



PRACTICE NOTE 11

March 2020

FOOD ACT 2014

Cost Recovery Guidance for Territorial Authorities

Purpose

This document sets out guidance for Territorial Authorities (TAs) on some of the areas in which they can make provision for cost recovery in their fees and charges under the Food Act 2014.

Approach

This document draws on the content of the Food Act 2014, practice recommended by the Ministry for Primary Industries (MPI) and the current practice of a number of TAs. It has been developed in collaboration with multiple TAs and stakeholders within MPI.

Intended Audience

TA staff, Regulatory Managers with Food Safety oversight.

Context

Section 205 of the Food Act 2014 authorises TAs to set fees to recover costs related to registration, verification, compliance and monitoring activities. TAs are required to take into account cost recovery principles of equity, efficiency, justifiability and transparency as far as is reasonably practicable. The Act also allows for averaging of costs and targeting of costs to different classes of persons or businesses who receive service from the TA.

Any fees or charges that are set should be created in line with the special consultative process of the Local Government Act 2002.

In setting fees and charges, a broad range of costs and areas of activity can be considered. This guidance outlines issues that can be considered when setting cost recovery fees and charges.

Fees and charges should be established in line with treasury principles. A TA charging fees under the Act

should be able to demonstrate:

- A documented approach to creating its fees and charges, including the legal basis for charging, the rationale for charges, and sources of revenue pertinent to Food Act activities.
- An understanding of the objectives sought by introducing the charging regime and any trade-offs that have been necessary.
- A sound cost-allocation process, with indication of any assumptions.
- A clear audit trail showing the assessment of costs incurred or forecast. The way in which the charges have been determined.
- A performance framework against which their cost-recovery activities are measured.
- Lines of accountability for the activity being cost recovered and the related charges.
- A plan for implementation, monitoring and review.

Who should pay?

Most TAs are already aware of the concepts of public and private good as part of their fee-setting process. Who pays for a service or good is determined by the nature of the good or service. There are three types of good that determine the appropriate source of funding.

These are:

- **Private Good** – people can be excluded from the benefits of a private good, if they do not pay for it. Its use by one person conflicts with its use by another, resulting in additional cost in providing the service. Private goods should be funded by their users or beneficiaries, or those whose actions create the risk. Examples: verification of a food business, or provision of food safety information. There may be circumstances where individual TAs elect to subsidise private good activities (to stimulate commerce in their region, for example). However these decisions should also consider equity principles, not only between different business activities within the TA region, but also with similar food businesses nationwide).
- **Club or Industry Good** – a club good has some characteristics of a public good in that its use by one person does not detract from its use by another. Beneficiaries may be a narrow identifiable group. Example: general compliance monitoring.
- **Public Goods** – excluding people from the benefits of a public good is either difficult or costly and its use by one person does not prevent its use by another. Public goods should generally be ratepayer funded. Examples: provision of general food safety information, enforcement and prosecution actions associated with issuing infringement notices.

These facets should be considered and assigned in line with individual TA policies.

Areas that can be considered in fee setting

It can be challenging to identify all of the costs associated with carrying out registration authority functions. Some may not be immediately obvious and the Act puts in place new areas of responsibility that

may generate activity that requires cost recovery. The following are some of the likely costs that should be considered prior to a TA setting fees and charges.

Administrative costs

This could include physically handling applications, data entry, organising work activities, data entry (for your organisation or MPI), communication with applicants, general enquiries. Even incidental costs such as stationery and printing should be considered as part of a robust cost-recovery process.

TAs generally maintain databases of information related to registrations and verifications under the Act. Where the bulk upload of verification or enforcement data is not possible TA staff are required to update MPI's Titiro database manually. All of these activities are cost recoverable.

Advice provision

TAs may need to provide advice about any aspect of its food safety functions. This may encompass process, regulatory, technical or general food safety advice.

For example, staff working with a new business as a verifier may need to provide guidance on when to measure temperatures in accordance with the Simply Safe & Suitable template Food Control Plan, regulatory and verification requirements around temperature, how to effectively measure the temperature of cooked food, and why those controls or requirements exist.

Staff undertaking Registration Authority functions will likely need to provide advice on registration and application processing issues.

Food Safety Officers (FSOs) will likely need to provide advice or guidance to food business operators in the course of their duties.

Corporate Overheads associated with the provision of Food Act Functions

These should be clearly identified, quantified and realistic. This can cover activities such as staff recruitment, strategy formulation, website

maintenance, communications, information technology and performance management, as examples.

Educational or monitoring initiatives

In the future, as part of its activities, MPI and the co-regulatory priorities panel may determine that it is appropriate for food safety educational initiatives to occur. These initiatives may be sporadic and targeted to specific food safety issues but may directly involve TA staff. Nothing prevents individual Registration Authorities from undertaking food safety educational initiatives under their own recognisance.

Equipment, Hardware, Software

Fulfilling the responsibilities of the Act (and the previous statutory regime) requires a certain amount of equipment and ongoing maintenance. Different TAs take different approaches to their Food Act duties, but all FSOs or verifiers will have some fundamental equipment needs. Examples include: calibrated and reference thermometers, sampling and storage equipment, access to a chain of evidence lockable refrigerator.

Hearings associated with Food Act Activities

Different TAs view the process of holding hearings differently, however consideration should be given to whether it is appropriate for this activity to be funded from general rates, as part of registration fees, or directly cost recovered from applicants. As hearings can involve substantial numbers of officers, support staff and Councillors, depending on how these are structured, the cost of holding a hearing that can be triggered by the Act can be considerable.

Investigations

The Act makes provision for the cost recovery of compliance and monitoring activities. Where it can be shown that a food business has created an offence, cost recovery becomes less complex. Unfortunately, a proportion of all investigations have no clear outcome. These events may be cost recovered as part of a registration process, or individual TAs may decide it is

in the community's best interest such investigations occur and funding it all or partly from rates is desirable.

Legal Advice

As a relatively new piece of legislation, the Act is undergoing a considerable degree of interpretation. MPI is not in a position to be able to provide legal interpretations for situations that will evolve for TAs under the Act. It is crucial that TA staff can access, as required, competent legal advice on issues they will encounter and this should be budgeted for.

There should also be budgetary provision for legal action, review of enforcement documentation and advice to Councillors should that become necessary. This is difficult to budget for reliably and may need to be cost recovered in the following financial years.

Liaison with and information provision to MPI

TAs will need to interact with MPI on an ongoing basis. There will continue to be regular reporting required of Registration Authorities to ensure that New Zealand continues to have a demonstrably robust food regulatory system. This type of activity of Registration Authorities should be cost recoverable.

Licence fees for Titiro

Use of the centralised Titiro database will attract licence fees for more than two users per verification agency. For the 2019/2020 financial year, this is estimated to be \$600 per additional user.

MPI programme charges

The Act makes provision for MPI to create fees that can be collected by TAs and passed on to MPI. The administration of this activity should be cost recoverable.

Quality Management Systems (QMS)

Whether or not a TA decides to undertake verification activities, they may choose to institute a QMS as part of a quality approach to work practices. There are

costs associated with maintenance, record handling and assessment. It is reasonable that a proportion of those costs are passed on via fee setting.

Training specific to Food Act responsibilities

The Food Act 2014 introduced a range of new functions for TAs to administer. Activities such as verification requires the adoption of new skills and ongoing professional development. It is likely requirements around ongoing professional development will be set out over the next few years. In addition the range of powers available to TA FSOs has grown significantly. It is important that officers are afforded the opportunity to train in the execution of these powers, both to support food safety practices nationally and to minimise risk to the respective organisations they work for.

It is appropriate that additional training required for these new responsibilities be budgeted for and cost recovered.

Travel

Travel time, and the mode of travel adopted, should be considered as part of robust cost recovery model. TAs will adopt a variety of approaches to this issue depending on local drivers and geography.

Verification Activities

For the majority of the time, it is likely that verification activities will be directly cost recovered from recipients of the verification. Fee setting for

verification activities will hinge upon many of the elements set out above.

Exemptions from fees

The Food (Fees and Charges) Regulations 2015 makes provision for TAs to be able to exempt waive or refund fees. The decision to waive fees is open to all TAs. Regulation 5 sets out circumstances in which waiving a fee may be desirable. When this occurs:

- The amount of the fee is less than the reasonable cost of recovering the fee.
- The TA has made an administrative error.
- The TA is satisfied that it would be unreasonable or unfair to require payment of the fee.
- The TA considers that more efficient processes can be used (for example, batching services), resulting in lower costs.

Summary

TAs have a number of responsibilities set out under the Food Act 2014 and this work requires a source of funding. The Act clearly empowers TAs to recover costs associated with Food Act activities. It requires them to be mindful of the principles of equity, efficiency, justifiability and transparency. Nothing in the Act prevents TAs from subsidising fees and charges to whatever extent they believe appropriate (to promote economic growth, for example). Where it is considered appropriate, a TA can exempt, waive or refund fees associated with the Act.

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