

## **FOOD SAFETY UPDATE – MAY 2008**

### **Summary**

- The State Government has announced it will be developing changes to the Victorian Food Act 1984 this year as a result of its response to the Victorian Competition and Efficiency Commission (VCEC) report “Simplifying the Menu: Food Regulation in Victoria”.
- The DHS/MAV Food Safety Coordination Project is tackling those areas which require legislative and practice change by local government.
- This brief provides an overview of the projects being undertaken and the opportunities that local government will have to provide input to the development of changes.
- The order and urgency of the projects being undertaken is driven by legislative deadlines, which derive from the State Government’s commitment to implement recommendations from the VCEC report.
- Local government input to the development of the changes will be vital to ensuring their success. Various mechanisms will be used to garner local government views, including formal consultation papers, workshops, working groups and interviews.
- Previous consultative processes to develop a MAV position to the VCEC review and various forums and workshops held over the past few years will also assist the MAV provide advice to the State Government about proposed changes.

### **Background**

Local government in Victoria is one of the key regulators of food safety, registering and inspecting about 45,000 food businesses and issuing thousands of temporary permits for one-off events each year.

The key principle underlying the changes to food regulations is to reduce burdensome regulatory red-tape for businesses and community organisations and enable more targeted regulatory effort to those activities that pose the highest risk to public health.

The DHS/MAV Food Safety Coordination Project, funded by the Department of Human Services (DHS), provides a mechanism for State and local government to work together in a systematic way to deal with problems with the current system of food safety regulation in Victoria identified by a range of organisations (government, business and community).

Councils have been previously briefed about latest developments in food safety and the purpose and activities of the DHS/MAV Food Safety Coordination Project (Member Briefs of August 2007 and March 2008 refer).

In summary, with the funding the MAV is receiving from DHS it is:

- employing additional staff resources (Anne Farrow)
- contracting consultants to undertake specific projects.

## **DHS/MAV Food Safety Coordination Project**

The DHS/MAV Food Safety Coordination Project has a number of projects underway to enable, in the time available, a local government perspective to be included in the changes being developed by the Department of Human Services. The Steering Committee has been meeting every few weeks, and consultants have been employed for two projects.

The changes to the food safety regulatory system will require both legislative and operational changes. Key decisions about the content of changes to the legislation need to be finalised in the coming months. Operational and subordinate legislative changes (such as regulations where they may be required) and guidelines and other operational supports can be developed alongside and after the legislation is considered by Parliament.

DHS is anticipating that a discussion paper will be released shortly setting out its proposals. The paper will give greater detail about the changes that will be required as a result of the State Government's response to the VCEC report released in April this year.

A key priority of the MAV in the next few months will be to ensure that realistic time frames for implementation of the amendments to the Food Act are included in the Bill to Parliament.

An outline of the opportunities local government will have to provide input to the development of changes to Victoria's food safety regulatory system is provided in Attachment 1.

Set out below are details of the specific projects and topics being considered as part of the DHS/MAV Food Safety Coordination Project.

### **Reporting and monitoring project**

The MAV recognises that the lack of centralised data about food safety regulation undertaken by councils is an impediment to an effective and responsive food safety system. As a consequence it has endorsed the recommendations by VCEC and the State Government to require reporting by councils.

Consulting company Sinclair Knight Merz (SKM) has been engaged to develop a reporting framework for councils. This project will involve consultation with councils, including:

- Literature review of reporting system best practice
- Environmental scan, including in-depth interviews with three councils and their IT vendors
- Development of a policy framework
- Audience expectations report which will document the activities DHS and councils would like reported and monitored, including interviews with seven councils
- Development of reporting indicators, including consultation with all councils
- Propose an implementation strategy.

The intention of this project is to end up with a practical system of reporting that is not onerous for councils and focuses on data which is important for food safety regulation purposes of councils and the State Government. It is not intended to provide a mechanism for a state government department to oversee or direct council activity in food safety.

Legislative changes to the Food Act 1984 will be made to require councils to report to the Department of Human Services. This will be included in the discussion paper that is expected to be released by DHS shortly. Councils will have the opportunity to respond to this paper.

The timing of the introduction of the reporting and monitoring system will be based on a realistic, practical and feasible assessment by the Steering Committee after taking into consideration the reporting and monitoring project report by SKM, due in August 2008.

## **New risk classification system for food businesses**

The State Government has committed to developing a new risk classification system to ensure that requirements imposed on businesses are proportionate to the inherent risk of the activities they undertake. The intention is to broaden the current three classes of food businesses to four, so that there is likely to be a Class 1 (food sold to vulnerable groups, such as hospitals, nursing homes, childcare centres), Class 2 (businesses where the food being sold is medium to high risk due to the nature of the food products or the handling activities), a new Class 3 (businesses selling low risk food), and possibly a Class 4 for very low risk activities (businesses selling shelf stable food). Each class has different levels of compliance requirements in relation to preparation of Food Safety Programs and training of staff handling food.

Proposed compliance requirements for businesses based on their risk classification will be detailed in the DHS consultation paper.

CGU Insurance has been engaged and its consultant, Walter Arrow, will be reporting to the DHS/MAV Food Safety Coordination Project Steering Committee to make recommendations about a new risk classification system. This includes setting criteria for determining what activities will fall within each class. The project brief requires him to consult with a cross section of rural/metropolitan, small/large councils and relevant industry bodies.

The consultant is contracted to complete the project by the end of July, at which time the report will be provided and considered by the Steering Committee. DHS will then make recommendations to the Minister for Health.

## **Changed compliance requirements**

The State Government's acceptance of the principles of VCEC's recommendations to have fewer compliance requirements for food businesses will result, where it is possible without jeopardising public health, in changed compliance requirements for food businesses, especially for those categorised as lower risk and those businesses performing well. Food businesses meeting their statutory obligations may also be rewarded for their good performance.

The development of the new compliance regime will require not only legislative changes to the Act but also the development of tools for council officers to evaluate what compliance requirements are needed for particular businesses. This in turn will require the development of communication materials for councils, industry and community groups so that the new requirements are clear and easily understood.

The DHS discussion paper will cover these issues to some extent, however further work will be required once the new risk classification system is agreed. Council advice and input will be vital to the development of tools and guidance material.

## **Ministerial directions**

The State Government is proposing to introduce ministerial directions into the Food Act 1984 to direct councils where this is required. The MAV has expressed its concern about this decision. The State Government, however, has persisted in proceeding with this proposal. The MAV will be advocating for clear limitations to the areas where ministerial directions might be used, and that the principles contained in the Victorian State and Local Government Agreement are adhered to in their development and use.

The MAV is anticipating that this matter will be included in the DHS discussion paper, and that it will be providing advice to DHS once it sees its proposals. It has provided to DHS

copies of the Victorian State Local Government Agreement that was signed by the Minister for Local Government and the President of the MAV on 14 May 2008.

### **Modelling the financial impact for local government**

The intention to reduce regulatory burden for food businesses will have consequences for the workload of councils in food safety regulation, with reductions of effort in some areas, but increasing effort in others. For example the State Government has announced it will remove the requirement for council inspections of food businesses that are third-party audited by a certified auditor under the Food Act 1984. The profile of food businesses in a particular local government will determine whether this significantly impacts current work activity by councils. Some councils will experience little change, while others may experience considerable reductions in the need for council inspections as part of the registration process.

The DHS/MAV Food Safety Coordination Project Steering Committee has identified the need to measure the impact of the legislative and regulatory amendments on council activity to ensure that the changes do not have adverse consequences for local government. A project brief is being developed with the intention that a consultant be employed to model the financial effects of the changes.

Council support in providing data and advice will be important in ensuring that the results of modelling undertaken are sufficiently robust to enable realistic decision making.

### **Single registration of temporary and mobile food businesses**

In response to the proliferation of temporary and mobile food businesses in recent years, such as food vans and farmers market stalls, the State Government has announced it will develop a central database of temporary and mobile food businesses so that each operator only need to register once. Currently each temporary and mobile food business has to register with each council where it sells food.

Establishing a single registration system for this particular profile of food businesses requires councils accepting registrations undertaken by other councils, in effect “mutual recognition”. This is already practice among a number of councils, and this proposal will enhance the ease with which this can be done.

A working group comprising DHS, MAV and three councils (Greater Shepparton City Council, Melbourne City Council and Mornington Peninsula Shire Council) has been established to develop a discussion paper proposing suggestions for a single registration system for temporary and mobile food businesses. The Working Group has met three times since April 2008.

The proposal to establish a single database for temporary and mobile food businesses will be included in the DHS discussion paper. There will also be a separate discussion paper outlining the Working Group and Steering Committee’s detailed consideration as a means of councils providing advice about the operation of the proposed system.

The DHS/MAV Food Safety Coordination Project Steering Committee will then consider all submissions and make recommendations to DHS to make to the Minister for Health.

### **Penalty Infringement Notices (PINs)**

The State Government has announced it will introduce penalty infringement notices (PINs) to add to the suite of enforcement options available to regulators to enforce the Food Act 1984. These will be required to comply with the State Government’s framework for the use of PINs, established in guidelines of the Attorney-General, which operationalise the Infringements Act 2006.

DHS will undertake the detailed work leading to the establishment of PINs, including the development of legislative amendments making it lawful to use PIN in food safety enforcement. Council input will be required to assist in determining what offences should be to undertake food subject to PINs, and in developing guidelines around their use. A workshop with councils is planned at this stage as the mechanism to seek council input for this task. Councils will also have the opportunity to respond to the DHS discussion paper which will outline its proposals.

### **Workforce enabling**

A number of activities are underway to strengthen the capacity of the environmental health workforce safety regulatory activities. Ensuring a strong and available workforce was a recommendation of VCEC. DHS will be providing training to officers about the changes to the Food Act 1984. It is also developing pathways projects for officers who are not environmental health officers to become suitable to be authorised to administer the Food Act 1984, including the establishment of a Certificate IV and post-graduate qualifications. Training will be a key priority, particularly as the changes to the food regulatory system become closer to implementation.

The MAV views the role of environmental health officers within councils as vital to the role of local government in preserving the environmental and public health of the community. It will be continuing to liaise with DHS and other departments such as the Department of Sustainability and Environment on training and other initiatives involving environmental health officers.

The DHS/MAV Food Safety Coordination Project Steering Committee is considering the ways to enhance the work undertaken by DHS and the Australian Institute of Environmental Health. In particular it has welcomed proposals from the AIEH to develop a certification scheme and professional development program that it will be seeking to introduce over the next few years.

### **FURTHER INFORMATION**

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## Attachment 1: Development of changes to Victoria's Food Safety Regulatory System – Opportunities for Local Government Input

\*\*Please note that these are plans of the DHS/MAV Food Safety Coordination Project Steering Committee as at May 2008. Some of the mechanisms outlined may change as the projects progress\*\*

Project	Mechanisms for local government input and consultation
New risk classification for food businesses	<ul style="list-style-type: none"> <li>• Interviews with a sample of rural and metropolitan councils by Walter Arrow, CGU Insurance, the consultant preparing recommendations for a new risk classifications for food businesses</li> <li>• Providing response to DHS discussion paper expected to be released shortly (all councils)</li> <li>• Council involvement in the development of guidelines, education tools and implementation preparation</li> </ul>
Development of compliance requirements for new food classes	<ul style="list-style-type: none"> <li>• Providing response to DHS discussion paper (all councils)</li> <li>• Council involvement in the development of guidelines, education tools and implementation preparation</li> </ul>
Reporting & monitoring project	<ul style="list-style-type: none"> <li>• In-depth interviews with three councils and their IT vendors, followed by interviews with seven councils by SKM, the consultant preparing recommendations for a food safety monitoring and reporting framework</li> <li>• Opportunity to comment on reporting indicators developed by SKM prior to finalisation (all councils)</li> <li>• Providing response to DHS discussion paper (all councils)</li> <li>• Council involvement in the development of guidelines, education tools and implementation preparation</li> </ul>
Introduction of ministerial directions	<ul style="list-style-type: none"> <li>• Providing response to DHS discussion paper (all councils)</li> <li>• Providing input to MAV submission to DHS in response to its discussion paper (all councils)</li> <li>• Advice to MAV in response to requests for comment (all councils)</li> </ul>
Modelling the financial impact for local government	<p>Project brief still being developed pending more detailed information being available about the compliance requirements that will accompany the new risk classification system. It is anticipated that in-depth studies with a sample of rural and metropolitan councils would be required, and that outcomes from the study would be available to all councils.</p>

Single registration of temporary & mobile food premises	<ul style="list-style-type: none"> <li>• Working group including three councils (Greater Shepparton, Melbourne &amp; Mornington Peninsula)</li> <li>• Providing response to DHS discussion paper (all councils)</li> <li>• Providing response to DHS/MAV Food Safety Coordination Project Steering Committee discussion paper setting out detailed proposals, expected to be released shortly (all councils)</li> <li>• Participating in forum/workshop planned to be held June/July (all councils invited)</li> </ul>
Introduction of PINs	<ul style="list-style-type: none"> <li>• Workshop to provide advice about the offences which might be subject to PINs under the Food Act 1984</li> <li>• Providing response to DHS discussion paper (all councils)</li> <li>• Council involvement in the development of guidelines, education tools and implementation preparation</li> </ul>