Reducing the Burden on Food Businesses

NSW Councils
Home Jurisdiction Partnership Agreement:
Non Fixed Food Businesses

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Background

- All food vans required Section 68
- Food vans inspected by appointment outside council chambers
- No food handling or storage observed at annual inspections
- Floors, walls and ceilings only ... just a checklist, not risk related
- Mobiles and temps treated very different but not based on risk
- Traders incurring excessive costs because of multiple registrations and inspection across LGA borders
Local Government Act 1993 Section 68, Part F (7)
Use of a standing vehicle or article for the purpose of selling any article in a public place requires approval under the Act.

Food Act 2003

Vehicle: Any means of transport, whether self-propelled or not, and whether used on land or sea or in the air

Guidelines for Mobile Food Vending Vehicles

A mobile food vending vehicle is any means of transport, whether self-propelled or not or otherwise designed to be movable from place to place, and which is used for selling food, whether on land, sea or air
The Local Government Act be amended to enable councils to recognise Section 68 approvals issued by another council (ie, mutual recognition of section 68 approvals), for example with mobile vendors and skip bins. 

And, 

All councils should adopt the NSW Food Authority’s guidelines on mobile food vendors. This will allow for food safety inspections to be conducted in a mobile food vendor’s ‘home jurisdiction’, which will be recognised by other councils.
Councils can apply a ‘home jurisdiction rule’

*a council in which the vehicle is operating does not need to conduct an inspection if the home council has already conducted an inspection within the past 12 months.*

Despite the home jurisdiction rule, councils are still conducting duplicate inspections of food vendors over a 12 month period.

Reasons for duplicate inspections includes
- vendors did not have the previous inspection report with them to demonstrate compliance or
- council deemed it necessary to conduct another inspection for food safety purposes.
On average, mobile vendors are inspected twice within a 12 month period equalling a total of 2,200 inspections on average.

IPART’s recommendation to apply the ‘home jurisdiction’ rule will reduce up to 1,100 inspections per year.

The average inspection fee charged to mobile vendors is $140 per inspection.

IPART’s recommendation would reduce red tape for businesses by up to $154,000 in per year.
1262 businesses defined as ‘mobile’

8448 businesses defined as ‘temporary’

All together that's 9710 business with potential to trade across borders

.....therefore how many might have multiple registrations and inspections??

If only half of those businesses are inspected more than once a year = potential over charging of almost $700,000 and also unneeded drain on Councils resources
The Proposal

Will you join us in ..............

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Home Jurisdiction Partnership Agreement
Home Jurisdiction Partnership Agreement: Non- Fixed Food Businesses

- Compliance with the requirements of the Food Act 2003 and Local Government Act 1993
- Recognising the recommendations of the 2013 IPART review into Local Government Compliance and Enforcement
- Help to ensuring non fixed food businesses are inspected for food safety at least once annually
- Not place undue burden on food businesses operating from non-fixed premises
- Not place undue burden on Council resources
- Recoup reasonable cost incurred by Council’s for service provision.
Definitions

- The Home Jurisdiction Rule
  A process where food regulators coordinate responses to food standards matters across borders to avoid imposing unnecessary regulatory costs on businesses.

- Home Council
  Home Council is the LGA in which a food business is based.

- Partnership Council
  A Council who adopts the terms and responsibilities of agreement.

- Non-fixed food premises
  Any food business trading from a vehicle or temporary structure. Formally referred to as ‘Mobile’ and ‘Temporary’ food businesses.
Basic Terms of the Partnership Agreement

✓ Non fixed food businesses notify their business to the Home Council.

✓ If a business trades across LGAs, partner Councils will not require to notify or obtain additional approval.

✓ Council will not inspect a food business who is able to provide valid evidence of an inspection within the current financial year unless,
  a) There is reasonable suspicion of a health risk
  b) A complaint has been received
  c) The food business cannot produce valid evidence of LGA or NSWFA notification on request.
Basic Terms of the Partnership Agreement

- Partnership Councils to use the standardised NSWFA Food Premises Inspection Report (FPAR), or equivalent,

- A written record of any inspection and associated compliance actions forwarded to the Home Council

- As part of the consent, tender or licencing agreement etc, organisers of markets and temporary events to ensure that each food business provides,
  - evidence of notification to a NSW Council (or NSWFA)
  - a copy of the nominated Food Safety Supervisor certificate and
  - copies of the last inspection report, where available,
Similar home jurisdiction rules will apply

The Home Council will be responsible for issue of the Section 68 approval.

The approval will be comprised of ‘standard’ conditions and ‘local’ conditions
Section 68 Approval - Standard Conditions

- Applicable across all partnership LGAs
  - Compliance with the Food Act 2003 (NSW) and the Food Regulation 2010 (NSW) and the Australian New Zealand Food Standards Code
  - Insurance policy coverage in respect to public and products liability of an amount of not less than $20 million (for each accident or event).
  - No offensive noise, light or waste pollution caused, in accordance with the Protection of the Environment Operations Act 1997
  - No signage is to be erected, unless directly attached to the vehicle.
  - Compliance with NSW Road Rules including parking/regulatory signposting required at all times
  - Any changes made to the business, such as ownership, equipment or food sold, must be notified to the issuing Council
  - Food businesses approved under Section 68 must not operate:
    a. As a roadside stall.
    b. On any public land or reserve (i.e. council reserve, park, beach, car park etc.) without the prior approval of council’s land manager.
    c. As a stall to sell food to the public on any site that first requires development consent under the Environmental Planning and Assessment Act 1979 for that use
    d. During the hours of darkness without additional council approval unless otherwise associated with an approved event
  - A copy of this approval document is to be retained on site at all times while the business is trading and must be available for inspection at the request of an authorised officer.
  - When operating outside the boundaries of the issuing authority, it is the responsibility of the food business to ensure they are familiar with local conditions in all local government areas (LGAs) that they trade. Local conditions of other Councils take precedent when trading with their Local Government Area.
Section 68 Approval - Local Conditions

- Variable in accordance with local policy and Local Environmental Plans (LEP)
- Each Council sets their own local conditions
- Only applicable when trading within the relevant LGA.
- Local conditions take precedent

For example...

1. Food businesses approved under Section 68 are permitted to trade:
   a) By standing on a public road for up to \( \{XX\} \) minutes at a time, or longer whilst serving customers and must keep moving once customers have been served. After stopping to trade, the business must drive at least \( \{XXX\} \) metres before stopping again to trade.

2. Food businesses approved under Section 68 must not operate:
   a) Within a radius of \( \{XXX\} \) metres of an existing trading food business selling similar or the same product, on days when the food outlet is open for business.
   b) On roads where the speed limit exceeds 50km
Section 68 Approval

- The Home Council will issue the Section 68 detailing their own local conditions and Standard Conditions.

- Councils adopting this agreement will recognise the Section 68 approval issued by other Councils.

- Food business not required to obtain additional approval or pay additional fees.

- Local conditions of other Councils take precedent when trading within their area.

- Local conditions must be clearly displayed on Council’s website.
Dealing with Non Compliance

- All Councils retain the right to pursue appropriate regulatory enforcement actions
- If non-compliance with law or the terms of an approval, follow normal enforcement protocols but also contact the Home Council, where applicable.
- Home Councils keeps inspection and investigation and also collates information relating to the business provided by other Councils.
- Home Council provides relevant information on request
- Home Councils who receive repeated notification of non-compliance may wish to use this information to increase inspection frequencies or withdraw Section 68 approval etc.
- Home Councils under no obligation to carry out follow up inspections on behalf of other Councils
Responsibilities – Home Council

- Maintain details on the LGA register.
- Evaluate for, and issue of, Section 68 Approval
- Issue proof of registration/notification certificates
- Inspect annually and issue inspection report
- Collect Fees
- Acknowledge inspection reports issued by other LGAs
- Collate and provide information on issues of non-compliance
- Provide information on the website
- Market/Event consent, licence or tender conditions require market
Responsibilities – Partnership Councils

- Recognise inspection reports issued by other LGAs
- Inspect as required and issue inspection report
- Advise Home Council of inspection and any issues of non-compliance
- Collect Fees
- Provide information on the website
- Consent, licence or tender conditions
Responsibilities – Food Business Operator

- Ensure copy of inspection report **and** proof of notification and (where relevant) Section 68 approval available on site at all times when trading.
- Provide copies of the above document to market/event organisers on request.
- Meet standard and local conditions of Section 68 approval, as applicable, in all LGA.
- Advise Home Council of trading location (on request) so inspections can be planned.
- Reimburse relevant Councils for reasonable costs.
Summary

✓ Councils acknowledge the home jurisdiction rule becoming ‘partnership Councils,
✓ Council recognition of food safety inspections by other authorities
✓ Allow Councils to target resources
✓ Reducing the regulatory and financial burden on the food businesses.
✓ The fees set for inspections and administration services provided, remains at the discretion of each individual Council.
✓ No centralised database is needed.
✓ A suite of toolkit template documents to aid Councils.

- Website information
- Advisory letter for business operators to accompany approval/confirmation of notification
- Section 68 approval
- Home Council referral
- Sample non-fixed business (internal) procedure