



30 September 2022

Export Systems Policy
Regulatory Systems Directorate
Ministry for Primary Industries
PO Box 2526
Wellington 6140

Email: exportlegislation@mpi.govt.nz

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on *Modernising our export assurance systems: legislative options*.

Yours sincerely

Katherine Rich
Chief Executive



Modernising our export assurance systems: legislative options

Submission by the New Zealand Food & Grocery Council

30 September 2022

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on *Modernising our export assurance systems: legislative options*.
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 COMMENTS

3. NZFGC is strongly opposed to a new export legislative framework when there are export provisions in all the food related legislation currently administered by MPI or which are emerging (eg organics).
4. The animal product and wine export provisions have been developed over many years and are specifically tailored to the specificities of those exports. The wine industry has recently been through the exhausting regulation review process which covered the wine export regulations. There is absolutely nothing to be gained from animal products, wine or the bulk of food having to go through yet another costly legislative process.
5. The examples of why there is a need change are not compelling. The examples of non-food products such as legal harvesting could be covered in a much more narrowly focussed legislative option for those particular products.
6. We recommend that if the food and related products covered by the *Food Act 2014* (**Food Act**) for export need additional attention then that should be undertaken in a consistent way to align provisions across the *Animal Products Act 1999* (**Animal Products Act**) and *Wine Act 2003* (**Wine Act**) arrangements. At the same time, the issue of the export of trade samples under all three Acts, which has been a festering issue since the late 1990s and a constant barrier to trade, could be addressed.
7. The changes influencing trading partners are not new eg food safety, biosecurity and supply chain – they are simply the ongoing manifestation of innovation and the shrinking global environment. Importantly, every legislative framework brings costs – for industry, government and consumers. Many of these costs are already being borne by the Food and related products sectors and layering further costs in the current environment of rising input costs etc is totally opposed.
8. NZFGC does not consider that the opportunities identified in the Consultation Document are compelling enough to justify a legislative response for the food and related products sectors. Instead, we recommend an amendment to the Food Act to provide for further minimum export related provisions including for horticulture and grains and comparably more narrowly scoped export legislation for other products if deemed necessary.
9. NZFGC very strongly opposes the minimum legislative tools and increased visibility in the Legislative Options for the food and related product sectors. If there is a specific deficiency identified, the Food Act could be amended further as it has 12 times already since commencement. There may be some merit in legislation for other products (eg forestry and fibre) but this is best responded to by the relevant businesses/ associations.

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10. NZFGC considers it of great importance not to add to regulatory complexity for the food and related products sectors but rather amend the Food Act if the need for more extensive export provisions is sustained.
 11. In any case, NZFGC strongly recommends that the selected option that is determined be advised publicly (not just to the Minister) and consulted on further. If legislation proceeds, we recommend an exposure draft be publicly consulted on.

DETAILED COMMENTS

3. Introduction and need for change

12. NZFGC is strongly opposed to a new export legislative framework when there are provisions in much of the food related legislation currently administered by MPI or which are emerging (eg organic product exports are covered in the Organics Bill, Part 3 Imports and Exports; Assurance of organic status for international markets); The bill as introduced provides for the chief executive to specify export requirements, or restrictions on products described as organic and there is a specific provision on official assurances¹).
13. The examples of why there is a need change are not compelling. The examples of non-food products such as legal harvesting could be covered in a much more narrowly focussed legislative option for those particular products.
14. We are particularly concerned at the prospect of animal products and wine being in scope when the export provisions of the underpinning legislation are finely balanced and encompassing. We are as concerned that if the food and related products covered by the Food Act for export need additional attention then that should be undertaken in a consistent way to align with the Animal Products and Wine Act arrangements. At the same time the issue of the export of trade samples, which has been a festering issue since the late 1990s could be addressed.
15. The changes influencing trading partners are not new eg food safety, biosecurity and supply chain – they are simply the ongoing manifestation of innovation and the shrinking global environment. Importantly, every legislative framework brings costs – for industry, government and consumers. We comment on this as necessary throughout this submission.

Q7 Overall, how strongly do you agree or disagree with the proposed objectives? Please explain your views

Q8 In your view, have we missed any objectives?

16. NZFGC considers the objectives appropriate for any legislative proposal. These have been central to the development and operation of food related legislation to date. Their application for any non-food export related legislation is therefore appropriate.

4. Te tiriti o Waitangi/Treaty of Waitangi

17. NZFGC supports the inclusion of Te Ao Māori perspectives in any development in the future.

5. Context

¹ clause 47 *Organic Products Bill*

https://www.legislation.govt.nz/bill/government/2020/0221/latest/LMS312665.html?search=ta_bill%40bill%20bc%40bcurn%40bn%40rn_25_a&p=1

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18. Several questions are asked under this heading but they are not directly related to legislative imperatives eg how do you currently receive information on exporting. Communication does not, in our view, require legislation. A registration system might make it easier for MPI to communicate with exporters but it is a heavy-handed approach to what could be effected by non-regulatory mechanisms or, for food related sectors, utilising existing registration systems.
19. The Sapere analysis referred to registration as a time saver for Government in implementing export assurance schemes so that it could have more efficient and consistent communication with the entire export sector². The reality is that the cost of registration falls heavily on the registrants both in their administrative time, and cost recovered compliance and registration system administration (reapplication and assessment annually and compliance costs). In any event, there is already an export registration system in place – if a business is exporting goods worth more than NZ\$1,000 then that business must have a New Zealand Customs Service client code. Client code applications and information on goods departing New Zealand need to be submitted through the Trade Single Window which is accessible by MPI.
20. It is also true that once a registration system is in place, it becomes the platform for a range of many other regulatory requirements and measures over time. This is evidenced in the Food Act arena where services are currently being considered for addition to the mandatory registration requirements for food businesses and importers to operate in New Zealand. The additional services are:
- risk management through improved standards setting
 - additional advisory and education support for food businesses to meet their regulatory requirements,
 - oversight and coordination of regulatory partners to ensure that food businesses receive a consistent level of service, and
 - monitoring to provide assurance the system is working well and to proactively identify systemic issues and non-compliance.
21. We are also concerned at the potential interface difficulties between the Food Act and an export act given the difficulty and costly overlaps that have been experienced with the Food Act/ Wine Act /Animal Products Act interfaces.

Q13 If you are an exporter, how well does the current approach work for you? Please explain your views

22. NZFGC understands its members find, overall, the current approach works well.

Q14. Are there any improvements that could be made to the current approach that would make exporting easier for you? Please provide detail.

23. The most pressing area of improvement is in facilitating the export of commercial samples. This area is the single most frustrating aspect of, and barrier to, export growth. The delays in getting commercial samples to importing countries has proven a continual and lingering barrier to export development with New Zealand companies missing out on opportunities as a result.

Q15. How do you currently receive information on exporting and export regulation, and what changes would make it easier for you?

24. Any administrative changes would be positive. Costly legislative measures should be a very last resort where existing systems are available.

² p20 *Analysis of benefits and costs of proposals for a new legislative framework for exports of food and other primary sector products.*

6 Opportunities for improvement

25. The opportunities comprise the setting of blanket requirements, addressing urgent risks to market access and setting offences and penalties. The reason there has not been a need to deal with urgent risks in the past is because of their infrequency and the generally small share of export revenue not covered by existing legislation. Even in a post-Covid environment the food and related products (including horticulture) are expected to remain plateaued or with very modest growth for several out years³.

26. NZFGC does not consider that the opportunities are compelling enough to justify a legislative response especially with existing legislative provisions and all product input costs continuing to increase. We suggest an amendment to the Food Act to provide for a minimum of export-related provisions for food and related products including horticulture and grains (which includes offences and penalties that could be added to). Animal products and wine would be excluded as already having well-developed export provisions. A more narrowly scoped export legislation for other products MPI is proposing such as forestry products might be considered.

Q16. What effects have there been on your business from changes to the international trading environment?

27. NZFGC members have across the board, been affected by the logistics barriers, increased input costs, supply chain disruptions and barriers to securing skilled staff presented by the Covid 19 pandemic. MPI already knows this from its *Situation and Outlook Reports* (most recently June 2022). The most recent report identified: climate change, demographic pressures, geopolitical disruptions, higher input costs, disruptions to supply chains, uncertainty about international partners' commitment to the rules-based trading system, technological disruption and changing consumer preferences⁴ (p13) This has been universal.

28. The proposed legislation does not, nor could it be expected to, comprehensively address these issues. In fact, the experience of Covid-19 demonstrated that a pan-Government response was more often the most effective response.

Q17. What are the emerging export related challenges for your business over the next 5, 10, 20+ years?

29. As noted above, the challenges are logistics, supply chain, sustainability, consumer preferences, online shopping and the impact of future pandemics will all continue to develop over the medium to long term. The frequency of pandemics is increasing over-time and all originate in animals and potentially impact food – BSE, Ebola, SARs, Covid etc.

Q18. Do you think the current export regulation is sufficient to address these challenges?

30. NZFGC is absolutely convinced that the existing legislation for animal products and wine is sufficient. The Food Act might need amendment to match the provisions of animal products and wine. The current regulation has been added to on a needs basis with regulatory requirements tailored to meet these challenges rather than relying on broad-brush, generic legislation. Pan Government responses have been effective. As a result, a more narrowly scoped export legislation for other products MPI is proposing such as forestry products would complete the legislative underpinning in a least-cost way.

Q19. How strongly do you agree or disagree with the opportunities presented in the consultation document?

31. NZFGC strongly disagrees that the opportunities are compelling enough to justify a legislative response especially with all product input costs continuing to increase. We

³ p12 *Situation and Outlook Report June 2022*

⁴ p13 *Situation and Outlook Report June 2022*.

suggest an amendment to the Food Act to provide for a minimum of export related provisions for food and related products including horticulture and grains (including the addition of offences and penalties to those already in the Food Act). This would result in more narrowly scoped export legislation for other products MPI is proposing such as forestry products and fibre.

32. We note that there are many programmes that are recognised eg Japan and Switzerland's recognition of New Zealand's Official Organic Assurance Programme (OOAP) as equivalent to their regulations for plants and processed plant products. If legislative export requirements were to enable equivalence, then it would have been the option considered in relation to these programmes.

7 Options

33. Four options are considered: Status quo, Legislative Option 1 (enabling export legislation), Legislative Option 2 (Option 1 + minimum legislative tools for all products) and Legislative Option 3 (Options 1 and 2 + Government visibility over all food and other primary exports from the outset). All four options are assessed against criteria of: certainty, confidence, effectiveness, proportionality.

Status quo

Q20. *How strongly do you agree or disagree with continuing the status quo?*

34. NZFGC strongly supports the status quo with additions as necessary eg an amendment to the Food Act for export specific provisions. We note that the Food Bill, when presented to Parliament in 2010⁵ included the expectation that:

*“The bill seeks to maintain New Zealand’s reputation as a producer **and exporter of food** by providing an efficient, risk-based regulatory regime that places a primary duty on persons trading in food to ensure that what is sold is safe and suitable.”* (NZFGC emphasis).

35. The purpose of the Food Act includes the provision to “maintain **confidence** in New Zealand’s food safety regime”⁶ section 4(c) and “provide **certainty** for food businesses in relation to how the requirements of this Act will affect their activities;”⁷ (NZFGC emphasis).

36. The Food Act defines ‘export’, includes ‘export’ in the definition of ‘sale’ and already has several sections relating to export. As such, regulations relating to export standards might be made. New provisions could be added relating specifically to export assurances.

37. NZFGC strongly supports status quo for animal products and wine. This is on the basis that it would avoid unnecessary change (and associated costs), minimise confusion and lack of certainty; and most importantly prevent blurred legislative interfaces.

38. Amendments to food legislation have been made where enhancements have been justified. This was the approach taken with traceability provisions when it was realised that there were interface issues preventing effective traceability mechanisms to be implemented. The Food Safety Law Reform Bill was described by the Government as necessary “...so as to better protect human health, and maintain and strengthen New

⁵ Food Bill as further reported by the Primary Production Committee [Food Bill 160-3 \(2010\), Government Bill – New Zealand Legislation](#))

⁶ section 4(c), Food Act [Food Act 2014 No 32 \(as at 28 October 2021\), Public Act – New Zealand Legislation](#).

⁷ section 4(e), Food Act [Food Act 2014 No 32 \(as at 28 October 2021\), Public Act – New Zealand Legislation](#).

Zealand's reputation as a supplier of safe and suitable food both domestically and internationally”⁸.

39. We recognise there could be delays where legislation might be needed but if the imperative is so urgent then it *will* happen eg the 5 days for facilitating the take of bovine colostrum in the early 2000s and most recently, the legislation to declare Monday 26 September 2022 a public holiday.

Q21. *If the status quo option was taken, what would be the impacts on you or your business?*

40. NZFGC members would generally continue as before under the status quo and be pleased to do so. We note that several ‘cons’ listed in the Consultation Document can currently be addressed without the need for the identified Legislative Options. This would result in the Status Quo for food and related products being much more favourable. The response to the cons is:

- *Certainty* - difficult to navigate the current export systems as an exporter – MPI has an obligation to address this for existing legal requirements and administrative arrangements; consistency across existing systems in terms of the regulatory tools that are available to the Government to manage exports – MPI has had many opportunities to address this with amendments to existing and prospective legislation (eg organics). This is only an issue for non-food products
- *Confidence* – there is no constraint ability to negotiate equivalence agreements or seek systems recognition for food related products.
- *Effectiveness* – constraint in responding to emergency situations because of differences across existing assurance systems. This is only an issue for non-food products where non-regulatory solutions can always be found over time.
 - No barrier to responding to trade disruptions or new importing country requirements for food related products. This is only an issue for non-food products
 - Existing legislation with amendment to the Food Act mean trade opportunities are realisable. Potential delays caused by the need for new legislative systems are only issues for non-food products
 - tools to address non-compliance and maintain regulatory system integrity are currently available for food. This is only an issue for non-food products

Q22. *Do you have any other comments or feedback on the status quo?*

41. We repeat that that the Legislative Options presented are not necessary for food and related products including animal products and wine.

Legislative Option 1

Q23. *How strongly do you agree or disagree with Legislative Option 1?*

42. NZFGC does not agree with Legislative Option 1 for food and related products or animal products or wine – this could be addressed through a limited amendment to the Food Act. The animal product and wine export provisions have been developed over many years and are specifically tailored to the specificities of those exports. The wine industry has recently been through the exhausting regulation review process which covered the wine export regulations. There is absolutely nothing to be gained from animal products, wine or the bulk of food having to go through yet another costly legislative process. There may be some merit in legislation for other non-food products but we are not expert in such products and leave decisions on a more narrowly scoped export legislation for other products such as forestry and fibre to the relevant businesses/associations.

Q24. *If Legislative Option 1 was implemented, what would be the impacts on you or your business?*

⁸ [Food Safety Law Reform Bill - New Zealand Parliament \(www.parliament.nz\)](http://www.parliament.nz)

43. For the food and related products sectors we consider such regulation to be an unnecessary and costly regulatory burden for the foregoing reasons.

Q25. Thinking about your current business operation, if Legislative Option 1 was implemented, what are your thoughts on any additional costs that your business may incur?

44. As noted above, the food and related products sectors are already paying for a broad range of regulatory provisions. Further costs would be contrary to best practice minimum regulatory intervention.

Legislative Option 2

Q26. How strongly do you agree or disagree with Legislative Option 2?

45. NZFGC strongly opposes Legislative Option 2 for food and related products – this could be addressed through a limited amendment to the Food Act. There may be some merit in legislation for other products (eg forestry and fibre) but this is best responded to by the relevant businesses/associations.

Q27. Overall, how strongly do you agree or disagree with the minimum legislative tools we have chosen?

46. NZFGC strongly opposes the minimum legislative tools in Legislative Option 2 for food and related products sectors – should additional export measures be required, this could be addressed through a limited amendment to the Food Act. There may be some merit in legislation for other products (eg forestry and fibre) but this is best responded to by the relevant businesses/ associations.

Q28. What other minimum legislative tools might be useful to include?

47. NZFGC does not consider any additional minimum tools are necessary.

Q29. If Legislative Option 2 was implemented, what would be the impacts on you or your business?

48. For the food and related products sectors we consider such regulation to be an unnecessary and costly regulatory burden for the reasons set out in preceding sections of this submission.

Q30. Thinking about your current business operation, if Legislative Option 2 was implemented, what are your thoughts on any additional costs that your business may incur?

49. As noted above, the animal products, wine and food and related product sectors are already paying for a broad range of regularly provisions. Further costs for these industries would be contrary to best practice minimum regulatory intervention and, in the current environment of rising input costs, difficult supply chains and barriers to skilled workers, further legislation would be total anathema. We note that the extensive uncertainties in the Sapere analysis for Legislative Options 2 and 3 would negate proceeding at this time.

Legislative Option 3

Q31. Overall, how strongly do you agree or disagree with the minimum legislative tools we have chosen?

50. NZFGC opposes in the strongest possible terms, the minimum legislative tools and increased visibility in Legislative Option 3 for the food and related product, animal products and wine sectors. There is already visibility through the underpinning legislation for these sectors and if more export visibility was required for food than the Food Act could be amended further. There may be some merit in legislation for other products (eg forestry and fibre) but this is best responded to by the relevant businesses/ associations.

Q32. Do you currently have to register or otherwise provide information about your exporting business to MPI or any other government agency? If so, what information do you provide and to whom?

51. The food and related products, animal products and wine businesses already provide information to MPI under the relevant legislation administered by MPI and to the New Zealand Customs Service. This information is accessible by MPI.

Q33. If Legislative Option 2 was implemented, what would be the impacts on you or your business?

52. For the food and related products, animal products and wine sectors, we consider legislation as described for Legislative Option 3 to be duplicative, unnecessary, costly and contrary to Government best practice regulation.

Q34. Thinking about your current business operation, if Legislative Option 3 was implemented, what are your thoughts on any additional costs that your business may incur?

53. As noted above, the food and related products, animal products and wine sectors are already paying for a broad range of regulatory provisions under the Food Act. Further costs would be contrary to best practice minimum regulatory intervention and in the current environment of rising input costs, difficult supply chains and barriers to skilled workers, further legislation would be total anathema. We note that the extensive uncertainties in the Sapere analysis especially for Legislative Options 2 and 3, would negate proceeding at this time.

Next Steps

54. This consultation proposes a decision on the option to pursue being made following the close of submissions, advised to the Minister of Agriculture and proceeding to legislative drafting and then through the Parliamentary process.

55. NZFGC strongly recommends that the selected option determined be advised and consulted on further and that if legislation proceeds, an exposure draft be publicly consulted on. Leaping directly from policy concepts and option to Parliamentary Committee for the next opportunity for industry to have visibility is neither transparent nor best practice.

Q35 Among the four options set out in the discussion document (the status quo and three legislative options), which option or options do you prefer? Please describe why.

56. As clearly set out in the foregoing, NZFGC strongly prefers the status quo for the food and related products, animal products and wine sectors. These sectors are already subject to specific legislative underpinning. Should further provisions be considered necessary then limited amendment to the Food Act could be made and to all three food acts for the export of commercial samples.

Q36. Are there alternative option(s) that should be considered? Please describe your alternative option(s) and its pros and cons.

57. NZFGC considers that no other option is necessary for animal products and wine sectors. We have set out the option of an amendment to the Food Act for the food and related products sectors should this be deemed necessary on analysis of the Food Act. We note that 'export' already features in the Food Act and recommend this be built on if deemed necessary. There have been 12 instances of amendment to the Food Act since its commencement (see below) so this is a common occurrence:

- Secondary Legislation Act 2021 (2021 No 7): [section 3](#)
- [Food \(Continuation of Dietary Supplements Regulations\) Amendment Act 2021](#) (2021 No 2)
- Public Service Act 2020 (2020 No 40): [section 135](#)
- Education and Training Act 2020 (2020 No 38): [section 668](#)
- Privacy Act 2020 (2020 No 31): [section 217](#)
- COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13): [section 3](#)
- Statutes Amendment Act 2019 (2019 No 56): [Part 18](#)

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- Customs and Excise Act 2018 (2018 No 4): [section 443\(3\)](#)
 - Food Safety Law Reform Act 2018 (2018 No 3): [Part 1](#)
 - District Court Act 2016 (2016 No 49): [section 261](#)
 - Senior Courts Act 2016 (2016 No 48): [section 183\(b\), \(c\)](#)
 - Food Regulations 2015 (LI 2015/310): Schedule 1 [clause 7](#)

37. If you have any other comments or suggestions, or anything we have missed, please let us know. Feel free to attach documents or links to your submission.

58. NZFGC reiterates the importance of not adding to regulatory complexity for food and related products, animal products and wine sectors but rather amend the Food Act if the need for more extensive export provisions is sustained. In any case, NZFGC strongly recommends that the selected option determined be advised and consulted on further and that if legislation proceeds, an exposure draft be publicly consulted on.