



2 March 2021

Dr Liz Craig, MP
Chairperson
Health Select Committee
Parliament Buildings
Wellington
NEW ZEALAND

Email: Health@parliament.govt.nz

Dear Dr Craig

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Water Services Bill 2020*.

With my signature redacted, this submission is not confidential and can be published. We wish to speak on the Bill to the Health Committee.

Yours sincerely

Katherine Rich
Chief Executive



Water Services Bill 2020

**Submission by the New Zealand Food & Grocery
Council**

2 March 2021

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the *Water Service Bill 2020* (the Bill).
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

OVERARCHING CONCERNS

3. NZFGC supports the purpose of the Bill to ensure that drinking water suppliers provide safe drinking water to consumers.
4. NZFGC’s key concern with the Bill is the high level of duplication and overlap the Bill will have with food and beverage related legislation administered by the Ministry for Primary Industries. This includes the *Animal Products Act 1999*, the *Food Act 2014* and the *Wine Act 2003* and subordinate legislation associated with these Acts. The duplications appear throughout the Bill including:
 - register supply
 - duties (supply safe drinking water, comply with drinking water standards, take reasonable steps to supply aesthetically acceptable drinking water, provide sufficient quantity of drinking water, where sufficient quantity of drinking water at imminent risk, protect against risk of backflow, ensure endpoint treatment and notifications)
 - definition of ‘drinking water’
 - self-supply for food and beverage manufacturers
 - drinking water safety plans
 - drinking water suppliers to keep records
 - source water risk management plans.
5. These present extensive, costly and unnecessary duplication.
6. NZFGC is also concerned with the inclusion of provisions regarding wastewater, which are currently regulated under the *Resource Management Act 1991* and the *Local Government Act 2002*. NZFGC recommends these provisions should be scrutinised with a view to the potential downstream costs of compliance to businesses and consumers.
7. The current environment is placing enormous pressure on our food and beverage manufacturers as they struggle with huge increases in supply chain costs. To place additional, duplicative requirements on them when they are already part of an existing, world class legislative regime is unthinkable and strongly opposed.
8. NZFGC recommends an exemption be applied on the face of the Bill for food and beverage manufacturers from the provisions of the Bill where they are already subject to provisions of the *Animal Products Act 1999*, the *Food Act 2014* and the *Wine Act 2003* (the Food Acts) and the related subordinate legislation administered by the Ministry of Primary Industries.

DETAILED COMMENTS

Use of water in food and beverage manufacture

9. The production and manufacture of food and beverage requires the use of water at many stages. For example, water may be used in the farm dairy or fruit packing, it is extensively used in dedicated manufacturing facilities as an ingredient, to dilute ingredients, for the cleaning of storage, treatment and packaging containers and cleaning equipment and premises. The use of such water is regulated by the Ministry for Primary Industries under the Food Acts. The essential requirement of these Acts is that water, like any other food processing input, must not be a source of hazards in food or feed.
10. For many food manufacturing businesses located in rural areas, bores and rainwater collection are essential sources for the water used in production and manufacture because town supply is simply not available. Typically, these are self-supplied although there are situations where water allocation issues may make it necessary for a producer or manufacturer to access water from a neighbouring or local property.
11. Where water used in production and manufacture of food and beverage is not sourced from a town supply, it will not necessarily be required to meet the drinking water standard if, due to the processing and nature of the final product, there is no risk to the final consumer. Instead, a different standard is prescribed in regulations (eg 'clean water') that is sufficient to ensure that food safety requirements are observed, taking into account the nature of the process in which the water is used and the final product itself.
12. The nature of the product is an important food safety consideration. Pasteurisation, retorting canned products, heat treatment generally, alcohol and steam sterilisation and many other food processing technologies kill or inhibit the development of pathogens in foods and feed.
13. Equally, the way that water is used in production, processing and manufacture is relevant to food safety. For example, water is used for cleaning processing equipment and storage containers – but this could never meet the drinking water standard because it is mixed with cleaning products. Such water is never consumed as part of the final product, even if it is used in the course of producing, manufacturing or storing the product.

Definition of 'drinking water'

14. The definition of 'drinking water' in the Bill is too broad. It does not make a clear distinction between regulated drinking water and water used in the manufacture of food, beverage and feed that is not supplied to consumers as drinking water. Such water is already regulated under food legislation.
15. Clause 6 of the Bill states as follows:
"6 Meaning of drinking water
In this Act, unless the context otherwise requires, drinking water—
 - (a) means water that is used for—*
 - (i) human consumption; or*
 - (ii) oral hygiene; or*
 - (iii) preparing food, drink, or other products for human consumption; or*
 - (iv) washing utensils that are used for eating and drinking, or for preparing, serving, or storing food or drink for human consumption; but*
 - (b) does not include bottled water that is prepared or manufactured by a food business, and is regulated, under the Food Act 2014."*
16. The use of the word 'preparing' in sub-clauses 6(a)(iii) and (iv) of the Bill, when read in the context of food legislation, can be read as capturing all water used in food manufacturing.

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17. The Food Act uses the word 'prepare' on multiple instances in a context where it includes or is interchangeable with the word 'manufacture'. For example, food is defined as "anything that is used, capable of being used, or represented as being for use, for human consumption (whether raw, prepared, or partly prepared)" [emphasis added].
 18. The Animal Products Act does not use 'preparing' to the same extent but focusses on 'processing' and 'manufacturing'. However, this raises the issue of whether 'prepare' is equivalent to 'process' and 'manufacture' when the term 'prepare' is used in just that way in the Food and Wine Acts.
 19. The Wine Act defines fruit and vegetable wine as "the product prepared from the complete or partial fermentation of any fruit, vegetables, grains, cereals, or preparations of fruit, vegetables, grains, or cereals, other than that produced solely from grapes" Mead is defined as "the product prepared from the complete or partial fermentation of honey" [emphasis added].
 20. Consequently, for food manufacturers, it is not possible to draw a clear line between 'preparing' and other food production steps.
 21. This creates the real likelihood that any water used in the production of food and beverage could be considered to be used in the preparation of a drink for human consumption, and therefore regulated as drinking water. This would impose a significant, duplicative and unnecessary cost upon businesses, particularly those in rural areas dependent upon sources of water other than town supply.
 22. It is significant that bottled water is specifically excluded from the definition of drinking water (clause 6(b)) in recognition of the fact that it is regulated under the Food Act. It is only logical that water used in the manufacturing of other food and beverages and equally subject to regulation under the Food Acts should also be excluded on the face of the Bill.

Self-supply for food and beverage manufacturers

23. NZFGC recognises that the reference to food production in the definition of drinking water is carried over from the existing legislation – albeit in a modified form. However, the potential for this definition to create problems is exacerbated in the Bill, because the Bill is significantly broader in scope in relation self-supplied water.
24. Under the existing *Health Act 1956*, a 'self-supplier' is excluded from the definition of a 'drink water supplier' and therefore from the obligations upon such a supplier. 'Self-supplier' is defined as follows:
***self-supplier** means a person who owns a drinking-water supply that is exclusively used to supply water to—*
 - (a) 1 property that is also owned by that person; or
 - (b) 1 or more buildings that are also owned by that person
25. Under the Bill, only a 'domestic self-supplier' is excluded from the definition and obligations of a 'drinking water supplier'. A 'domestic self-supplier' is defined as 'a stand-alone or single domestic dwelling that has its own supply of water'.
26. This is a major change which potentially brings within the scope of the new drinking water regime a whole class of self-supplied commercial food and beverage manufacturers that are already operating under the requirements of the relevant Food Acts. This would include, for example, the majority of rural wineries, the majority of farm dairies and potentially several major manufacturing facilities.

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27. The examples given for clause 10 of the Bill indicate that it was intended to capture some commercial food preparation activities with this policy change ('A café building supplied by a rainwater tank is not a domestic self-supply.') However, NZFGC is concerned that the implications of this change have not been fully considered and the unintended consequences are extensive.
28. There is potential for a very substantial overlap with the Food Acts, creating unnecessary cost and uncertainty for food businesses at a time when they are already under great pressure. It is not enough to place the burden of exemptions for overlaps and duplication when these are glaringly evident from the outset – and this is not limited to food and beverage manufacturers but also to hospitals, prisons, the Defence Force etc.
29. It is extremely unsatisfactory for the regulator to determine all these very clear and known duplications. Businesses and organisations should not have to wait until the Bill is passed, regulations promulgated, the regulator put in place, a decision made, and the necessary orders or notice issued in order to resolve an issue that could easily be avoided now through a few simple drafting changes. As well. Having these exemptions on the face of the Act makes it very clear to future industry entrants where their obligations lie without having to wade into the depths of subordinate legislation to determine this. Useability will be greatly enhanced through such an amendment to the Bill at this time.

Part 2 – Provisions relating to supply of drinking water

Register supply

30. Clause 23 of the Bill states:

“23 Duty of owner of drinking water supply to register supply

*(1) Every individual drinking water supply must be registered under **section 54**.*

*(2) The owner of a drinking water supply must ensure that the supply is registered in accordance with the requirements of **subpart 7**.*

31. The Food Acts require all food and beverage manufacturing businesses to be registered. This registration requirement is a costly duplication for businesses already registered.

Other duties

32. Other duties that appear to be duplicative are:

- Duty to supply safe drinking water
- Duty to comply with drinking water standards
- Duty to take reasonable steps to supply aesthetically acceptable drinking water
- Duty to provide sufficient quantity of drinking water
- Duties where sufficient quantity of drinking water is at imminent risk
- Duty to protect against risk of backflow
- Duty to ensure endpoint treatment
- Notification duties of drinking water supplier.

Drinking water safety plans

33. NZFGC is concerned with the potential application of 'drinking water safety plans' as referred to in clauses 30 and 31 in the Bill. Water used in the processing and manufacture of food and beverage is already regulated under the Food Acts and is specifically required to be included in food control plans, national programmes for food businesses, risk management programmes and wine standards management plans as appropriate. To overlay these with a drinking water safety plan is duplicative of requirements that are already part of an existing, world class legislative regime. Such duplication is strongly opposed.

Drinking water suppliers to keep records

34. Clause 37 of the Bill requires drinking water suppliers to keep and maintain a range of records. Records are already a feature of the plans and programmes mandated under the Food Acts. These form a key element of the verification and audit of compliance. Duplicating record keeping provisions is duplicative of requirements that are already part of an existing, world class legislative regime. Such duplication is strongly opposed.

Source water risk management plans

35. NZFGC is concerned with the potential application of 'source water risk management plans'. Water used in the processing and manufacture of food and beverage is already regulated under the Food Acts including source and is specifically required to be included in food control plans, national programmes for food businesses, risk management programmes and wine standards management plans. To overlay these with a source water risk management plan is duplicative of requirements that are already part of an existing, world class legislative regime. Such duplication is strongly opposed.

Wastewater

36. NZFGC is also concerned with the inclusion of provisions regarding wastewater, which are currently regulated under the *Resource Management Act 1991* and the *Local Government Act 2002*. NZFGC recommends these provisions should be scrutinised with a view to the potential downstream costs of compliance to businesses and consumers.

37. A specific concern relates to the broad definition of 'wastewater network', to which certain obligations in relation to wastewater are attached. 'Wastewater network' is defined in the Bill in clause 5 as:

"wastewater network means the infrastructure and processes used to collect, store, transmit through reticulation, treat, and discharge wastewater".

38. It appears from the Cabinet paper and Proposal paper that this is primarily directed at wastewater networks operated by local authorities or their subsidiaries. However, this definition could potentially capture the private wastewater treatment operations carried out by many food manufacturers under the terms of their Resource Management Act consents. This would again be a source of unnecessary compliance cost to food manufacturers. It is unclear to what extent "wastewater network operators" could be defined in a register made in accordance with regulations.

List of regulatory agencies

39. It is possible that, in light of the foregoing, the Ministry for Primary Industries should be included in the list of 'regulatory agencies' in clause 194(5).