

FOOD SAFETY LEGISLATION – Update June 2009

Summary

- The *Food Amendment (Regulation Reform) Bill* was introduced into State Parliament on 9 June 2009 by the Minister for Health, the Hon Daniel Andrews MLA, to amend the Victorian Food Act 1984.
- Provisions within the Bill focus on improving the way in which food safety is regulated in Victoria to reduce burdensome red-tape for businesses and community organisations and to enable better use of council resources with regulatory effort targeted to those activities that pose the highest risk to public health.
- The introduction of two additional classes of food premises with lower regulatory requirements will be welcomed by food businesses and community organisations that fall into these categories.
- Safe provision of food to the public continues to be important, however, with regulatory requirements to have food safety programs and food safety supervisors continuing for food businesses and community groups providing higher risk food.
- Local government has had a considerable level of input to the development of the legislation, with opportunities to respond to two papers released by the State Government in 2008, the VCEC draft and final reports in 2006 and 2007, and through participation in the various working groups and in-depth discussion with consultants preparing detailed advice about administrative aspects of proposed changes.
- The joint Department of Human Service (DHS)/MAV Food Safety Coordination Project has also provided a mechanism to bring a local government perspective to the proposed changes.
- Many of the initiatives will be welcomed by local government as they will bring the statutory framework more into line with current practice, however many of the provisions will also require administrative and practice changes by councils.
- To assist industry and local government to adapt, the Bill proposes a staggered implementation timetable. Some key components will become effective on 1 July 2010. Other provisions will become effective 1 March 2011 and 1 July 2011.
- This brief provides an overview of the provisions of the Bill and what these might mean for councils. A timetable for implementation is also provided.
- The MAV will continue to work with DHS to ensure the new legislative provisions and associated policy changes can be introduced effectively and in a manner which minimises the burden imposed on councils.
- Continued local government input to the development of the specific policy frameworks and guidelines to support the legislative provisions will be vital to ensuring their success.

Key Provisions

The Bill introduces a number of initiatives including:

- a new system that will enable declarations to be made classifying food premises so that there will be four classes, replacing the current three-class system of Class 1, Class 2 and exempt food premises
- changes to compliance requirements that better reflect the risk to public health of the food being provided
- more flexible food safety supervisor requirements for businesses that have a new “QA food safety program” under a recognised QA system or code, if the program includes appropriate training for staff
- clarification about the roles of the Department of Human Services and the role of councils
- new enforcement tools such as on-the-spot fines and enabling councils to temporarily close food businesses if the food being prepared is considered unsafe
- the ability of councils to charge separate fees for follow-up inspections
- provision of information about food safety to the public, and to councils, with an annual report to be published by DHS using data provided through the sampling regime and reporting provided by councils, and provision of collated data to councils to enable better targeting of areas identified as requiring effort
- establishment of a publicly available register of food businesses convicted by a court of offences under the Food Act
- revised sampling framework, including central recording by DHS
- establishment of a central registry for mobile and temporary food premises
- the ability of appropriately qualified council employees to undertake audits of food premises on behalf of councils
- introduction of a power to enable ministerial directions to local government
- new requirement for councils to register water carters.

Attachment 1 sets out the proposed new classification system with an outline of the new classes and the proposed compliance requirements for each class.

There will be a phased timetable for implementation, to enable the systems and practice changes to be developed before the provisions become law. The following table outlines the timing of what is proposed to be introduced and when.

Timetable for implementation:

Phase	Date	Key Provisions
Phase 1	1 July 2010	New classification system Changed regulatory requirements for the new classes Voluntary recognition by councils of registration of food vans and stalls registered by other councils Register of Food Act convictions New provisions on temporary closure of premises Provisions to establish the data reporting system. (But the date on which reporting will commence is to be determined) Ability to charge follow-up inspection fees
Phase 2	1 March 2011	Enabling DHS to accept an undertaking (which can be enforced in the courts) from a business to address non-compliance relating to misleading or deceptive conduct (e., labelling) Infringement offences New food sampling requirements
Phase 3	1 July 2011	Single statewide registration of food vans and stalls New requirements for water carters to be registered

Items of particular interest for local government:

Premises classification:

If enacted, the Food Amendment (Regulation Reform) Bill 2009 will expand the current classification of food premises from two to four classes. The purpose of this is to allow regulation to be better matched to the level of food safety risk which each class of food premises needs to manage.

At this stage, it is envisaged that the new classes will generally be:

- Class 1 – premises similar to current Class 1, with some minor amendments to bring Victoria into line with the national framework
- Class 2 – premises engaged in manufacture or handling of any unpackaged, potentially hazardous foods
- Class 3 – premises handling low risk food or wholesale of pre-packaged food, or selling pre-packaged potentially hazardous food requiring temperature control
- Class 4 – premises selling shelf-stable, pre-packaged food or running low risk community activities (sausage sizzles).

The new classification will apply to all food premises. All registration decisions made on or after 1 July 2010 will be based on this new system. The lead time should provide councils with sufficient time to “convert” existing premises to the new classification, make any necessary changes to their documentation systems and address issues such as new fee structures.

Consideration is also being given by DHS as to which community group activities will be in Class 2 or 3, and regarding the continuation of the current exemption for occasional charitable or fundraising activities from the requirement to have a food safety supervisor.

A working group comprising council representatives, the MAV and DHS (through the joint Food Safety Coordination Project) is developing an on-line tool and manual which will assist councils in classifying food premises. DHS is currently refining the tool based on national risk policies and feedback received from councils, businesses and community groups. It is expected that most premises will be pre-assigned to a specific class so that councils only need use the tool for “hard-to-define” premises. Training and guidance in using the tool will be provided at an appropriate time by DHS.

Changed compliance requirements:

A risk-based approach to regulation underpins the Bill, with regulation proportionate to the risks posed by the food handled and sold by the premises. As a result, each class will now have different levels of compliance requirements in relation to their registration, audit frequencies, preparation of Food Safety Programs and training of staff handling food. Attachment 1 sets out the likely requirements for each class – note they have to be “declared” by the Secretary of DHS before they become law.

In summary, the changes mean that:

- Councils will continue to register all Class 1, 2 and 3 premises. Very low risk premises (Class 4) will only need to notify councils of their location and nature of business.
- There will be changes to the terminology relating to registration renewals, to provide greater clarity about the activity being undertaken by the council, such as assessment or audit, depending on the class of business and whether it has a standard or non-standard food safety program. A specific information sheet on this is included in the department’s webpage on the Bill.
- It is proposed that the declaration will provide that some premises no longer *require* an annual council inspection or assessment as part of the registration renewal process. This will apply to premises in Class 2 that use a non-standard Food Safety Program and are independently audited. However, councils will retain the discretion to inspect such premises. The Act will continue to require class 1 premises (e.g. nursing homes, hospitals and long day care) to be assessed annually by the council.
- Some premises (Class 3) no longer require a Food Safety Program (with simple record keeping required instead) nor will they require a Food Safety Supervisor. The Bill amends the Act to enable new “minimum records” to apply to this class.
- Class 1 and Class 2 premises will now be able to develop a new non-standard “QA food safety program” under an approved whole-of-business quality assurance system.
- The standard Food Safety Program for Class 2 premises will change to a new simplified format to be issued by DHS.

- Food Safety Supervisors (Class 1 and Class 2 premises) will not be required if the QA based Food Safety Program includes accredited training for staff.
- The possibility of Class 1 premises using a DHS standard Food Safety Program (with two council assessments upon registration renewal rather than one assessment and one audit) is being flagged. A date for this has yet to be determined.

The likely changes are also described in the discussion about classification of food premises at:

http://www.health.vic.gov.au/foodsafety/regulatory_info/legislation/food_safety_reform/index.htm

In keeping with the new classification system, the new compliance requirements will generally apply to all premises from 1 July 2010.

Enforcement

Alongside these changes, the Bill provides for new enforcement mechanisms. Although priority remains on assisting proprietors to handle food safely, these mechanisms will help councils to respond to problems in a manner appropriate to the nature of the breach of the Act or National Food Standards.

The new enforcement tools include the introduction of on-the-spot fines for certain food safety or hygiene offences. Further, councils or their CEOs will be able to temporarily close premises, or stop particular food handling activities, to ensure the business rectifies the problem before continuing to sell food. Councils may alter the frequency and intervals of audits and assessments that may apply to a particular premises (beyond the default requirements) where there is a demonstrated history of non-compliance. The Bill also proposes that DHS is to keep a public register of Food Act convictions.

The new compliance and enforcement regime will require the development of tools for councils as well as communication materials to ensure that the new requirements are clear and readily understood by all parties (regulators and food proprietors). Through the joint Coordination Project the MAV will work with DHS to develop a state-wide strategy to enhance the compliance tools available to councils and improve the consistency of enforcement approaches. An enforcement policy framework will also be developed to ensure enforcement is appropriately targeted to risk.

Councils will be engaged in consultations to ensure the supporting materials are appropriate to their needs.

Reporting

The Bill provides for the establishment of a reporting framework so councils can report their food safety activities to the Department of Human Services. Although the provision will come into effect on 1 July 2010, specific dates and requirements for reporting have not yet been determined. The Bill provides that consultation with local government is required prior to making Declarations establishing reporting requirements.

The MAV is working closely with DHS, through both the joint Food Safety Coordination Project and the MAV Information and Communication Technology Advisory Committee to consider the way forward.

Ability to charge for follow-up inspections

The Bill proposes that councils be able to charge “poor performers” fees for follow-up inspections where there has been repeated non-compliance. These charges are at council discretion and are aimed at recovering the greater costs that councils incur in repeatedly attending such premises. The method of determining follow-up fees must be available to the public. Standard mandatory inspections and assessments cannot be the subject of a specific separate fee. However, the costs incurred in conducting them may be recovered as part of the overall fees charged for registration and renewal of registration. .

This provision will take effect from 1 July 2010. It is intended that DHS will provide guidelines with regard to the structure and use of follow-up fees. A fee policy discussion document, prepared under the auspices of the Joint MAV/DHS Food Safety Coordination Project, will be released for council comment in coming months.

Sampling

The Bill provides for a new food sampling regime. Instead of basing the number of samples on population, the Bill enables a declaration to be made which can shift the focus to the number and type of premises (with a skew toward Class 1 premises and large manufacturers) within municipalities. It is expected that many councils will face a drop in the required number of samples they are required to collect. This amendment is planned to take effect from 1 March 2011.

Voluntary Recognition of Mobile Premises Registrations

The Bill will enable councils to recognise the registration of food vans and market stalls registered by other councils. This provision is voluntary but essentially formalises what is widespread practice across Victoria.

This provision will take effect from 1 July 2010 and is a prelude to the establishment of a statewide single database for temporary stalls and mobile vehicles. It will cease to apply when it is replaced by the mandatory single registration system on 1 July 2011.

Statewide single registration of temporary and mobile food businesses

The Bill aims to achieve a sensible balance between managing the food risks posed by food vans and market stalls with the desire to both reduce the amount of ‘red tape’ faced by these traders and to provide workable administrative procedures for councils.

From 1 July 2011 there will be a (mandatory) statewide single registration process for food vending machines, mobile premises (i.e. food vans) and temporary food premises. Temporary food premises include market stalls and also situations where food is sold by a business only on an occasional basis from a permanent structure that is not owned or leased by that business.

A central data base will be established. While such food premises will no longer be required to register with every municipality in which they operate, their compliance requirements match those of their fixed premises counterparts. Access to the central data base will enable councils to co-ordinate inspections and the follow-up of any food safety issues.

A working group comprising DHS, MAV and council representatives was established to outline the kind of changes to law and practice that would support a single registration system. A Discussion Paper “TempLink: Single Registration and Notification Central Database of Temporary and Mobile Food Premises” was released by the MAV in July 2008. The MAV will continue to work with DHS and councils to develop a workable system to enable the provisions to come into effect.

DHS is about to engage the services of a business analyst to provide advice about the best IT solution to enable the single registration system to work effectively across municipal districts. The analyst will be holding workshops with council representatives in the forthcoming months. MAV and DHS will be involved in this consultation process.

Ministerial directions

The Bill proposes that ministerial directions may be given to councils in relation to any matter concerning the administration of the Act. The provisions are limited to areas where a direction is in the public interest and will promote the objectives of the Act or the consistent administration of the Act, and cannot be given in relation to decisions by councils with respect to a particular premises of proprietor. Additionally, the directions power will only be available to the Minister (except in emergencies) if certain consultation requirements are met. This includes the opportunity for a specified council (or CEO) to comment on a draft of the direction. Where more than one council is involved, the draft may be given for comment to either all relevant councils or to a body that represents local government such as the MAV. The Department and any council receiving a direction will be required to publish the direction within their annual reports.

Workforce enabling

The Bill proposes that a council officer would be able to audit a food premises on behalf of their council, provided that the officer is an approved auditor under the Act and the council chooses to provide an auditing service. Businesses are able to choose between a council audit and private auditors. This provision takes effect from 1 July 2010.

A project officer is working with DHS and the MAV to develop and manage the delivery of a professional development program for authorized officers to implement changes arising from this Bill. The project officer is currently working on the professional development requirements related to the Public Health and Wellbeing Act 2008 due to come into effect on 1 January 2010. As this is targeted at many of the same council officers, this work will provide a framework and lessons for the design and delivery of a professional development program to meet the needs of the Food Act amendments. The officer will also be developing a training program specific to changes relating to the Food Act.

Next Steps

The DHS/MAV Food Safety Coordination Project will be continuing over the coming year. It has provided unprecedented opportunities for a local government perspective to be included in many of the proposals included within this Bill. This has included regular meetings between DHS and MAV to steer the direction of the framework to improve the current regulatory system and the formulation of policy options to meet desired reforms.

In addition, representatives from many councils have been co-opted to work on specific issues to develop workable solutions and tease out implementation requirements. Their assistance has proved invaluable, as their field experience has ensured that policy proposals are both practical and appropriate to the issue at hand.

Changes to the food safety regulatory system will require operational change and reform. In many cases only minor adjustments in regulatory effort will be required of councils. Others will require practice and system changes and considerable thought will be required to provide councils sufficient support to adjust to the changed environment.

A key priority of the MAV over coming few months will be to ensure that the support mechanisms provided to councils are appropriate and sufficient to meet their needs. These will include:

- Working with DHS in the development of guidelines and policies
- Exploration of information technology solutions for reporting systems
- Provision of summaries and updates about specific issues as appropriate
- Provision of materials to enable councils to communicate effectively with food premises and community organisations

FURTHER INFORMATION

Visit the Department of Human Services (DHS) website: www.health.vic.gov.au/foodsafety

Contact the MAV: Rosemary Hancock
 Phone Number: 9667 5520
 Email: rhancock@mav.asn.au

Attachment 1

This table summarises the features of the new system which the *Food Amendment (Regulation Reform) Bill*, and accompanying non-legislative reforms, are designed to achieve.

Proposed food premises classifications										
Legislative reforms	Class 1		Class 2				Class 3		Class 4	
Rationale for classification based on risks¹	E Handles, processes or serves ready to eat potentially hazardous food to groups most vulnerable to food related illness (eg hospital patients, nursing home residents, children in long day care)		E Supplies potentially hazardous unpackaged foods which need correct temperature control throughout the food handling process, including cooking and storage, to keep them safe (eg restaurants)				E Supplies or handles unpackaged low risk foods or pre-packaged potentially hazardous foods which simply need refrigeration to keep them safe (eg milk bars, or bread baking) and some community events		E Supplies low risk pre-packaged foods which do not need refrigeration. Also sessional kindergartens where cut fruit is served, sausage sizzles where food is cooked, served and immediately consumed, and cake stalls	
Council registration or notification²	Non-Standard Food Safety Program Registration (initially)¹²		Standard Food Safety Program³ Registration		Non-Standard Food Safety Program⁴ Registration		Registration		Notification	
	Initial or transfer ⁵	Annual renewal	Initial or Transfer ⁵	Annual renewal	Initial or transfer ⁵	Annual renewal	Initial or Transfer ⁵	Annual renewal	Initial or Transfer ⁵	Annual renewal
Type of compliance check										
Audit⁶ by approved auditor⁷. Reports to be available to council	E	E			E	E				
Council assessment⁸		E		E						
Mandatory council inspection^{9, 10}	E		E		E		E	E		
Choice of Food Safety Program	E Non-standard ⁴ including whole of business QA system ¹¹ . or E DHS approved Standard (future) ¹² .		E Non-standard ⁴ including whole of business QA system ¹¹ . or E Simplified DHS approved Standard				X No Food Safety Program required E Simple record keeping		X No Food Safety Program required	
Choice of staff supervisor training	E Food Safety Supervisor including other accredited training (eg chef) ¹³ . or E Via recognised QA system		E Food Safety Supervisor including other accredited training (eg chef) ¹³ . or E Via recognised QA system							
Support to businesses										
Choice of food handler staff training	E Council advice and support E Optional free online training E Free guidance material		E Council advice and support E Optional free online training E Free guidance material				E Council advice and support E Optional free online training E Free guidance material		E Council advice and support E Optional free online training E Free guidance material	