work/how/standards-certification/participatory-guarantee-systems>

Fee free thresholds

AFSA recommends that should regulatory approaches be required:

- A fee-free licensing and audit threshold is set for any small business primary production processor that sells its produce direct to the consumer.
- A fee-free food safety accreditation template is provided for micro businesses
- A fee-free Food Safety Supervisor accreditation is available to micro businesses.

Proposal 2: Give effect to guidelines published under the Food Standards Code.

Agree

The proposal is to amend the Food Act to give effect to FSANZ guidelines - the [Model Food Provisions Annex B](#) without further consideration - these are not mandatory.

However, [Annex A](#) is already mandatory.

Comments

AFSA agrees this would provide national consistency.

Proposal 3: Apply national standards relating to the application of food safety programs.

Disagree

It is proposed to amend the Food Act to ensure that the following elements of the Food Standards Code will apply in Queensland:

- Standard 3.2.1 excluding clause 2(1)
- Chapter 4 of the Code (see also proposal 9 in this consultation paper)
- Standard 3.2.2 (excluding clause 4) (note that 3.2.2 by extension includes 3.2.2A which relates to catering and market stalls)

Exemptions would be:

- clause 4 only of Standard 3.2.2, relates to notification - the rest of Standard 3.2.2 applies
- standard 3.3.1 (this relates to vulnerable people)

Issues

There are a number of different changes being proposed here simultaneously:

1. The inclusion of Chapter 4 of the Code - which includes the new standards 4.2.7, 4.2.8 and 4.2.9 relating to melons, leafy vegetables and berries Primary Production and Processing.
2. The inclusion of Primary Producers that are retailing food under Standard 3.2.2 and under its extension 3.2.2A which relates to Market Stalls as a 'category 2' business.

The nature of small-scale producers which AFSA represents mean that for the majority of them they will be impacted by this change in legislation.

Reports by AFSA members show that of small scale horticultural producers are:

- 75% are selling directly to the customer via farm gate, markets or box deliveries
- 25% sell the majority of their product into the wholesale market
- 100% include 'washing' in the processing activity
- Over 75% of producers provide consumers with the product within 24 hours of harvesting
- Over 70% have cold storage facilities
- Over 60% are registered with local council and 27% have food safety qualifications/plans
- Around 10% are also involved in higher-risk food categories for which they hold appropriate licences such as the sale of eggs, meat or poultry.

The effect of the inclusion of Chapter 4 of the Code into the Queensland Food Act without change or allowance is:

- Classifies these producers as Processors which then classifies them as Food Businesses under the Act (ie they are now under Standard 3.2.2).
- Requires Licencing
- Requires Traceability documentation
- Relates to premises, cleaning and sanitation: Premises must be kept free of animals and pests.

- Requires temperature control under 5 or above 60 degrees C for potentially hazardous goods. Food businesses handling potentially hazardous food must have a probe thermometer accurate to +/- 1°C so they can measure the temperature of food.
- Requires food safety skills
- Requires water testing

The effect of the inclusion of Primary Producers as retailers under Standard 3.2.2 and by extension 3.2.2A is:

- Requires food safety supervisor and food handling training
- Requires to temperature control under 5 or above 60 degrees C for potentially hazardous goods. Food businesses handling potentially hazardous food must have a probe thermometer accurate to +/- 1°C so they can measure the temperature of food .

Standard 3.2.2 sets out specific food handling controls related to the receipt, storage, processing, display, packaging, transportation, disposal and recall of food. Other requirements relate to the skills and knowledge of food handlers and their supervisors, the health and hygiene of food handlers, and the cleaning, sanitising and maintenance of the food premises and equipment within the premises. If complied with, these requirements should ensure that food does not become unsafe or unsuitable. **Standard 3.2.2 does not require the food business to keep any records demonstrating compliance with this standard. This is the purpose of Standard 3.2.1.**

Effectively, **Standard 3.2.1 requires the business to set out in a documented food safety program how it will comply with Standard 3.2.2, how it will monitor compliance with the food safety program, and what action it will take if monitoring finds the food safety program is not being complied with.** All food businesses are required to comply with Standard 3.2.2. However, for some requirements in the standard, there are exemptions for charities and community groups, and also for businesses operating from temporary food premises and from private homes.

Definitions:

potentially hazardous food means food that has to be kept at certain temperatures to minimise the growth of any pathogenic micro-organisms that may be present in the food or to prevent the formation of toxins in the food. **NOTE that according to FSANZ this includes: prepared fruits and vegetables, for example cut melons, salads and unpasteurised juices**

food business means a business, enterprise or activity (other than primary food production) that involves:
 (a) the ***handling*** of food intended for sale, or
 (b) the sale of food, regardless of whether the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.

A ***food safety program*** is a written document indicating how a food business will control the food safety hazards associated with the food handling activities of the business.

handling of food includes the making, manufacturing, production, collection, extraction, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving or displaying of food.

processing, in relation to food, means activity conducted to prepare food for sale including chopping, cooking, drying, fermenting, heating, pasteurising, thawing and washing, or a combination of these activities.

ready-to-eat food means food that is ordinarily consumed in the same state as that in which it is sold and does not include nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer.

leafy vegetables means vegetables of a leafy nature where the leaf is consumed raw; and includes baby leaves, lettuce, and leafy herbs; and does not include seed sprouts.

growing site means any site used to grow leafy vegetables; and includes an open, partially enclosed or enclosed planting area.

harvest means all activities related to the collection and removal of leafy vegetables from a growing site; and includes picking, cutting, field packing (including packaging for retail sale), and transport from the growing site to the next step in the supply chain.

premises and equipment means equipment, infrastructure, structures and vehicles that:

- (a) are used by a primary horticulture producer or by a primary horticulture processor; and
- (b) have direct or indirect contact with leafy vegetables.

primary horticulture producer means a business, enterprise or activity that involves the growing and/or harvesting of leafy vegetables.

primary horticulture processor means a business, enterprise or activity that includes one or more of the following activities in relation to leafy vegetables that have been harvested:

- (a) washing;
- (b) trimming;
- (c) sorting;
- (d) sanitising;
- (e) storing;
- (f) combining harvested leafy vegetables;
- (g) packing; and
- (h) transport between primary processing premises.

relevant activity means:

- (a) in relation to a primary horticulture producer, the growing and/or harvesting of leafy vegetables; and
- (b) in relation to a primary horticulture processor, any of the following:
 - (i) washing harvested leafy vegetables;

- (ii) trimming harvested leafy vegetables;
- (iii) sorting harvested leafy vegetables;
- (iv) sanitising harvested leafy vegetables;
- (v) storing harvested leafy vegetables;
- (vi) combining harvested leafy vegetables;
- (vii) packing harvested leafy vegetables; and
- (viii) transporting harvested leafy vegetables between primary processing premises.

New regulatory reforms coming into effect for Melons, Berries and Leafy Vegetables

3.2.2 Clause 5 Covers the retail sale at market stalls of fruit and veg

Chapter 4 covers primary production and processing of fruit and veg - 4.2.7 Primary Production and Processing Standard for Berries, 4.2.8 Primary Production and Processing Standard for Leafy Vegetables and 4.2.9 Primary Production and Processing Standard for Melons.

Clause 4 is an additional one for berries

4.2.7—4 Notification

- (1) A primary horticulture producer and a primary horticulture processor must provide the specified information to the relevant authority before engaging in a relevant activity.
- (2) In this section, ***specified information*** means the following information:
 - (a) the contact details of the primary horticulture producer or the primary horticulture processor, including the name of their business and the name and business address of the proprietor of their business;
 - (b) a description of the activities the primary horticulture producer or the primary horticulture processor will undertake in relation to berries; and
 - (c) the location or locations of each activity referred to in paragraph (b) that is within the jurisdiction of the relevant authority.
- (3) A primary horticulture producer and a primary horticulture processor must notify the relevant authority of any proposed change to specified information provided to a relevant authority in accordance with this section before that change occurs.

Traceability - clause 5 in all

A primary horticulture producer and a primary horticulture processor must have in place a system that can identify:

- (a) from whom leafy vegetables were received; and
- (b) to whom leafy vegetables were supplied.

Noting: **4.2.8—3 Application**

(1) This Standard applies to primary horticulture producers and to primary horticulture processors in Australia.

(2) This Standard does not apply to the retail sale of leafy vegetables.

Clauses below from the Leafy Greens standard as an example:

4.2.8—6 Inputs – seed, seedling, soil, fertiliser and water

A primary horticulture producer and a primary horticulture processor must take all reasonable measures to ensure that any of the following inputs do not make leafy vegetables unacceptable:

1. seeds;
2. seedlings;
3. soil;
4. soil amendments (including manure, human biosolids, compost, and plant bio-waste);
5. fertiliser; and
6. water.

4.2.8—9 Premises and equipment

(1) A primary horticulture producer and a primary horticulture processor must take all reasonable measures to ensure that premises and equipment are designed, constructed, maintained and operated in a way that:

- (a) allows for effective cleaning and sanitisation of the premises and equipment; and
- (b) does not make leafy vegetables unacceptable.

(2) A primary horticulture producer and a primary horticulture processor must ensure that premises and equipment are kept clean, sanitised and in good repair to the extent required to ensure that leafy vegetables are not made unacceptable.

4.2.8—10 Temperature of harvested leafy vegetables

A primary horticulture producer and a primary horticulture processor must keep harvested leafy vegetables at a temperature that does not make the leafy vegetables unacceptable.

4.2.8—11 Washing and sanitisation of harvested leafy vegetables

A primary horticulture processor must take all reasonable measures to ensure that:

- (a) visible extraneous material on harvested leafy vegetables is removed; and
- (b) any washing or sanitising of harvested leafy vegetables does not make the leafy vegetables unacceptable.

4.2.8—12 Animals and pests

A primary horticulture producer and a primary horticulture processor must take all reasonable measures to minimise the presence of animals, vermin and pests in growing sites, and in premises and equipment, to ensure that leafy vegetables are not made unacceptable.

4.2.8—13 Skills and knowledge

A primary horticulture producer and a primary horticulture processor must ensure that persons who engage in a relevant activity, or who supervise a person who engages in a relevant activity, have:

- (a) knowledge of food safety and food hygiene matters; and
- (b) skills in food safety and food hygiene matters commensurate with their work.

Basically, this defines market gardeners as Primary Production *Processors* by nature of the fact that they wash, bunch, trim, sort, combine, store or pack leafy vegetables. This translates then into making them all Food Businesses under the definition, added to that is that these leafy vegetables would potentially fall under the definition of potentially hazardous food!

Unlike NSW¹¹ and Victoria¹² (for example), where certain food businesses are only required to notify council of their food business, in QLD the requirement (with limited exemptions) is that all food businesses must be licenced and therefore subject to approved food safety accreditation schemes. This is not in line with the intent of more nationally consistent regulation. In QLD there is no allowance for scale, low-risk assessments or direct supply chain considerations, which is the subject of many of the proposals in this review. Whilst all food businesses are subject to the Food Standards, this allows for appropriate regulatory compliance inspections based on risk at the Local Government level.

In NSW, Primary Production Vegetable Enterprises are excluded from notification and licensing.

There needs to be greater consideration with regard to:

- Clarification of who this applies to
- Length of Supply Chain
- Over-Classification of businesses according to processing
- Over-Classification of businesses according to ‘handling unpackaged potentially hazardous food’
- Food Safety Management Tools
- Scale
- Cost of regulatory burden

We are concerned that many small businesses, especially horticulture producers, who have vertically integrated or ‘stacked’ food enterprises, are captured under these changes to the Food Act and are also subject to the Food Production (Safety) Act and Food Production Regulations as well as Chapter 4 of the (Standards 4.2.7, 4.2.8 and 4.2.9) of the *Australia New Zealand Food Standards Code*. as well as *Standard 3.2.2 clause 5*. Making them some of the most regulated food businesses in the state.

Clarification of who this applies to

Food businesses that operate from a farm, vineyard, orchard or aquaculture facility should refer to the definition of ‘food business’ in Standard 3.1.1 to determine if they have to comply with this Standard 3.2.2. If they are involved in the ***substantial transformation of food*** or the sale or service of food directly to the public then they must comply with this Standard.

¹¹ <https://www.foodauthority.nsw.gov.au/help/licensing>

¹² <https://www.health.vic.gov.au/food-safety/food-businesses>

This then refers to processing of food to add value

It is not clear if Primary Produce Processors are substantially transforming food. However many definitions cited above seem to point to Primary Producers who are Processing Potentially Hazardous and Ready to Eat Leafy Greens, Melons and Berries now fall under 3.2.2.

Please clarify the intent before introducing legislation to this effect. Community consultation with these affected businesses should take place prior to changes to the Food Act.

Length of Supply Chain

Reports by AFSA members show that of small scale horticultural producers are:

- 75% are selling directly to the customer via farm gate, markets or box deliveries
- 25% sell the majority of their product into the wholesale market
- 100% include 'washing' in the processing activity
- Over 75% of producers provide consumers with the product within 24 hours of harvesting
- Over 70% have cold storage facilities
- Over 60% are registered with local council and 27% have food safety qualifications/plans
- Around 10% are also involved in higher-risk food categories for which they hold appropriate licences such as the sale of eggs, meat or poultry.

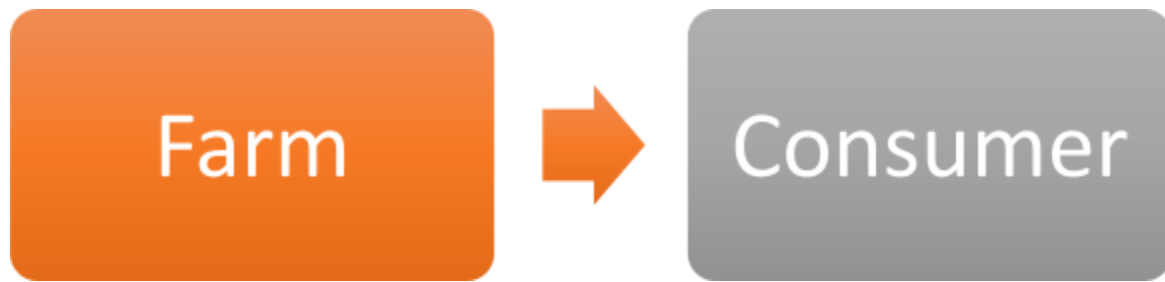
The very short supply chain reduces food safety risks as it minimises the time for growth of any pathogenic microorganisms that may be present, and also reduces risks in longer cold supply chain management. FSANZ's own risk assessment asserts that these are risk mitigation measures - which are inherent in our members' systems. Rather than a higher level of risk presented by retailing of food, we believe this presents a lower level of risk because of the short supply chain.

FSANZ uses a flow chart in its 2018 Strategy document to show the 'food chain for each commodity', which fails to capture the model of most small-scale farms. The many risk points represented in the conventional industrial supply chain are vastly reduced in small-scale farming models with direct sales channels - these farmers are not commodity farmers.

Conventional Supply Chain for Commodities



Small-Scale Farm Supply Chain for Food



The review must assure small-scale producers that safety management options, mandatory or not, will be commensurate to risk, and acknowledge the high level of traceability in models where produce is sold directly from the farmer to consumers.

Over-Classification of businesses

Processing

The definition of processing for primary production in standard 4.2.8 includes '*washing, trimming, sorting, storing, combining and packing*' which are entirely different and very minimal compared to the other acts defined in processing including cooking, drying, fermenting, heating and so on.

We do not believe that these activities are in fact a ***substantial transformation of food*** and so these businesses should not be captured under Standard 3.2.2 and defined as a Food Business rather than the Primary Producers that they are.

These processes are part of the primary production phase itself and should not be used to tip producers into the 'Food Business' definition.

Handling of Unpackaged Potentially Hazardous Food

Many of the farmers we represent are small scale horticulturalists, for whom leafy vegetables and fruit make up a large proportion of their business.

Whilst the handling of these items on a large scale may present increased risk, due to the nature of these businesses and the scale at which they operate, including time from harvest to delivery, indirect sales models and longer transportation. This is not the case with small scale businesses supplying direct to consumers.

We do not believe that leafy vegetables from these small scale, direct to consumer businesses should be included in the definition of 'unpackaged potentially hazardous food.'

Over-regulation

Small scale producers who both farm, do limited processing on farm and sell at a separate retail outlet are hit by multiple levels of confusing legislation. If you add other elements to the mix, such as the production and sale of eggs, meat or poultry, the burden is even larger.

Due to the nature of the small businesses we represent, with over 50% selling at Farmers Markets (in addition to already being regulated under the Food Production (Safety) Act, and for the Medium-Risk Processing at their farm site), they will also require a Mobile Business Registration as they now fall under 3.2.2 of the Food Standards Code¹³ requiring a Food Safety Supervisor which has to be renewed every 5 years and now include operations such as Market Stalls.

The inclusion of these small scale direct to consumer primary producers of leafy greens and fruits now tips them into the requirement for a Food Safety Supervisor which is, frankly, regulatory overkill.

Scale

Standard 3.2.2 (5) states ‘**the categorisation is based on the food business activities, regardless of its size, location or business model**’ which seems totally at odds with the allowance of scale appropriate regulation determined by FSANZ in its advice to State legislators.

Definitions

Small business ‘a business that employs less than 50 people in the ‘manufacturing’ sector or which employs less than 10 people in the ‘services’ sector.’

*A **micro business** is a type of small business that employs fewer than 10 people, according to the Small Business Association, while small businesses can include businesses with up to 500 employees.* 1 June 2022

In fact the level of scale we are talking about is significantly lower than the 500 defined by the taxation office, or even the 50 defined by FSANZ, with almost all of the food producers we are talking about employing less than 10 people in all instances and the majority less than 5, many operating as single or couple family farmers, putting them into the ‘micro-business’ category.

Notes to *Food Safety: The priority classification system for food businesses* 5.4 Customer base state that *The number of individuals potentially exposed to a food hazard is an important determinant in assessing the severity of the risk presented by the food business. The number of persons exposed will, in all but fully automated processes, be related to the number of employees required for production.’*

And we ask that this is fully taken into account by any directive proposed by the QLD Government in relation to standard 3.2.2.

Cost of regulatory burden

The biggest issue here is with regard to putting these businesses into

1. The primary production processing category (Chapter 4) AS WELL AS
2. Being defined as a Food Business under 3.2.2
3. Defining them as category two businesses under standard 3.2.2A

¹³ Food Standards Australia and New Zealand, [Food Standards Code](#), Standard 3.2.2A, [Food Safety Management Tools](#) (PDF, 1.04mb).

This not only increases the regulatory burden, but it also increases the cost of that burden in an entirely unfair and burdensome way including the cost of:

- Food Safety Supervisor Costs
- Licences
- Monitoring and documentation
- Amendments required to facilities when businesses are ‘overclassified’ into a new definition

When these are micro businesses of less than 10 employees for which the regulatory impact is overwhelmingly large both as a percentage of time and revenue.

Many small farms start in horticulture because of the low barriers to entry. Increasing regulatory barriers into horticulture production would prohibit the much-needed growing movement of young people returning to farm in small-scale agroecological systems, and in turn inhibit communities’ access to fresh, local food produced in socially-just and ecologically-sound systems.

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas asserts that: ‘States shall take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production.’ It further asserts that ‘States shall stimulate sustainable production, including agroecological production, whenever possible, and **facilitate direct farmer-to-consumer sales.**’ (UNDROP, Article 16.4)

The public health system in Australia is under pressure due to an epidemic of diet related disease. One of the most important ways to counter the effects of poor dietary options is to ensure the public have access to high quality fresh vegetables and fruits. Requiring every enterprise that processes vegetables to have a licence will make such enterprises as urban micro farms, community-supported agriculture, food buyers’ groups, farmers’ markets, and foodbanks more difficult to start and harder to run. According to the IBISWorld *Fruit and Vegetable Processing - Australia Market Research Report*,

The licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

Case Study

Salad leafy vegetable grower:

provided by FSANZ¹⁴ about the impacts of the introduction of Standard 4.2.8

Jasper runs a small farm in New South Wales that grows salad leafy vegetables. His harvested produce is

¹⁴ <https://www.foodstandards.gov.au/code/proposals/Documents/P1052%20SD1%20DRIS%20at%20approval.pdf>

trimmed and sorted on farm for sale to restaurants. His annual aggregated turnover is \$200,000 per annum and he employs two farm hands.

Jasper has not considered any food safety risks associated with horticultural produce and has not invested in food safety. Jasper reviews the proposed standard and compliance plan for leafy vegetables. He realises he will need to make significant changes in his business and improve the food safety knowledge and skills of himself and his two employees. He will need to:

- *become familiar with food safety and the new standard [\$480 upfront]*
- *create a food safety management statement \$1520 in the first year & \$1120 in subsequent years.]*
- *improve traceability [\$100pa]*
- *source seeds and seedlings from suppliers who have implemented programs to assure the microbiological safety of the product [\$120pa]*
- *cease using untreated manures and swap to products of suitable microbiological quality [\$120 upfront & \$200pa - \$320 in the first year & \$200 in subsequent years.]*
- *start treating dam water before spraying it onto leafy vegetables [\$400 upfront & \$200pa]*
- *adjust production to better mitigate the effects of weather events [\$480pa]*
- *better maintain the premises and equipment [\$668pa]*
- *clean the premises and equipment [\$2,267pa]*
- *wash and sanitise produce [\$4,333pa]*
- *control animal pests [\$960pa]*
- *develop food safety skills and knowledge, including on-going training [\$345pa]*
- *improve hygiene practices [\$200pa].*
- *Jasper will also need to factor in government licencing (\$654pa) and audit costs (\$885pa). Jasper's audit costs may reduce if alternative monitoring and audit arrangements are agreed by NSW DPI.*

Based on FSANZ estimates, it will cost Jasper a total of \$13,933 in the first year and \$12,533 each subsequent year to shift from zero food safety compliance to ongoing full compliance with the proposed standard. In the first year, these costs equate to 7% of his annual \$200,000 turnover and 6.3% in subsequent years.

*Jasper realises it will take him 6 months to become compliant. He contacts the NSW Department of Primary Industries (DPI) seeking food safety advice and to discuss his concerns about implementation. **The NSW DPI advises him that the proposed national standard will be phased in over 2.5 years and that they will work with businesses to help them become compliant.** They also discuss the approval process of Jasper's food safety management statement, licencing and auditing arrangements.*

Issues with Case Study

The example given assumes ignorance of food safety, in general this is not the case with small scale primary producers and processors. According to AFSA's research, over 60% are registered with local council and 27% have voluntary food safety qualifications/plans.

It also indicates that the State regulatory bodies will work with these producers and processors, and in fact this is also not the case. **There has been no contact with affected businesses to help with compliance.**

Whilst the example given by FSANZ is for NSW, it equally applies to QLD. Noting the costs of \$13,933 in the first year and \$12,533 in the second year are expressed as a percentage of an annual turnover of \$200,000.

AFSA would argue that, not only do many small scale producers not reach this scale of turnover, \$50,000 to \$100,000 is quite common for micro-businesses, but also that even at \$200,000 there is very little left after paying wages. Whilst numbers under \$15,000 per annum for compliance might seem reasonable to those on a government wage, consider the impact of taking this out of your wage, that is the effect of this cost on small, and particularly micro businesses.

Without making any attempt to verify the costs provided in the FSANZ case study (some estimates may be too low), if we apply these costs to different revenue amounts, the percentages look like this:

- At \$100,000 in revenue, the compliance costs are close to 13% in the first year and close to 13% in subsequent years
- AT \$50,000 in revenue, the compliance costs are around 28% in the first year and 25% in subsequent years.

AFSA submits that this is an unacceptable cost burden imposed by regulatory change on small and micro businesses and that scale appropriate measures need to be considered.

Case Study

SCPA Organics - Participatory Guarantee System¹⁵

SCPA Organics is an *organic certification process* based on peer inspection and assessment which is managed by SCPA - South East Producers in Bega, NSW. It was established in 1998 to meet the need of local producers for a system that was affordable and credible. It is suitable for small growers who want to sell their produce locally. SCPA Organics is not nationally accredited and therefore not suitable for export produce. Our aim is to develop and promote organic production in the Bega Valley and adjacent areas in the South East Region.

Initially member growers/producers adhered to the de facto Australian National Standards for Organic and Bio-Dynamic Produce. In 2009 the AS6000 Australian Standard for Organic & Biodynamic Products was published. Due to strict copyright and the cost of obtaining copies of this Standard for every member, we decided to prescribe the IFOAM Standard for Organic Production and Processing as an informative guide to organic principles and practices. Where the IBS and AS6000 significantly differ and the latter standard potentially provides a higher quality of produce, then members will be informed by supplementary publications to meet the higher standard.

As per the Australian Standards, the **SCPA Organics** certification process takes 3 years. If the initial inspection and soil test are approved you are recorded as "Pre-Certified". At least 12 months later a second inspection is made by a **SCPA Organics** member. If everything is in order at the second inspection you will be recorded as "In-Conversion" and issued with a Certificate. This phase applies for 2

¹⁵ <https://organics.scpa.org.au/pages/an-introduction>

years of organic practice. If all is in order after your fourth annual inspection you will become “Certified Organic”.

To assist the initial inspection an **Organic Management Plan (OMP)** is required to indicate your experience and intentions to manage your property/activities in accordance with the prescribed Organic Standards.

Each member must in turn inspect another member's property with full knowledge of the prescribed standards. Inspections take place in winter each year, followed by group assessment, addressing of issues and, where appropriate, certification.

This peer review system not only develops trust and education within the group, but also promotes education and knowledge sharing of the standards. Whilst this example is specific to organic certification and members performing inspections, the PGS system certainly has potential to be used for other community certification needs relating to food safety.

Recommendations

Reform

AFSA recommends that the QLD Government:

- Review the consistency of food regulation approaches and make subsequent reforms that are commensurate with the level of risk of different scale food producers and the length and complexity of their supply chains including a review of licensable activities and the implementation of a notification system for lower risk, smaller scale, short supply chain businesses rather than the licensing approach.
- Include democratically-elected representatives of smallholders and civil society in stakeholder groups in the development of food safety policy and regulation. Representation from broader cross-sections of food and agriculture will ensure that food safety regulations are developed at scale of risk to public health.
- Support the setup of Participatory Guarantee Systems (PGS) in local areas through scale appropriate regulatory framework. PGS' are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange.¹⁶ These could be developed for many areas of the production, processing, distribution and consumption parts of the food system.

Exemptions

AFSA recommends that there should be exemptions from the more onus regulatory reporting:

- Based on turnover of less than \$500,000
- Based on micro business
- Based on direct sales model

¹⁶ <https://www.ifoam.bio/our-work/how/standards-certification/participatory-guarantee-systems>

AFSA recommends that:

- That no licence nor audits be required for small scale producers of salad, fruit and vegetables who sell directly to consumers as an addition to their food production business.
- That if required an audit and/or testing frequency of no greater than 12 months apply to micro businesses.

There should still be exemptions, as per Brisbane City Council¹⁷, if you are only selling whole fruit or vegetables, you should not be tipped into this due to the processing factors that are not actually transforming food (washing, storing, combining, packing etc)

Further, in your proposed amendments to the Food Act Proposal 25 you said about:

- Cheese tasting
- Supermarket juice, yoghurt, sausages, nuggets, rissoles food tasting
- Farmers markets providing samples of fruit normally purchased whole e.g. cut apples.
- Sausage sizzle in conjunction with a stall at a trade expo

These activities are considered low-risk, and the licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions. We note that some of these activities do require licencing as per Brisbane City Council¹⁸

THEREFORE, If the above can be categorised as low risk, then our argument is that the activities outlined in the processing of primary production leafy greens and melons can indeed be considered low risk and not one that requires licensing.

We believe that licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

FSANZ feedback recommendations to States

In FSANZ's 2nd Call for submissions – Proposal P1052, which relates to Standards 4.2.7, 4.2.8 and 4.2.9, it acknowledges the following its response to feedback from the first two rounds of consultation, and we believe it would be important for QLD Health to take on these recommendations with regard to the Proposal to apply national standards to the application of food safety programs.

Impacts on small businesses in-particular were considered. Advice to FSANZ is that, if new regulations were found to be warranted and approved, **food regulators would support businesses, particularly small ones, to become compliant with that new regulation, easing uptake through guidance documents and templates.** In relation to fees, **regulators already have the ability to alter the fee structure for small**

¹⁷

<https://www.brisbane.qld.gov.au/laws-and-permits/laws-and-permits-for-businesses/food-business-licence/licences-for-temporary-food-stalls>

¹⁸

<https://www.brisbane.qld.gov.au/laws-and-permits/laws-and-permits-for-businesses/food-business-licence/licences-for-temporary-food-stalls>

businesses, which can include reduced fees or a fee-free threshold. Fees are charged per hour (rather than at a flat rate), and therefore can scale up or down depending on business size.

Further Consultation Required

Please clarify the intent before introducing legislation to this effect.

There are a large number of small scale horticultural businesses who need to be directly consulted with regard to these proposed amendments to the Food Act, for whom the proposed changes would mean SIGNIFICANT change, impact and cost.

AFSA recommends:

- **that the change in Proposal 3 be halted until industry consultation has occurred with the small business sector:**

A Horticulture Implementation Working Group (HIWG) has been established by the Implementation Sub-Committee For Food Regulation¹ (ISFR) to ensure consistent implementation of amendments to the Australia New Zealand Food Standards Code (the Code) nationally. HIWG members include government officers from individual states and territories responsible for food safety in the horticulture sector. The HIWG utilises the Integrated Model for Standards Development and Consistent Implementation of Primary Production and Processing Standards (the Integrated Model) to develop a draft compliance and implementation package for the proposed standards;

In fact, FSANZ Approval Report for P1052 states:

HIWG have committed to develop a compliance approach with template tools and guidance, in consultation with industry. *** we note that there has been no further consultation with industry.**

The above specifically relates to:

- **Small businesses**
- **extra fees and administration to comply and seek assistance will be unviable for many, they may not comply or may close down**
- **some businesses may switch to another (unregulated) commodity**
- **may see more consolidation of smaller operations into larger ones – and smaller businesses may be outcompeted or out priced**

Non regulatory measures

AFSA recommends that the focus for micro businesses should be on:

- **Guidance documents**
- **The provision of food safety accreditation plan templates (that do not require an external audit prior to approval) for micro businesses.**
- **Education - Food Safety Supervisor and Handling on a state-wide fee-free basis**
- **Participatory Guarantee Systems**

Fee free thresholds

AFSA recommends that should regulatory approaches be required:

- A fee-free licensing and audit threshold is set for any small business primary production processor that sells its produce direct to the consumer.
- A fee-free food safety accreditation template is provided for micro businesses
- A fee-free Food Safety Supervisor accreditation is available to micro businesses.

Implementation

AFSA recommends that:

- Timeframes for small/micro businesses need to be halted until industry consultation has occurred.

Clarification required

3.2.2 Clause 5 relates to Market stalls, which will now require food handling and food safety supervisor training when they are selling ready to eat food (salad, fruit) - however they are not required to make records to substantiate their management of food safety.

Is the intent for fruit and vegetable stalls to be included in the definition of market stalls?

AFSA recommends:

- An exemption based on risk - size of business, direct model of sale, time to market.

Clause 4 of standard 3.2.2 relates to Category one food service businesses, defined as caterers or food service processing unpackaged potentially hazardous food into potentially hazardous or ready to eat food.

Proposal 4: Specify the required qualifications for authorised persons.

No Comment

Proposal 5: Specify the required qualifications for auditors.

No Comment

Proposal 6: Introduce witness audits.

No Comment

Proposal 7: (a) Expand the list of prescribed contaminants required to be notified when isolated in food. (b) Streamline and strengthen testing and notification requirements for prescribed contaminants. (c) Clarify that the meaning of prescribed food includes ready-to-eat food.

No comment

Proposal 8: Require activities exempted under section 4 of the Food Act to meet the same food safety standards as regulated food businesses.

Disagree

Section 4 of the Food Act specifically exempts the handling, at a person's home, of food intended to be given away to a non-profit organisation for sale by that organisation, from the operation of the Food Act.

It is proposed to amend the Food Act to ensure the currently exempted activities will be required to meet the same standards as other food businesses.

However, due to the charitable and community nature of these activities they **may not** be required to be licensed. For example, if the activity involves the sale of meals prepared by a non-profit organisation at a particular place, on less than 12 days each financial year, a licence would not be required.

Issues

Unlike NSW¹⁹ and Victoria²⁰ (for example), where certain food businesses are only required to notify council of their food business, in QLD the requirement (with limited exemptions) is that all food businesses must be licenced and therefore subject to approved food safety accreditation schemes. This is not in line with the intent of more Nationally consistent regulation. In QLD there is no allowance for scale, low-risk assessments or direct supply chain considerations, which is the subject of many of the proposals in this review. Whilst all food businesses are subject to the Food Standards, this allows for appropriate regulatory compliance inspections based on risk at the Local Government level.

Significant increased regulatory burden

All of these except for some cakes, would get a score of at least 50 points - 25 for medium risk foods that are ready to eat and then 25 for medium risk ready to eat foods handled during processing or manufacturing of food.

Classifying these as food businesses when they have previously been exempt is going to make the change regulatory impact incredibly burdensome, they should be consulted with to determine requirements, provided free training etc as well as a 3 year transitional period.

The licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food producers and on local governments that administer and enforce these provisions.

Recommendations

Exemptions

AFSA recommends that:

¹⁹ <https://www.foodauthority.nsw.gov.au/help/licensing>

²⁰ <https://www.health.vic.gov.au/food-safety/food-businesses>

- this sector continues to be exempted from licensing (not exempt from the standards) by setting up an initiative for low-risk food products produced in homes, such as the California Public Health Approved list of Cottage Foods.²¹

Cottage Food Operations are allowed to produce certain categories of non-potentially hazardous foods. These are foods that do not support the rapid growth of microorganisms or toxins that could make people sick when the food is held outside time and temperature control. The California Department of Public Health (CDPH) is responsible for maintaining the Approved Cottage Foods List and may add or delete food categories.'

Fee-free compliance

AFSA recommends:

That non-profit organisations are able to obtain:

- Free food safety training
- Free licences
- Free audits
- Templates for food safety plans
- 3 year transitional period.

21

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CottageFood/ApprovedCottageFoodsList.pdf>

Proposal 9: Enable currently unmanaged risks to be regulated under the Food Act.

Disagree

It is proposed to amend the Food Act to include the application of Chapter 4 of the Food Standard Code, however it is not intended to regulate food businesses within the primary production space where food safety schemes are in force as these will continue to be regulated under the Food Production Safety Act.

Issues

Unlike NSW²² and Victoria²³ (for example), where certain food businesses are only required to notify council of their food business, in QLD the requirement (with limited exemptions) is that all food businesses must be licenced and therefore subject to approved food safety accreditation schemes. This is not in line with the intent of more Nationally consistent regulation. In QLD there is no allowance for scale, low-risk assessments or direct supply chain considerations, which is the subject of many of the proposals in this review. Whilst all food businesses are subject to the Food Standards, this allows for appropriate regulatory compliance inspections based on risk at the Local Government level.

In NSW, Primary Production Vegetable Enterprises are excluded from notification and licensing.

Market gardeners across the states and territories also face increasing regulation of the production and sale of fresh fruits and vegetables. The misconceptions about foodborne illness and its causes are widespread. In fact, only one percent of all food-borne outbreaks reported in Australia in 2017 were attributed to fresh produce.²⁴ Major outbreaks of foodborne diseases in produce up to 2022 are largely attributed to imported goods such as frozen berries and industrial farming, including baby spinach sold at Costco which was recalled due to being contaminated with hallucinogenic plant matter.

AFSA has actively campaigned against the tightening of regulations on leafy vegetables, melons and berries that treat small-scale direct supply chains the same as large-scale commodity supply chains, and are disappointed to see that these changes will come into effect in 2025. We are working with state governments to minimise the negative impacts of implementation on smallholders and request further consultation with the QLD Government in this regard.

Standards 4.2.7, 4.2.8 and 4.2.9 of Chapter 4 specifically relate to the Primary Production and Processing of Melons, Leafy Vegetables and Berries respectively.

Whilst there are many elements of this that fall within the primary production space, there are also many elements that are now 'tipped' into the processing and therefore Food Business definition (see Issues under Proposal 3 above).

There needs to be greater consideration with regard to:

²² <https://www.foodauthority.nsw.gov.au/help/licensing>

²³ <https://www.health.vic.gov.au/food-safety/food-businesses>

²⁴ Australian Government Department of Health and Aged Care, 2022

- Clarification of who this applies to
- Length of Supply Chain
- Over-Classification of businesses according to processing
- Over-Classification of businesses according to ‘handling unpackaged potentially hazardous food’
- Food Safety Management Tools
- Scale
- Cost of regulatory burden

We are concerned that many small businesses, especially horticulture producers, who have vertically integrated or ‘stacked’ food enterprises, are captured under these changes to the Food Act and are also subject to the Food Production (Safety) Act and Food Production Regulations as well as Chapter 4 of the (Standards 4.2.7, 4.2.8 and 4.2.9) of the *Australia New Zealand Food Standards Code*. as well as *Standard 3.2.2 clause 5*. Making them some of the most regulated food businesses in the state.

Basically, this defines market gardeners as Primary Production Processors by nature of the fact that they wash, bunch, trim, sort, combine, store or pack leafy vegetables... This translates then into making them all Food Businesses under the definition, in addition to these leafy vegetables potentially falling under the definition of potentially hazardous food!

The effect of the inclusion of Chapter 4 of the Code into the Queensland Food Act without change or allowance is:

- Classifies these producers as Processors which then classifies them as Food Businesses under the Act (ie they are now under Standard 3.2.2).
- Requires Licensing
- Requires Traceability documentation
- Relates to premises, cleaning and sanitation: Premises must be kept free of animals and pests.
- Requires temperature control under 5 or above 60 degrees C for potentially hazardous goods. Food businesses handling potentially hazardous food must have a probe thermometer accurate to +/- 1°C so they can measure the temperature of food.
- Requires food safety skills
- Requires water testing

Clarification of who this applies to

Food businesses that operate from a farm, vineyard, orchard or aquaculture facility should refer to the definition of ‘food business’ in Standard 3.1.1 to determine if they have to comply with this Standard 3.2.2. If they are involved in the ***substantial transformation of food*** or the sale or service of food directly to the public then they must comply with this Standard.

This then refers to processing of food to add value

It is not clear if Primary Produce Processors are substantially transforming food. However many definitions cited above seem to point to Primary Producers who are Processing Potentially Hazardous and Ready to Eat Leafy Greens, Melons and Berries now fall under 3.2.2.

Please clarify the intent before introducing legislation to this effect. Community consultation with these affected businesses should take place prior to changes to the Food Act.

Length of Supply Chain

Reports by AFSA members show that of small scale horticultural producers are:

- 75% are selling directly to the customer via farm gate, markets or box deliveries
- 25% sell the majority of their product into the wholesale market
- 100% include 'washing' in the processing activity
- Over 75% of producers provide consumers with the product within 24 hours of harvesting
- Over 70% have cold storage facilities
- Over 60% are registered with local council and 27% have food safety qualifications/plans
- Around 10% are also involved in higher-risk food categories for which they hold appropriate licences such as the sale of eggs, meat or poultry.

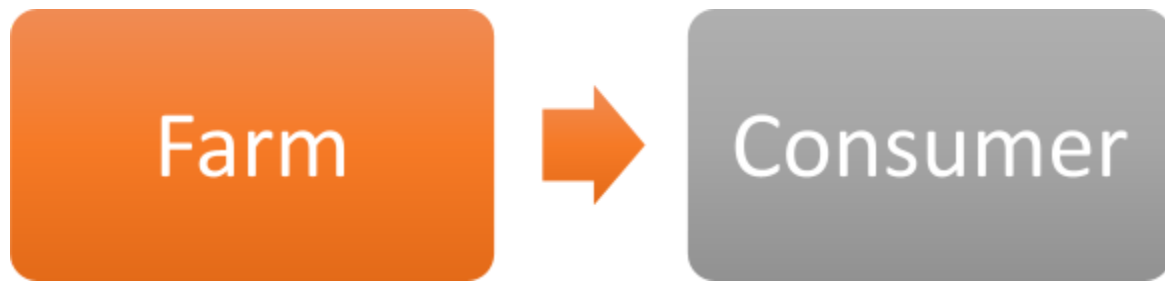
The very short supply chain reduces food safety risks as it minimises the time for growth of any pathogenic microorganisms that may be present, and also reduces risks in longer cold supply chain management. FSANZ's own risk assessment asserts that these are risk mitigation measures - which are inherent in our members' systems. Rather than a higher level of risk presented by retailing of food, we believe this presents a lower level of risk because of the short supply chain.

FSANZ uses a flow chart in its 2018 Strategy document to show the 'food chain for each commodity', which fails to capture the model of most small-scale farms. The many risk points represented in the conventional industrial supply chain are vastly reduced in small-scale farming models with direct sales channels - these farmers are not commodity farmers.

Conventional Supply Chain for Commodities



Small-Scale Farm Supply Chain for Food



The review must assure small-scale producers that safety management options, mandatory or not, will be commensurate to risk, and acknowledge the high level of traceability in models where produce is sold directly from the farmer to consumers.

Over-Classification of businesses

Processing

The definition of processing for primary production in standard 4.2.8 includes '*washing, trimming, sorting, storing, combining and packing*' which are entirely different and very minimal compared to the other acts defined in processing including cooking, drying, fermenting, heating and so on.

These processes are part of the primary production phase itself and should not be used to tip producers into the 'Food Business' definition.

We do not believe that these activities are in fact a ***substantial transformation of food*** and so these businesses should not be captured under Standard 3.2.2 and defined as a Food Business rather than the Primary Producers that they are.

Handling of Unpackaged Potentially Hazardous Food

Many of the farmers we represent are small scale horticulturalists, for whom leafy vegetables and fruit make up a large proportion of their business.

Whilst the handling of these items on a large scale may present increased risk, due to the nature of these businesses and the scale at which they operate, including time from harvest to delivery, indirect sales models and longer transportation. This is not the case with small scale businesses supplying direct to consumers.

We do not believe that leafy vegetables from these small scale, direct to consumer businesses should be included in the definition of 'unpackaged potentially hazardous food.'

Over-regulation

Small scale producers who both farm, do limited processing on farm and sell at a separate retail outlet are hit by multiple levels of confusing legislation. If you add other elements to the mix, such as the production and sale of eggs, meat or poultry, the burden is even larger.

Due to the nature of the small businesses we represent, with over 50% selling at Farmers Markets (in addition to already being regulated under the Food Production (Safety) Act, and for the Medium-Risk Processing at their farm site), they will also require a Mobile Business Registration as they now fall under 3.2.2 of the Food Standards Code²⁵ requiring a Food Safety Supervisor which has to be renewed every 5 years and now include operations such as Market Stalls.

The inclusion of these small scale direct to consumer primary producers of leafy greens and fruits now tips them into the requirement for a Food Safety Supervisor which is, frankly, regulatory overkill.

Scale

Standard 3.2.2 (5) states ‘**the categorisation is based on the food business activities, regardless of its size, location or business model**’ which seems totally at odds with the allowance of scale appropriate regulation determined by FSANZ in its advice to State legislators.

Definitions

Small business ‘a business that employs less than 50 people in the ‘manufacturing’ sector or which employs less than 10 people in the ‘services’ sector.’

*A **micro business** is a type of small business that employs fewer than 10 people, according to the Small Business Association, while small businesses can include businesses with up to 500 employees. 1 June 2022*

In fact the level of scale we are talking about is significantly lower than the 500 defined by the taxation office, or even the 50 defined by FSANZ, with almost all of the food producers we are talking about employing less than 10 people in all instances and the majority less than 5, many operating as single or couple family farmers, putting them into the ‘micro-business’ category.

*Notes to Food Safety: The priority classification system for food businesses 5.4 Customer base state that **The number of individuals potentially exposed to a food hazard is an important determinant in assessing the severity of the risk presented by the food business. The number of persons exposed will, in all but fully automated processes, be related to the number of employees required for production.***

AFSA asks that this is fully taken into account by any directive proposed by the QLD Government in relation to standard 3.2.2.

Cost of regulatory burden

The biggest issue here is with regard to putting these businesses into

4. The primary production processing category (Chapter 4) AS WELL AS
5. Being defined as a Food Business under 3.2.2
6. Defining them as category two businesses under standard 3.2.2A

²⁵ Food Standards Australia and New Zealand, [Food Standards Code](#), Standard 3.2.2A, [Food Safety Management Tools](#) (PDF, 1.04mb).

This not only increases the regulatory burden, but it also increases the cost of that burden in an entirely unfair and burdensome way including the cost of:

- Food Safety Supervisor Costs
- Licences
- Monitoring and documentation relating to transactions, water quality
- Amendments required to facilities when businesses are ‘overclassified’ into a new definition

When these are micro businesses of less than 10 employees for which the regulatory impact is overwhelmingly large both as a percentage of time and revenue.

Many small farms start in horticulture because of the low barriers to entry. Increasing regulatory barriers into horticulture production would prohibit the much-needed growing movement of young people returning to farm in small-scale agroecological systems, and in turn inhibit communities’ access to fresh, local food produced in socially-just and ecologically-sound systems.

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas asserts that: ‘States shall take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production.’ It further asserts that ‘States shall stimulate sustainable production, including agroecological production, whenever possible, and **facilitate direct farmer-to-consumer sales.**’ (UNDROP, Article 16.4)

The public health system in Australia is under pressure due to an epidemic of diet related disease. One of the most important ways to counter the effects of poor dietary options is to ensure the public have access to high quality fresh vegetables and fruits. Requiring every enterprise that processes vegetables to have a licence will make such enterprises as urban micro farms, community-supported agriculture, food buyers’ groups, farmers’ markets, and foodbanks more difficult to start and harder to run. According to the IBISWorld *Fruit and Vegetable Processing - Australia Market Research Report*,

The licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

Case Study

Salad leafy vegetable grower:

provided by FSANZ²⁶ about the impacts of the introduction of Standard 4.2.8

Jasper runs a small farm in New South Wales that grows salad leafy vegetables. His harvested produce is trimmed and sorted on farm for sale to restaurants. His annual aggregated turnover is \$200,000 per annum

²⁶ <https://www.foodstandards.gov.au/code/proposals/Documents/P1052%20SD1%20DRIS%20at%20approval.pdf>
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and he employs two farm hands.

Jasper has not considered any food safety risks associated with horticultural produce and has not invested in food safety. Jasper reviews the proposed standard and compliance plan for leafy vegetables. He realises he will need to make significant changes in his business and improve the food safety knowledge and skills of himself and his two employees. He will need to:

- become familiar with food safety and the new standard [\$480 upfront]
- create a food safety management statement \$1520 in the first year & \$1120 in subsequent years.]
- improve traceability [\$100pa]
- source seeds and seedlings from suppliers who have implemented programs to assure the microbiological safety of the product [\$120pa]
- cease using untreated manures and swap to products of suitable microbiological quality [\$120 upfront & \$200pa - \$320 in the first year & \$200 in subsequent years.]
- start treating dam water before spraying it onto leafy vegetables [\$400 upfront & \$200pa]
- adjust production to better mitigate the effects of weather events [\$480pa]
- better maintain the premises and equipment [\$668pa]
- clean the premises and equipment [\$2,267pa]
- wash and sanitise produce [\$4,333pa]
- control animal pests [\$960pa]
- develop food safety skills and knowledge, including on-going training [\$345pa]
- improve hygiene practices [\$200pa].
- Jasper will also need to factor in government licencing (\$654pa) and audit costs (\$885pa). Jasper's audit costs may reduce if alternative monitoring and audit arrangements are agreed by NSW DPI.

Based on FSANZ estimates, it **will cost Jasper a total of \$13,933 in the first year and \$12,533 each subsequent year** to shift from zero food safety compliance to ongoing full compliance with the proposed standard. In the first year, these costs equate to **7% of his annual \$200,000 turnover and 6.3% in subsequent years.**

Jasper realises it will take him 6 months to become compliant. He contacts the NSW Department of Primary Industries (DPI) seeking food safety advice and to discuss his concerns about implementation. **The NSW DPI advises him that the proposed national standard will be phased in over 2.5 years and that they will work with businesses to help them become compliant.** They also discuss the approval process of Jasper's food safety management statement, licencing and auditing arrangements.

Issues with Case Study

The example given assumes ignorance of food safety, in general this is not the case with small scale primary producers and processors. According to AFSA's research, over 60% are registered with local council and 27% have voluntary food safety qualifications/plans.

It also indicates that the State regulatory bodies will work with these producers and processors, and in fact this is also not the case. **There has been no contact with affected businesses to help with compliance.**

Whilst the example given by FSANZ is for NSW, it equally applies to QLD. Noting the costs of \$13,933 in the first year and \$12,533 in the second year are expressed as a percentage of an annual turnover of \$200,000.

AFSA would argue that, not only do many small scale producers not reach this scale of turnover, \$50,000 to \$100,000 is quite common for micro-businesses, but also that even at \$200,000 there is very little left after paying wages. Whilst numbers under \$15,000 per annum for compliance might seem reasonable to those on a government wage, consider the impact of taking this out of your wage, that is the effect of this cost on small, and particularly micro businesses.

If we apply these costs to different revenue amounts, the percentages look like this:

- At \$100,000 in revenue, the compliance costs are close to 13% in the first year and close to 13% in subsequent years
- AT \$50,000 in revenue, the compliance costs are around 28% in the first year and 25% in subsequent years.

AFSA submits that this is an unacceptable cost burden imposed by regulatory change on small and micro businesses and that scale appropriate measures need to be considered.

Case Study

SCPA Organics - Participatory Guarantee System²⁷

SCPA Organics is an *organic certification process* based on peer inspection and assessment which is managed by SCPA - South East Producers in Bega, NSW. It was established in 1998 to meet the need of local producers for a system that was affordable and credible. It is suitable for small growers who want to sell their produce locally. SCPA Organics is not nationally accredited and therefore not suitable for export produce. Our aim is to develop and promote organic production in the Bega Valley and adjacent areas in the South East Region.

Initially member growers/producers adhered to the de facto Australian National Standards for Organic and Bio-Dynamic Produce. In 2009 the AS6000 Australian Standard for Organic & Biodynamic Products was published. Due to strict copyright and the cost of obtaining copies of this Standard for every member, we decided to prescribe the IFOAM Standard for Organic Production and Processing as an informative guide to organic principles and practices. Where the IBS and AS6000 significantly differ and the latter standard potentially provides a higher quality of produce, then members will be informed by supplementary publications to meet the higher standard.

As per the Australian Standards, the **SCPA Organics** certification process takes 3 years. If the initial inspection and soil test are approved you are recorded as "Pre-Certified". At least 12 months later a second inspection is made by a **SCPA Organics** member. If everything is in order at the second inspection you will be recorded as "In-Conversion" and issued with a Certificate. This phase applies for 2 years of organic practice. If all is in order after your fourth annual inspection you will become "Certified Organic".

²⁷ <https://organics.scpa.org.au/pages/an-introduction>

To assist the initial inspection an **Organic Management Plan (OMP)** is required to indicate your experience and intentions to manage your property/activities in accordance with the prescribed Organic Standards.

Each member must in turn inspect another member's property with full knowledge of the prescribed standards. Inspections take place in winter each year, followed by group assessment, addressing of issues and, where appropriate, certification.

This peer review system not only develops trust and education within the group, but also promotes education and knowledge sharing of the standards. Whilst this example is specific to organic certification and members performing inspections, the PGS system certainly has potential to be used for other community certification needs relating to food safety.

Recommendations

Reform

AFSA recommends that the QLD Government:

- Review the consistency of food regulation approaches and make subsequent reforms that are commensurate with the level of risk of different scale food producers and the length and complexity of their supply chains including a review of licensable activities and the implementation of a notification system for lower risk, smaller scale, short supply chain businesses rather than the licensing approach.
- Include democratically-elected representatives of smallholders and civil society in stakeholder groups in the development of food safety policy and regulation. Representation from broader cross-sections of food and agriculture will ensure that food safety regulations are developed at scale of risk to public health.
- Support the setup of Participatory Guarantee Systems (PGS) in local areas through scale appropriate regulatory framework. PGS' are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange.²⁸ These could be developed for many areas of the production, processing, distribution and consumption parts of the food system.

Exemptions

AFSA recommends that there should be exemptions from the more onus regulatory reporting:

- Based on turnover of less than \$500,000?
- Based on micro business
- Based on direct sales model

AFSA recommends that:

- That no licence nor audits be required for small scale producers of salad, fruit and vegetables who sell

²⁸ <https://www.ifoam.bio/our-work/how/standards-certification/participatory-guarantee-systems>

- directly to consumers as an addition to their food production business.
- That if required an audit and/or testing frequency of no greater than 12 months apply to micro businesses.

There should still be exemptions, as per Brisbane City Council²⁹, if you are only selling whole fruit or vegetables, you should not be tipped into this due to the processing factors that are not actually transforming food (washing, storing, combining, packing etc)

Further, in your proposed amendments to the Food Act Proposal 25 you said about:

- Cheese tasting
- Supermarket juice, yoghurt, sausages, nuggets, rissoles food tasting
- Farmers markets providing samples of fruit normally purchased whole e.g. cut apples.
- Sausage sizzle in conjunction with a stall at a trade expo

*‘These activities are considered low-risk, and the licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions’.*³⁰ We note that some of these activities do require licensing as per Brisbane City Council.³¹

THEREFORE, If the above can be categorised as low risk, then our argument is that the activities outlined in the processing of primary production leafy greens and melons can indeed be considered low risk and not one that requires licensing.

We believe that licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

FSANZ feedback recommendations to States

In FSANZ’s 2nd Call for submissions – Proposal P1052, which relates to Standards 4.2.7, 4.2.8 and 4.2.9, it acknowledges the following its response to feedback from the first two rounds of consultation, and we believe it would be important for QLD Health to take on these recommendations with regard to the Proposal to apply national standards to the application of food safety programs.

Impacts on small businesses in-particular were considered. Advice to FSANZ is that, if new regulations were found to be warranted and approved, **food regulators would support businesses, particularly small ones, to become compliant with that new regulation, easing uptake through guidance documents and templates.** In relation to fees, **regulators already have the ability to alter the fee structure for small businesses, which can include reduced fees or a fee-free threshold.** Fees are charged per hour (rather than at a flat rate), and therefore can scale up or down depending on business size.

²⁹

<https://www.brisbane.qld.gov.au/laws-and-permits/laws-and-permits-for-businesses/food-business-licence/licences-for-temporary-food-stalls>

³⁰ https://www.health.qld.gov.au/_data/assets/pdf_file/0022/1229620/consultation-paper-review-food-act-2006.pdf

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³¹

<https://www.brisbane.qld.gov.au/laws-and-permits/laws-and-permits-for-businesses/food-business-licence/licences-for-temporary-food-stalls>

Further Consultation Required

Please clarify the intent before introducing legislation to this effect.

There are a large number of small scale horticultural businesses who need to be directly consulted with regard to these proposed amendments to the Food Act, for whom the proposed changes would mean SIGNIFICANT change, impact and cost.

AFSA recommends:

- that the change in Proposal 3 be halted until industry consultation has occurred with the small business sector:

A Horticulture Implementation Working Group (HIWG) has been established by the Implementation Sub-Committee For Food Regulation¹ (ISFR) to ensure consistent implementation of amendments to the Australia New Zealand Food Standards Code (the Code) nationally. HIWG members include government officers from individual states and territories responsible for food safety in the horticulture sector. The HIWG utilises the Integrated Model for Standards Development and Consistent Implementation of Primary Production and Processing Standards (the Integrated Model) to develop a draft compliance and implementation package for the proposed standards;

In fact, FSANZ Approval Report for P1052 states:

HIWG have committed to develop a compliance approach with template tools and guidance, in consultation with industry. *** we note that there has been no further consultation with industry.**

The above specifically relates to:

- Small businesses
- extra fees and administration to comply and seek assistance will be unviable for many, they may not comply or may close down
- some businesses may switch to another (unregulated) commodity
- may see more consolidation of smaller operations into larger ones – and smaller businesses may be outcompeted or out priced

Non regulatory measures

AFSA recommends that the focus for micro businesses should be on:

- Guidance documents
- The provision of food safety accreditation plan templates (that do not require an external audit prior to approval) for micro businesses.
- Education - Food Safety Supervisor and Handling on a state-wide fee-free basis
- Participatory Guarantee Systems

Fee free thresholds

AFSA recommends that should regulatory approaches be required:

- A fee-free licensing and audit threshold is set for any small business primary production processor that sells its produce direct to the consumer.
- A fee-free food safety accreditation template is provided for micro businesses
- A fee-free Food Safety Supervisor accreditation is available to micro businesses.

Implementation

AFSA recommends that:

- Timeframes for small/micro businesses need to be halted until industry consultation has occurred.

Clarification required

3.2.2 Clause 5 relates to Market stalls, which will now require food handling and food safety supervisor training when they are selling ready to eat food (salad, fruit) - however they are not required to make records to substantiate their management of food safety.

Is the intent for fruit and vegetable stalls to be included in the definition of market stalls?

AFSA recommends:

- An exemption based on risk - size of business, direct model of sale, time to market.

Clause 4 of standard 3.2.2 relates to Category one food service businesses, defined as caterers or food service processing unpackaged potentially hazardous food into potentially hazardous or ready to eat food.

Proposal 10: Ensure the manufacture of foods is a licensable activity.

Disagree

Section 16(2)(a) of the Food Act currently provides that preparing food at a particular place for retail sale at the place, including for immediate consumption, is not considered 'manufacture'.

The intention of this exemption is to include preparing food at a restaurant/cafe. Further notes to the Food Act indicate that the definition of a manufacturer is intended to capture large-scale manufacture of food for sale to a retailer that then on-sells the product, not a retailer themselves... (not exact words, a summary).

"This exemption means there are businesses who would normally be considered manufacturers which are exempt, in conflict with the intention of the provision e.g. manufacturing of fudge, biscuits, cakes at a food premises not licensable for the sale of snack food - and another example about coffee...

The sale of coffee drinks and unpackaged snack food is exempt from licensing as these are considered low risk activities. However manufacturing of these food products is not considered low risk.

The proposal is to amend the Food Act to ensure that all food businesses involving manufacture of food are captured as a licensable food business.

The objective of this proposal is to clarify that the exemption does not relate to home businesses from which retail sale of food occurs, nor to businesses undertaking manufacturing at premises where only retail sales occur.

Food businesses undertaking manufacturing have a medium level of food safety risk and should be exposed to regulatory oversight.

Issues

Unlike NSW³² and Victoria³³ (for example), where certain food businesses are only required to notify council of their food business, in QLD the requirement (with limited exemptions) is that all food businesses must be licenced and therefore subject to approved food safety accreditation schemes. This is not in line with the intent of more Nationally consistent regulation. In QLD there is no allowance for scale, low-risk assessments or direct supply chain considerations, which is the subject of many of the proposals in this review. Whilst all food businesses are subject to the Food Standards, this allows for appropriate regulatory compliance inspections based on risk at the Local Government level.

³² <https://www.foodauthority.nsw.gov.au/help/licensing>

³³ <https://www.health.vic.gov.au/food-safety/food-businesses>

Supply Chain

If the intention of the Food Act is *‘to capture large scale manufacture of foods for sale to a retailer that then sells the product’* then this intention is not carried through in the changes.

The proposed changes throw the idea of ‘scale’ out the window and now capture businesses of any size, which is at odds with the idea of *Food Safety: The priority classification system for food businesses* which talks about scale lowering risks.

The proposed changes also disregard the intent by bringing into this requirement home businesses that sell direct to the consumer rather than home businesses that sell to *‘a retailer that then sells the product’*.

AFSA believes that small businesses using a direct sales approach should be excluded from this proposal due to lower levels of risk and easy traceability.

We would like to see exemptions from licensing (not exempt from the standards) by setting up an initiative for low-risk food products produced in homes, such as the California Public Health Approved list of Cottage Foods.³⁴

‘Cottage Food Operations are allowed to produce certain categories of non-potentially hazardous foods. These are foods that do not support the rapid growth of microorganisms or toxins that could make people sick when the food is held outside time and temperature control. The California Department of Public Health (CDPH) is responsible for maintaining the Approved Cottage Foods List and may add or delete food categories.’

Definition of manufacturing

There does not appear to be a definition of manufacturing in the Food Standards Code (FSANZ), however, the definition in the QLD Food Act says that:

Manufacture, in relation to food, includes the following-

- a) Making food by combining ingredients
- b) Significantly changing the condition or nature of food by any process;
- c) Bottling or canning food, including, for example bottling water or canning fruit;
- d) Packing unpacked food, other than unprocessed primary product
- e) Making ice

Noting that the definition of *process* is:

*In relation to food, means activity conducted to prepare food for sale including cooking, drying, fermenting, heating, pasteurising, thawing and **washing**, or a combination of these activities.*

The definition of **handling** includes *manufacturing* and *processing* as separate items, and we believe that they are.

³⁴

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CottageFood/ApprovedCottageFoodsList.pdf>

This effectively captures all Primary Production Processors who wash and then pack food '*manufacturers*'. It could potentially also capture businesses who simply *freeze* food, although not specifically identified as a process one could argue it could fall under (b) Significantly changing the condition or nature of food by any process; AFSA argues that these processes should not be classified as manufacturing and should be exempt.

The licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

Case Study

SCPA Organics - Participatory Guarantee System³⁵

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Initially member growers/producers adhered to the de facto Australian National Standards for Organic and Bio-Dynamic Produce. In 2009 the AS6000 Australian Standard for Organic & Biodynamic Products was published. Due to strict copyright and the cost of obtaining copies of this Standard for every member, we decided to prescribe the IFOAM Standard for Organic Production and Processing as an informative guide to organic principles and practices. Where the IBS and AS6000 significantly differ and the latter standard potentially provides a higher quality of produce, then members will be informed by supplementary publications to meet the higher standard.

As per the Australian Standards, the **SCPA Organics** certification process takes 3 years. If the initial inspection and soil test are approved you are recorded as "Pre-Certified". At least 12 months later a second inspection is made by a **SCPA Organics** member. If everything is in order at the second inspection you will be recorded as "In-Conversion" and issued with a Certificate. This phase applies for 2 years of organic practice. If all is in order after your fourth annual inspection you will become "Certified Organic".

To assist the initial inspection an **Organic Management Plan (OMP)** is required to indicate your experience and intentions to manage your property/activities in accordance with the prescribed Organic Standards.

Each member must in turn inspect another member's property with full knowledge of the prescribed standards. Inspections take place in winter each year, followed by group assessment, addressing of issues

³⁵ <https://organics.scpa.org.au/pages/an-introduction>

and, where appropriate, certification.

This peer review system not only develops trust and education within the group, but also promotes education and knowledge sharing of the standards. Whilst this example is specific to organic certification and members performing inspections, the PGS system certainly has potential to be used for other community certification needs relating to food safety.

Recommendations

Reform

AFSA recommends that the QLD Government:

- Review the consistency of food regulation approaches and make subsequent reforms that are commensurate with the level of risk of different scale food producers and the length and complexity of their supply chains including a review of licensable activities and the implementation of a notification system for lower risk, smaller scale, short supply chain businesses rather than the licensing approach.
- Include democratically-elected representatives of smallholders and civil society in stakeholder groups in the development of food safety policy and regulation. Representation from broader cross-sections of food and agriculture will ensure that food safety regulations are developed at scale of risk to public health.
- Support the setup of Participatory Guarantee Systems (PGS) in local areas through scale appropriate regulatory framework. PGS' are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange.³⁶ These could be developed for many areas of the production, processing, distribution and consumption parts of the food system.

Definitions and intent

AFSA requests clarification of definitions and intent of manufacturing before proposed changes are introduced.

Exemptions

AFSA recommends that the proposal be amended to allow exemptions for:

- Small scale primary producers who are processing (washing, combining, packing) rather than manufacturing food.
- Small scale businesses (whether home based or otherwise) selling direct to consumers.
- We would like to see exemptions from licensing (not exempt from the standards) by setting up an initiative for low-risk food products produced in homes, such as the California Public Health Approved list of Cottage Foods.³⁷

³⁶ <https://www.ifoam.bio/our-work/how/standards-certification/participatory-guarantee-systems>

³⁷

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CottageFood/ApprovedCottageFoodsList.pdf>

‘Cottage Food Operations are allowed to produce certain categories of non-potentially hazardous foods. These are foods that do not support the rapid growth of microorganisms or toxins that could make people sick when the food is held outside time and temperature control. The California Department of Public Health (CDPH) is responsible for maintaining the Approved Cottage Foods List and may add or delete food categories.’

Non regulatory measures

AFSA recommends that the focus for micro businesses should be on:

- Guidance documents
- The provision of food safety accreditation plan templates (that do not require an external audit prior to approval) for micro businesses in the manufacturing sector
- Education

Non regulatory measures

AFSA recommends that the focus for micro businesses should be on:

- Guidance documents
- The provision of food safety accreditation plan templates (that do not require an external audit prior to approval) for micro businesses.
- Education - Food Safety Supervisor and Handling on a state-wide fee-free basis
- Participatory Guarantee Systems

Fee free thresholds

AFSA recommends that should regulatory approaches be required:

- A fee-free licensing and audit threshold is set for any micro business that sells its produce direct to the consumer.
- A fee-free food safety accreditation template is provided for micro businesses
- A fee-free Food Safety Supervisor accreditation is available to micro businesses.

Proposal 11: Remove the requirement for caterers to have accredited food safety programs.

Disagree

This is because they will come under the new food safety standard, 3.2.2A Food Safety Management Tools which is designed to assist food businesses enhance their food safety management practices, thereby delivering safer food to consumers and supporting improved business and consumer confidence. It includes targeted food safety measures to apply to businesses based on their level of food safety risk and includes training for food safety handlers and record-keeping requirements for key activities.

[Standard 3.2.2A will commence in December 2023](#) and will apply in all Australian jurisdictions, including catering operations (both on-site and off-site) and other high-risk food businesses.

It is therefore proposed to remove this requirements from the Food Act as caterers will be required to comply with another standard.

Issues

Unlike NSW³⁸ and Victoria³⁹ (for example), where certain food businesses are only required to notify council of their food business, in QLD the requirement (with limited exemptions) is that all food businesses must be licenced and therefore subject to approved food safety accreditation schemes. This is not in line with the intent of more Nationally consistent regulation. In QLD there is no allowance for scale, low-risk assessments or direct supply chain considerations, which is the subject of many of the proposals in this review. Whilst all food businesses are subject to the Food Standards, this allows for appropriate regulatory compliance inspections based on risk at the Local Government level.

Standard 3.2.2A makes no allowance for the size of a catering business. In the current Food Act section 99(2) there are exemptions available ‘a regulation may exempt a licensee from subsection(1) ie having an accredited food safety program’ if the scope of the on-site catering is not more than the limits prescribed in the regulation including, for example, limits about-

- (a) The size of the area where the on-site catering is carried out; or
- (b) The seating capacity of the area; or
- (c) The number of persons for whom on-site catering is provided; or
- (d) The frequency of provision of on-site catering; or
- (e) The proportion of the licensee’s revenue derived from on-site catering.

Recommendations

AFSA recommends that

³⁸ <https://www.foodauthority.nsw.gov.au/help/licensing>

³⁹ <https://www.health.vic.gov.au/food-safety/food-businesses>

- the equivalent of section 99(2) of the Food Act remains to enable scale appropriate exemptions.

Proposal 12: Ensure the regulation of commercial operations that operate in private residences.

Disagree

Section 19(2)(b) of the Food Act exempts preparing food at a private residence and supplying it at the residence for a fee. The intent of this clause was to exclude situations where a student is boarding with a family and the family prepares and supplies food as a minor extension to the normal domestic setting.

The change here seeks to capture private dinner parties, cooking lessons in private residences, businesses that make cakes etc and sell from residence (ie home based small businesses), neighbourhood food sharing schemes including virtual or dark kitchens. - currently these do not have any regulatory oversight.

It is proposed to amend the Food Act to clarify that the exemption provision for the sale of food at a private residence does not relate to commercial activities.

Issues

Unlike NSW⁴⁰ and Victoria⁴¹ (for example), where certain food businesses are only required to notify council of their food business, in QLD the requirement (with limited exemptions) is that all food businesses must be licenced and therefore subject to approved food safety accreditation schemes. This is not in line with the intent of more Nationally consistent regulation. In QLD there is no allowance for scale, low-risk assessments or direct supply chain considerations, which is the subject of many of the proposals in this review. Whilst all food businesses are subject to the Food Standards, this allows for appropriate regulatory compliance inspections based on risk at the Local Government level.

This would require the licensing and an accredited food safety program for all private residence activities of a commercial nature.

This is going to capture a lot of small scale people selling food direct to customers from the door or within their home and will introduce new and burdensome regulatory requirements, especially when we are talking micro-scale and direct to customers.

We would like to see exemptions from licensing (not exempt from the standards) by setting up an initiative for low-risk food products produced in homes, such as the California Public Health Approved list of Cottage Foods.⁴²

'Cottage Food Operations are allowed to produce certain categories of non-potentially hazardous foods. These are foods that do not support the rapid growth of microorganisms or toxins that could make people

⁴⁰ <https://www.foodauthority.nsw.gov.au/help/licensing>

⁴¹ <https://www.health.vic.gov.au/food-safety/food-businesses>

⁴²

<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CottageFood/ApprovedCottageFoodsList.pdf>

sick when the food is held outside time and temperature control. The California Department of Public Health (CDPH) is responsible for maintaining the Approved Cottage Foods List and may add or delete food categories.'

The licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

Recommendations

Reform

AFSA recommends that the QLD Government:

- Review the consistency of food regulation approaches and make subsequent reforms that are commensurate with the level of risk of different scale food producers and the length and complexity of their supply chains including a review of licensable activities and the implementation of a notification system for lower risk, smaller scale, short supply chain businesses rather than the licensing approach.
- Include democratically-elected representatives of smallholders and civil society in stakeholder groups in the development of food safety policy and regulation. Representation from broader cross-sections of food and agriculture will ensure that food safety regulations are developed at scale of risk to public health.

Exemptions

AFSA recommends that the proposal be amended to allow exemptions for:

- Small scale and/or micro businesses selling direct to consumers.
- Licensing (not exempt from the standards) by setting up an initiative for low-risk food products produced in homes, such as the California Public Health Approved list of Cottage Foods.⁴³

'Cottage Food Operations are allowed to produce certain categories of non-potentially hazardous foods. These are foods that do not support the rapid growth of microorganisms or toxins that could make people sick when the food is held outside time and temperature control. The California Department of Public Health (CDPH) is responsible for maintaining the Approved Cottage Foods List and may add or delete food categories.'

Non regulatory measures

AFSA recommends that the focus for micro businesses should be on:

- Guidance documents
- The provision of food safety accreditation plan templates (that do not require an external audit prior to approval) for micro businesses.
- Education - Food Safety Supervisor and Handling on a state-wide fee-free basis
- Participatory Guarantee Systems

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<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/CottageFood/ApprovedCottageFoodsList.pdf>

Exemptions

AFSA recommends that:

- That no licence nor audits be required for small scale producers of salad, fruit and vegetables who sell directly to consumers as an addition to their food production business.
- That if required an audit and/or testing frequency of no greater than 12 months apply to micro businesses.

Fee free thresholds

AFSA recommends that should regulatory approaches be required:

- A fee-free licensing and audit threshold is set for any small business primary production processor that sells its produce direct to the consumer.
- A fee-free food safety accreditation template is provided for micro businesses
- A fee-free Food Safety Supervisor accreditation is available to micro businesses.

Proposal 13: Enable the regulation of products that do not comply with the Food Standards Code.

Disagree

Raw Milk and almond kernels are “being sold alongside food products in a manner that indicates they can be consumed as a food.” The Food Standards Code prohibits the sale of these products for human consumption.

It is proposed to amend the Food Act to clarify that products that are not fit for human consumption are not permitted to be sold in a way that enables them to be consumed, either deliberately or unwittingly.

Issues

Food Sovereignty asserts the right of peoples to nourishing and culturally appropriate food produced and distributed in ecologically sound and ethical ways, and their right to collectively determine their own food and agriculture systems.

Draconian regulations across Australia that prohibit the sale of unpasteurised milk from the farm gate stand in the way of farmers who might otherwise be able to persevere in the face of fluctuating prices from processors and reduced production due to climate change. **Australia is one of just three countries in the world with a blanket ban on raw milk sales, leaving most Australians without the choice to consume nutritious, safe raw milk.**

Whilst currently prohibited, AFSA believes that the standards “should make greater use of international evidence in its assessments” (p35) of food standards (“including by placing greater reliance on assessments made by trusted comparable international regulators” (p35). One such food safety example is raw milk, which is legal and safely regulated in more than 30 states in the US and in nearly all countries in the European Union.

What legalising raw milk sales means for dairy farmers

It means that Australia’s struggling dairy farmers will be able to take direct control of the pricing and market for sales of their milk, which in some cases may mean as much as a ten-fold increase in the price they are paid for their produce. This will have a follow-on impact on local employment opportunities both on farms and in value adding industries. The proposed reforms could lead to a renaissance in the dairy industry, with farmers able to lower stocking rates at a time when the changing climate is making it increasingly difficult to sustain higher numbers of livestock on drought-stricken landscapes.

What legalising raw milk sales means for consumers

Access to high quality, local raw milk directly from farmers. Without the reforms, we could see the collapse of the Australian dairy industry, leading to an increased reliance on imported dairy products of uncertain origins.

Recommendations

Reform

AFSA recommends that the QLD Government in association with FSANZ:

- Review the consistency of food regulation approaches for dairy products and make subsequent reforms that are commensurate with the level of risk of different scale food producers and the length and complexity of their supply chains.
- Include democratically-elected representatives of smallholders and civil society in stakeholder groups in the development of food safety policy and regulation. Representation from broader cross-sections of food and agriculture will ensure that food safety regulations are developed at scale of risk to public health.

Proposal 14: Introduce a standard licence condition relating to the use of raw or lightly cooked eggs.

Disagree

Section 69 of the Food Act sets certain conditions that must be placed on a licence and provides local government with the ability to apply other reasonable conditions.

Two amendments are proposed:

- **Require all food businesses processing or serving food to vulnerable populations to only use pasteurised egg products in raw or lightly cooked egg products. This requirement will not preclude food businesses using fresh eggs when preparing dishes that are cooked all the way through, such as cakes or quiches.**
- **Mandate the implementation of an endorsed raw egg Directive in any food business that chooses to prepare raw or lightly cooked egg products. The mandating of the Directive is consistent with actions undertaken by NSW and Tas who have already implemented a similar document. The directive would include requirements outline in the Queensland Health guideline ‘Safe preparation of raw eggs - A guide for food businesses.’**

Issues

That is the proposal is for a *directive* rather than a recommendation.

The Queensland Health guideline ‘*Safe preparation of raw eggs - A guide for food businesses.*’ is 19 pages long v’s the Victorian version that is 3 pages and the NSW one that is 2 pages⁴⁴. The NSW longer document “Raw egg Guidelines” talks about businesses being responsible for taking “all practical measures” it does not actually ‘require’ the completion of suggested forms except the business must be able to demonstrate the 2 hour/4 hour rule if using it.

Requires pH testing of every batch or sous vide and document every batch. An example recipe for sous vide pasteurised shell egg is to hold the eggs in a water bath at temperature of 57°C for at least 75 minutes (Baldwin, 2010)¹.

The proposal primarily relates to:

- sauces and dressings made with raw egg e.g. mayonnaise, aioli, egg butter
- desserts made without an effective cook step e.g. tiramisu, mousse, deep fried ice cream
- drinks containing raw egg e.g. eggnog, raw egg shakes and smoothies.

The QLD document requires 5 different reports for the use of ‘raw’ eggs that include:

1. Food business egg safety checklist

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https://www.foodauthority.nsw.gov.au/sites/default/files/Documents/retailfactsheets/safe_preparation_of_raw_egg_products.pdf

2. Raw egg acidification record
3. Sous vide egg pasteurisation record
4. 2-hour/4-hour rule record
5. Thermometer calibration record

Basically this will discourage the use of raw eggs in any food service, as the paperwork will be too onerous. This will result in consumers no longer having the choice of consuming fresh, healthy, minimally processed egg products.

AFSA strongly advocates for consumer choice!

Recommendations

AFSA recommends:

- That the proposal should be a *recommendation*, not a *Direction*' - in line with Victorian and NSW legislation.

Proposal 15: Enable the use of enforceable undertakings as an alternative to prosecution.

Disagree

The introduction of enforceable undertakings would allow Queensland Health and local governments to enter into an agreement with a food business to take certain action to both remedy the breach and ensure it does not occur again.

An enforceable undertaking is a binding written agreement between the regulator and food business/person that has breached the legislation.

Issues

The information on it says that the undertaking is negotiated and put forward by the business not the regulator and that it's voluntary (an alternative to being prosecuted).

Recommendation

AFSA recommends that:

- A timeframe is proposed to negotiate said undertaking of 3-6 months. We do not believe the proposal should be accepted without a reasonable timeframe for negotiating the undertaking.

Proposal 16: Enable authorised persons to issue prohibition orders to food businesses in response to public health risks.

No comment

Proposal 17: Extend the maximum term of a provisional licence to six months, except where a food safety program is required.

Agree

Section 68 of the Food Act provides that a provisional food business licence cannot extend beyond a total of three months.

Comments

AFSA **Agrees** with this proposal, that it would be “allowing new businesses to operate with minor issue relevant to the premises and providing sufficient time to address structural issues which do not affect food safety”

Proposal 18: Lower the threshold for when a nonconformance audit can be conducted.

No comment.

Proposal 19: Clarify the powers of authorised persons to enter places.

Disagree

Section 175 of the Food Act outlines the powers on an authorised person to enter places for the purposes of monitoring or enforcement of the Food Act.

At the moment, authorised persons can be refused entry on the basis that the food business is ‘too busy’ which limits their powers to conduct an unannounced inspection. This also relates to lack of clarity about powers for inspection for food businesses that are not open to the public such as food manufacturing or processing facilities.

Issues

This is not a clarification, it is an extension of powers.

The impact on food safety of having staff offline dealing with an inspection when it is a busy service period, for example, is not in line with overall food safety measures, it leaves small businesses short staffed and unable to operate their businesses safely.

Authorised persons should ensure they do not attend during peak hours as that is not ‘reasonable’ for a small or micro business. **The requirement to ask for and obtain *permission* before entering is realistic, particularly when dealing with small and micro businesses.**

Likewise, many small businesses do not do food processing every day, especially those not ‘open to the public’ and people often have other paid work and may only be on-site on particular days of the week. An appropriate time should be negotiated with one week’s notice.

Recommendations

AFSA recommends:

- The legislation should remain unchanged.
- If the legislation requires amendment that exclusionary clauses are inserted to protect small and micro businesses from inappropriate regulation and provide a notice period for inspections of at least one week.

Proposal 20: Clarify the powers of authorised persons after entering a place.

Disagree

Section 182(3) of the Food Act details what actions an authorised person may undertake after entering a premises for monitoring and enforcing compliance with the Food Act.

Issues

Currently authorised persons have the powers under 182(3)(b) to *film* after entering premises. We find this overreach without permission.

Recommendations

AFSA recommends:

- The removal of the word *film* in 182(3)(b)

Proposal 21: Expand the powers of authorised persons to direct the disposal or destruction of food that may be unsafe or unsuitable or pose a significant risk to public health.

Disagree

Section 182(3) (as per proposal 20) of the Food Act relates to powers regarding monitoring and enforcing including:

- Search
- Inspect, measure, test, photograph or film
- Take a thing, a sample of a thing for analysis
- Copy a document or take it to copy it
- Take only the place any persons, equipment materials for exercising their power.

However, currently the Food Act does not enable an authorised person to direct a responsible person at the food business to dispose of or destroy food which may be deemed to be potentially unsafe or unsuitable or pose a significant risk to public health.

It is proposed to amend the Food Act to expand powers of authorised persons to direct the disposal or destruction of food that may be unsafe, unsuitable or pose a significant risk to public health.

Issues

Authorised persons already have the powers to search, inspect, take a thing or document etc. They have the ability to take food samples for testing to scientifically determine if they are unsafe, unsuitable or pose a significant risk to public health.

Authorised persons are not scientists and deal with a wide range of food businesses, meaning they do not have intricate knowledge of all food products but rather are generalists.

The destruction or disposal of food should not be able to be directed by an authorised person without appropriate testing.

The authorised persons do not have specific training with regard to product inspection that would enable them to make judgement about specific products.

Recommendations

AFSA recommends that:

- The legislation remain unchanged

Proposal 22: Expand provisions relating to tampering to include the act of moving seized items.

No comment

Proposal 23: Align the timeframe for returning seized items to the statute of limitations for commencement of legal proceedings.

No comment

Proposal 24: Enable temporary premises to operate across Queensland under one licence, and include them on the mobile food business register.

Agree

The Food Act identifies three different types of food premises - fixed, mobile and temporary.

A temporary premises is set up and taken down each time the food business is operating, such as a market stall. It may also mean that depending on the location, the setup of the temporary premises may not be the same each time.

It is proposed to amend the Food Act to allow temporary premises to operate across Queensland with one licence, equivalent to the provisions in place for mobile premises.

It is also proposed to amend the Food Act to incorporate temporary food premises into the mobile food business register, aligning provisions and allowing local government and members of the public to ascertain simply if a food business operating from a mobile or a temporary premises is licensed.

Recommendations

AFSA agrees with the proposed changes that “This will reduce regulatory, financial and administrative burdens on both food businesses and local government and will ensure consistency of licensing across the State.”

AFSA further recommends that:

- Consideration be given to alignment with NSW requirements given the number of producers that might operate across borders. Small businesses in Tweed Shire for example, do also sell at Queensland farmers markets.

Proposal 25: Remove taste testing as a licensable activity.

Agree

Proposal 26: Enable the cancellation of a food business licence in the event of business closure or change of ownership.

No comment.

Proposal 27: Remove references in the Food Act to the verification of documents by statutory declaration.

No comment.

Proposal 28: Enable the imposing, amendment or removal of licence conditions when a food business licence is renewed.

No comment.

Proposal 29: Remove the requirement for a licensee's personal address to be stated on the licence.

No comment.

Proposal 30: Remove the requirement for the food licence to accompany an amendment application or surrender notice.

No comment.

Proposal 31: Remove the requirement for food safety supervisor notifications.

Agree

Removes regulatory and financial burdens since Food Safety Supervisors can be easily assessed by local government environmental health officers during routine inspections.

Proposal 32: Require food safety program accreditation applications to include the written advice of an auditor.

No comment.

Proposal 33: Expand the range of conditions that the chief executive of Queensland Health may impose on auditor approvals.

No comment.

Proposal 34: Remove the requirement for an auditor to provide oral notification regarding a conflict of interest.

No comment.

Noting that the requirements for written notification within 24 hours of a conflict of interest is still required.

Proposal 35: Enable auditor approval renewal applications to be made 60 days prior to expiry of the approval.

No comment.

Proposal 36: Enable the restoration of an expired auditor approval within 30 days of expiry.

No comment.

Proposal 37: Remove the requirement for an auditor approval to accompany an application for an amendment of the approval.

No comment.

Proposal 38: Remove the requirement for an auditor to apply for a replacement copy of their auditor approval.

No comment.

Proposal 39: Remove the requirement for an authorised person to make a record noting compliance with an improvement notice.

No comment.

Do you have an alternative reform proposal? If so your submission must include evidence to support the proposal, expected impacts on the community, industry or regulators, and any other relevant information.

Proposal 40: AFSA Proposes that Section 99(1)(e) of the Food Act be amended to remove the requirements for small scale food businesses already covered by Chapter 4 selling direct to consumers to have a licence/an accredited food safety program.

We advocate for the introduction of Participatory Guarantee Systems (PGS) such as those that have been developed internationally by IFOAM as part of the organics movement as an alternative to ‘top down’ regulation, they could be adapted to fulfil scale appropriate regulation of food safety measures Across Australia. PGS are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange.⁴⁵

This would reduce the burden on local government compliance activities but still allow for intervention when required to address public health risks.

We believe that licensing of such activities poses an unnecessary administrative, financial and regulatory burden on these food businesses and on local governments that administer and enforce these provisions.

Without a fair approach to food safety regulation, where risks are determined by the scale of agricultural activity, and length and complexity of supply chains, increasing food safety regulation adversely impacts small-scale farmers and communities. For small-scale food producers, the cost of food licences as well as lengthy processes for seeking government approvals to operate under current regulation are a significant barrier to entry, and have been enough for some small-scale producers to close their businesses. Small-scale farmers pose significantly less risk to public health, environment, and biosecurity, but are being pushed out of farming by regulatory burdens (see also: Biodiversity is Biosecurity).

Market gardeners across the states and territories face increasing regulation of the production and sale of fresh fruits and vegetables. The misconceptions about foodborne illness and its causes are widespread. In fact, only one percent of all food-borne outbreaks reported in Australia in 2017 were attributed to fresh produce.⁴⁶ Major outbreaks of foodborne diseases in produce up to 2022 are largely attributed to imported goods such as frozen berries and industrial farming, including baby spinach sold at Costco which was recalled due to being contaminated with hallucinogenic plant matter.

AFSA has actively campaigned against the tightening of regulations on leafy vegetables, melons and berries that treat small-scale direct supply chains the same as large-scale commodity supply chains, and are disappointed to see that these changes will come into effect in 2025. We are working with state

⁴⁵ <https://www.ifoam.bio/our-work/how/standards-certification/participatory-guarantee-systems>

⁴⁶ Australian Government Department of Health and Aged Care, 2022

governments to minimise the negative impacts of implementation on smallholders. We would like to work with the QLD government further in regard to these changes.

Case Study

SCPA Organics - Participatory Guarantee System⁴⁷

SCPA Organics is an *organic certification process* based on peer inspection and assessment which is managed by SCPA - South East Producers in Bega, NSW. It was established in 1998 to meet the need of local producers for a system that was affordable and credible. It is suitable for small growers who want to sell their produce locally. SCPA Organics is not nationally accredited and therefore not suitable for export produce. Our aim is to develop and promote organic production in the Bega Valley and adjacent areas in the South East Region.

Initially member growers/producers adhered to the de facto Australian National Standards for Organic and Bio-Dynamic Produce. In 2009 the AS6000 Australian Standard for Organic & Biodynamic Products was published. Due to strict copyright and the cost of obtaining copies of this Standard for every member, we decided to prescribe the IFOAM Standard for Organic Production and Processing as an informative guide to organic principles and practices. Where the IBS and AS6000 significantly differ and the latter standard potentially provides a higher quality of produce, then members will be informed by supplementary publications to meet the higher standard.

As per the Australian Standards, the **SCPA Organics** certification process takes 3 years. If the initial inspection and soil test are approved you are recorded as “Pre-Certified”. At least 12 months later a second inspection is made by a **SCPA Organics** member. If everything is in order at the second inspection you will be recorded as “In-Conversion” and issued with a Certificate. This phase applies for 2 years of organic practice. If all is in order after your fourth annual inspection you will become “Certified Organic”.

To assist the initial inspection an **Organic Management Plan (OMP)** is required to indicate your experience and intentions to manage your property/activities in accordance with the prescribed Organic Standards.

Each member must in turn inspect another member's property with full knowledge of the prescribed standards. Inspections take place in winter each year, followed by group assessment, addressing of issues and, where appropriate, certification.

This peer review system not only develops trust and education within the group, but also promotes education and knowledge sharing of the standards. Whilst this example is specific to organic certification and members performing inspections, the PGS system certainly has potential to be used for other community certification needs relating to food safety.

⁴⁷ <https://organics.scpa.org.au/pages/an-introduction>

Recommendations

AFSA Recommends that the QLD Government

- Reviews the consistency of food regulation approaches and make subsequent reforms that are commensurate with the level of risk of different scale food producers and the length and complexity of their supply chains including a review of licensable activities and the implementation of a notification system for lower risk, smaller scale, short supply chain businesses rather than the licensing approach.
- Include democratically-elected representatives of smallholders and civil society in stakeholder groups in the development of food safety policy and regulation. Representation from broader cross-sections of food and agriculture will ensure that food safety regulations are developed at scale of risk to public health.
- Support the setup of Participatory Guarantee Systems (PGS) in local areas through scale appropriate regulatory framework. PGS' are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange.⁴⁸ These could be developed for many areas of the production, processing, distribution and consumption parts of the food system.

Proposal 41: AFSA proposes that QLD replace the current local Government licensing requirement with a requirement for notification of food businesses

Unlike NSW⁴⁹ and Victoria⁵⁰ (for example), where certain food businesses are only required to notify council of their food business, in QLD the requirement (with limited exemptions) is that all food businesses must be licenced and therefore subject to approved food safety accreditation schemes. This is not in line with the intent of more Nationally consistent regulation. In QLD there is no allowance for scale, low-risk assessments or direct supply chain considerations, which is the subject of many of the proposals in this review. Whilst all food businesses are subject to the Food Standards, this allows for appropriate regulatory compliance inspections based on risk at the Local Government level.

In NSW, Primary Production Vegetable Enterprises are excluded from notification and licensing.

Recommendation

AFSA Recommends the QLD Government:

- Reviews the consistency of food regulation approaches and make subsequent reforms that are commensurate with the level of risk of different scale food producers and the length and complexity of their supply chains including a review of licensable activities and the implementation of a notification system for lower risk, smaller scale, short supply chain businesses rather than the licensing approach.

⁴⁸ <https://www.ifoam.bio/our-work/how/standards-certification/participatory-guarantee-systems>

⁴⁹ <https://www.foodauthority.nsw.gov.au/help/licensing>

⁵⁰ <https://www.health.vic.gov.au/food-safety/food-businesses>

Do you have any other general comments or feedback?

The newly adopted UN Declaration on the Rights of Peasants and Other People Working in Rural Areas asserts the right of small-scale farmers to participate in ‘decision-making processes on food and agriculture policy’ (UNDROP, Article 15.4). As stakeholders and representatives of farmers and eaters, we seek further engagement in the making of new standards or major variations which can become law.

It is important to note that many small- and medium- scale food producers are also food businesses, who conduct processing and retailing of food, often selling direct to consumers. Therefore, the risk points that arise in the conventional industrial supply chain are vastly reduced, due to shorter supply chains resulting in less cold-chain risks and potential contamination points, as well as increased traceability.

Australia’s food safety regime has a narrow focus on things that might kill you quickly (e.g. pathogens), entirely ignoring the plethora of things that are killing people slowly, such as highly-hazardous pesticides and ultra-processed foods. While AFSA does not advocate a lax approach to food safety, it does firmly propose a systemic look at what makes food systems and the food they produce unsafe.

AFSA puts forward the need to not only consult with smallholders, First Peoples and local communities, but to collaborate and empower civil society to collectively determine our own food and agriculture systems in small-scale direct and transparent local food economies.

The UN *Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)* asserts that:

States shall take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production.

It further asserts that ‘States shall stimulate sustainable production, including agroecological production, whenever possible, and facilitate direct farmer-to-consumer sales.’⁵¹

Issue: The rise of toxic and ultra-processed foods

We note that historically, food regulation to manage health risks have focused heavily on short-term, fast moving threats from pathogens passed through agricultural production. However, these reforms should seek to incorporate a focus on the number of toxic and ultra-processed foods sold in supermarket chains across Australia and New Zealand. While these foods may not pose an immediate health risk, they are unequivocally linked to the rising number of chronic illnesses in Australia, ranging from diabetes to heart disease. Genetically modified foods (GMOs) should be considered under regulation related to health and well being as well as shifts in consumer wants and needs.

⁵¹ UNDROP, Article 16.4

Issue: Risk and scale-appropriate regulation

Microbiological testing and auditing regimes across Australia are largely blind to scale and risk, leading to a disproportionate regulatory burden on smallholders selling via direct supply chains. From standards for egg stamps to sample sizes for pathogen testing for ready-to-eat meat products to pasteurisation requirements for milk in herdshares, Australian food safety regulation is biased towards industrial food production.

Market gardeners across the states and territories also face increasing regulation of the production and sale of fresh fruits and vegetables. The misconceptions about foodborne illness and its causes are widespread. In fact, only one percent of all food-borne outbreaks reported in Australia in 2017 were attributed to fresh produce.⁵² Major outbreaks of foodborne diseases in produce up to 2022 are largely attributed to imported goods such as frozen berries and industrial farming, including baby spinach sold at Costco which was recalled due to being contaminated with hallucinogenic plant matter. AFSA has actively campaigned against the tightening of regulations on leafy vegetables, melons and berries that treat small-scale direct supply chains the same as large-scale commodity supply chains, and are disappointed to see that these changes will come into effect in 2025. We are working with state governments to minimise the negative impacts of implementation on smallholders. We would like to work with the QLD government further in regard to these changes.

Issue: Transparency

Regulatory reform should always be conducted through a transparent and participatory approach which identifies the priority needs of small-scale farmers, and which uses measures already available in the food regulatory system to prevent outbreaks:

1. Consult with producers with regard to the cost and administrative impact of any of government reforms;
2. Identify and improve any current regulatory and non-regulatory measures that can be improved, rather than adding more costly and burdensome steps for producers and processors; and
3. Provide the expected assurances to low-risk producers that there will be exemptions that apply to them should any new regulatory measures be put in place.

Any risk management measures considered should target the known source of outbreaks, namely large-scale, intensive operations and sections of the processing industry engaged in the export and import of agricultural products. Appropriate assessments of the relationship between scale, production methods, supply chain length and logistics, and risk should be a priority.

Issue: Lack of engagement with smallholders and civil society

AFSA has long advocated for food safety regulation to consider risks in line with the scale of agricultural activities. Part of this process should be that small-scale farmers, fishers, First Peoples and civil society are involved in the development of food safety policy and regulation. Self-organised involvement of farmers'

⁵² Australian Government Department of Health and Aged Care, 2022

democratic organisations in stakeholder advisory groups, steering committees and focus groups should be widely extended to ensure regulation recognises the value of smallholders in feeding local communities and reducing biosecurity risks.

Participatory Guarantee Systems (PGS) have been developed internationally by IFOAM as part of the organics movement as an alternative to ‘top down’ regulation, they could be adapted to fulfil scale appropriate regulation of food safety measures Across Australia. PGS are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange.⁵³

⁵³ <https://www.ifoam.bio/our-work/how/standards-certification/participatory-guarantee-systems>