



Submissions Template for the proposed s33 class exemption for home-based cake-makers of shelf-stable cakes and decorators of shelf-stable cakes

Please use this table for making your comments for this review.

Name: Helen Evans and Environmental Health Team

Title (if applicable): Environmental Health Manager

Organisation (if applicable): Queenstown Lakes District Council

Address and contact details: helen.evans@qldc.govt.nz

Please submit to foodactinfo@mpi.govt.nz by **11.59pm 28th September 2025**.

Questions MPI would like feedback on:		
Please read the discussion document and the Notice for further information prior to submission.		
	Questions:	Comments:
1.	Are you a (select all the apply): <ul style="list-style-type: none"> - Commercial baker - Cake-maker - Cake decorator - Food Act Verifier - Consumer - Local Government - Other [please comment] 	Registration Authority – Verification Agency and Food Safety Officer provisions



Questions MPI would like feedback on:

2.	Do you agree or disagree with the problem statement: Current requirements for home-based cake makers and home-based cake decorators are disproportionate to the level of risk presented?	<p>It's critical that quality analysis of the risks relating to these operators is undertaken before any changes are made. Current requirements for cake makers to be registered as a Template Food Control plan may be disproportionate to the level of risk. However, no risk assessment or research has been made available to submitters by New Zealand Food Safety (NZFS) to support or disagree with this statement.</p> <p>Evidence is required for the position that home-based cake makers are generally small-scale and low risk with limited turnover and that there has been no safety and suitability issues relating to foods produced by home based cake makers and cake decorators.</p> <p>Further evidence and explanation are required to justify why NZFS considers there is less risk when making a cake at home versus in a separate non-residential building. It is widely accepted that risks may be higher in a home-based setting due to the presence of children, other family members/flatmates and pets. In addition to this, the mixed-use kitchen also presents a higher risk of cross contamination, particularly regarding allergens and inadequate separation of equipment and ingredients used for food business activities as opposed to personal use.</p>
3.	If you disagree with the problem statement, what do you think the problems are?	As detailed, insufficient research has been undertaken to analyse the risks for this type of food production. It is accepted that these operators should not be required to be registered under the risk category Template Food Control Plans. However, there is no reason that they should also be completely exempt from registration under the Food Act 2014. It is essential that food safety rules and regulations are not based on the businesses size, turnover and income, it must be based on the degree of risk to the consumers.



Questions MPI would like feedback on:		
		QLDC recommends that the NZFS prioritises and allocates funding from the new Food Levy based on the degree of the food safety risks and updating public resources as required.
4	What evidence should we look at to better understand the problem(s)?	<p>There is minimal information in the proposal in respect to food safety risk considerations. In addition, one of the important risk considerations – allergens has not been mentioned. This is an essential area that should have been included especially as birthday and celebration cakes are often created for more susceptible consumers such as young children.</p> <p>It's essential that food safety regulatory requirements are based on research and risk evaluation. Any changes should only be introduced following a review of research and after performing a risk-based analysis.</p> <p>The information from <i>Department of Health, Victoria</i> is being used to assist in developing the table on what is and what is not a shelf stable cake. However, it is noted that the cited guidance is for community fundraising groups, and it appears that food operators selling cakes are still required to register under food legislation in Australia.</p> <p>QLDC recommends that NZFS rather than taking a sector-by-sector approach, reviews all the assigned risk categories under the Food Act 2014 under Schedule 1 and 2, importantly those not required to work under a Food Control Plan or National Programme.</p> <p>QLDC recommends that NZFS considers why a home-based cake maker should be exempt from operating under a risk-based measure, while a campground with a freezer selling ice blocks is still required to register. Furthermore, a baker of bread or</p>



Questions MPI would like feedback on:

cookies would need to register but not a cake maker. This is an inconsistent approach and favours cake makers over producers and manufacturers of other food items (such as those who produce jam, preserves, candy floss, confectionary, popcorn and other food products) by creating more permissive regulation, without clear rationale.

It states in the proposal that over the next 18 months, NZFS will be undertaking a wider review of the risk-based measures and the businesses to which they relate. This is not an organised nor efficient approach to take. The assessment should be completed for all categories in Schedules 1, 2 and 3. A focus on a particular group of producers at a time will lead to a disjointed review and also undermines the integrity of the management of food safety and how it is applied.

QLDC recommends NZFS considers whether risk should be compared to the business size, turnover and income.

Clarification is required about the proposed frequency requirements for food verifications. The verifications are not periodic every 12 to 18 months, as stated in the proposal but based on the frequency set in Food Regulations 2015.

The discussion on ingredients used in bakery products and specifically cakes has not considered the full use of the ingredients. For instance, flowers and herb decorations, food colourings, buttercreams, cream cheese icings etc. The cakes and icing may be “shelf stable” but they may also have freshly sliced strawberries or other fruit (or similar) as a garnish. A robust definition on what is considered as a “cake” is required e.g. are “soft sweet” muffins, cookies, brownies and slices included in the definition of a cake? This has not been detailed in the notice.



Questions MPI would like feedback on:		
5	Do you agree or disagree that we have identified the correct options to consider? Why/why not?	<p>We disagree that all options have been considered. Insufficient evidence has been provided by NZFS to demonstrate that these operators are low risk, and inadequate information has been supplied to ensure consultation is effective.</p> <p>We note that there was no collaboration with Registration Authorities and verifiers to ensure a co-regulatory approach prior to consultation.</p> <p>Of the options provided, option 2 would be the most appropriate option identified. Although Part 4 of the Food Act - Schedules 1, 2 and 3 require a full review to ensure each food sector is in the appropriate risk category. As aforementioned, it is strongly recommended that all food sectors are reviewed rather than a particular sector approach which may lead to inconsistent or unfair regulations.</p>
6	Are there any other options we should consider? Please comment	<p>All the risk categories under Schedule 1, 2 and 3 Food Act 2014 need to be reviewed. One option that could have been considered is that the risk category for this operator be reviewed rather than applying an exemption. It would be best practice to include cake makers in the NP3 Retailers that Handle Food or expand the NP2 Bakeries that prepare or manufacture bread or bread products to include shelf stable cakes.</p> <p>The cake making and cake decorating industry could develop their own template for approval after considering the risks associated with their sector and effective measures to control those risks. As outlined in the Food Act 'section 39 Food control plan: chief executive's power to issue official template or model' or 'section 40 - Food control plan: chief executive's power to approve official template or model developed by third party'.</p>



Questions MPI would like feedback on:		
		Alternatively, a template could be developed by MPI that could adequately address the risks while ensuring that food safety measures are maintained.
7	What are the impacts of the preferred option 4 to enable a class exemption?	<p>QLDC assesses the following impacts:</p> <ul style="list-style-type: none">• Home-based cake makers and decorators of shelf stable cakes may not comply with the requirements to make safe and suitable food. This will cause issues with food operators and public having confidence with the Food Act and Food Regulations as the foundations of managing food safety in NZ.• The exemption creates confusion and misalignment with the other lower risk categories that have been incorrectly assigned under schedule 1 and 2.• If an exemption is provided to a certain sector, it may set a precedent for other lower risk-based sectors to also apply for an exemption i.e., other small home-based food businesses like jam makers. Therefore, it is critical that there is adequate risk-based evidence for any changes to regulations to support future decision making and ongoing alignment with the purpose of the Food Act 2014, in particular to “<i>achieve the safety and suitability of food for sale</i>” and “<i>maintain confidence in New Zealand’s food safety regime</i>” and “<i>minimise and manage risks to public health and protect and promote public health</i>”.• There may be implementation and process challenges or inconsistencies as Registration Authorities decipher the use ingredients such as flour, eggs, sugar and other ingredients, and other ingredients and definition of cake (as noted in question 4).



Questions MPI would like feedback on:		
8.	What sources of information would help us assess the associated costs and benefits of implementing this exemption?	QLDC seeks clarification on whether there will there be a cost recovery. QLDC does not determine there are any benefits in terms of associated costs.
9.	Do you agree or disagree that there should be a specified maximum number of cakes an operator under the class exemption is permitted to bake or decorate per year? If you agree, what do you feel the maximum number should be?	<p>QLDC does not support the approach to specify the maximum number of cakes an operator could be permitted to bake per year as it is not a risk-based approach. Risk can be assessed based on how many people can become sick, for example a large wedding or celebration cake could be served to hundreds of people, birthday cakes could be served to vulnerable populations such as young children, the elderly, immunocompromised people or those who suffer severe food allergies. It is essential that food safety risks are adequately managed to reduce the risk of unsafe or unsuitable food being served to these at-risk groups as well as the general public.</p> <p>QLDC also noted this approach is not effective as cakes vary in size and would have to consider the inclusion of cupcakes. An approach would have to outline what happens and how it would be managed if a cake maker went over a set number of cakes.</p>
10.	Do you agree or disagree with the conditions of the proposed exemption as laid out in clause 1.4 of the Notice? Why/why not?	<p>QLDC seeks clarification for how “<i>general good hygiene practices</i>” and “<i>competency</i>” would be defined. It’s important that clear information on the expectations for ensuring food is safe and suitable is provided and people are appropriately trained. Furthermore, clarity is required as to how a cake maker or cake decorator would be deemed as ‘competent’ and who would make this assessment i.e., across certain areas such as (but not limited to) food allergen management, hand hygiene practices, safe storage of ingredients and cross contamination prevention.</p> <p>QLDC does agree with the requirements relating to ensuring cakes meet the applicable requirements of the Food Standards Code and the Food Act 2014, however</p>



Questions MPI would like feedback on:

		<p>if an exemption was provided, clarification would be required about who would be assess whether the ingredients such as sprinkles, colourings, flavourings and decorations meet the requirements of the Food Standards Code. Some cake makers currently operating under a Template Food Control Plan do not understand this requirement, the Food Standards Code is complex and can be difficult to understand. Some cake making operators may purchase these types of ingredients from overseas and are inadvertently importing them. A process would be required to check and assess products to ensure they meet the Food Standards Code and importing requirements.</p> <p>QLDC agrees that <i>threats</i> need to be reported, however the wording threat should be reviewed and a clearer explanation of what constitutes a threat will need to be provided. The word “threat” does not align with wording used for food operators registered under the Food Act.</p> <p>In situations when something goes wrong, there needs to be a requirement to record the action taken and provide a copy to NZFS for review. Any significant instance when something goes wrong i.e. “a threat” needs to be reviewed by NZFS using a full cost recovery approach. It should be questioned whether the compliance team have enough resources to adequately investigate these complaints.</p> <p>QLDC agrees with the approach in respect of traceability and ensuring cakes are not sold as wholesale or for export.</p>
11.	Is there anything we need to consider during implementation and ongoing monitoring of the class exemption?	QLDC recommends that the process needs to be based on a full cost recovery model.



Questions MPI would like feedback on:

		<p>QLDC seeks clarification as to whether there will there be a system as per importing of directed verification for operators where complaints or issues have been noted.</p> <p>QLDC has concerns that there are higher risk issues that are not being addressed which should be prioritised before the implementation of this exemption. For instance, food operators not needing treatment of self-supply water based on one test result, out of date guidance and resources, etc.</p> <p>QLDC seeks clarification as to why the Food Notice does not contain a definition of what can be included as a Home-Based cake maker or decorator i.e. what is home based. Specifically, whether a home-based cake baker would be exempt if they had a separate unit/room away from the main house. Additionally, whether safeguards would be put in place to stop ‘commercial’ cake makers from moving to their home address to be eligible for exemption.</p>
--	--	--

Discussion Document: Proposal for regulating home-based cake-makers and cake decorators of shelf-stable cakes

If you have any other comments on the Discussion Document, please add these to the table below.



New Zealand Food Safety

Ministry for Primary Industries

Manatū Ahu Matua

Part	Comment on the Part
	The tools for cake-makers to assess whether a product is shelf stable are outdated and difficult to use. For instance, the TFCP references the 'How to determine the shelf life of food' guidance document – this document is from 2016 and does not provide adequate information for small scale food producers.
	If an exemption system is introduced, it should be considered that a criterion is applied if that if they employ staff, they cannot also apply for an exemption.
	The proposal contained insufficient details and also information that was not clear or accurate. For instance, the provision for cakes containing meat, poultry and fish.
	Typo 1.3(1b) of the Food Notice: b) Home-based decorators or shelf-stable baked cakes sold direct to consumers.
	An exemption would provide limited traceability in terms of potential Food Bourne Illness, given businesses are not registered. Additionally, if they are exempt, clarification is required as to whether this prevents a Food Safety Officer from investigating a serious food safety complaint or issue and prevent them from undertaking enforcement action, such as issuing a Notice of Direction, Improvement Notice or undertaking a prosecution if a major issue arose. For example, a child suffering a severe allergic reaction due to inadequate allergen control or declaration.
	As provided for in Section 33 of the Food Act 2014 2(b) QLDC requests further information on how persons or groups of persons will demonstrate understanding and awareness of the importance of hazards and other factors that are relevant in achieving safe and suitable food.



New Zealand Food Safety

Ministry for Primary Industries

Manatū Ahu Matua

Part	Comment on the Part
	In addition, further information on the evidence to determine whether to grant the exemption in regard to hazards, the feasibility, effectiveness, and efficiency of operating under a food control plan or a national programme, the appropriateness of regulatory control in comparison with controls specified for similar food sectors or types or descriptions of food business.