



THE NEW FOOD ACT 2014

In May this year, the new Food Act 2014 (Act) was passed into law after a long Parliamentary legislative process. The majority of the Act comes into force on 1 March 2016 (when the Food Act 1981 will be repealed). However, provisions relating to product recall and the ability to manage a food safety incident are in effect now.

SO WHAT ARE THE KEY CHANGES?

The purpose of the Act is to establish a flexible, cost-effective and risk-based food safety system of management. This is intended to be a move away from the “one-size-fits-all” approach under the old Act. We have summarised the key changes below.

	OLD ACT	NEW ACT
Risk-based monitoring & food handling practices	<p>All food businesses are required to operate under the Food Hygiene Regulations 1974 (which are administered by local councils) or adopt a Food Safety Programme (FSP).</p> <p>If a business chooses to operate under an audited FSP, it will be exempt from the requirements of the Food Hygiene Regulations.</p> <p>Some businesses must operate with an FSP including:</p> <ul style="list-style-type: none"> • dairy processors who supply the domestic market or export their products to Australia; and • primary processors of fish who sell that fish by both wholesale and retail on the New Zealand market. <p>Other businesses must manage food safety hazards through Risk Management Programmes (RMPs) under the Animal Products Act 1999.</p>	<p>The New Act introduces a sliding scale based on specific risks of each food business. Foods are classified into high, moderate/moderate-low and low. There are more stringent obligations imposed on businesses that have higher food safety risk than lower food safety risk businesses. We summarise these below.</p> <ul style="list-style-type: none"> • High Risk Foods: Higher risk food sectors, such as manufacturers of baby food, dairy and meat (see Schedule 1) must operate under a Food Control Plan (or continue to operate under an equivalent programme under the Animal Products Act or the Wine Act). Many businesses selling higher risk foods already have Food Safety Programmes in place under the Old Act and these will become Food Control Plans on commencement of the New Act. Higher risk foods that currently operate under the Food Hygiene Regulations, will need to operate under a Food Control Plan.

	OLD ACT	NEW ACT
		<ul style="list-style-type: none"> • Moderate Risk Foods: Moderate or moderate to low risk food sectors, such as manufacturers of alcohol, crisps, confectionery (see Schedule 2) must operate under National Programmes (or continue to operate under an equivalent programme under the Animal Products Act or the Wine Act). There are three levels of National Programmes which vary depending on how the food is classified. Businesses subject to National Programs do not have to register a plan but they will have to follow requirements for producing safe food under the regulations. They will also have to register their business details, keep specified records and have periodic checks, with the frequency depending on which level of National Programme applies. • Lower Risk Foods: Low risk foods sectors (Schedule 3), such as home based early childhood sectors, are not required to operate under a Food Control Plan or National Programme. <p>In addition, businesses who are performing well will be subject to less frequent checks, while businesses not managing food safety well will receive more scrutiny. Therefore, each food business is able to influence their own compliance costs.</p>
Product recall and the ability to manage a food safety incident	The Minister has the power to issue an order directing recall of any food, or requiring the destruction of any food that is unfit or unsound for human consumption, or that is contaminated with any poisonous, deleterious or injurious substance. Upon receipt of this order, the importer, manufacturer or seller had to advise the Minister of how it will comply with the order, and also give written notice to the Minister when the recall had been completed.	<p>The chief executive of the Ministry of Primary Industries has powers including to:</p> <ul style="list-style-type: none"> • give directions to a person to dispose of imported food; • give directions to a person to complete and supply a declaration if there is to be a change of ownership or location of any food or anything that may become food; • give directions to impose movement or related controls in relation to food that may not comply with the Act to control the risk to human life or public health; • give directions to recall unsafe, contaminated, mislabelled or incorrectly identified food; • give directions to manage food; • give directions to publish statements about the food; • publish statements about the food; and • require production of information for the purpose of determining safety and suitability of food.
Exporters	The wording of the Old Act is unclear in its application to exporters.	The New Act applies to all food produced in New Zealand, regardless of whether the food is intended for domestic market or for export. Therefore, food exporters (except to Australia) must comply with the Act, unless they apply for exemptions for specific foods and/or markets.

	OLD ACT	NEW ACT
Genetically modified foods	The Government can make New Zealand-only standards relating to GM food in the exceptional circumstances set out in the Food Treaty with Australia. The Act supports the existing robust scientific pre-approval process required prior to the sale of GM foods.	This provision was in the Old Act but was originally left out of the New Act and later reinstated.
Donations in good faith	N/A	The New Act introduces a “good Samaritan” clause to protect businesses who donate their food in good faith. A donor is protected from civil and criminal liability that results from the consumption of food donated if it was safe and suitable when it left the possession or control of the donor and (if necessary) the donor provided information on how to keep the food safe and suitable.
Food for Fundraising	N/A	Under the New Act, there is a clear exemption to allow for Kiwi traditions like sausage sizzles, home baking at school fairs, raffles and charity fundraisers to take place.
New offences and increased fines	Previously, the maximum penalties were \$5000 for individuals and \$20,000 for companies.	The New Act strengthens Government’s enforcement powers by introducing new offences. Food safety officers now have the power to issue infringement notices, a new enforcement option that is an intermediate measure between warnings and court action. There are also greater powers given to the officers to inspect and search food businesses and premises where food is prepared. Penalties for breaching the Act have significantly increased. The maximum penalties are now \$100,000 for individuals and \$500,000 for companies.

WHAT DOES THIS MEAN FOR YOU AND YOUR BUSINESS?

Before the Act comes fully into force, the Ministry of Primary Industries (**MPI**) will develop and release regulations, tools and guidance, subject to a public consultation process. Although businesses do not have to make immediate changes, to make the most of the new legislation, you should begin thinking about the level of food safety regulation appropriate to your food business and industry if you wish to participate in the development of regulations, which will determine the final scope of Act.

If you have any questions about how the new Act will impact your business, give us a call. We are always happy to help.

CONTACT DETAILS



PETER STUBBS – PARTNER

T. 09 977 5010 M. 021 955 230 E. peter.stubbs@simpsongrierson.com



CISKA DE RIJK – ASSOCIATE

T. 09 977 5348 E. ciska.derijk@simpsongrierson.com

A SIMPSON GRIERSON PUBLICATION

This newsletter is produced by Simpson Grierson. It is intended to provide general information in summary form. The contents do not constitute legal advice and should not be relied on as such. Specialist legal advice should be sought in particular matters. © Copyright Simpson Grierson 2014.