



Response to the

*Discussion Paper on Proposals for
Improving Food Safety and Food
Regulatory Transparency in the ACT*

Lodged on behalf of

the members of ClubsACT

30 September, 2011.

General Comments

There is a clear and undisputed need for the public to have confidence in the food safety practices of licensees and the quality and safety of the food that is served. Trust and confidence in food standards and practices of licensees requires transparency in how the standards are enforced.

However, the need for this review has not been established.

There is insufficient information in the Discussion Paper to adequately brief respondents on the need for a review. The following statement included in the Background section of the Discussion Paper is the closest the document comes to providing any context for the review:

“However, it is estimated that each year in the ACT alone, there are approximately 87,700 cases of foodborne illness at an estimated cost to the community of \$60.9 million (2003)”

The figures included in this statement are dubious at best and are 8 years old and do not provide any sound basis for the review nor sufficient information for respondents to provide useful submissions.

The document would have been better served if information was included regarding recent compliance activity which received significant media attention and is evidently a source of concern for Health Protection.

However, it needs to be stated at the outset that a thorough assessment of why there has been a spike in non-compliance would be of much greater use in addressing those problems and ensuring greater compliance instead of the process that is underway now.

Indeed, none of the proposals contained in the Discussion Paper are likely to have any discernable impact in addressing the issues which are the source of the recent spike in non-compliance that has apparently been seen in the ACT.

Review of Current Procedures and Practice

An examination of what processes and procedures Health Protection Service (HPS) currently undertake and what improvements can be made should be a necessary first step before we look at further regulation.

An increased effort in ensuring all licensees understand their obligations with respect to food safety standards and food regulation would probably be of value. As an example, providing information on food safety to licensees in a number of different languages would appear to be a sensible new initiative.

It needs to be determined whether recent instances of non-compliance were as a result of licensees knowing the standards but failing to meet them or as a result of a lack of knowledge of the standards.

Prior to any proposals that relate to the food industry are suggested, the Health Protection Service should be subjected to an external, thorough and transparent review to ensure its policies and procedures are as effective as possible.

This is a necessary and logical step to take before introducing any of the measures suggested in the Discussion Paper.

Regulatory Impact Statement

ClubsACT welcomes the fact that any proposed changes will be subject to a thorough Regulatory Impact Statement (RIS) process.

Such a process will ensure that any proposed measures will be assessed against stringent cost-benefit criteria and the impact on the food sector will be known to the ACT Government.

The RIS needs to be a thorough and consultative process and not work from the assumption that further regulation is necessary but genuinely assess each proposed measure against rigorous cost-benefit and effectiveness standards.

Scores on Doors

Key Questions

1. Do you think a more transparent regulatory system will result in consumers changing their preferences?

Potentially. However this is not necessarily a desirable outcome.

As we understand the 'scores on doors' approach, venues will be graded based on their last inspection and this grade will be converted into a score which will then be displayed at the venue.

ClubsACT notes that each score represents how close a venue is to being totally compliant as opposed to whether a venue is compliant or not. So a venue that might receive an 'A' or five stars was simply compliant across more criteria than a venue that received a 'C' or three stars. It is important to understand that the venue that received the C was still compliant with food standards.

The fundamental question that a scores on doors system poses is can one venue be any more or less compliant than another and if the answer is yes, should venues be penalized for being less compliant than others even though they are still compliant?

This is a very important question given international experience shows that venues which display a lower grade suffer a reduction in revenue compared to those with a higher grade.

2. What types of food establishments do you think should be included in a 'Scores on Doors' scheme?

If a scheme was introduced, all venues licensed to serve food should be able to participate.

However, based on the information provided to date, ClubsACT does not support a scores on doors or similar scheme if venues will be mandatorily required to display their grading. A voluntary scheme which provides some incentive for venues to improve standards whilst not forcing any venue to participate would be preferable.

3. What do you see as the main cost drivers of a 'Scores on Doors' scheme? (i.e. inspectors, additional preparation time, administration costs etc)

This will depend largely on the scheme that is adopted. Obviously any scheme will involve extra costs relating to its establishment and the necessary education campaign which will have to be undertaken to ensure the public has a good awareness of the scheme and its operation.

Further, a licensee's score should only be valid for a certain period of time so there may be an increased inspection rate which will incur added costs.

Generally speaking it is difficult to comment on the potential costs but it is clear that any scheme will more likely than not incur additional costs.

4. What do you see as the key benefits of introducing a 'Scores on Doors' scheme?

Any scoring system may provide an incentive for venues to try and achieve a top score and therefore improve their compliance levels, however it must be stated that different venues will clearly have different capacities to make improvements to their compliance levels.

The Scores on Doors approach may provide consumers with more information about a venue but there are some questions about the value of that information and whether it will be an effective measure to improve transparency.

5. Should the frequency of inspections vary depending on performance (previous ratings), risk classification of the business or any other criteria?

There is a total lack of information in the Discussion Paper regarding current Health Protection Service practices and processes which is unhelpful however as a matter of principle, the only circumstance in which a venue should be subjected to a higher inspection rate than others is where it has previously failed an inspection and has been deemed non-compliant.

However, questions regarding inspection rates seem to be beyond the scope of the Discussion Paper and are not strictly relevant to the Scores on Doors scheme. Moreover, it is unreasonable to expect substantive responses to such a question without providing any supporting information about current procedures, assessment criteria and risk classifications.

6. How much time do you think there should be between inspections?

Inspection frequencies will probably be different depending on the circumstances of each venue. It would be fair to assume that there is a 'standard or minimum inspection frequency' and a higher rate of inspection for venues that require it as per the previous question.

In the context of any scheme which requires venues to display their previous assessment as a score, the frequency of inspections should be yearly. If the purpose of such a scheme is to inform the public, than an inspection regime which allows venues to display a score on their door which relates to an inspection which took place more than a year ago is counterproductive.

7. What information on ratings or inspections do you think should be made available to the public?

As much as possible. One of the greatest dangers of a scores on doors scheme is that the information can be misinterpreted or misunderstood by the public. The information regarding inspections and how they convert to ratings should be contained in a publicly accessible website rather than displayed at the venue itself.

8. What re-inspection and/or appeals mechanisms do you think should be in place to support the scheme?

Again, it would have been helpful if the Discussion Paper provided some information regarding what mechanisms currently exist.

Notwithstanding that, licensees should have the ability to request a re-inspection if they feel the first inspection in some way resulted in an unfair result or was conducted inappropriately. Specifically, licensees should have the option to request one re-inspection and be able to ultimately appeal the outcome to a body which is independent of Health Protection Service. One approach is to establish a board of suitably qualified persons to hear appeals.

All licensees presumably retain the right to appeal decisions to the Administrative and Civil Appeals Tribunal (ACAT) however it is important to provide a mechanism for disputes to be resolved before needing to be heard in ACAT.

9. What do you see as the key risks or implementation issues of a 'Scores on Doors' scheme?

ClubsACT has a number of concerns regarding a 'scores on doors' approach. Broadly speaking, whilst licensees should be encouraged to reach and maintain the highest standards of compliance possible, venues should not be forced to display their score or grade on their premises.

Given the lack of current knowledge of food standards and how they are applied and assessed amongst the general public, there is very considerable risk that any scoring system will be misinterpreted or misunderstood by the public which will more likely than not, lead to adverse impacts on licensees.

A very significant amount of work would need to be undertaken by HPS including a widespread education campaign to ensure any scheme was well understood by the public.

There are also questions around whether HPS inspection results can fairly be translated into a score or grade which is meaningful to the public and genuinely representative of a venue's performance.

More broadly, the Scores on Doors approach will have a not insignificant revenue impact on venues. International experience demonstrates that venues with lower scores suffer a fall in revenue.

This is not an outcome the ACT Government should be encouraging given every venue that has a score, whether it be a 'C' or an 'A' or 3 Stars or 5 Stars, are all compliant with the food safety standards.

To put it in simple terms, venues should not be penalized financially or in any other way when they are complying with the relevant standards and any Scores on Doors scheme will lead to such a result.

10. On balance, would you support a 'Scores on Doors' scheme in the ACT?

Based on the information that has been provided, ClubsACT does not support a Scores on Doors scheme.

However, in the interests of ensuring the public has access to information regarding a licensee's compliance with the food safety standards, ClubsACT would support information about inspection results being made available on a website.

Other Measures to Improve Transparency

Key Questions

1. What impact do you see the mandatory display of closures notices having on businesses?

There will undoubtedly be an impact on venues if they are forced to display the reason for temporary closure is as a result of a serious failure to comply with food safety standards.

The likely impact will be ongoing and certainly beyond the time at which the venue has passed a subsequent inspection.

The key question is whether venues that have been forced to close temporarily should be placed in a position where they suffer an ongoing impact even after they have passed a subsequent inspection?

Again, it would be the position of ClubsACT that the ACT Government should not introduce any measure which would impact unfairly on licensees.

2. What impact would the creation of a register of convicted food businesses have on the business?

See response to Key Question 1.

3. Who do you think might consult such a register (consumers, media, lenders, suppliers etc)?

All of the groups listed in the question are likely to consult the register.

4. Do you think that the community should be informed when a business is closed for food safety issues?

The public should have access to information on a website which provides information on venues which are closed as a result of food safety issues. The website should contain as much information as possible about the assessment outcomes and the process for re-inspection and subsequent results.

This will ensure that the public is fully informed not only about venue closures but will also have an understanding about the process for the venue to once again become compliant.

5. What do you see as the key risks and implementation issues of these proposals?

The major risk associated with these measures is a failure to provide appropriate information to the public. It will be vitally important to ensure that information which is made available on the website has proper context.

Specifically, as opposed to just providing information about a closure, the website needs to provide details regarding the compliance history of venues and information about re-inspection procedures so that the public can make informed decisions in the context of a venue's overall compliance history.

If the information provided is incomplete or without proper context, licensees will suffer adverse and unfair consequences.

6. Do businesses currently display their registration certificates as a matter of standard practice? Would there be any impact on businesses if mandatory display was introduced?

There should be no need for venues to display their registration certificate. If a venue is open and operating, clearly it is licensed. Displaying the registration certificate will provide no useful information to the general public.

Food Safety Supervisors

In principle, ClubsACT supports the introduction of a requirement of basic training in food safety for licensees. In the same way Responsible Service of Alcohol certificates are mandatory for staff in liquor licensed venues, some level of basic training should be required for venues licensed to serve food.

There is a question regarding the best method for ensuring each licensee has some degree of basic training in food safety. The appointment of a Food Safety Supervisor (FSS) may not be the best approach for all venues given they differ greatly in size and staff complement.

Key Questions

1. Do you think the requirement to have a FSS would contribute to improving food safety?

A FSS approach would certainly have a positive impact on those venues where staff have received no formal training in food safety. Obviously, venues such as restaurants will have staff members with significant training and qualifications dealing with food safety and a FSS may not have as much value.

2. What types of food businesses should be required to have a FSS in the ACT?

All venues that are licensed to sell food should be subject to the same requirement for a basic level of training in food safety.

3. Should the FSS be present at all times?

No. The FSS should be responsible for ensuring all other staff adhere to relevant food safety standards.

4. What do you see as the key cost drivers of introducing a FSS requirement in the ACT?

Clearly for many venues, a new requirement to demonstrate the completion of a basic food safety course will involve cost. The cost will be variable depending on the number of staff that each venue will need to undertake training.

5. Are there ways that could minimize the implementation costs (i.e. transitional arrangements, accrediting existing training) of introducing a FSS requirement?

A long transitional period would be a very necessary measure to reduce costs to industry. This will also allow for training providers to meet what would be a significantly increased demand for training.

It is also clear that any scheme such as the one proposed would need to accommodate licensees who can demonstrate that they already meet the required standards so that unnecessary training is avoided.

Costs to Industry

Notwithstanding any requirements for licensees to train staff in basic food safety standards, industry should not be burdened with any increased costs as a result of any measure that arises out of this process.

ClubsACT is concerned that much of what is contained in the Discussion Paper will lead to increased costs for the Health Protection Service and those costs will be passed on to industry. ClubsACT does not support such an approach.

The Regulatory Impact Statement should detail the costs of each measure and the ACT Government should respond in very clear terms how those costs are to be borne.

Conclusion

The Discussion Paper is based on a premise that what is required at this point is an industry based response. This premise is false.

While it may be that some of the measures proposed in the paper have merit, there is no way of being able to determine whether they will address the problems which are the genesis of the current review, because those problems have not been laid out which is the primary failure of the Discussion Paper.

Indeed, a 4 page Discussion Paper asking for industry feedback on measures which have the potential to have a significant impact on licensees is completely inadequate and makes it very difficult to provide substantive responses.

As stated earlier, ClubsACT does not support the introduction of any of the measures proposed in this document until an external review of existing Health Protection Services policies and procedures as they pertain to food safety in the ACT is completed.